

The Board Function and Board Charter

Adopted by the Board July 2015

1. Introduction

This Charter summarises the role and responsibility of the Memphasys Limited Board. The roles and responsibilities of the Board will evolve as the Company moves forward. The Board Charter broadly addresses each of the Principles and Recommendations released by the ASX Corporate Governance Council, 3rd Edition.

2. Role

The Memphasys Limited Board is accountable to shareholders for the performance of the Company. It oversees the activities and performance of management and provides an independent and objective view of Company decisions.

3. Responsibilities

3.1 General Responsibilities

The general responsibilities of the Memphasys' Board are:

- (a) Protection and enhancement of shareholder value.
- (b) Formulation, review and approval of the objectives and strategic direction of the Company.
- (c) Monitoring the financial performance of the Company by reviewing and approving budgets and monitoring results.
- (d) Approving all significant business transactions including acquisitions, divestments and capital expenditure.
- (e) Ensuring that adequate internal control systems and procedures exist and that compliance with these systems and procedures is maintained.
- (f) The identification of significant business risks and ensuring that such risks are adequately managed.
- (g) Evaluation of potential business development opportunities.
- (h) The review of performance and remuneration of executive directors and staff.
- (i) Ensuring there is an effective corporate governance structure and practice in place.

- (j) Ensuring the integrity in financial reporting. Please refer to board committees section below.
- (k) Ensuring the Company's Code of Conduct and other policies are adhered to, to promote ethical and responsible decision making.
- (l) Ensuring that an appropriate Securities Trading Policy is in place regarding trading of the Company's shares by employees and directors of the Company.
- (m) Ensuring that an appropriate policy is in place regarding the recognition and management of the risks facing the Company.
- (n) Ensuring that appropriate policies and procedures are in place to ensure compliance with applicable laws.

3.2 **Specific Responsibilities**

The specific roles of the Board and the Chairman are as follows:

- (a) Monitor all aspects of the Company's performance, ensuring that this performance is in shareholder's interests and is meeting agreed goals and objectives.
- (b) Improve the performance of the Company through strategy formulation and policy making.

3.3 **Annual**

- (a) Setting and reviewing
 - (i) vision and mission;
 - (ii) goals (short, medium and long term); and
 - (iii) strategy.
- (b) Approving the annual strategic plan and major operating plans.
- (c) Approving the annual budget.
- (d) Reviewing and providing feedback on the performance of the CEO.
- (e) Reviewing the performance of the Board, the individual Directors and the Committees every year.
- (f) Approving the annual report.
- (g) Approving the notice of AGM.
- (h) Reviewing/approving:
 - (i) the documents that must be lodged with ASIC under section 601CK of the Corporations Act. These include:

- (A) a copy of the Memphasys Limited balance sheet;
- (B) a copy of the Memphasys Limited profit and loss statement; and
- (C) a copy of the Memphasys Limited cash flow statement,
all made up to the end of the last financial year (**Annual Accounts**);
- (ii) the information set out in ASX Listing Rules Appendix 4E (preliminary final year report) in accordance with the relevant accounting standards (**ASX Listing Rules Appendix 4E**); and
- (i) Ensuring the following is lodged with the ASX:
 - (i) no later than two months after the end of the accounting period:
 - (A) ASX Listing Rules Appendix 4E.
 - (ii) no later than three months after the end of the accounting period:
 - (A) the Annual Accounts with the ASX.
 - (iii) On the day it is sent to shareholders:
 - (A) the Annual Report.
 - (iv) all the documentation to be lodged with ASIC no later than three months after the end of the accounting period.
- (j) Ensuring that the Annual Accounts are lodged with ASIC at least once every calendar year (no later than three months after the end of the accounting period) and at intervals of not more than 15 months.

3.4 Half-year

- (a) Reviewing/approving:
 - (i) the half year accounts (audited), information or documentation that must be lodged with ASIC under section 320 of the Corporations Act and any other information or documentation that would be required under section 320. These include:
 - (A) financial report;
 - (B) directors report;
 - (C) audit report,
(Half Year Accounts);
 - (ii) the information set out in ASX Listing Rules Appendix 4D in accordance with the relevant accounting standards (**ASX Listing Rules Appendix 4D**); and

- (b) Ensuring the following is lodged with the ASX no later than two months after the end of the accounting period:
 - (i) The Half Year Accounts with the ASX; and
 - (ii) ASX Listing Rules Appendix 4D.

3.5 **Monthly**

- (a) Reviewing performance of the Company in meeting objectives, including presentations on key areas for success, as determined by the Board.
- (b) Consider reports and recommendations from committees.

3.6 **Ad hoc**

- (a) Determine all policies governing the Company and ensuring that adequate procedures are in place to manage the identified risks.
- (b) Appointing and approving the terms and conditions of appointment of the CEO and CFO (or equivalent).
- (c) Approving the terms and conditions of appointment of all other persons reporting to the CEO.
- (d) Establish and determine powers and functions of committees and reviewing those powers and functions every two years or as circumstances demand.
- (e) Approving**
 - (i) capital expenditures in excess of \$100,000;
 - (ii) operational expenditure outside the budget in excess of \$100,000;
 - (iii) mergers, acquisitions and disposals of businesses;
 - (iv) all property acquisitions and disposals;
 - (v) leases, in excess of a 3 year term;
 - (vi) sale/licensing of trade marks, patents; and
 - (vii) borrowings in excess of \$100,000.
- (f) Ensuring procedures are in place so that the share market is promptly and adequately informed of all material matters.
- (g) Decisions on the following matters in relation to the Board:
 - (i) the appropriate size, composition and terms and conditions of appointment to and retirement from the board. For the level of remuneration for non-executive directors, the board will have regard to practices of other public companies of similar size and scope, external professional advice, if

considered necessary, and the aggregate amount of fees approved by shareholders;

- (ii) the appropriate criteria for board membership;
- (iii) reviewing the membership of the board and, when necessary, considering candidates for appointment to the board;
- (iv) monitoring board members and senior executives to ensure no transactions in associated products are entered into which could lead to unacceptable levels of economic risk for the Company. Such products include unvested entitlements under equity-based remuneration schemes.

3.7 **Matters reserved to the Board**

The following matters are reserved for the Board and are not to be delegated

- (a) Appointing and approving the terms of appointment of the Chairman;
- (b) Appointing and removing the CEO;
- (c) Appointment of Directors to fill a vacancy or as an additional Director;
- (d) Establishment of Board committees, including their membership and delegated authorities;
- (e) Approval of dividends and distributions;
- (f) Approval of matters referred to in paragraph 4.6(e);
- (g) Calling meetings of shareholders;
- (h) Other specific matters nominated by the Board from time to time.

4. **Role of the Chairman**

4.1 **Vision/mission statement/strategy**

Ensure the Board shows leadership in setting, reviewing and achieving the vision and strategy of the Company.

4.2 **Board meetings**

- (a) Agree the agenda in consultation with the Company Secretary to ensure appropriate time is allowed for discussion on strategic, operational and compliance issues.
- (b) Ensure the Board receive all necessary information to enable effective decision making.

- (c) Chair Board meetings and ensure that they are validly convened, a quorum is present, all Directors have a fair opportunity to participate, the minutes are signed confirming their correctness and the meeting is declared closed.
- (d) Deal with any conflicts that arise, address differences of opinion and ensure contrary votes are recorded, if so required.
- (e) Ensure Directors with material personal interests in a matter leave the meeting while the matter is discussed, unless a resolution has been passed by the non-interested Directors allowing the interested Director to remain in the meeting and participate in discussions and/or vote on the matter.

4.3 **Annual general meetings**

- (a) Chair the meeting and ensure that the shareholders as a whole have an opportunity to speak on matters relevant to the management of the Company.
- (b) Ensure the audit partner is present at the AGM and available to answer questions.

4.4 **Committee meetings**

Attend committee meetings in accordance with membership of such committees.

4.5 **External contact**

Be spokesperson in respect of the performance and profit figures and any board-related matters, if appropriate.

4.6 **Board**

- (a) Initiate the process of Board, committee and Director performance appraisal.
- (b) Ensure the agreed composition of the Board is maintained or initiate action.
- (c) Ensure Directors are informed of significant changes to the Company's business environment and relevant changes to legislation.
- (d) Ensure new Directors are properly inducted.

4.7 **Other**

Carry out other duties as requested by the Board from time to time.

4.8 **Vision/mission statement/strategy**

- (a) Formulate with the Board the vision, mission statement and strategy, and initiate reviews, as appropriate.
- (b) Develop actions with the management team to achieve the vision and implement the strategy.

- (c) Monitor the Company's progress against the vision and strategy, discuss and attempt to resolve issues that appear to be impeding progress.

5. Role of the CEO

5.1 Management team and employees

- (a) Negotiate terms and conditions of appointment of senior executives for approval, where necessary, by the Board.
- (b) Develop succession plan and senior executives' development programs and evaluate performance of senior executives.
- (c) Approve general conditions of employment of all other staff members.
- (d) Provide strong leadership to the management team and ensure all employees understand the vision and strategy and their part in its achievement.
- (e) Ensure procedures and training are in place to provide a safe work environment.
- (f) Ensure employees are educated on legal requirements and company policies such that compliance is the culture and a high level of ethical behaviour is expected.

5.2 Board

- (a) Ensure all matters requiring review or approval by the Board are brought to the Board with adequate information and time to allow proper consideration of such matters.
- (b) Advise the Board of any significant change in the risk profile of the Company together with actions taken or proposed, in a timely manner.
- (c) Report to the Board on at least every board meeting and preferably on a monthly basis the performance of the business against budgets and the projected performance against the budget going forward.
- (d) Ensure all presentations on matters agreed with the Board are made on a timely and in an informative manner.
- (e) Ensure Directors are continually educated on the business of the Company, the environments in which it operates, changes in legal obligations and developments in corporate governance best practice.

5.3 External Stakeholders

Liaison with all relevant stakeholders from time to time.

5.4 Delegated authority**

The following delegated authority as approved by the Board:

- (a) Capital expenditure of up to \$100,000;
- (b) Operational expenditure outside of budget of up to \$100,000;
- (c) Leases - period of up to three years or less;
- (d) Sale of assets – value and proceeds of up to \$100,000; and
- (e) Appointment and termination of employees.

5.5 **Management**

All other matters necessary for the day to day management of the Company.

6. Role of Executive Chairman and CEO

Having regard to the Company's size and stage of development, as at the date of adoption of this Charter, the roles of Chairman and CEO are merged into a single role, as Executive Chairman and CEO. The person appointed to this position will take on the responsibilities set out in sections 4 and 5 above.

7. Role of the Company Secretary

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

The role of the Company Secretary includes:

- (a) advising the Board and its committees on governance matters;
- (b) monitoring that Board and committees to ensure policy and procedures are followed;
- (c) coordinating the timely completion and despatch of Board and committee papers;
- (d) ensuring that the business at Board and committee meetings is accurately captured in the minutes; and
- (e) helping to organise and facilitate the induction and professional development of directors.

8. Board Committees

To assist the Board in fulfilling its duties, the Board or certain nominated Directors will also meet as the following committees pursuant to their written terms of reference:

- (i) Audit and Risk Committee; and

(ii) Nomination and Remuneration Committee.

The Charter of the Committees is approved by the Board and reviewed following any applicable regulatory changes.

Members of Committees are appointed by the Board. The Board may appoint additional Directors to Committees or remove and replace members of Committees by resolution.

The minutes of each Committee meeting shall be provided to the Board at the next occasion the Board meets following approval of the minutes of such Committee meeting.

9. Composition

The Company's Constitution requires that the minimum number of Directors is three.

If Memphasys Limited activities change in size, nature and scope, the size of the Board and the optimum number of Directors required for the Board to properly perform its responsibilities and functions will be reviewed and, if appropriate, changed accordingly.

The Board requires Directors to, collectively, have a broad range of technical and commercial expertise and experience, particularly in a field which is complementary to the Company's activities and strategy, or with appropriate professional qualifications, and are able to bring value to the Board's deliberations.

The Board must maintain a broad skills matrix setting out the mix of skills and diversity that the Board currently has or is looking to achieve in its composition.

Directors are subject to retirement by rotation and election by shareholders at a general meeting. No Director other than the Executive Chairman may remain on the Board for more than three years without re-election. Where a Director is appointed during the year that Director will hold office until the next Annual General Meeting and then be eligible for re-election.

10. Board Nominations

The Board will consider nominations for appointment or election of Directors that may arise from time to time having regard to the corporate and governance skills required by Memphasys Limited and the ASX Corporate Governance Council, and procedures outlined in the Constitution.

11. Appointment of Directors

Subject to the number of directors allowed under the Constitution, a director may be appointed by an ordinary resolution of the Company in a general meeting. Where a director's position becomes vacant between such elections, the Board will appoint a replacement director. Such a replacement director will only hold office until the next annual general meeting of the Company.

Prior to appointing a director or putting forward a candidate for election as a director, the Board must:

- (a) undertake appropriate checks; and
- (b) provide shareholders with all material information in the Board's possession relevant to a decision on whether or not to elect or re-elect a director.

The terms and conditions of the appointment and retirement of members of the Board will be set out in a letter of appointment in accordance with the requirements of the Corporations Law.

The Company must have a written agreement with each director and senior executive which outlines the terms of their appointment.

12. Board processes and evaluation of performance

The Board currently schedules a minimum of 4 meetings per year. In addition, the Board meets whenever necessary to deal with specific matters needing attention between the scheduled meetings. Extraordinary meetings take place at such other times as may be necessary to address any specific significant matters that may arise.

The agenda for meetings is prepared by the Company Secretary in conjunction with the Chairman of the Board, with periodic input from the Board. Board papers are distributed to directors in advance of scheduled meetings.

Each member of the Board is committed to spending sufficient time to enable them to carry out their duties as a Director.

It is recognised and accepted that Board members may also concurrently serve on other boards, either in an executive or non-executive capacity.

Due to the current size of the Company and its level of activity, the Board is responsible for the evaluation of its performance and the performance of individual directors. This internal review is to be conducted on an annual basis and if deemed necessary this internal review will be facilitated by an independent third party.

13. Independence of Board Members

The Board will regularly assess the independence of each of the Non-Executive Directors based on the interests and associations disclosed by them, in line with the Principles and Recommendations.

Principle and Recommendation 2.4 states that a majority of the Board should be independent directors. In assessing the makeup of the Board, the Company aims for its Directors to be independent in thought and judgement, as well as expecting the Directors to add value to the Company. This applies to Directors who are assessed as being non-independent as well as those who are independent. The Board structure will be reviewed at the appropriate stages of the Company's development.

13.1 Assessing the independence of directors - The ASX guidelines

An independent director, in the view of Memphasys Limited, is a Non-Executive Director who:

- (a) is not a substantial shareholder of the Company or an Officer of, or otherwise associated directly with a substantial shareholder of the Company (as defined in section 9 of the Corporations Act);
- (b) has not, within the last three years, 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) has not, within the last three years, 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) is not a material supplier or customer of the Company or other group member, or an Officer of or otherwise associated, directly or indirectly, with a material supplier or customer;
- (e) has no material contractual relationship with Memphasys other than as a director of the Company;
- (f) has not served on the Board for a period which could, or could reasonably be perceived to, materially interfere with the Director's ability to act in the best interests of the Company; and
- (g) 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.

13.2 Annual Report Disclosure

The Board may decide that it considers a Director to be independent, notwithstanding the existence of relationships listed above. If the Board does so decide, it will state its reasons in the annual report for making such a decision.

If the independent status of a Director is lost, this will be disclosed to the market immediately.

The Board must ensure that each annual report of the Company discloses:

- (a) in the corporate governance section, the names of the Directors who are considered by the Board to be independent;
- (b) the reasons for considering a Director to be independent;
- (c) the reasons for considering a Director to be independent despite the existence of the relationships set out above; and
- (d) the period of office of each Director.

14. Access to Professional Advice

Directors have the right of access to Company employees, advisers and records. In relation to their duties and responsibilities, Directors have the right to seek independent professional advice at the Company's expense provided that before the advice is obtained, the Director discusses the requirement for the advice with the Chairman of the Board. Any advice so received must be made available to all other directors.

Where the Chairman of the Board wishes to seek independent advice, she or he must make a formal request to the Board if it is considered material advice. Immaterial advice would generally cost less than \$15,000. Any material advice so received must be made available to all other directors. The Company has entered into Confidentiality, Indemnity, Insurance and Access Deeds with each Director giving them a right of access to all documents that were presented to meetings of the Board or to any committee of the Board or otherwise made available to the director whilst in office. This right continues for a term of seven years after ceasing to be a director or such longer period as is necessary to determine relevant legal proceedings that commenced during that term.

15. Remuneration of non-executive Directors

The fees and emoluments paid to Directors will be set by the Nomination and Remuneration Committee or otherwise the Board, and approved in advance by shareholders.

The maximum aggregate remuneration of Non-Executive Directors is \$450,000 per annum as approved by the shareholders in general meeting. Fees paid to non executive directors on a PAYE basis have superannuation contributions deducted as applicable as required by Commonwealth legislation, however fees may also be paid to directors on invoice and they will be responsible for their own tax and superannuation payments. The Company pays no other retirement benefits to Directors.

15.1 Access to Company information and confidentiality

All Directors have the right of access to all relevant Company books. In accordance with legal requirements and agreed ethical standards, Directors and senior executives of Memphasys Limited have agreed to keep confidential information received in the course of the exercise of their duties and will not disclose non-public information except where disclosure is authorised or legally mandated.

15.2 Operation of the Board

The Board operates as a whole in dealing with the affairs of the Company. It meets formally periodically to review the Company's performance, to receive reports and acts on any recommendations from its senior executives. Other Board meetings are held when necessary to deal with other matters that may arise.

The Board papers, which include comprehensive reports on the operational and financial performance of the Company, are circulated in advance of meetings.

The Board has established the following committees:

- (a) Audit & Risk Management Committee; and
- (b) Nomination and Remuneration Committee

15.3 Establishing policies

The Board (or appropriate Board committee) is responsible for establishing policies relating to the following matters:

- (a) Code of Conduct;
- (b) Share Trading Policy;
- (c) Nomination and Remuneration Charter;
- (d) Audit and Risk Management Committee Charter;
- (e) Continuous Disclosure Policy and Communications Strategy.

The Board will review each of these policies periodically*.

16. Publication

A copy of this Board Function and Board Charter is available at www.memphasys.com