UNIVERSAL COAL PLC
ARBN 143 750 038
(Company)

CORPORATE GOVERNANCE

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SCHEDULE 1 – BOARD CHARTER

In carrying out the responsibilities and powers set out in this Charter, the Board:

(a) recognises its overriding responsibility to act honestly, fairly, diligently and in accordance with *the Companies Act* 2006 and other associated United Kingdom enactments (as set out in Annexure B) in serving the interests of its shareholders; and

(b) recognises its duties and responsibilities to its employees, customers and the community.

The Board recognises that as an English public limited company its responsibilities and powers are subject to English law as well as the standards applicable to companies listed on ASX. In particular, Annexure B identifies the principal Directors duties under English law, including duties regarding situational or transactional conflicts.

1. THE SPECIFIC RESPONSIBILITIES OF THE BOARD

In addition to matters it is expressly required by law to approve, the Board has the following specific responsibilities:

(a) appointment of the Chief Executive Officer and other senior executives and the determination of their terms and conditions including remuneration and termination;

(b) driving the strategic direction of the Company, ensuring appropriate resources are available to meet objectives and monitoring management's performance;

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

(d) approving and monitoring the progress of major capital expenditure, capital management and significant acquisitions and divestitures;

(e) approving and monitoring the budget and the adequacy and integrity of financial and other reporting;

(f) approving the annual, half yearly and quarterly reports and directors' reports, as applicable;

(g) approving significant changes to the organisational structure;

(h) approving the issue of any shares, options, equity instruments or other securities in the Company (subject to receipt of the necessary shareholder authorities under English law and compliance with ASX Listing Rules);

(i) ensuring a high standard of corporate governance practice and regulatory compliance and promoting ethical and responsible decision making;

(j) the appointment of Board members in line with the criteria included in this document at Section 2;

(k) managing the performance of the Board as a whole and of individual Board members;

(l) developing and reviewing corporate governance principles and policies;

(m) developing and reviewing the Company's policy, objectives and strategies in relation to diversity;

(n) developing and reviewing measurable objectives for diversity, including an annual review of the proportions of females at each level of the Company.

(o) recommending to shareholders the appointment of the external auditor as and when their appointment or re-appointment is required to be approved by them (in accordance with English law and the ASX Listing Rules);

(p) approving the remuneration of external auditors;

(q) defining the scope of the external and internal audit function; and

(r) meeting with the external auditor, at their request, without management being present.

2. COMPOSITION OF THE BOARD

(a) The composition of the Board is to be reviewed regularly to ensure the appropriate mix of skills, diversity and expertise is present to facilitate successful strategic direction.

(b) The Board should comprise Directors with a mix of qualifications, diversity, experience and expertise which will assist the Board in fulfilling its responsibilities, as well as assisting the Company in achieving growth and delivering value to shareholders.

(c) In appointing new members to the Board, consideration is given to the ability of the appointee to contribute to the ongoing effectiveness of the Board, to exercise sound business judgement, to commit the necessary time to fulfil the requirements of the role effectively and to contribute to the development of the strategic direction of the Company. Consideration will also be given to achieving a Board with a diverse range of backgrounds.

(d) The process used for selecting new members for the Board may be assisted by the use of external search organisations as appropriate. An offer of a Board appointment will be made by the Chairman of the Board only after having consulted all Directors and undertaking appropriate background check. Detailed background information in relation to a potential candidate will be provided to all Directors. Material

information, including biographical details will also be provided to shareholders at the time of re-election.

(e) Where practical, the majority of the Board is comprised of non-executive Directors. Where practical, at least 50% of the Board will be independent. An independent Director is one who is independent of management and free from any business or other relationship, which could, or could reasonably be perceived to, materially interfere with, the exercise of independent judgement. Independent Directors should meet the definition of what constitutes independence as set out in the ASX Corporate Governance Council Principles and Recommendations as set out in Annexure A.

(f) Care needs to be taken to monitor the residence of the Directors appointed and to be appointed to ensure clarity as to whether or not the UK City Code on Takeovers (**City Code**) will apply. Any change of directorships should be checked with the UK Takeover Panel to ascertain the position.

(g) Directors must disclose their interests. The independence of the Directors should be regularly assessed by the Board in light of the interests disclosed by them. Directors must have regard to Annexure B for an outline of the position under English law.

(h) Directors are expected to bring their independent views and judgement to the Board and must declare immediately to the Board any potential or active conflicts of interest.

(i) Directors must declare immediately to the Board, and the Board will determine whether to declare to the market, any loss of independence.

(j) Subject to Article 25 of the Company's Articles of Association, no member of the Board may serve for more than three years or past the third annual general meeting following their appointment, whichever is the longer, without being re-elected by the shareholders.

(k) Subject to the provisions of the Company's Articles of Association, prior to the Board proposing re-election of non-executive Directors, their performance will be evaluated by the Board to ensure that they continue to contribute effectively to the Board.

3. THE ROLE OF THE CHAIRMAN

(a) Where practical, the Chairman should be a non-executive, Independent Director. If a Chairman ceases to be an independent Director then the Board will consider appointing a lead independent Director.

(b) Where practical, the Chief Executive Officer should not be the Chairman of the Company during his term as Chief Executive Officer or in the future.

(c) The Chairman must be able to commit the time to discharge the role effectively.

(d) The Chairman is responsible for the leadership of the Board, ensuring it is effective, setting the agenda of the Board, conducting the Board meetings and conducting the shareholder meetings.

(e) The Chairman should facilitate the effective contribution of all Directors and promote constructive and respectful relations between Board members and management.

(f) In the event that the Chairman is absent from a meeting of the Board then the Board shall appoint a Chairman for that meeting.

4. BOARD COMMITTEES

(a) The Board may establish Committees from time to time to assist the Board in fulfilling its duties. The Board has currently established the following Committees:

(i) Audit and Risk Committee; and

(ii) Remuneration Committee.

(b) Any Committee established by the Board will have written terms of reference or charters approved by the Board in accordance with Articles 23 and 26.5 of the Company's Articles of Association, and reviewed following any applicable regulatory changes.

(c) The Board will ensure that any Committees are sufficiently funded to enable them to fulfil their roles and discharge their responsibilities.

(d) Members of Committees will be appointed by the Board.

(e) The minutes of any Committee meetings shall be provided to the Board at the next occasion the Board meets following approval of the minutes of such Committee meeting.

5. BOARD MEETINGS

(a) There must be two Directors present at a meeting to constitute a quorum.

(b) The Board will schedule Board meetings as frequently as may be required.

(c) Non-executive Directors may confer at scheduled times without management being present.

(d) The minutes of each Board meeting shall be prepared by the Company Secretary, approved by the Chairman and circulated to Directors after each meeting.

(e) The Company Secretary shall distribute supporting papers for each meeting of the Board as far in advance as practicable.

(f) Minutes of meetings must be approved at the next Board meeting.

(g) Further details regarding board meetings are set out in Article 26 of the Company's Articles of Association.

6. THE COMPANY SECRETARY

(a) The Company Secretary is accountable directly to the Board, through the Chairman, on all matters to do with the proper functioning of the board.

(b) When requested by the Board, the Company Secretary will facilitate the flow of information of the Board, between the Board and its Committee and between senior executives and non-executive Directors.

(c) The Company Secretary is to facilitate the induction of new Directors.

(d) The Company Secretary is to facilitate the implementation of Board policies and procedures.

(e) The Company Secretary is to provide advice to the Board, on corporate governance matters, the application of the Company's Articles of Association, the ASX Listing Rules and applicable English and other laws.All Directors have access to the advice and services provided by the Company Secretary.

(f) The Board has the responsibility for the appointment and removal of the Company Secretary.

7. ACCESS TO ADVICE

(a) All Directors have unrestricted access to company records and information except where the Board determines that such access would be adverse to the Company's interests.

(b) All Directors may consult management and employees as required to enable them to discharge their duties as Directors.

(c) The Board, Board Committees or individual Directors may seek independent external professional advice as considered necessary at the expense of the Company, subject to prior consultation with the Chairman. A copy of any such advice received is made available to all members of the Board.

8. THE BOARD'S RELATIONSHIP WITH MANAGEMENT

(a) The Board shall delegate responsibility for the day-to-day operations and administration of the Company to the Chief Executive Officer.

(b) In addition to formal reporting structures, members of the Board are encouraged to have direct communications with management and other employees within the Group to facilitate the carrying out of their duties as Directors.

9. PERFORMANCE REVIEW

The Board will review its performance at regular intervals determined by the Chairman. Any such review will:

(a) compare the performance of the Board with the requirements of its Charter;

(b) critically review the mix of the Board; and

(c) suggest any amendments to the Charter as are deemed necessary or appropriate.

10. DISCLOSURE POLICY

The Board should ensure that the Company has in place effective disclosure policies and procedures so that shareholders and the financial market are fully informed to the extent required by the applicable disclosure rules and legislation on matters that may influence the share price of the Company or its listed debt securities.

SCHEDULE 2 – CORPORATE CODE OF CONDUCT

1. PURPOSE

The purpose of this Corporate Code of Conduct is to provide a framework for decisions and actions in relation to ethical conduct in employment. It underpins the Company's commitment to integrity and fair dealing in its business affairs and to a duty of care to all employees, clients and stakeholders. The document sets out the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behaviour expected from employees.

1. ACCOUNTABILITIES

1.1 The Board

The Board is responsible for ensuring a high standard of corporate governance and reviewing and ratifying systems of risk management and internal compliance and control, codes of conduct and legal compliance. Individual Directors are accountable for undertaking their duties and behaving in a manner that is consistent with the provisions of the Code of Conduct.

1.2 Managers and Supervisors

Managers and supervisors are responsible and accountable for:

(a) undertaking their duties and behaving in a manner that is consistent with the provisions of the Code of Conduct;

(b) the effective implementation, promotion and support of the Code of Conduct in their areas of responsibility; and

(c) ensuring employees under their control understand and follow the provisions outlined in the Code of Conduct.

1.3 Employees

All employees are responsible for:

(a) undertaking their duties in a manner that is consistent with the provisions of the Code of Conduct;

(b) reporting suspected corrupt conduct; and

(c) reporting any departure from the Code of Conduct by themselves or others.

2. PERSONAL AND PROFESSIONAL BEHAVIOUR

When carrying out your duties, you should:

(a) behave honestly and with integrity and report other employees who are behaving dishonestly;

(b) carry out your work with integrity and to a high standard and in particular, commit to the Company's policy of producing quality goods and services;

(c) operate within the law at all times;

(d) follow the policies of the Company; and

(e) act in an appropriate business-like manner when representing the Company in public forums.

3. CONFLICT OF INTEREST

Potential for conflict of interest arises when it is likely that you could be influenced, or it could be perceived that you are influenced by a personal interest when carrying out your duties. Conflicts of interest that lead to biased decision making may constitute corrupt conduct. Annexure B describes the position from an English law perspective.

(a) Some situations that may give rise to a conflict of interest include situations where you have:

(i) financial interests in a matter the Company deals with or you are aware that your friends or relatives have a financial interest in the matter;

(ii) directorships/management of outside organisations;

(iii) membership of boards of outside organisations;

(iv) personal relationships with people the Company is dealing with which go beyond the level of a professional working relationship;

(v) secondary employment, business, commercial, or other activities outside of the workplace which impacts on your duty and obligations to the Company;

(vi) access to information that can be used for personal gain; and

(vii) offer of an inducement.

(b) You may often be the only person aware of the potential for conflict. It is your responsibility to avoid any conflict from arising that could compromise your ability to perform your duties impartially. You must report any potential or actual conflicts of interest to your manager.

(c) If you are uncertain whether a conflict exists, you should discuss that matter with your manager and attempt to resolve any conflicts that may exist.

(d) You must not submit or accept any bribe, or other improper inducement. Any such inducements are to be reported to your manager.

Management of Board conflicts of interest

The Constitution and applicable regulations set out the obligations of Directors in dealing with any conflicts of interest. Pursuant to the Constitution and Code of Conduct, Directors are obliged to:

- disclose to the Board any actual or potential conflicts of interest which may exist as soon as they become aware of the issue;
- take any necessary and reasonable measures to resolve the conflict; and
- comply with all law in relation to disclosure of interests and restrictions on voting.

Unless the Board determines otherwise, a Director with any actual or potential conflict of interest in relation to a matter before the Board, does not:

- receive any Board papers in relation to that matter; and
- participate in any discussion or decision making in relation to that matter.

4. PUBLIC AND MEDIA COMMENT

(a) Individuals have a right to give their opinions on political and social issues in their private capacity as members of the community.

(b) Employees must not make official comment on matters relating to the Company unless they are:

(i) authorised to do so by the Chief Executive Officer; or

(ii) giving evidence in court; or

(iii) otherwise authorised or required to by law.

(c) Employees must not release unpublished or privileged information unless they have the authority to do so from the Chief Executive Officer.

(d) The above restrictions apply except where prohibited by law, for example in relation to "whistleblowing".

5. USE OF COMPANY RESOURCES

Requests to use Company resources outside core business time should be referred to management for approval.

If employees are authorised to use Company resources outside core business times they must take responsibility for maintaining, replacing, and safeguarding the property and following any special directions or conditions that apply.

Employees using Company resources ***without*** obtaining prior approval could face disciplinary and/or criminal action. Company resources are not to be used for any private commercial purposes.

6. SECURITY OF INFORMATION

Employees are to make sure that confidential and sensitive information cannot be accessed by unauthorised persons. Sensitive material should be securely stored overnight or when unattended. Employees must ensure that confidential information is only disclosed or discussed with people who are authorised to have access to it. It is considered a serious act of misconduct to deliberately release confidential documents or information to unauthorised persons, and may incur disciplinary action.

7. INTELLECTUAL PROPERTY/COPYRIGHT

Intellectual property includes the rights relating to scientific discoveries, industrial designs, trademarks, service marks, commercial names ad designations, and inventions and is valuable to the Company.

The Company is the owner of intellectual property created by employees in the course of their employment unless a specific prior agreement has been made. Employees must obtain written permission to use any such intellectual property from the Company Secretary/Group Legal Counsel before making any use of that property for purposes other than as required in their role as employee.

8. DISCRIMINATION AND HARASSMENT

Employees must not harass, discriminate, or support others who harass and discriminate against colleagues or members of the public on the grounds of sex, pregnancy, marital status, age, race (including their colour, nationality, descent, ethnic or religious background), physical or intellectual impairment, homosexuality or transgender.

Such harassment or discrimination may constitute an offence under legislation. Managers should understand and apply the principles of Equal Employment Opportunity.

9. CORRUPT CONDUCT

Corrupt conduct involves the dishonest or partial use of power or position which results in one person/group being advantaged over another. Corruption can take many forms including, but not limited to:

(a) official misconduct;

(b) bribery and blackmail;

(c) unauthorised use of confidential information;

(d) fraud; and

(e) theft.

Corrupt conduct will not be tolerated by the Company. Disciplinary action up to and including dismissal will be taken in the event of any employee participating in corrupt conduct.

A new Bribery Act is expected to come into force in the United Kingdom in 2011, which may extend to activities of the Company's group outside of the United Kingdom.

10. OCCUPATIONAL HEALTH AND SAFETY

It is the responsibility of all employees to act in accordance with occupational health and safety legislation, regulations and policies applicable to their respective organisations and to use security and safety equipment provided.

Specifically all employees are responsible for safety in their work area by:

(a) following the safety and security directives of management;

(b) advising management of areas where there is potential problem in safety and reporting suspicious occurrences; and

(c) minimising risks in the workplace.

11. LEGISLATION

It is essential that all employees comply with the laws and regulations of the countries in which we operate. Violations of such laws may have serious consequences for the Company and any individuals concerned. Any known violation must be reported immediately to management.

12. FAIR DEALING

The Company aims to succeed through fair and honest competition and not through unethical or illegal business practices. Each employee should endeavour to deal fairly with the Company's suppliers, customers and other employees.

13. INSIDER TRADING

All employees must observe the Company's *"Securities Trading Policy"*. In conjunction with the legal prohibition on dealing in the Company's securities when in possession of unpublished price sensitive information, the Company has established specific time periods when Directors, management and employees are permitted to buy and sell the Company's securities.

14. RESPONSIBILITIES TO INVESTORS

The Company strives for full, fair and accurate disclosure of financial and other information on a timely basis.

15. BREACHES OF THE CODE OF CONDUCT

Employees should note that breaches of certain sections of this Code of Conduct may be punishable under legislation.

Breaches of this Code of Conduct may lead to disciplinary action. The process for disciplinary action is outlined in Company policies and guidelines, relevant industrial awards and agreements.

16. REPORTING MATTERS OF CONCERN

Employees are encouraged to raise any matters of concern in good faith with the head of their business unit , without fear of retribution. Where the matter is inappropriate to be raised with the head of their business unit, employees are able to raise the matter with the Chief Financial Officer or Chief Executive Officer as appropriate.

The Chief Financial Officer reviews and reports directly to the Board on any material breaches of the Code. The Audit Committee oversees procedures for whistleblower protection.

SCHEDULE 3 – AUDIT AND RISK COMMITTEE CHARTER

1. ROLE

The role of the Audit and Risk Committee is to assist the Board in monitoring and reviewing any matters of significance affecting financial reporting and compliance. This Charter defines the Audit and Risk Committee's function, composition, mode of operation, authority and responsibilities.

2. COMPOSITION

(a) The Board will appoint members of the Committee. The Board may remove and replace members of the Committee by resolution.

(b) Where practical, all members of the Committee will be non-executive Directors.

(c) Where practical, a majority of the members of the Committee must be independent non-executive Directors in accordance with the criteria set out in Annexure A.

(d) All members of the Committee must be able to read and understand financial statements.

(e) The Chairman of the Committee may not be the Chairman of the Board of Directors and, where practical, must be independent.

(f) The external auditors, the other Directors, the Chief Executive Officer, Chief Financial Officer, Company Secretary and senior executives, may be invited to Committee meetings at the discretion of the Committee.

3. PURPOSE

The primary purpose of the Committee is to assist the Board in fulfilling its statutory and fiduciary responsibilities relating to:

(a) the quality and integrity of the Company's financial statements, accounting policies and financial reporting and disclosure practices;

(b) compliance with all applicable laws, regulations and company policy;

(c) the effectiveness and adequacy of internal control processes;

(d) the performance of the Company's external auditors and their appointment and removal;

(e) the independence of the external auditor and the rotation of the lead engagement partner; and

(f) the identification and management of business risks.

A secondary function of the Committee is to perform such special reviews or investigations as the Board may consider necessary.

4. DUTIES AND RESPONSIBILITIES OF THE COMMITTEE

16.2 Review of Financial Reports

(a) Review the appropriateness of the accounting principles adopted by management in the financial reports and the integrity of the Company's financial reporting.

(b) Oversee the financial reports and the results of the external audits of those reports.

(c) Assess whether external reporting is adequate for shareholder needs.

(d) Assess management processes supporting external reporting.

(e) Establish procedures for treatment of accounting complaints.

(f) Review the impact of any proposed changes in accounting policies on the financial statements.

(g) Review the quarterly, half yearly and annual results.

16.3 Relationship with External Auditors

(a) Recommend to the Board procedures for the selection and appointment of external auditors and for the rotation of external auditor partners.

(b) Review performance, succession plans and rotation of lead engagement partner.

(c) Approve the external audit plan and fees proposed for audit work to be performed.

(d) Discuss any necessary recommendations to the Board for the approval of quarterly, half yearly or annual reports.

(e) Review the adequacy of accounting and financial controls together with the implementation of any recommendations of the external auditor in relation thereto.

(f) Meet with the external auditors at least twice in each financial period without management being present and at any other time the Committee considers appropriate.

(g) Provide pre-approval of audit and non-audit services that are to be undertaken by the external auditor.

(h) Ensure adequate disclosure as may be required by law of the Committee's approval of all non-audit services provided by the external auditor.

(i) Ensure that the external auditor prepares and delivers an annual statement as to their independence which includes details of all relationships with the Company.

(j) Receive from the external auditor their report on, among other things, critical accounting policies and alternative accounting treatment, prior to the filing of their audit report in compliance with the Corporations Act.

16.4 Internal Audit Function (if such a function has been established)

(a) Monitor the need for a formal internal audit function and its scope.

(b) Assess the performance and objectivity of any internal audit procedures that may be in place.

(c) Review risk management and internal compliance procedures.

(d) Monitor the quality of the accounting function.

(e) Review the Internal Control Reports on a quarterly basis.

16.5 Risk Management

(a) Oversee the Company's risk management systems, practices and procedures to ensure effective risk identification and management and compliance with internal guidelines and external requirements.

(b) Review reports by management on the efficiency and effectiveness of risk management and associated internal compliance and control procedures.

16.6 Other

(a) The Committee will oversee the Company's environmental risk management and occupational health and safety processes.

(b) The Committee will oversee procedures for whistleblower protection.

(c) As contemplated by the ASX Corporate Governance Council Principles and Recommendations, and to the extent that such deviation or waiver does not result in any breach of the law, the Committee may approve any deviation or waiver from the *"Corporate code of conduct"*. Any such waiver or deviation will be promptly disclosed where required by applicable law.

(d) Monitor related party transactions.

17. MEETINGS

(a) The Committee will meet as required for it to undertake its role effectively.

(b) Meetings are called by the Secretary as directed by the Board or at the request of the Chairman of the Committee.

(c) Where deemed appropriate by the Chairman of the Committee, meetings and subsequent approvals and recommendations can be implemented by a circular written resolution or conference call.

(d) A quorum shall consist of two members of the Committee. In the absence of the Chairman of the Committee or their nominees, the members shall elect one of their members as Chairman of that meeting.

(e) Decisions will be based on a majority of votes with the Chairman having a casting vote.

(f) Minutes of each meeting are included in the papers for the next full Board meeting after each Committee meeting.

18. SECRETARY

(a) The Company Secretary or their nominee shall be the Secretary of the Committee and shall attend meetings of the Committee as required.

(b) The Secretary will be responsible for keeping the minutes of meetings of the Committee and circulating them to Committee members and to the other members of the Board.

(c) The Secretary shall distribute supporting papers for each meeting of the Committee as far in advance as possible.

19. RELIANCE ON INFORMATION OR PROFESSIONAL OR EXPERT ADVICE

Each member of the Committee is entitled to rely on information, or professional or expert advice, to the extent permitted by law, given or prepared by:

(a) an employee of the Group whom the member believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or expert in relation to matters that the member believes on reasonable grounds to be within the person's professional or expert competence; or

(c) another Director or officer of the Group in relation to matters within the Director's or officer's authority.

20. ACCESS TO ADVICE

(a) Members of the Committee have rights of access to management and to the books and records of the Company to enable them to discharge their duties as Committee members, except where the Board determines that such access would be adverse to the Company's interests.

(b) Members of the Committee may meet with the auditors, both internal and external, without management being present.

(c) Members of the Committee may consult independent legal counsel or other advisers they consider necessary to assist them in carrying out their duties and responsibilities, subject to prior consultation with the Chairman. Any costs incurred as a result of the Committee consulting an independent expert will be borne by the Company.

21. REVIEW OF CHARTER

(a) The Board will conduct a regular review of the membership to ensure that the Committee has carried out its functions in an effective manner, and will update the Charter as required or as a result of new laws or regulations.

(b) The Charter shall be made available to members on request, to senior management, to the external auditor and to other parties as deemed appropriate and will be posted to the Company's website.

22. REPORT TO THE BOARD

(a) The Committee must report to the Board formally at the next Board meeting following from the last Committee meeting on matters relevant to the Committee's role and responsibilities.

(b) The Committee must brief the Board promptly on all urgent and significant matters.

SCHEDULE 4 – REMUNERATION COMMITTEE CHARTER

1. GENERAL SCOPE AND AUTHORITY

(c) The Remuneration Committee is a Committee of the Board. The Charter may be subject to review by the Board at any time.

(d) The primary purpose of the Committee is to support and advise the Board in fulfilling its responsibilities to shareholders by:

(i) reviewing and approving the executive remuneration policy to enable the Company to attract and retain executives and Directors who will create value for shareholders;

(ii) ensuring that the executive remuneration policy demonstrates a clear relationship between key executive performance and remuneration;

(iii) recommending to the Board the remuneration of executive Directors;

(iv) fairly and responsibly rewarding executives having regard to the performance of the Group, the performance of the executive and the prevailing remuneration expectations in the market;

(v) reviewing the Company's recruitment, retention and termination policies and procedures for senior management;

(vi) reviewing and approving the remuneration of Direct reports to the Chief Executive Officer, and as appropriate other senior executives and conducting an annual review of remuneration by gender; and

(vii) reviewing and approving any equity based plans and other incentive schemes.

(e) The Committee shall have the right to seek any information it considers necessary to fulfil its duties, which includes the right to obtain appropriate external advice at the Company's expense.

1. COMPOSITION

(a) The Board will appoint members of the Committee and remove and replace members of the Committee by resolution.

(b) It is intended that the Committee shall comprise a majority of independent non-executive Directors.

(c) If possible, the Committee will be chaired by an independent Director who will be appointed by the Board.

(d) A quorum will comprise any two Director Committee members. In the absence of the Committee Chairman or appointed delegate, the members shall elect one of their number as Chairman for that meeting.

2. SECRETARY

(a) The Company Secretary or their nominee shall be the Secretary of the Committee, and shall attend meetings of the Committee as required.

(b) The Secretary will be responsible for keeping the minutes of meeting of the Committee and circulating them to Committee members and to the other members of the Board.

(c) The Secretary shall distribute supporting papers for each meeting of the Committee as far in advance as possible.

3. MEETINGS

(a) The Committee will meet as required to fulfil its functions.

(b) Meetings are called by the Secretary as directed by the Board or at the request of the Chairman of the Committee.

(c) A quorum shall comprise any two members of the Committee. In the absence of the Committee Chairman or appointed delegate, the members shall elect one of their members as Chairman.

(d) Where deemed appropriate by the Chairman of the Committee, meetings and subsequent approvals may be held or concluded by way of a circular written resolution or a conference call.

(e) Decisions will be based on a majority of votes with the Chairman having the casting vote.

(f) The Committee may invite any executive management team members or other individuals, including external third parties, to attend meetings of the Committee, as they consider appropriate.

4. ACCESS

(a) Members of the Committee have rights of access to the books and records of the Company to enable them to discharge their duties as Committee members, except where the Board determines that such access would be adverse to the Company's interests.

(b) The Committee may consult independent experts to assist it in carrying out its duties and responsibilities. Any costs incurred as a result of the Committee consulting an independent expert will be borne by the Company.

5. DUTIES AND RESPONSIBILITIES

In order to fulfil its responsibilities to the Board the Committee shall:

(a) **Executive Remuneration Policy**

(i) Review and approve the Group's recruitment, retention and termination policies and procedures for senior executives to

enable the Company to attract and retain executives and Directors who can create value for shareholders.

(ii) Review the on-going appropriateness and relevance of the executive remuneration policy and other executive benefit programs.

(iii) Ensure that remuneration policies fairly and responsibly reward executives having regard to the performance of the Company, the performance of the executive and prevailing remuneration expectations in the market.

(b) **Executive Directors and Senior Management**

(i) Consider and make recommendations to the Board on the remuneration for each executive Director (including base pay, incentive payments, equity awards, retirement rights, service contracts) having regard to the executive remuneration policy.

(ii) Review and approve the proposed remuneration (including incentive awards, equity awards and service contracts) for the direct reports of the Chief Executive Officer. As part of this review the Committee will oversee an annual performance evaluation of the executive team. This evaluation is based on specific criteria, including the business performance of the Company and its subsidiaries, whether strategic objectives are being achieved and the development of management and personnel.

(c) **Executive Incentive Plan**

Review and approve the design of any executive incentive plans.

(d) **Equity Based Plans**

(i) Review and approve any equity based plans that may be introduced (**Plans**) in the light of legislative, regulatory and market developments.

(ii) For each Plan, determine each year whether awards will be made under that Plan.

(iii) Review and approve total proposed awards under each Plan.

(iv) In addition to considering awards to executive Directors and direct reports to the Chief Executive Officer, 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.

(v) Review, approve and keep under review performance hurdles for each equity based plan.

(e) **Other**

The Committee will approve the engagement of any remuneration consultants and receive advice and recommendations from remuneration consultants from time to time as required.

The Committee shall perform other duties and activities that it or the Board considers appropriate.

6. APPROVALS

The Committee must approve the following prior to implementation:

(a) changes to the remuneration or contract terms of executive Directors and direct reports to the Chief Executive Officer;

(b) the Plans or amendments to current equity plans or executive cash-based incentive plans;

(c) total level of awards proposed from equity plans or executive cash-based incentive plans; and

(d) termination payments to executive Directors or direct reports to the Chief Executive Officer. Termination payments to other departing executives should be reported to the Committee at its next meeting.

SCHEDULE 5 – DISCLOSURE – PERFORMANCE EVALUATION

The Board will arrange a performance evaluation of the Board, its Committees and its individual Directors on a regular basis. To assist in this process an independent advisor may be used.

The review will include a review of the role of the Board, assess the performance of the Board over the previous 12 months and examine ways of assisting the Board in performing its duties more effectively.

The review will include:

(a) comparing the performance of the Board with the requirements of its Charter;

(b) examination of the Board's interaction with management;

(c) the nature of information provided to the Board by management; and

(d) management's performance in assisting the Board to meet its objectives.

A similar review will be conducted for each Committee by the Board with the aim of assessing the performance of each Committee and identifying areas where improvements can be made.

The Remuneration Committee will oversee the performance evaluation of the executive team. This evaluation is based on specific criteria, including the business performance of the Company and its subsidiaries, whether strategic objectives are being achieved and the development of management and personnel.

SCHEDULE 6 –CONTINUOUS DISCLOSURE POLICY

The Company must comply with continuous disclosure requirements arising from legislation and the Listing Rules of the Australian Securities Exchange (**ASX**).

The general rule, in accordance with ASX Listing Rule 3.1, is that once the Company becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price of value of the Company's securities, the Company must immediately disclose that information to the ASX.

The Listing Rules provide that a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information **would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the securities**. For the purposes of this Policy, this information will be referred to as "Material Information".

"**Immediately**" should be taken to mean within hours of becoming aware of the information.

Listing Rule 19.12 also provides:

> "*An entity becomes **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 that entity*."
>
> An **"Executive Officer"** is any manager of the Company who is concerned with, or takes part in, the management of the Company.

Restricted Exemptions

Listing Rule 3.1A contains a restricted exemption for any of the following reasons:

a) a "reasonable person" would not expect the information to be disclosed;
b) the information is confidential (and ASX has not formed the view that the information has ceased to be confidential);
c) it would be a breach of law to disclose the information;
d) the information concerns an incomplete proposal or negotiation;
e) the information is insufficiently definite to warrant disclosure;
f) the information is generated for the Company's internal management purposes only; or
g) the information is a trade secret.

Decisions on whether any of these exemptions may apply to Material Information will be made by the Company Secretary.

POLICY

The Chief Executive Officer is primarily responsible for ensuring that this Policy is implemented and enforced and that all required Material Information is disclosed to the ASX as required by the *Corporations Act* and the Listing Rules. Any announcement to be made to the ASX must first be approved by the Chairman, unless the Chairman is unavailable and, in this circumstance, the Chief Executive Officer has the authority to approve any announcement.

Price sensitive information is publicly released through ASX before it is disclosed to shareholders and market participants to ensure all investors have equal and timely access to Material Information concerning the Company. Distribution of other information to shareholders and market participants is also managed through disclosure to the ASX.

Information is posted on the Company's website after the ASX confirms an announcement has been made, with the aim of making the information readily accessible to the widest audience.

Employee Responsibilities

All Employees of the Company, its subsidiaries or associated companies must immediately disclose full details of any Material Information that comes to their attention to the Chief Executive Officer. If an Employee is unsure whether specific information would be Material Information, the Employee must immediately disclose full details of the information to the Chief Executive Officer.

Directors' and Executive Officers' Responsibilities

The Listing Rules require disclosure of Material Information that has, or ought reasonably to have come into the possession of a Director or Executive Officer. As such, all Directors and Executive Officers must keep up to date with all matters within their operations which may become material.

Chief Executive Officer's Responsibilities

The Chief Executive Officer has overall administrative responsibility for reviewing all information forwarded pursuant to this Policy and, where necessary, for making a recommendation to the Chairman on whether it is Material Information that must be disclosed to the ASX and/or falls within the exemptions referred to in this Policy. If the Chairman is unavailable the Chief Executive Officer has the authority to determine if the information is Material Information.

Chairman's Responsibilities

The Chairman is responsible for reviewing and approving all proposed announcements to the ASX and advising the Company Secretary when an announcement is approved for release to the ASX.

Company Secretary's Responsibilities

The Company Secretary is responsible for:

(a) co-ordinating disclosure of information to the relevant stock exchanges and shareholders; and

(b) providing guidance to Directors and employees on disclosure requirements and procedures, as required.

(c) The attached flowchart provides further information on the process to be followed to assess if information is material and whether it is to be disclosed.

TYPES OF INFORMATION THAT MAY REQUIRE DISCLOSURE

Types of Information

For assistance in determining if information is Material Information, the following types of information may be material and therefore may be required to be disclosed:

a) the financial results of the Company;
b) projections of future earnings or losses;
c) material changes in the Company's financial forecasts;
d) a declaration of a dividend;
e) the making of a share, option or debt issue and the under or over subscription of that issue;
f) acquisitions, mergers, sales, joint ventures or takeovers;
g) information about the Company's business direction, investments or asset purchases or sales;
h) regulatory decisions or industrial actions that may affect the Company's operations;
i) the occurrence of an environmentally related incident;
j) the threat, commencement or settlement of any material litigation or claim;
k) an agreement between the Company (or a related party or subsidiary) and a Director (or related party of the Director);
l) a change in accounting policy adopted by the Company;
m) a proposal to change Company auditors;
n) changes in senior management; and
o) the health or capacity of any Director.

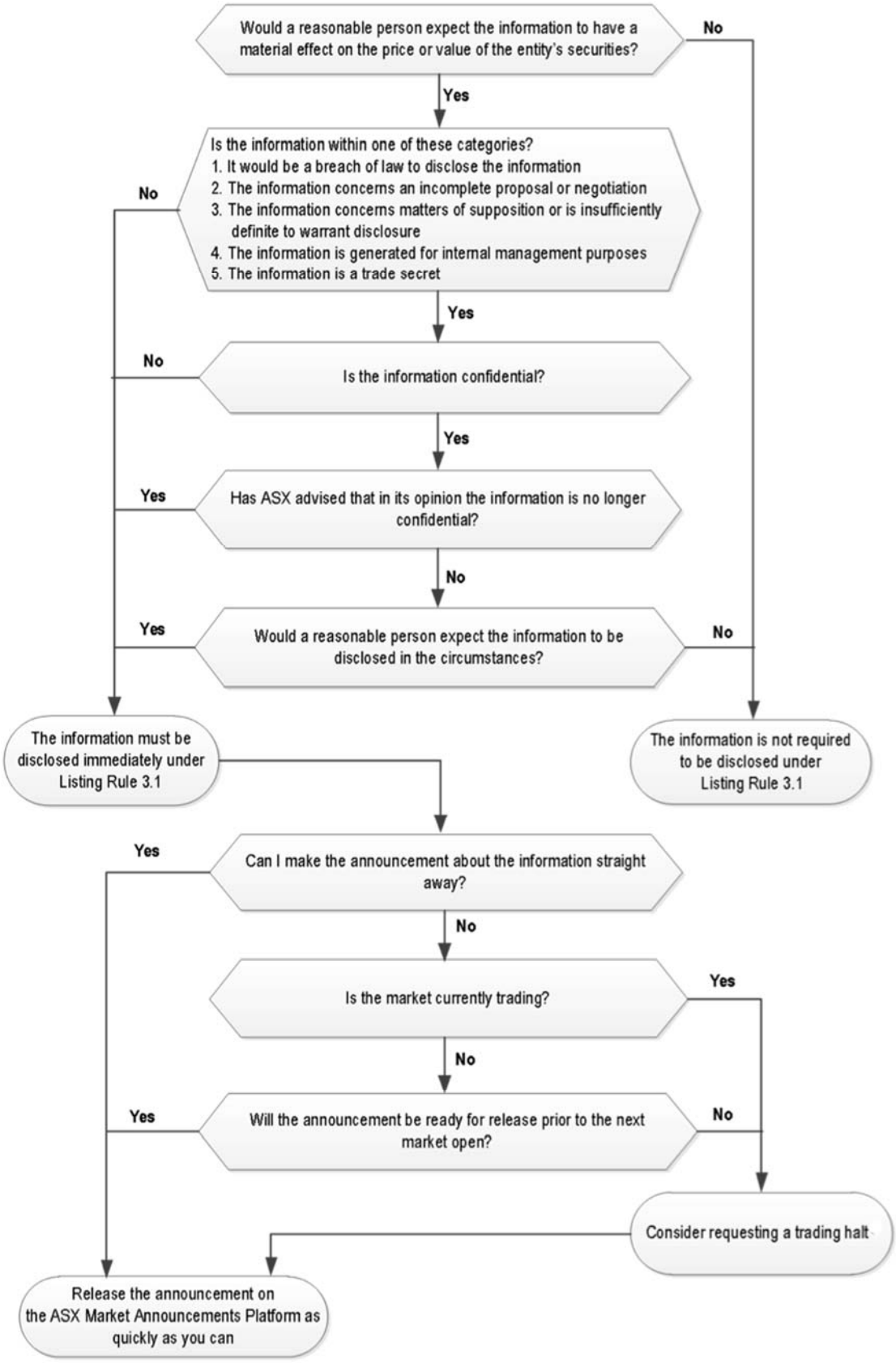
Other Matters

Clearly, there are many other matters which may give rise to Material Information. Employees with any questions on whether particular information is material must contact the Company Secretary.

Providing Public Information

As a listed company, Employees must ensure that only public information is provided when answering questions asked by third parties, including the media and analysts. Media statements or draft analyst reports will only be commented on or corrected by a Director of the Company (or other appropriately authorised person) and should only be commented on or corrected if doing so involves the provision of publicly available information.

CONTINUOUS DISCLOSURE PROCESS



SCHEDULE 7 –RISK MANAGEMENT POLICY

1. RISK MANAGEMENT REVIEW PROCEDURE AND INTERNAL COMPLIANCE AND CONTROL

The Company is committed to ensuring that:

(a) its culture, processes and structures facilitate realisation of the Company's business objectives whilst material risks are identified, managed, monitored and wherever appropriate and possible, mitigated; and

(b) to the extent practicable, its systems of risk oversight, management and internal control complies with the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations.*

The Board determines the Company's "risk profile" and is responsible for overseeing and approving risk management strategy and policies, internal compliance and internal control.

The Board has delegated to the Audit and Risk Committee responsibility for implementing the risk management system.

The Audit and Risk Committee will submit particular matters to the Board for its approval or review. Among other things it will:

(e) oversee the Company's risk management systems, practices and procedures to ensure effective risk identification and management and compliance with internal guidelines and external requirements;

(f) assist management to determine the key risks to the businesses and prioritise work to manage those risks; and

(g) review reports by management on the efficiency and effectiveness of risk management and associated internal compliance and control procedures.

The Company's process of risk management and internal compliance and control includes:

(a) identifying and measuring risks that might impact upon the achievement of the Company's goals and objectives, and monitoring the environment for emerging factors and trends that affect these risks.

(h) Formulating risk management strategies to manage identified risks, and designing and implementing appropriate risk management policies and internal controls.

(i) Monitoring the performance of, and improving the effectiveness of, risk management systems and internal compliance and controls, including regular assessment of the effectiveness of risk management and internal compliance and control.

To this end, comprehensive practises are in place that are directed towards achieving the following objectives:

(a) compliance with applicable laws and regulations.

(j) preparation of reliable published financial information.

(k) implementation of risk transfer strategies where appropriate e.g. insurance.

The responsibility for undertaking and assessing risk management and internal control effectiveness is delegated to management. Management is required to assess risk management and associated internal compliance and control procedures and report back quarterly to the Audit and Risk Committee.

In addition, in accordance with the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations (recommendation 7.2),* the Chief Executive Officer and CFO will state to the Board on an annual basis that the management of the Company's material business risks is effective.

SCHEDULE 8 –SECURITIES TRADING POLICY

1. INTRODUCTION

These guidelines set out the policy on the dealing of securities in the Company by its Key Management Personnel and any family member and associate over whom the Key Management Personnel have influence.

The Policy is aimed at ensuring that all employees comply with the law at all times and their dealings in securities and inside information are within both the letter and the spirit of the law, and meet industry practice and market expectations. The Policy also assists the Company in its disclosure and reporting obligations, while maintaining and promoting the Company's reputation.

The Company recognises the primacy of the insider trading laws and the importance of managing both regulatory and reputational risk. Any perception that directors or employees may have traded on the basis of an unfair advantage and/or breached their legal obligations could have a significant impact on the personal reputation of those persons, and negatively affect the Company's standing in the market. Therefore the purpose of this Policy is to both manage the risk of insider trading, and to avoid any perception of insider trading and the significant reputational harm that may cause. The Policy will be administered and communicated to all employees.

For the purposes of this Policy, **dealing** includes, without limitation, securities transactions such as buying, selling, transfers of beneficial ownership and trading (either directly or indirectly).

While this Policy applies to all employees, in that insider trading laws apply to all employees, the specific provisions regarding Closed Periods apply to Key Management Personnel who are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any Director (whether executive or otherwise) of that entity.

The Company has determined that its Key Management Personnel are its Directors and those employees directly reporting to the Chief Executive Officer. The Board can determine additional persons subject to the Closed Periods from time to time.

Key Management Personnel are encouraged to be long-term holders of the Company's securities. However, it is important that care is taken in the timing of any purchase or sale of such securities.

The purpose of these guidelines is to assist Directors and employees to avoid conduct known as 'insider trading'. In some respects, the Company's policy extends beyond the strict requirements of the Corporations Act.

2. WHAT TYPES OF TRANSACTIONS ARE COVERED BY THIS POLICY?

This policy applies to of the dealing in any securities of the Company and its subsidiaries on issue from time to time, including listed shares in the Company, a right to shares, options over shares and any other financial products of the Company traded on any securities exchange.

3. WHAT IS INSIDER TRADING?

3.1 Prohibition

Insider trading is a criminal offence. It may also result in civil liability. In broad terms, a person will be guilty of insider trading if:

(a) that person possesses information which is not generally available to the market and, if it were **generally available** to the market, would be likely to have a material effect on the price or value of the Company's securities (ie, information that is 'price sensitive'); and

(b) that person:

(i) buys or sells securities in the Company; or

(ii) procures someone else to buy or sell securities in the Company; or

(iii) passes on that information to a third party where that person knows, or ought reasonably to know, that the third party would be likely to buy or sell the securities or procure someone else to buy or sell the securities of the Company.

Information is generally available if it:

a) is readily observable; and

b) has been made known in a manner (e.g. released to the ASX) likely to bring it to the attention of persons who commonly invest in securities and a reasonable period for that information to be disseminated has elapsed since it was made known.

Outside a Closed Period (see section 4.1), the laws prohibiting insider trading continue to apply. The fact that a Company is not in a Closed Period does not mean an employee is not in possession of inside information. A person may possess inside information notwithstanding that dealing by employees is generally permitted, and if this is the case, a person should not deal in the Company's Securities.

Similarly, all employees should be aware that the insider trading laws apply even where a person has been given clearance to deal under this Policy, and a clearance to deal will not absolve a person from a breach of the insider trading laws. If a person is in possession of inside information, any dealing in the relevant securities will be a breach of the insider trading provisions.

3.2 Examples

To illustrate the prohibition described above, the following are possible examples of price sensitive information which, if made available to the market, may be likely to affect materially the price of the Company's securities:

(a) the Company considering a major acquisition;

(b) the threat of major litigation against the Company;

(c) the Company's revenue and profit results materially exceeding (or falling short of) the market's expectations;

(d) a material change in debt, liquidity or cash flow;

(e) a significant new development proposal (e.g. new product or technology);

(f) the grant or loss of a major contract;

(g) a management or business restructuring proposal;

(h) a share issue proposal;

(i) an agreement or option to acquire an interest in a mining tenement, or to enter into a joint venture or farm-in or farm-out arrangement in relation to a mining tenement; and

(j) significant discoveries, exploration results, or changes in reserve/resource estimates from mining tenements in which the Company has an interest.

3.3 Dealing through third parties

The insider trading prohibition extends to dealings by individuals through nominees, agents or other associates, such as family members, family trusts and family companies (referred to as "Associates" in these guidelines).

3.4 Information however obtained

It does not matter how or where the person obtains the information – it does not have to be obtained from the Company to constitute inside information.

3.5 Employee share schemes

The prohibition does not apply to acquisitions of shares or options by employees made under employee share or option schemes, nor does it apply to the acquisition of shares as a result of the exercise of options under an employee option scheme. However, the prohibition does apply to the sale of shares acquired under an employee share scheme and also to the sale of shares acquired following the exercise of an option granted under an employee option scheme.

4. GUIDELINES FOR TRADING IN THE COMPANY'S SECURITIES

4.1 General rule

Key Management Personnel must not, except in exceptional circumstances deal in the securities of the Company during the following periods:

(a) Seven (7) days prior to, and one (1) day after the release of the Company's Annual Financial Report;

(b) Seven (7) days prior to, and one (1) day after the release of the Consolidated Interim Financial Report of the Company; and

(c) Seven (7) days prior to, and one (1) day after the release of the Company's quarterly reports,

(together the **Closed Periods**).

Outside a prohibited Closed Period, the laws prohibiting insider trading continue to apply to Key Management Personnel.

The Company may at its discretion vary this rule in relation to a particular Closed Periods by general announcement to all Key Management Personnel either before or during the Closed Periods. However, if a Key Management Personnel is in possession of price sensitive information which is not generally available to the market, then he or she must not deal in the Company's securities at **any** time.

4.2 Approval requirements during a Closed Period

The following procedures apply to Designated Persons who wish to deal in the Company's Securities during a Closed Period:

- Key Management Personnel (or a family member or associate over whom they have influence) must provide the Chairman (or in the case of the Chairman, an Independent Non-Executive Director) with a notice in writing (which may be by email), requesting permission to deal in the Company's Securities, including any reasons for the request;
- Key Management Personnel must not deal in the Company's Securities unless they have received permission in writing (which may be by email) from the Chairman;
- Key Management Personnel must effect the instructions to deal within 2 days of receiving permission, and the dealing must be executed within that period;
- permission to deal may be withdrawn if new information arises, or if there is a change in circumstances. The Key Management Personnel will be notified of any withdrawal in writing (which may be by email); and
- if the dealing is not executed within the 2 day period, the permission to deal lapses, and the Key Management Personnel must submit a further request to the Chairman for permission to deal.

Permission to deal is at the discretion of the Chairman, and may be given or refused without providing any reasons.

When considering a request from a Key Management Personnel for permission to deal, the Chairman will take into account a range of factors to determine if the risk of insider trading, or the appearance of insider trading is not a concern. These factors include but are not limited to whether:

- the Company is about to release a periodic report or other financial information that the market may not expect;
- the Company will shortly release market sensitive information under ASX Listing Rule 3.1;
- the Company is considering a matter that is subject to ASX Listing Rule 3.1A; and
- the Key Management Personnel has access to or is likely to have access to other material information that has not been released to the market.

More generally, the Chairman will consider the specific circumstances of a request as a whole, in light of the underlying purpose of this Policy, to both minimise the risk of insider trading and avoid any appearance of insider trading and possible reputational damage. The Chairman may seek professional advice to assist in making any decision. In most circumstances if the Company is about to release information that falls into the categories set out above, the Chairman will not grant permission to deal.

A refusal to grant permission to deal is final and binding on the person seeking the permission. If permission is refused, the person must keep that information confidential and not disclose it to anyone, to ensure that the Company manages its disclosure obligations in accordance with its policies, the ASX Listing Rules and the Law.

The Chairman must follow the same procedures set out above in relation to any proposed dealing by the Chairman in the Company's Securities, but permission must be sought from an Independent Non-Executive Director.

4.3 No short-term trading in the Company's securities

Key Management Personnel should never engage in short-term trading of the Company's securities except for the exercise of options where the shares will be sold shortly thereafter.

4.4 Securities in other companies

Buying and selling securities of other companies with which the Company may be dealing is prohibited where an individual possesses information which is not generally available to the market and is 'price sensitive'. For example, where an individual is aware that the Company is about to sign a major agreement with another company, they should not buy securities in either the Company or the other company.

4.5 Exceptions

(a) Key Management Personnel may at any time:

(i) acquire ordinary shares in the Company by conversion of securities giving a right of conversion to ordinary shares;

(ii) acquire Company securities under a bonus issue made to all holders of securities of the same class;

(iii) acquire Company securities under a dividend reinvestment, or top-up plan that is available to all holders or securities of the same class;

(iv) acquire, or agree to acquire or exercise options under a Company Share Option Plan;

(v) withdraw ordinary shares in the Company held on behalf of the employee in an employee share plan where the withdrawal is permitted by the rules of that plan; and

(vi) acquire ordinary shares in the Company as a result of the exercise of options held under an employee option scheme;

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

(viii) make an investment in, or trade in units of, a fund or other scheme (other than a scheme only investing in the securities of the Company) where the assets of the fund or other scheme are invested at the discretion of a third party;

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

(x) undertake to accept, or accept, a takeover offer;

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

(xii) dispose of securities of the Company resulting from a secured lender exercising their rights, for example, under a margin lending arrangement;

(xiii) exercise (but not sell securities following exercise) an option or a right under an employee incentive scheme, or convert a convertible security, where the final date for the exercise of the option or right, or the conversion of the security, falls during a

prohibited period or the Company has had a number of consecutive prohibited periods and the restricted person could not reasonably have been expected to exercise it at a time when free to do so; or

(xiv) trade under a non-discretionary trading plan for which prior written clearance has been provided in accordance with procedures set out in this Policy.

(b) In respect of any share or option plans adopted by the Company, it should be noted that it is not permissible to provide the exercise price of options by selling the shares acquired on the exercise of these options unless the sale of those shares occurs outside the periods specified in paragraph 4.1.

Where this is to occur at a time when the person possessed inside information then the sale of Company securities would be a breach of insider trading laws, even though the person's decision to sell was not influenced by the inside information that the person possessed and the person may not have made a profit on the sale. Where Company securities are provided to a lender as security by way of mortgage or charge a sale that occurs under that mortgage or charge as a consequence of default would not breach insider trading laws.

4.6 Notification of periods when Key Management Personnel are not permitted to trade

The Company Secretary will endeavour to notify all Key Management Personnel of the times when they are not permitted to buy or sell the Company's securities as set out in paragraph 44.1.

5. APPROVAL AND NOTIFICATION REQUIREMENTS

5.1 Approval Requirements

(a) Any Key Management Personnel (other than the Chairman) wishing to buy, sell or exercise rights in relation to the Company's securities must obtain the prior written approval of the Chairman or the Board before doing so.

(b) If the Chairman wishes to buy, sell or exercise rights in relation to the Company's securities, the Chairman must obtain the prior approval of the Board before doing so.

5.2 Approvals to buy or sell securities

(a) All requests to buy or sell securities as referred to in paragraph 5.1 must include the intended volume of securities to be purchased or sold and an estimated time frame for the sale or purchase.

(b) Copies of written approvals must be forwarded to the Company Secretary prior to the approved purchase or sale transaction.

5.3 Notification

Subsequent to approval obtained in accordance with paragraphs 5.1 and 5.2, any Key Management Personnel who (or through his or her Associates) buys, sells, or exercises rights in relation to Company securities **must** notify the Company Secretary in writing of the details of the transaction within five (5) business days of the transaction occurring. This notification obligation **operates at all times** but does not apply to acquisitions of shares or options by employees made under employee share or option schemes, nor does it apply to the acquisition of shares as a result of the exercise of options under an employee option scheme.

5.4 Key Management Personnel sales of securities

Key Management Personnel need to be mindful of the market perception associated with any sale of Company securities and possibly the ability of the market to absorb the volume of shares being sold. With this in mind, the management of the sale of any significant volume of Company securities (i.e. a volume that would represent a volume in excess of 10% of the total securities held by the seller prior to the sale, or a volume to be sold that would be in excess of 10% of the average daily traded volume of the shares of the Company on the ASX for the preceding 20 trading days) by a Key Management Personnel needs to be discussed with the Board and the Company's legal advisers prior to the execution of any sale. These discussions need to be documented in the form of a file note, to be retained by the Company Secretary.

5.5 Exemption from Closed Periods restrictions due to exceptional circumstance

Key Management Personnel who are not in possession of inside information in relation to the Company, may be given prior written clearance by the Chief Executive Officer (or in the case of the Chief Executive Officer by all of the other members of the Board) to sell or otherwise dispose of Company securities in a Closed Period where the person is in severe financial hardship or where there are exceptional circumstances as set out in this policy.

5.6 Severe Financial Hardship or Exceptional Circumstances

The determination of whether a Key Management Personnel is in severe financial hardship will be made by the Chief Executive Officer (or in the case of the Chief Executive Officer by all other members of the Board).

A financial hardship or exceptional circumstances determination can only be made by examining all of the facts and if necessary obtaining independent verification of the facts from banks, accountants or other like institutions.

5.7 Financial Hardship

Key Management Personnel may be in severe financial hardship if they have a pressing financial commitment that can not be satisfied other than by selling the securities of the Company. A tax liability would not normally constitute severe financial hardship, including a tax liability relating to securities received under an employee incentive scheme.

In the interests of an expedient and informed determination by the Chief Executive Officer (or all other members of the Board as the context requires), any

application for an exemption allowing the sale of Company securities in a Closed Period based on financial hardship must be made in writing stating all of the facts and be accompanied by copies of relevant supporting documentation, including contact details of the person's accountant, bank and other such independent institutions (where applicable).

Any exemption, if issued, will be in writing and shall contain a specified time period during which the sale of securities can be made.

5.8 Exceptional Circumstances

Exceptional circumstances may apply to the disposal of Company securities by a Key Management Personnel if the person is required by a court order, a court enforceable undertaking for example in a bona fide family settlement, to transfer or sell securities of the Company, or there is some other overriding legal or regulatory requirement to do so.

Any application for an exemption allowing the sale of Company securities in a Closed Period based on exceptional circumstances must be made in writing and be accompanied by relevant court and/or supporting legal documentation (where applicable).

Any exemption, if issued, will be in writing and shall contain a specified time period during which the sale of securities can be made.

6. OTHER RESTRICTIONS

6.1 Restrictions on Margin Loans

Margin lending poses special risks to the compliance of Key Management Personnel with this Policy, particularly where the terms of the margin lending arrangements may place the Key Management Person in a position of conflict with their obligations under this Policy and/or with the insider trading laws (for example, if a call is made under the arrangements, which results in Universal Coal securities being sold while the Key Management Person possesses inside information).

Without prior approval in the manner set out in section 10, Key Management Personnel must not enter into agreements that provide lenders with rights over their interests in Universal Coal securities (eg for the disposal of Universal Coal securities or options that is the result of a secured lender exercising their rights under a margin lending agreement).

11.2 Anti-hedging Policy

Key Management Personnel are not permitted to enter into transactions with Securities (or any derivative thereof) in associated products which limit the economic risk of any unvested entitlements under any equity-based remuneration schemes awarded under any equity-based remuneration scheme currently in operation or which will be offered by the Company in the future. However, Key Management Personnel will consult with the Chairman if they are

considering, or if they are not sure, as to whether entering into transactions may limit the economic risk of unvested entitlements they may have.

7. ASX NOTIFICATION FOR DIRECTORS

The ASX Listing Rules require the Company to notify the ASX within 5 business days after any dealing in securities of the Company (either personally or through an Associate) which results in a change in the relevant interests of a Director in the securities of the Company. The Company has made arrangements with each Director to ensure that the Director promptly discloses to the Company Secretary all the information required by the ASX.

8. DISCLOSURE TO ASX

Listing Rule 12.9 of the ASX Listing Rules requires this policy to be disclosed to the ASX. Where Universal Coal makes a material change to this Policy, the amended policy must be provided to ASX within 5 (five) business days of the material changes taking effect, in accordance with Listing Rule 12.10.

9. EFFECT OF COMPLIANCE WITH THIS POLICY

Compliance with these Guidelines for trading in the Company's securities does not absolve that individual from complying with the law, which must be the overriding consideration when trading in the Company's securities.

SCHEDULE 9 – SHAREHOLDER COMMUNICATIONS POLICY

The Board of the Company aims to ensure that the shareholders are informed of all major developments affecting the Company's state of affairs.

Information is communicated to shareholders through:

1. the Annual Report delivered by post and which is also placed on the Company's website;

2. the quarterly reports which are placed on the Company's website;

3. disclosures and announcements made to the Australian Securities Exchange (**ASX**) copies of which are placed on the Company's website;

4. notices and explanatory memoranda of Annual General Meetings (**AGM**) and Extraordinary General Meetings (**EGM**) copies of which are placed on the Company's website;

5. the Chairman's address and the Chief Executive Officer's address made at the AGMs and the EGMs, copies of which are placed on the Company's website;

6. the Company's website on which the Company posts all announcements which it makes to the ASX; and

7. the auditor's lead engagement partner being present at the AGM to answer questions from shareholders about the conduct of the audit and the preparation and content of the auditor's report.

The Company continually reviews its website to identify ways in which it can promote its greater use by shareholders and make it more informative.

At least three historical years of the Company's Annual Report is provided on the Company's website.

The Company encourages participation by shareholders at all shareholder meetings.

Shareholders queries should be referred to the Company's Head Office in the first instance.

SCHEDULE 10 – DIVERSITY POLICY

The Board of the Company is committed to workplace diversity. The Company recognises the benefits arising from diversity, including a broad pool of high quality employees, accessing different perspectives and ideas and benefiting from all available talent.

Diversity includes, but is not limited to, gender, age, ethnicity and cultural background.

To the extent practicable, the Company will address the recommendations and guidance provided in the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (ASX Principles and Recommendations).

1. OBJECTIVES

The Diversity Policy (Policy) provides a framework for the Company to achieve:

(a) a diverse and skilled workforce that supports continuous improvement and achievement of corporate goals;
(b) a workplace culture characterised by inclusive practices and behaviours;
(c) equal employment and career development opportunities for all staff, regardless of gender, age, ethnicity or cultural background; and
(d) a work environment that values and utilises the contributions of employees with diverse backgrounds, experiences and perspectives,

(collectively, the Objectives).

The Policy does not impose on the Company, its directors, officers, agents or employees any obligation to engage in, or justification for engaging in, any conduct which is illegal or contrary to any anti-discrimination or equal employment opportunity legislation or laws in any jurisdiction in which it operates. In particular, the Policy does not detract from the duties of the directors and officers of the Company to exercise their powers and discharge their duties in good faith in the best interests of the Company.

2. RESPONSIBILITIES

The Board is responsible for the application of measurable objectives and strategies to meet the Objectives of the Policy (Measurable Objectives). From time to time the Board will consider the establishment, amendment or removal of Measurable Objectives.

3. MONITORING AND REPORTING

When Measurable Objectives are implemented by the Board, the CEO will report to the Board on progress against the Measurable Objectives on an annual basis.

ANNEXURE A – DEFINITION OF INDEPENDENCE

1. ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES AND RECOMMENDATIONS

An independent Director is a non-executive Director (i.e. is not a member of management) and:

(a) holds less than 5% of the voting shares of the Company and is not an officer of, or otherwise associated directly or indirectly with, a shareholder of more than 5% of the voting shares of the Company;

(b) 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;

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

(d) within the last three years, has not been 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;

(e) has no material contractual relationship with the Company or another group member other than as a Director of the Company;

(f) has close family ties with any person who falls within any of the categories described above;

(g) has not served on the board for a period which could, or could reasonably be perceived to, materially interfere with the Director's independence or ability to act in the best interests of the Company and its shareholders generally; and

(h) is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the Director's ability to act in the best interests of the Company.

The materiality thresholds are assessed on a case-by-case basis, taking into account the relevant Director's specific circumstances, rather than referring to a general materiality threshold, to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity to bring independent judgement to bear on issues before the board and to act in the best interests of the Company and its shareholders generally.

MAYER·BROWN

ANNEXURE B - DIRECTORS' DUTIES AND OBLIGATIONS UNDER ENGLISH LAW

UNIVERSAL COAL PLC

Responsibilities of directors of a limited liability company incorporated in England and Wales

CONTENTS

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RESPONSIBILITIES OF DIRECTORS OF A LIMITED LIABILITY COMPANY INCORPORATED IN ENGLAND AND WALES

1. INTRODUCTION

This memorandum summarises the key responsibilities, duties and liabilities which directors owe and are subject to by virtue of their office. Depending on the circumstances, various duties are owed by directors to their company, its shareholders, its employees, its creditors and to third parties. This memorandum does not discuss the additional responsibilities, duties and liabilities of directors of companies whose shares are traded on a stock exchange such as the London Stock Exchange's main market or AIM, or ASX. In that case, further responsibilities will need to be considered.

In general, the duties of a director apply whether the director is an executive or a non-executive director, although certain matters (e.g. entering into commercial agreements on behalf of the company) are less likely, in practice, to be relevant to non-executive directors and the extent of their duties will vary accordingly.

Moreover, these duties apply also (in some cases to a lesser extent) to persons who are deemed to be "shadow directors". A person is a shadow director if they are "a person in accordance with whose directions or instructions the directors of the company are accustomed to act". Although this would not usually include someone upon whom the directors rely upon for professional advice, it might apply to an observer at board meetings who participates and exercises real influence on a company. This need not include control or influence over all of a company's activities.

In this memorandum, unless otherwise stated **"Companies Act"** means Companies Act 2006, **"FSMA"** means Financial Services and Markets Act 2000 and **"Insolvency Act"** means Insolvency Act 1986. All statutory references are to the Companies Act unless otherwise stated.

This memorandum is a summary of the subject matter only. It does not purport to be comprehensive nor to give specific legal advice. Specific advice should be sought in specific circumstances.

2. KEY DUTIES AND RESPONSIBILITIES OF DIRECTORS

2.1 The general duties

The Companies Act provides that the "general duties" of directors are the duties to:

(a) promote the success of the company (see Paragraph 2.2);

(b) act within powers (see Paragraph 2.3);

(c) exercise reasonable care, skill and diligence (see Paragraph 2.4);

(d) exercise independent judgment (see Paragraph 2.5);

(e) avoid conflicts of interest (see Paragraph 2.6);

(f) not accept benefits from a third party (see Paragraph 2.6); and

(g) declare interests in proposal transactions with the company (see Paragraph 2.6).

In turn, the Companies Act provides that in interpreting these general duties regard must be had to the body of case law which underpins the common law rules and equitable principles that these statutory duties are intended to replace. It remains to be seen how the courts will apply that body of case law to these newly formulated statutory duties. However, there are some early indications of statutory duties being interpreted as having equivalent scope to the common law rules.

In the absence of a body of case law as yet which interprets and applies the new statutory duties, cautious reliance may also have to be placed upon certain statements of Government ministers during the course of the Act's passage through Parliament, where those statements help to shed light on the meaning of the new provisions. Where relevant, we have taken some of those statements into account in this memorandum.

2.2 Duty to promote the company's success

The Companies Act sets out the core duty of a director, which is to act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members (s172).

This statutory duty, which came into force on 1 October 2007, replaces the previous fiduciary duty of a director to act bona fide in what he or she considers is in the best interests of the company. It remains to be seen whether the difference in the wording of the new duty will result in any material change to the duty owed by directors.

As with all the general duties, the duty to promote the success of the company is owed by a director to the company and is, accordingly, only enforceable by the company. The Companies Act does not define "success" but we understand that it is intended to mean what the members collectively want the company to achieve and that, in respect of a commercial company, it will usually mean long-term increase in value. In many transactional scenarios, directors will need to think carefully as to whether the duty is being complied with, for instance on takeovers, solvent liquidations and intra-group transactions.

In fulfilling his or her core duty to promote the success of the company, the Companies Act provides that a director must have regard (amongst other matters) to the following factors:

(a) the likely consequences of any decision in the long term;

(b) the interests of the company's employees;

(c) the need to foster the company's business relationships with suppliers, customers and others;

(d) the impact of the company's operations on the community and the environment;

(e) the desirability of the company maintaining its reputation for high standards of business conduct; and

(f) the need to act fairly as between the members of the company.

The following points can be made about these factors:

(a) a director will need to give proper consideration to them;

(b) they are not an exhaustive list and directors may need to have regard to other factors in their decision-making;

(c) the Government has indicated that:

(i) the requirement to have regard to the factors is subordinate to the director's overriding duty to promote the success of the company for the benefit of members as a whole; and

(ii) decisions taken by a director and the weight given to the factors will continue to be a matter for a director's business judgment exercised in good faith.

A company's affairs must be managed and conducted in the interests of the general body of shareholders and not a particular section of them, such as an investing company. Shareholders may not successfully claim (other than in special circumstances) that duties are owed to them directly. If the director is employed by a third party company, he or she also owes duties to that company.

Where the company is a member of a group of companies, the director must not be guided by the interests of the group as a whole, to the extent that these conflict with the interests of the company of which he or she is a director. However, it is not a breach of duty to take into account the benefit of the group as a whole where no conflict arises.

When deciding whether or not a director has fulfilled his or her duty to act, under the previous formulation, *bona fide* in the interests of a company, the courts have in the past tested the decision from the point of view of the director concerned (as opposed to an "average" director) and have not intervened provided that the director was acting bona fide in what he or she considered was in the interests of the company, unless the exercise of his or her power could not be considered by a reasonable person to have been in the company's interests. Provided a director has exercised his or her powers in good faith, it is irrelevant that his or her conclusion as to what is in the best interests of the company (or, now, what will be most likely to promote the success of the company) is not the same conclusion as a court might reach on the same facts. We expect this approach of the courts to continue.

While things are going well, it is often appropriate for directors to assume differing functions within a company and, for example, for a marketing director or non-executive director to rely upon a finance director or committee to monitor the day-to-day financial position of the company (a director will always be expected to have a broad overview). This may operate as a shield for a director with a specific, non-financial function in the period before he or she becomes aware that the company is in financial difficulties.

However, as soon as the directors become aware that circumstances give grounds for concern, each will need to review the extent to which he or she can rely on delegation in a way consistent with his or her fiduciary duties. The responsibilities of all of the directors will be enhanced, and how these responsibilities should be discharged will depend on all the circumstances, and is discussed further in Paragraph 3.7(h)(ii).

The duty to promote the success of the company is modified when a company is insolvent or on the verge of insolvency and, in those circumstances, the duty is displaced by the duty for the directors to consider the interests of creditors (see Paragraph 2.7).

2.3 Duty to act within powers

A director must act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred (s171). The company's "constitution" includes not only the articles of association but also certain resolutions and agreements, for instance decisions taken by informal unanimous consent of all the members.

2.4 Duty to exercise reasonable skill, care and diligence

Each director is required to exercise his powers and functions with reasonable care, skill and diligence (s174). This is the care, skill and diligence that a reasonably diligent person would exercise with:

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (this is an objective test); and

(b) the general knowledge, skill and experience that the director actually has (this is a subjective test).

The director will be liable to make good to the company any losses it suffers as a result of his failure to exercise that level of care, skill or diligence.

2.5 Duty to exercise independent judgment

A director must exercise independent judgment (s173). This does not prevent a director acting in accordance with an agreement duly entered into by a company that restricts the future exercise of discretion by its directors or acting in a way authorised by the company's constitution. Nor does the duty prevent directors delegating their powers to a committee if they are empowered to do so.

The director's judgment must be his or her own judgment and not that of someone else. A director can still rely on the advice of others but the final judgment must be his or her responsibility. A director can also adopt another's judgment if the director's judgment is that the other person's judgment will be most likely to promote the success of the company.

This duty applies to all directors including a director nominated by a shareholder (which is usual for joint venture and private equity portfolio companies).

2.6 Conflicts of interest

(a) Generally

The law relating to conflicts of interest changed on 1 October 2008, by virtue of the implementation of the Companies Act. The Companies Act provides (at s175) that a director must avoid a situation in which he or she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. This applies to conflicts other than those arising in relation to transactions or arrangements with the company, which are dealt with separately (see Paragraph 2.6(b). s175 states that this duty applies, in particular, to the exploitation of any property, information or opportunity for personal purposes, whether or not the company itself could take advantage of the property, information or opportunity. The duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest.

As the rule in s175 is stated as a *duty* to avoid a situation of conflict or possible conflict, in order not to find themselves in breach of duty directors must either avoid a conflict or possible conflict situation arising in the first place or must avail themselves of one of the safe harbours. One safe harbour, as mentioned above, is that the situation cannot reasonably be regarded as likely to give rise to a conflict of interest. If, however, that is not available, a director must obtain the authorisation of directors or shareholders. The Companies Act allows for the first time for conflicts to be authorised by independent directors (i.e. those directors of the company who are not themselves interested in the matter in question). In the case of a public company, its articles of association must include a provision enabling the independent directors to authorise conflicts. In the case of private companies, whether or not authority needs to be explicitly given to directors depends on when the company was incorporated. If incorporated on or after 1 October 2008, the directors will have the power to authorise conflicts provided there is nothing to the contrary in the company's articles. For companies incorporated before that date, the directors will need to be given that power by a shareholder resolution. Private companies may wish, in addition, to amend their articles of association to include provisions dealing with conflicts, but a company incorporated before 1 October 2008 will still need to pass a shareholder resolution as well.

As an alternative to independent director authorisation, the ability of a company's shareholders to authorise a conflict is preserved. However, especially in the case of widely held companies, it will generally be easier to obtain authorisation of a conflict from the directors (if considered appropriate, and subject to any conditions and limits the independent directors wish to impose) rather than having to seek the authorisation of shareholders.

(b) Interests in contracts

Directors are required to declare their interests in contracts or proposed contracts.

As regards proposed contracts, the Companies Act (s177) requires a director who is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company to declare the nature and extent of that interest to the other directors. The declaration must be made before the company enters into the transaction.

A general notice of a director's interest in a company or firm will suffice, though the Companies Act provides for it to apply to a wider range of interests, whether as shareholder, officer, employee or otherwise. A general notice can also still be given for interests arising through a connected person, where relevant, though the categories of connected person have been considerably broadened. The notice must state the nature and extent of the interest or connection, and be updated if the declaration becomes inaccurate. As there is no *de minimis*, a change, however small, in (for instance) the level of shareholding will trigger the requirement to provide an update.

The declaration may (but need not) be made at a board meeting or by notice to the directors in accordance with provisions of the Companies Act, leaving it open to the articles to impose separate requirements.

An interest need not be declared if: it cannot reasonably be regarded as likely to give rise to a conflict of interest; the directors are (or ought reasonably to be) aware of it; or it concerns terms of the director's service contract that have been or are to be considered by the board or a committee of the board.

The Companies Act preserves the ability for the company to approve a director's interest in a proposed transaction, either by shareholder approval or through the articles.

As regards contracts already entered into, the Companies Act provides (s182) that a director who is directly or indirectly interested in a transaction or arrangement that has been entered into by the company must declare the nature and extent of that interest to the other directors. Identical requirements to those in respect of proposed transactions are provided for in terms of how a declaration of interest may be made and the exceptions that apply to the requirement to disclose. Directors will need to be careful not to commit a technical breach of this provision, which amounts to a criminal offence (albeit one only punishable by a fine); for instance, this will be the case if a director fails to update a declaration that has previously been made and that has since become inaccurate or incomplete. By contrast only civil consequences (for instance, damages or an account of profits) flow from a breach of the duty to disclose proposed contracts.

(c) Duty not to accept benefits from third parties

The Companies Act provides that a director must not accept a benefit from a third party conferred by reason of being a director or doing (or not doing) anything as director. This is intended to cover bribes and secret commissions and represents the codification of the duty not to make secret profits. It will

catch non-financial benefits, such as the provision of corporate hospitality to directors.

The prohibition only applies to benefits the acceptance of which can reasonably be regarded as likely to give rise to a conflict of interest. So payments of small, non-material amounts are unlikely to be caught.

These benefits may be authorised by the members or in accordance with provisions in the company's articles.

2.7 Duties when the company is facing insolvency

The onset of insolvency imposes a further set of duties, mostly under the Insolvency Act, and adds a new dimension to a director's primary duties in that directors must now also have regard to the interests of the company's unsecured creditors.

Insolvency (or the directors having no realistic expectation that the company will avoid going into insolvent liquidation) marks a change in the company's position. The directors are expected to put to one side the interests of the company and its shareholders and to focus on minimising losses to creditors. As the company's financial position deteriorates, creditors will be interested in the company maximising realisations on its assets and, conversely, shareholders will be less likely to see a significant return on their original investment. In these circumstances, the directors' considerations are likely to be less long-term, instead focusing on the more immediate interests of creditors.

Once the directors realise that the company is likely to go into insolvent liquidation, they must consider extremely carefully any decision they make and its financial implications and in particular its impact on the position of the company's creditors generally.

See also Paragraph 3.7(h).

3. PROVISIONS AFFECTING THE LIABILITY OF DIRECTORS

3.1 General

Generally, a director will be personally liable for any breach of his duties and responsibilities to the company where the company suffers loss due to such breach, unless the director can show a valid defence. A court may relieve a director wholly or partially from liability for negligence, default, breach of duty or breach of trust if he acted "honestly and reasonably" and "having regard to all the circumstances, he or she ought fairly to be excused" (s1157).

In addition, the defaulting director may be liable to the company for any profits made where there is a breach of requirements in relation to any of the following:

(a) a substantial property transaction;

(b) a conflict of interest;

(c) a loan to a director; or

(d) where the director has made a secret profit through holding the office of a director.

Where there is a breach of statutory pre-emption rights as discussed in Paragraph 3.7(b), a defaulting director may be liable to compensate the individual shareholder who should have received shares. Some statutory duties carry criminal sanctions i.e. fines and/or imprisonment (discussed in Paragraph 3.7).

Generally, a director can be liable for acts which took place during his term of office even after having left office. Certain statutory duties apply specifically to former directors and shadow directors, such as wrongful trading liabilities discussed in Paragraph 3.7(h)(ii). As regards former directors, the Companies Act provides, for instance, that as from 1 October 2008 the statutory duties to avoid conflicts of interest and not to accept benefits from third parties will to an extent apply to former directors as regards things done while they were in office.

3.2 Liability in negligence

Where a duty of care is established between a company and any third party such as, for example, where it gives professional advice to a client, the company will be liable to compensate the client in question if that advice is negligent and the recipient suffers loss as a consequence. Any employee or officer of the company involved in giving the advice (including a director) may also be personally liable in negligence for that advice if, depending on the facts, he or she assumed a sufficiently close relationship with the client or customer in question.

In this context, we would also mention the recent Court of Appeal case of *Chandler v Cape PLC* in which it was held that an English parent company can, in certain circumstances, be liable for the acts and omission of its subsidiaries. The case concerned the health and safety liability of a parent company to an employee of a subsidiary as a result of negligence. There may be circumstances in which this decision might be able to be applied to non-English subsidiaries and areas outside health and safety (e.g. environmental liabilities). Since the decision is not on directors' duties per se, the case is outside the scope of this memorandum but we can provide further details if required; for instance, steps directors might take to seek to mitigate the risk of parent company liability arising.

3.3 Company debts and personal guarantees

A director is not generally personally liable for a company's debts (including PAYE, NI, and VAT payable by the company) although, as discussed in Paragraph 3.9, a director will be personally liable for the debts of the company when that director acts in breach of any disqualification orders.

Additionally, if a director has given personal guarantees on company loans, personal liability will be incurred which may result in a bankruptcy order being made against him.

3.4 Director's liabilities for acts of others

A director is not liable for the acts of co-directors or company officers solely by virtue of his position. However, a director will become so liable if he or she participates in the wrong or, having become aware of it, takes no steps to correct the wrong. It does not take much to establish participation; merely signing minutes approving a misapplication of property can attract liability; as does unquestioningly signing a cheque for what turns out to be an unauthorised payment, though a director is not liable for signing a cheque for an authorised payment put to an unauthorised use. An executive or experienced non-executive director will not necessarily be able to escape liability merely by showing he or she missed the relevant board meeting. A director is liable though actually ignorant of another's wrong where he or she ought to have supervised the activity or ought to have known that it was wrong.

3.5 Non-executive directors' duties and liabilities

All directors should owe the same duties to the company. Executive directors will additionally owe special duties arising out of their contracts of employment. This is the true distinction between executive and non-executive directors. The part-time nature of the latter's involvement in the company does not in any way diminish their duties and responsibilities, but rather lends them an independence and objectivity over their executive counterparts. Nevertheless, there may be particular matters set out in a non-executive director's letter of appointment, in relation to which they owe additional duties, such as advising on remuneration for other directors.

3.6 Shadow directors' duties and liabilities

A "shadow director" is "a person in accordance with whose directions or instructions the directors are accustomed to act" (s251). Where the directors of a subsidiary company are accustomed to act in accordance with the directions or instructions of its holding company, the latter will be deemed to be a shadow director of its subsidiary except for the purposes of certain provisions of the Companies Act (notably, the general duties and transactions requiring members' approval). Whether this is the case will largely depend upon the degree of autonomy accorded to subsidiaries. If subsidiaries are to be given a significant degree of autonomy, it may be good practice for the service agreements of subsidiary company directors to contain a clear definition of their responsibilities.

Shadow directors may attract the same liability as a formally appointed director, especially in the insolvency context. Many provisions of the Insolvency Act impose responsibility upon shadow directors and in two cases the responsibility goes further than this:

(a) the fraudulent trading regime (discussed in Paragraph 3.7(h)(i)) imposes liability on anyone who is knowingly party to carrying on the business of a company with intent to defraud creditors; and

(b) there are also statutory remedies (s212 Insolvency Act) for breach of duty in the course of winding up of a company, which apply not only to directors of the

company but also anyone concerned in the promotion, formation or management of the company in the course of winding up.

In both of these regimes, the third party involved can be required to make a contribution to the assets of the company.

In respect of the Companies Act, certain provisions are expressly stated to apply to shadow directors (for instance, the s182 requirement to declare interests in existing transactions). As regards the general duties (see Paragraph 2.1), the Companies Act provides that these will apply to shadow directors where, and to the extent that, the corresponding common law rules and equitable principles so apply. So this will be a matter for existing case law.

3.7 Other statutory liabilities

This is not a comprehensive list as there are innumerable criminal and civil liabilities which a director can incur by reason of a breach of statutory duties. However, the following matters are key examples.

(a) Health and safety at work

An offence may be committed whenever there is a breach of the general duties imposed on companies under the Health and Safety at Work etc. Act 1974. These duties are very wide and require companies to ensure (so far as reasonably practicable) the health, safety and welfare at work of its own employees. Business must be conducted in such a manner so that persons not in the company's employment are protected, as far as possible, from health and safety risks created by it. A director may be liable to criminal prosecution for these offences where they are committed due to his neglect or with his consent. Directors may also be liable for breaches of specific duties imposed via regulations made under the Health and Safety at Work etc. Act 1974 to protect employees in particular situations, for example, in relation to asbestos or use of lifting equipment. Sanctions which may be imposed on directors are fines and/or imprisonment.

(b) Contravention of pre-emption rights provisions

If the statutory requirement for a company to offer new shares for subscription first to existing shareholders in the proportions in which they hold shares (see Paragraph 3.1) are knowingly contravened, a director may be liable (both individually and together with the other persons who are liable) to compensate any person to whom an offer to subscribe for shares should have been made (s563 Companies Act).

(c) Prohibition on financial promotion

It is prohibited for any person (including a director) other than a person with formal authorisation granted by the Financial Services Authority to communicate, in the course of a business, any invitation or inducement to engage in investment activity (e.g. acquiring or disposing of shares) unless its contents have been approved by an "authorised person" (s21 FSMA). The

prohibition applies if the communication originates in the United Kingdom or originates abroad but is capable of having an effect in the United Kingdom.

The phrase "in the course of a business" is not defined so has its ordinary meaning. Any communication by or on behalf of a company for the purposes of its business (for example, day to day business operations, fund raising, mergers and acquisitions and potentially internal communications to employees) which amounts to an invitation or inducement to acquire or dispose of shares in the company is capable of being caught. Importantly, the financial promotion restriction applies equally to oral communications which now, for the first time, potentially become a criminal offence if they amount to an "invitation or inducement" to engage in investment activity communicated in the course of a business. Directors should take particular care to ensure that they seek appropriate advice about any written or oral communication to third parties or employees (for example, in connection with an employee share scheme) which could contain an invitation or inducement to acquire or dispose of shares in the company and in particular whether it amounts to prohibited financial promotion. There are several helpful exemptions available.

If a communication is issued or caused to be issued in breach of s21 FSMA:

(i) a criminal offence will be committed and any director authorising that issue will be liable to imprisonment for up to two years or to a fine or both;

(ii) any resulting investment agreement (e.g. an undertaking to acquire shares) may be rendered unenforceable against the recipient (e.g. the subscriber or placee) who will, except in limited circumstances, be able to recover any money paid under the agreement and also any loss sustained.

(d) **Bribery**

New legislation combating bribery (the Bribery Act 2010 (the "**Bribery Act**")) has been enacted to modernise the existing United Kingdom anti-corruption legislation. This has heightened awareness of the responsibility of directors to ensure that they, and their organisations, do not make or receive bribes. Conduct which amounts to bribery under the Bribery Act is a criminal offence. Penalties for individuals found guilty of bribery include fines and a prison term of up to ten years. A director who is found to have consented to, or connived in, bribery by a company will himself be guilty of the offence, as well as the company. A new criminal offence has also been introduced for a commercial organisation which fails to prevent bribery by any person who performs services on its behalf (which might include employees, subsidiaries and agents, amongst others). The only statutory defence against this new wide offence is for an organisation to show that it had "adequate procedures" in place to prevent bribery.

(e) **Liability for false or misleading statements in reports**

Provisions introduced by the Companies Act have established the extent of a director's liability to his or her company in respect of the statutory narrative reporting requirements, that is the directors' report (including the business review), the directors' remuneration report and any summary financial statements derived from them. A director of a company will be liable to compensate the company for any loss suffered by it as a result of any untrue or misleading statement in a report or the omission from a report of anything required to be included. A director will only be liable if an untrue or misleading statement is made deliberately or recklessly or an omission amounts to dishonest concealment of a material fact.

(f) **False or misleading statements**

A person (including a director) is guilty of an offence if that person:

(i) makes a statement, promise or forecast which that person knows to be misleading, false or deceptive in a material particular or if that person dishonestly conceals any material fact whether in connection with a statement, promise or forecast made by that person or otherwise; or

(ii) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular,

if that person made that statement, promise or forecast, or concealment, for the purpose of inducing (or if that person is reckless as to whether it may induce) any other person to enter or offer to enter into (or refrain from entering or offering to enter into) a relevant agreement (e.g. the purchase or subscription of shares in the company) or to exercise, or refrain from exercising, any rights conferred by an investment (s397 FSMA). Any person found guilty under s397 FSMA is liable to a term of imprisonment not exceeding seven years, or to a fine, or to both.

A person (including a director) is also liable to imprisonment under s397 FSMA if that person does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments (including shares of the company), provided that person does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

It is worth noting that an offence can be committed if a person makes a false or misleading statement "recklessly". This could occur if a person, without knowing a statement is actually false or misleading, fails to give any thought to the possibility of there being a risk that it may be, or ignores the fact that a risk exists. The omission of a material fact will only be an offence if it is concealed "dishonestly" (i.e. knowingly).

(g) **Competition law**

Whilst outside the scope of this memorandum, a director may face personal liability where the company of which he or she is a director has breached competition law.

(h) **Insolvency-related liability**

(i) *Fraudulent trading*

If, in the course of a winding up of a company, it appears that a director was knowingly a party to the carrying on of the business of the company with the intent to defraud creditors of the company or of any other person or for any fraudulent purpose, that director could be liable for fraudulent trading. The director in question maybe personally liable:

(A) to make such contributions to the company's assets as the court thinks proper (s213 Insolvency Act); and

(B) to imprisonment or a fine, or both (s993 Companies Act).

In practice, fraudulent trading is hard to establish since it requires the offence to be proven "beyond reasonable doubt". It has been generally accepted that an honest, if ill-founded, view of the company's financial health will not amount to fraudulent trading; it is not enough to show that the company continued to run up debts when the directors knew that the company was insolvent. Only those who were knowingly parties to the fraudulent trading are liable and there has to be "real dishonesty, involving, according to current notions of fair trading among commercial men at the present day, real moral blame".

(ii) *Wrongful trading*

Directors (including former directors and shadow directors) face an increased risk of personal liability for the company's debts and of consequent disqualification if the company goes insolvent and the directors are found not to have taken all steps to minimise potential losses to the company's creditors (s214 Insolvency Act). Disqualification is discussed in Paragraph 3.9. In practice, potential wrongful trading liability is often the most concerning issue for directors.

The court may make an order declaring that a director is liable to make a contribution to the company's assets if:

(A) the company has gone into insolvent liquidation;

(B) at some time before the commencement of the winding-up the person knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation;

(C) he or she was a director or shadow director at that time; and

(D) the court is satisfied that the director did not take every step he or she ought to have taken to minimise the potential loss to creditors.

In determining what the director should have known and done, the court will take into account both:

(A) the general knowledge, skill and experience that might reasonably be expected of the director carrying out his particular function within the company; and

(B) the general knowledge, skill and experience that he or she actually has.

A skilled director will, therefore, be measured by the skill he or she has; an incompetent director primarily by an objective test. Wrongful trading applies to all directors, including non-executives who each has a responsibility to ensure that the company is not treating creditors unfairly.

Once an insolvent liquidation becomes a realistic possibility, the directors should consider implementing the following:

(A) holding regular board meetings;

(B) compiling fully reasoned and well-documented board minutes;

(C) consultation with bankers; and

(D) seeking appropriate professional (including legal) advice.

As soon as a director is aware that there is no reasonable prospect of avoiding insolvent liquidation, or believes that that is the case, he or she should raise the problem with the rest of the board. Incurring further trading or other liabilities should be carefully considered pending such advice.

Liability for wrongful trading cannot arise until there is an actual insolvent liquidation. However, the courts will look back at the directors' conduct in the run-up to the liquidation and will be looking for evidence that the directors did not take every step to minimise potential loss to creditors. Directors cannot avoid liability by resigning (although the courts may conclude that this reduces an individual director's personal liability). Once they conclude that the company cannot continue to trade, they must take appropriate action.

If a director fails to persuade his colleagues, despite his best efforts, to accept his belief that there is no reasonable prospect of the company avoiding insolvent liquidation, it would be sensible for that director to

seek independent personal advice and communicate his or her concerns clearly in writing to the rest of the board.

(iii) *Misfeasance and breach of duty*

If a director is guilty of any misfeasance (i.e. wrongdoing) or breach of duty to the company, the court may order him personally to contribute to the company's assets by way of compensation such sum as it thinks fit. s212 Insolvency Act provides a streamlined procedure by which a liquidator or any creditor or contributory of a company can bring such an action against a director.

(iv) *Transactions defrauding creditors*

A director may also be liable where he or she is responsible for transactions at an undervalue (that is, where an asset is sold or otherwise disposed of for a value below its market price) made for the purpose of putting assets beyond the reach of creditors or prejudicing the interests of a particular creditor (s423 Insolvency Act). See also Paragraph 2.7.

(v) *Restriction on the re-use of company names*

Directors or shadow directors of a company which goes into insolvent liquidation are prohibited for five years from the date of liquidation from trading through a company or business of the same or a similar name (s216 Insolvency Act). If a director does involve himself or herself, directly or indirectly, in the management of a company which uses a prohibited name, he or she may be personally liable for the company's debts and may be imprisoned. The Registrar of Companies keeps a blacklist of these directors.

(vi) *Criminal offences (s206 Insolvency Act)*

A director may be criminally liable for offences committed in anticipation of winding up. Offences include, among other things:

(A) concealing from the company its property;

(B) fraudulently removing its property; and

(C) disposing of any property of the company which has been obtained on credit and which has not yet been paid for.

Liability may constitute a fine, imprisonment or both.

(i) **Theft Act 1968**

An offence under this legislation is committed by any person who:

(a) dishonestly falsifies or conceals any document required for any accounting purpose;

(b) furnishes information for any accounting purpose which he or she is aware may be misleading or false; or

(c) publishes or concurs in publishing a written statement or account with intent to deceive members or creditors of the Company.

(j) **Fraud Act 2006**

Under this legislation, a criminal offence is committed by any person who:

(a) dishonestly makes a false representation;

(b) dishonestly fails to disclose information which he or she is under a legal duty to disclose; or

(c) occupies a position in which he or she is expected to safeguard or not to act against the financial interests of another person and he or she dishonestly abuses that position.

(k) **Record keeping and Companies House filings**

Companies have various obligations to keep accounting records, to prepare accounts and to deliver accounts, returns and other information to the Registrar of Companies (e.g. notices of allotments of shares, notices of changes to officers, etc). Defaults in complying with such obligations are offences and may also lead to disqualification (see Paragraph 3.9).

3.8 **Other non-statutory liabilities**

The general law provides that, if directors carry on business in breach of their powers as stated in the articles of association of the company, they can be made personally liable for any debts arising to the extent that the company itself does not discharge them (for example, where the company exceeds any borrowing limits in its articles).

3.9 **Disqualification**

The Company Directors Disqualification Act 1986 contains provisions concerning the formal disqualification of directors by the court. A disqualification order prohibits a person from acting as a director (and from being concerned or taking part, whether directly or indirectly, in the promotion, formation or management of a business) for a defined period.

A disqualification order may be issued if a director is found to have conducted himself in a way which makes him "unfit" to be concerned in the management of a company. The main categories of misconduct are:

(a) conviction of an indictable offence committed in connection with the setting up, management or liquidation of a company;

(b) persistent breaches of the Companies Act requirements to file returns, accounts or other documents;

(c) fraudulent or wrongful trading; and

(d) summary conviction of an offence relating to the Companies Act requirements to file returns, accounts or other documents.

If a company goes into liquidation, administration or administrative receivership and the office holder (the liquidator, for example) suspects the unfitness of any director or former director, he is obliged to report this to the Secretary of State (who is responsible for bringing disqualification proceedings).

Disqualification can last for between two and fifteen years. Directors will be personally liable for all the debts of the company if they act in breach of any disqualification orders.

4. OTHER PROVISIONS AFFECTING DIRECTORS

4.1 Substantial property transactions

Where a director (or a shadow director) of a company or of its holding company (or a person connected with such a director) proposes to enter into a transaction with the company involving the acquisition by either party of non-cash assets valued in excess of £100,000, or a sum in excess of 10% of the company's asset value and which exceeds £5,000, the transaction may not be entered into unless it is approved by a resolution of members of the company or is conditional on that approval being obtained (s190). If the director in question is a director of the company's holding company, the transaction must also be approved by a resolution of members of the holding company (or be conditional on that approval being obtained). Otherwise, the transaction may be set aside at the instance of the company and the director, connected person (if relevant) and any other director who authorised the transaction must account for any gain they made and indemnify the company for any loss.

4.2 Loans to directors

A company (with some exceptions) may not lend money to its directors or directors of its holding company or guarantee or secure third party loans to any such director (s197) unless the transaction is approved by a resolution of members of the company (and of the holding company, if relevant). This also applies to connected persons of directors where the company is a public company or is associated with a public company. The consequences of breach are the same as in connection with substantial property transactions described above. This prohibition extends to shadow directors.

The Companies Act contains similar provisions in respect of transactions whereby a public company or company associated with a public company makes a quasi-loan (e.g. agrees to pay a sum owed by the director to a third party) or enters into a credit transaction (e.g. supplies goods under a hire-purchase agreement or supplies goods or services on deferred payment terms).

4.3 Trustees of company's property

Directors are trustees of a company's property and are, therefore, answerable for any misapplication of it.

4.4 Directors' long-term service contracts

Long-term service contracts with directors must be approved by shareholders if the guaranteed term of a director's employment is more than two years (s188). The guaranteed term includes the notice period that the company must give to the director.

4.5 Payments for loss of office

Payments to directors or past directors (or a person connected with such a director) for loss of office require shareholder approval (s215). This is subject to a de minimis of £200.

4.6 Use of business stationery

The Companies (Trading Disclosures) Regulations 2008 (the **"Regulations"**) require that the company's business stationery, which includes business letters and order forms, notices and other official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts and letters of credit and all other forms of business correspondence and documentation, in all cases whether hard copy or electronic, must state the company's full registered name including "Limited" or, as the case may be, "plc".

The Regulations also require business letters, order forms and the company's websites to include not only the company's name but also its place of registration, registered number and the address of its registered office.

A director of a company should ensure that commitments entered into on behalf of the company are signed or made by him "as a director for and on behalf of" or "as duly authorised officer of" or some other expression which denotes a representative capacity. In relation to cheques and other bills of exchange, s26 Bills of Exchange Act 1882 requires a director, when signing, to indicate clearly that he or she signs "for and on behalf of a principal or in a representative capacity". It is not enough just to use the word "director". However, one decision hints that the court may be more lenient where an ordinary modern bank cheque is used.

5. OTHER RELEVANT PROVISIONS OF COMPANIES LEGISLATION

The Companies Act imposes restrictions on the way in which companies can allot and issue shares, which apply to both private and public companies. It also provides for additional regulation that applies to public companies only, of which directors should be aware.

5.1 Allotment and issue of shares

(a) Directors' general power of allotment

Directors of both public and private companies are generally prohibited from allotting shares and certain other securities (including any right to subscribe for, or to convert any security into shares) unless authorised to do so either by shareholders in general meeting or by the articles of association. Authority may

be given either generally or for a specific allotment and may be conditional or unconditional. The authority must state:

(i) the maximum amount of shares that may be allotted under it; and

(ii) the date on which it will expire. This must not be more than five years from the date the authority is granted.

An authority may be perpetually renewed for further periods of up to five years. However, many listed companies choose to renew the authority to allot shares annually at each annual general meeting. Directors may incur criminal sanctions if these rules are breached.

(b) **Pre-emption rights**

Under the Companies Act, neither a public nor a private company may allot shares (and certain other securities including some options) for cash (e.g. a small cash placing) unless it has first offered them to existing shareholders on a pro rata basis. These restrictions do not apply to shares issued for cash under an employees' share scheme.

Where the directors have been given a general authority to allot shares, they may also be given power under the articles or by special resolution to disregard the statutory pre-emption requirements when allotting shares. This authority will last for as long as the relevant general authority to allot shares. Again, many listed companies prefer to renew their authority to disapply pre-emption rights on an annual basis at each annual general meeting.

The directors may also be authorised by special resolution to make an allotment disregarding pre-emption rights on a one-off basis.

(c) **Restrictions on share allotments which apply to public companies only**

A public company may not:

(i) accept in consideration for the issue of shares an undertaking to do work or perform services. This does not prevent the allotment of bonus shares;

(ii) allot shares whether fully or partly paid up otherwise than in cash if the consideration for the allotment includes an undertaking which may be performed more than five years after the allotment;

(iii) allot shares which are paid up less than as to one-quarter of the nominal value and the whole of any premium. Shares in employees share schemes are excluded; or

(iv) subject to certain exemptions, allot shares for non-cash consideration (e.g. in exchange for other shares) unless an independent valuation of the consideration is carried out and a report prepared by its auditors.

5.2 **Other provisions relevant to public companies**

Among other things:

(a) whilst private companies are no longer required to hold annual general meetings, public companies must hold such meetings, within six months of their year-end;

(b) whilst a public company may offer its shares or debentures to the public (whereas a private company may not), it may only do so if it publishes a prospectus approved by the UK Listing Authority (unless it is able to fall within a relevant exemption from the requirement to publish a prospectus);

(c) except in certain circumstances, a public company may not take a charge over its own shares;

(d) a public company may not purchase or redeem its own shares out of capital;

(e) a public company may only make a distribution if at that time the amount of its net assets is not less than the aggregate of its called up share capital and its undistributable reserves and if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate;

(f) the directors of a public company must convene a meeting of the shareholders if they discover that the company's net assets have fallen to 50%, or less, of its called-up share capital to consider what (if any) steps should be taken to deal with the situation. If there is a failure to convene such a meeting, a director may, in certain cases, commit an offence (punishable by a fine);

(g) up until 1 October 2008, a company, whether public or private, was not permitted to provide financial assistance for the acquisition of its own shares or shares in a parent company. However, a private company is now permitted to provide financial assistance for the acquisition of its own shares, or shares in its private company parent. The general prohibition in respect of public companies continues to apply, and, except in limited circumstances:

(i) a public company may not provide financial assistance for the acquisition of its own shares or shares in a parent company; and

(ii) a private company may not provide financial assistance for the purpose of an acquisition of shares in its public parent company.

A public company can, for instance, provide money towards the acquisition by employees of fully paid shares under an employee share scheme but the net assets of the company must not be reduced or, if they are, the assistance must be made out of distributable profits; and

(h) takeovers in the UK are regulated by the City Code on Takeovers and Mergers (the **"Code"**). It applies to UK public companies whose shares are admitted to trading on a UK regulated market. It also applies to UK public and private companies which are considered to have their place of central management and

control in the UK but, in relation to private companies, only when one of a number of other conditions is fulfilled (e.g. that the private company's shares were admitted to the Official List at some time in the previous 10 years). The Code requires any person who acquires an interest in shares which carries 30% or more of the voting rights of a company to make a mandatory bid on specified terms for the whole of the company.

6. PROTECTING DIRECTORS FROM LIABILITY

(a) Director indemnification

The Companies Act effectively prohibits a company from exempting, or providing an indemnity to, a director of the company or of an associated company against any liability attaching to him or her in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he or she is a director.

There are, however, three notable exceptions:

(i) a company may purchase insurance for such a director against such liabilities;

(ii) a company may indemnify such a director against any such liabilities incurred by the director to a person other than the company or an associated company, in the circumstances set out in s234 (these indemnities are known as qualifying third party indemnity provisions or QTPIPs); and

(iii) a company may indemnify any such director, being a director of a company that is trustee of an occupational pension scheme, against liability incurred in connection with the company's activities as trustee of the scheme (these indemnities are known as qualifying pension scheme indemnity provisions or QPSIPs).

As an exception to the restrictions on providing loans to directors (see Paragraph 4.2), a company is also entitled to fund a director's costs in defending civil or criminal proceedings in connection with any alleged negligence, default, breach of duty or breach of trust as and when those costs are incurred, but only if the terms of the loan provide for the funds to be repaid in the event of judgment being entered against the director.

(b) Availability of insurance

As regards the purchase of insurance cover for directors, the conventional form of cover, known as directors' and officers' (**"D&O"**) liability insurance, will usually embrace, on a "blanket basis", all past, present and future directors and officers of the company.

The usual D&O cover is in respect of a director's personal legal liability:

(i) to the company or to third parties for damages and claimants' costs; and

(ii) for costs of his or her own representation and defence in civil or criminal proceedings, or in an investigation or other proceedings into the affairs of the company.

This liability must arise from a claim made during the period of insurance against the director for his "wrongful act" in his capacity as a director or officer of the company or from an investigation initiated during the period of insurance. "Wrongful act" is commonly defined as "any actual or alleged breach of trust, breach of duty, neglect, error, misstatement, misleading statement, omission or other act wrongfully committed or attempted…or breach of warranty of authority"; this includes, among other things, wrongful trading liability.

Any D&O insurance cover extended to a company's directors may need to be examined carefully to ensure there is no mismatch with any indemnification arrangements for directors included in the company's articles, in service contracts for individual directors or otherwise.

(c) **Practical measures to limit directors' liability**

In addition to D&O insurance and indemnification by the company, the following should be considered:

(i) the company should ensure that directors are aware of their responsibilities, duties and liabilities, including their statutory duties;

(ii) directors should have a broad overview of the financial condition of the company;

(iii) directors should be aware of any changes to the borrowing powers of the company;

(iv) directors should hold and attend regular board meetings to ensure familiarity with the company's business;

(v) proper board minutes should be kept and, in respect of important board decisions at least, consideration given to recording (A) in those minutes that the particular decision accords with the duty to promote the success of the company and (B) whether in those minutes, in board papers or elsewhere, the board's consideration, to the extent relevant, of the factors set out in s172 (see Paragraph 2.2);

(vi) directors should raise questions regarding affairs of the company and not "close their eyes" to potential problems;

(vii) directors should ensure that any oral or written communication (whether to shareholders, employees or third parties) relating to the acquisition or disposal (including issue) of shares (whether of the company or a third party company) complies with FSMA and other relevant legislation by seeking appropriate legal advice as to the timing, form and contents of the communication;

(viii) directors should ensure that all contracts, orders, agreements and other documents are properly authorised and correctly signed. Directors should sign documents in a manner that denotes a representative capacity, such as "for and on behalf of" the company; and

(ix) finally, directors should seek appropriate legal advice as to the form of key business stationery.

13 December 2012