

BOARD CHARTER

KIMBERLEY DIAMONDS LTD ABN 95 150 737 563

1. OVERVIEW

- 1.1 The Kimberley Diamonds Ltd (KDL or Company) Board is primarily responsible for ensuring that KDL has an appropriate corporate governance structure to ensure the creation and protection of shareholder value.
- 1.2 The Board is also responsible for ensuring the Company recognises its legal and other obligations to all legitimate stakeholders from time to time where and to the extent appropriate. "Stakeholders" are groups that are likely to feel a social, environmental or economic impact from KDL's actions. They include shareholders, employees, contractors, regulatory bodies and members of the communities where KDL operates and are affected by KDL's activities.
- 1.3 This Board Charter explains the Company's commitment to corporate governance and sets out the role, responsibilities and conduct of the Board. It is not an "all inclusive" document and should be read as an expression of principle.
- 1.4 To the extent practicable, the Company endorses and seeks to follow the Australian Securities Exchange (ASX) Corporate Governance Council's *Corporate Governance Principles and Recommendations* (ASX Principles & Recommendations).
- 1.5 This Board Charter sets out the principles for the operation of the KDL Board.

2. COMPLIANCE AND GOVERNING MATERIALS

2.1 Constitution

KDL's Constitution is the Company's key governance document. The Board must ensure that it and the Company comply at all times with the provisions of the Constitution.

2.2 Compliance with Laws

As a public company listed on the ASX, the Company must comply with the *Corporations Act*, the ASX Listing Rules (Listing Rules) as well as all other applicable laws, regulations, moral codes and statutes. Examples of applicable areas of regulation include:

- a. occupational health and safety legislation;
- b. environmental protection legislation;
- c. employment related laws; and
- d. anti-discrimination legislation.

2.3 Governance Materials

The operations and conduct of KDL are administered in accordance with all governance materials approved by the KDL Board, including but not limited to:

- a. this Charter and various Committee charters, from time to time;
- b. Code of Conduct;
- c. Diversity Policy;
- d. Securities Trading Policy; and
- e. Continuous Disclosure Policy.

3. COMPOSITION OF THE BOARD

3.1 Number of Directors

- a. In accordance with the Constitution and the *Corporations Act*, the Board shall at all times have at least three Directors and a maximum of 10 Directors.
- b. The Board size, diversity and composition is periodically determined and reviewed by the Board as a whole. In relation to the composition, the Board will consider, and regularly review, the number and balance of Directors with non-executive and independent status.

3.2 Alternate Directors

Directors may appoint Alternate Directors in accordance with the Constitution of the Company.

3.3 Appointment and Removal of Directors

General

Directors will be appointed and removed in accordance with the *Corporations Act* and the Constitution.

Considerations

In selecting new Directors, the Board must ensure that the candidate has the appropriate range of skills, experience, diversity and expertise that will best complement Board effectiveness.

In addition, any candidate must confirm that they have the necessary time to devote to their KDL Board position.

3.4 Nomination and Rotation of Directors

Nomination and rotation of Directors will be governed by the *Corporations Act*, the Listing Rules and the Constitution.

Procedure for Nomination to Board

The Board's procedure for selection of candidates and recommendation to the Board following identification of the needs of the Board is to:

- a. assess the competencies and skills required by the Board, having regard to the current and future business of KDL, including development of a skills matrix covering skills and diversity;
- b. identify individuals with the competencies required by the Board, including engaging recruitment consultants to assist in the identification process, as required;
- c. develop a short list of candidates based upon competencies and ability to fit within the existing Board;
- d. conduct appropriate checks (including for example, person's character, experience, education, criminal record and bankruptcy history); and
- e. approve the most appropriate person from the short list to be invited by the Board to become a Director of KDL.

Other Nomination Related Matters

The responsibilities of the Board with regard to nomination related matters (without limiting its scope) are to:

- a. review the composition of the Board and its Committees (if any);
- b. assess the necessary and desirable competencies of Directors;
- c. ensure the Directors have the appropriate mix of competencies to enable the Board to discharge its responsibilities effectively;
- d. oversee the Directors' induction program;
- e. ensure that Directors have access to appropriate continuing education to update and enhance their skills and knowledge;
- f. develop Board succession plans to ensure an appropriate balance of skills, experience and expertise is maintained;
- g. review the time commitment required from Non-Executive Directors and whether Directors are meeting that commitment; and
- h. evaluate the collective performance of the Board, the Chairman of the Board, the individual performance of all the Directors and senior management.

3.5 Board Committees

Pursuant to the Constitution of the Company and to assist the Board in fulfilling its duties and responsibilities, the Board may delegate its powers to a committee or committees consisting of such of their number as they think fit, from time to time.

Any such committees established will have formal charters. With the exception of certain limited delegations contained in the committees' charters, recommendations of such committees are to be referred to the Board for approval.

3.6 Independence

Independent Directors are those who have the ability to exercise their duties unfettered by any business or other relationships and are willing to express an objective opinion.

It is the approach and attitude of each Non-Executive Director which is critical to determining independence and this must be considered in relation to each Director while taking into account all other relevant factors, which may include whether the Non-Executive Director:

- a. is a substantial shareholder (defined as owning more than five per cent of the issued share capital of the Company), or an officer of, or otherwise associated directly with, a substantial shareholder of the Company;
- b. has, within the last three years, been employed in an executive capacity by the Company or any other Group company;
- c. has, within the last three years, been a principal of a material professional adviser or a material consultant to the Company or an employee materially associated with the service provided. In this context, the relationship with the professional adviser or consultant shall be deemed to be material if payments from the Company exceed \$100,000 of KDL's annual expenditure to all professionals and consultants or exceed \$100,000 of the recipient's annual revenue for advisory or consultancy services;
- d. has, within the last three years been a material supplier or customer of the Company, or an officer of or otherwise associated directly or indirectly with, a material supplier or customer. In this context, the relationship with the supplier or customer shall be deemed to be material if annual payments to or from that supplier or customer exceed \$100,000 of the annual consolidated gross revenue of either KDL or of that supplier or customer;
- e. has a material contractual relationship with KDL other than as a Director which could, or could reasonably be perceived to interfere with the Director's ability to act in the best interests of KDL;
- f. has close family ties with any person who falls within any of the categories described above;
- g. has been a Director of the entity for such a period that his or her independence may have been compromised; or
- h. is free from any interest and any business or other relationship which could, or could reasonably be perceived to interfere with the Director's ability to act in the best interests of KDL.

Independence will be reviewed on a regular basis.

4. INFORMATION AND INDEPENDENT ADVICE

4.1 Due Diligence “Pack”

Prior to any formal offer, any potential director must be given sufficient information about KDL as part of his/her personal due diligence. The information will extend to non-public information after the potential director has signed a confidentiality agreement.

4.2 Appointment Letter

Upon appointment, a new Director will be given a formal letter of appointment from the Chairman setting out the key terms, conditions and responsibilities of their position.

4.3 Induction Program

Upon appointment, the Company Secretary is responsible for arranging for the new Director to undertake an induction program to enable them to gain an understanding of:

- a. KDL’s operations and the industry sectors in which it operates;
- b. the culture and values of KDL;
- c. KDL’s financial, strategic, operational and risk management position;
- d. their rights, duties and responsibilities; and
- e. any other relevant information.

As part of this induction program, a new Director will meet with all incumbent Directors and senior executives (if this has not already taken place) to gain an understanding of the duties and responsibilities of the Director or manager within KDL.

4.4 Ongoing Information

The Chairman, Managing Director (MD), Chief Financial Officer (CFO), Company Secretary and any other executive officers must ensure that updated information is provided to the Board in a timely fashion to enable them to effectively discharge their duties as Directors. This may be part of, or in addition to, the periodic Board reporting process.

Appropriate professional development opportunities will be offered on an ongoing basis to enable Directors to develop and maintain their skills and knowledge.

4.5 Requested Information

Directors are entitled to request and receive such additional information as they consider necessary to support informed decision-making. Any Director has the authority to seek any information he/she requires from any employee or contractor (Employee) of KDL and all Employees must comply with such requests.

Unless a conflict exists or to do so would be inconsistent with the Director’s duties, the Director is to request such information via the Chairman.

4.6 Independent Advice

Any Director may take such independent legal, financial or other advice as they consider necessary at the reasonable expense of KDL on any matter connected with the discharge of his or her responsibilities. Any Director seeking independent advice must first discuss the request with the Chairman who will facilitate obtaining such advice. The Chairman may determine that any advice received by a Director be circulated to the Board.

All Directors are entitled to the benefit of KDL's standard Deed of Access, Indemnity and Insurance which provides ongoing access to Board Papers and at the Company's expense, Directors' and Officers' Insurance for seven years after the Director leaves the Board.

5. DUTIES AND RESPONSIBILITIES

5.1 The Board is responsible for setting KDL's values and standards of conduct and ensuring that these are adhered to, in the interests of KDL's stakeholders and, generally in safeguarding KDL's reputation.

5.2 The Board is responsible for setting the strategic direction of KDL and for the senior executives of KDL, including:

- a. financial strategic objectives;
- b. oversight of control and accountability systems;
- c. the appointment, appraising, removal and remuneration of the:
 - i. MD;
 - ii. CFO; and
 - iii. Company Secretary;
- d. input into and final approval of corporate strategy;
- e. evaluating and approving the annual operating budget and business plans and holding management accountable for delivery of same;
- f. evaluating, approving and monitoring the progress of major capital and operating expenditure, capital management and all major corporate transactions;
- g. monitoring compliance with all legal and regulatory and ethical obligations;
- h. reviewing, monitoring and ratifying the Company's audit function and risk management system and internal compliance and controls;
- i. reviewing progress against objectives set under KDL's diversity policy;
- j. approving remuneration policies for the Company;
- k. approving employment terms and conditions for Non-Executive Directors and senior executives;

- l. establishing criteria for and monitoring performance of senior executives;
- m. approving and monitoring financial and other reporting to the market, shareholders, employees and other stakeholders;
- n. determining KDL's dividend policy, the operation of dividend re-investment plan (if any) and the amount and timings of all dividends; and
- o. appointing the Chairman of the Company.

5.3 It is the role of senior executives and management to manage the Company in accordance with the direction and delegations of the Board and the responsibility of the Board to oversee the activities of management in carrying out these delegated duties. The Board shall approve all delegations of authority. The responsibility of senior executives and management includes:

- a. managing the day to day operations of the Company;
- b. implementing the financial strategic objectives of the Board;
- c. implementing, maintaining and control and accountability of financial and operating systems;
- d. the employment, supervision and the setting terms and conditions of human resources;
- e. input into the corporate strategy process;
- f. preparing and implementing the annual operating budget and business;
- g. implementing and monitoring the progress of major capital and operating expenditure, capital management and all major corporate transactions;
- h. comply with all legal and regulatory and ethical obligations;
- i. setting measurable objectives for achieving gender diversity and reviewing progress against objectives set under KDL's diversity policy; and
- j. establishing criteria for and monitoring performance of management and staff.

5.4 In discharging his/her duties, each Director must:

- a. exercise care and diligence;
- b. act honestly and in good faith in the best interests of the Company as a whole;
- c. not improperly use his/her position or misuse information of the Company;
- d. disclose to the Board any actual or perceived conflicts of interest, whether of a direct or indirect nature, of which the Director becomes aware and which the Director reasonably believes may compromise the reputation or performance of the Company; and
- e. commit the time necessary to discharge effectively his/her role as a Director.

5.5 All Directors are entitled to be heard at all meetings and to the extent practicable, should bring an objective judgement to bear in decision-making.

5.6 All Directors have access to the Company Secretary, who is accountable to the Board, through the Chairman, on all governance matters.

6. THE CHAIRMAN

The Chairman is responsible for:

- a. leadership of the Board;
- b. developing and maintaining key strategic relationships;
- c. working with the Managing Director to ensure a productive relationship between the Board and management;
- d. overseeing the Board in the effective discharge of its supervisory role;
- e. the efficient organisation and conduct of the Board's function and meetings;
- f. facilitating the effective contribution of all Directors;
- g. briefing all Directors in relation to issues arising at meetings;
- h. the promotion of constructive and respectful relations between Directors; and
- i. committing the time necessary to discharge effectively his/her role as Chairman.

Should the Chairman be absent from a meeting, another Director should act as chairman of the meeting.

7. MEETINGS

The Board will meet as frequently as required to manage the business and deal with urgent matters which might arise between the scheduled meetings.

A meeting of the Board will usually be convened by the Chairman, although under KDL's Constitution, a meeting may be called by any Director.

All Directors are expected to diligently prepare for, attend, and participate in all Board meetings. At a minimum, a quorum of Directors under KDL's Constitution is two.

Meetings of the Board may be held or participated in by conference call or similar means. Resolutions of the Board may be passed by circular resolution or in writing in accordance with KDL's Constitution.

The Chairman in conjunction with the MD should ensure the availability and, if necessary, the attendance at the relevant meeting, of any member of the senior executives responsible for a matter included as an agenda item at the relevant meeting.

The external auditor should meet with the Board in the course of preparing the half-yearly and annual accounts.

8. DIRECTOR SHARE TRADING

The Company's Security Trading Policy imposes restrictions on the trading of shares by Directors and others with undisclosed material price sensitive information. All Directors must comply with that Policy.

9. CORPORATE GOVERNANCE

9.1 The Board is responsible for the adoption, oversight and administration of the Company's corporate governance materials, including but not limited to those documents listed in clause 2.3.

9.2 The Corporate Governance Statement will be published on the website and will contain the content required by the ASX Principles & Recommendations (as well an explanation of any departures from the best practice Recommendations).

9.3 As part of an effective communications strategy, the Company will maintain and keep current its Corporate Governance website.

10. PERFORMANCE

To determine whether it is functioning effectively, the Board shall:

- a. review this Charter annually; and
- b. undertake an evaluation of its performance at intervals considered appropriate by the Chairman.

A copy of this Charter is available on the Company's website.