

Board charter and relationship with management

ThinkSmart Limited

ACN 092 319 698

Adopted by the Board on 22 May 2009

Freehills

1 Introduction

The Board of the Company has adopted this Board Charter to outline the manner in which its constitutional powers and responsibilities will be exercised and discharged, adopting principles of good corporate governance and practice that accord with international best practice and applicable laws (including, as a result of the Company's upcoming listing on the Australian Securities Exchange (**ASX**) and its future status as an Australian public company, the requirements of the *Corporations Act 2001* (Cth) (**Corporations Act**) and the ASX Listing Rules.)

The Board Charter and the charters adopted by the Board for the Committees to be established by the Board have been prepared and adopted on the basis that strong corporate governance can add to the performance of the Company, create shareholder value and engender the confidence of the investment market.

2 Structure

The Company's constitution governs the regulation of meetings and proceedings of the Board.

The Board, together with the Nomination and Remuneration Committee, determines the size and composition of the Board, subject to the terms of the constitution.

The Board does not believe that it should establish a limit on tenure. While tenure limits can help to ensure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of directors who have been able to develop, over a period of time, increasing insight in the Company and its operation and, therefore, an increasing contribution to the Board as a whole.

It is intended that the Board should comprise a majority of independent non-executive directors and comprise directors with a broad range of skills, expertise and experience from a diverse range of backgrounds.

The Board regularly reviews the independence of each director in light of the interests disclosed to the Board.

The Board only considers directors to be independent where they are independent of management and free of any business or other relationship that could materially interfere with – or could reasonably be perceived to interfere with – the exercise of their unfettered and independent judgement. The Board has adopted a definition of independence based on that set out in the Investment & Financial Services Association Limited (IFSA) Blue Book (October 2004). (See Attachment 1.) The Board will review the independence of each director in light of interests disclosed to the Board from time to time.

3 Role of the Board

- Representing and serving the interests of shareholders by overseeing and appraising the strategies, policies and performance of the Company. This includes overseeing the financial and human resources the Company has in place to meet its objectives and the review of management performance.

- Protecting and optimising Company performance and building sustainable value for shareholders in accordance with any duties and obligations imposed on the Board by law and the Company's constitution and within a framework of prudent and effective controls that enable risk to be assessed and managed.
- Setting, reviewing and ensuring compliance with the Company's values (including the establishment and observance of high ethical standards).
- Ensuring shareholders are kept informed of the Company's performance and major developments affecting its state of affairs.

4 Responsibilities of the Board

4.1 Responsibilities/functions of the Board include:

- (a) selecting, appointing and evaluating from time to time the performance of, determining the remuneration of, and planning for the successor of, the Chief Executive Officer (CEO);
- (b) reviewing procedures in place for appointment of senior management and monitoring of its performance, and for succession planning. This includes ratifying the appointment and the removal of the Chief Financial Officer and the Company Secretary;
- (c) input into and final approval of management development of corporate strategy, including setting performance objectives and approving operating budgets;
- (d) reviewing and guiding systems of risk management and internal control and ethical and legal compliance. This includes reviewing procedures in place to identify the main risks associated with the Company's businesses and the implementation of appropriate systems to manage these risks;
- (e) monitoring corporate performance and implementation of strategy and policy;
- (f) approving major capital expenditure, acquisitions and divestitures, and monitoring capital management;
- (g) monitoring and reviewing management processes in place aimed at ensuring the integrity of financial and other reporting;
- (h) monitoring and reviewing policies and processes in place relating to occupational health and safety, compliance with laws, and the maintenance of high ethical standards; and
- (i) performing such other functions as are prescribed by law or are assigned to the Board.

In carrying out its responsibilities and functions, the Board may delegate any of its powers to a Board committee, a director, employee or other person subject to ultimate responsibility of the directors under the Corporations Act.

4.2 Matters which are specifically reserved for the Board or its committees include the following:

- appointment of a chair;
- appointment and removal of the CEO;
- appointment of directors to fill a vacancy or as additional director;
- establishment of Board committees, their membership and delegated authorities;
- approval of dividends;
- development and review of corporate governance principles and policies;

- approval of major capital expenditure, acquisitions and divestitures in excess of authority levels delegated to management;
- calling of meetings of shareholders; and
- any other specific matters nominated by the Board from time to time.

5 Relationship with management

- Directors may delegate their powers as they consider it appropriate. However, ultimate responsibility for strategy and control rests with the directors.
- Management must supply the Board with information in a form, timeframe and quality that will enable the Board to discharge its duties effectively. It follows that directors are entitled to request additional information at any time when they consider it appropriate.
- The Board may meet from time to time without presence of management.
- The management function is conducted by, or under the supervision of, the CEO as directed by the Board (and by other officers to whom management function is properly delegated by the CEO).
- The Board approves corporate objectives for the CEO to satisfy and, jointly with the CEO, develops the duties and responsibilities of the CEO.
- Where a director seeks to provide information about business opportunities or introductions to the Company, this should be done through the CEO with the chair also being informed.

6 Delegation to Committees

The Board from time to time establishes Committees to streamline the discharge of its responsibilities and, for each standing Committee, adopts a formal charter setting out the matters relevant to the composition, responsibilities and administration of such Committees.

The Board may also delegate specific functions to ad hoc Committees on an 'as needs' basis. The powers delegated to these Committees are set out in Board resolutions.

7 Review of Charter

This Charter is to be reviewed by the Board as required and at least annually.

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Adopted by the Board 1 June 2007

Guidelines of the Board of directors – independence of directors

Part 2 of the Company's Board Charter refers to the 'independence' of directors.

Without limiting the discretion of the Board, the Board has adopted the following guidelines to assist in considering the issue of the independence of directors.

In general, directors will be considered to be 'independent' if they are not members of management (a non-executive director) and they:

- are not material shareholders of the Company, or officers of, or otherwise associated directly or indirectly with, material shareholders of the Company;
- have not within the last 3 years been employed in an executive capacity by the Company or another group member;
- were not appointed as a director of the Company within 3 years of ceasing to be employed in an executive capacity by the Company;
- except in connection with reorganisations within the Group, have not within the last 3 years been a principal or employee of a material professional adviser or a material consultant to the Company or another group member;
- are not a material supplier to or customer of the Company or another group member or an officer of or otherwise associated directly or indirectly with a material supplier or customer;
- have no material contractual relationship with the Company or another group member, other than as a director of the Company; and
- are free from any interest, 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.

It is intended that the Board will consider thresholds of materiality for the purposes of the determination of 'independence' on a case by case basis, having regard to both quantitative and qualitative principles. Without limiting the Board's discretion in this regard, the Board has adopted the following guidelines:

- the Board will determine the appropriate base to apply (for example, revenue, equity or expenses), in the context of each situation;
- in general, the Board will consider a holding of 5% or more of the Company's shares to be material;
- in general, the Board will consider an affiliation with a business which accounts for less than 5% of the relevant base to be immaterial for the purposes of determining independence. However, where this threshold is exceeded, the materiality of the particular circumstance with respect to the independence of the particular director should be reviewed by the Board; and

- overriding the quantitative assessment is the qualitative assessment. Specifically, the Board will consider whether there are any factors or considerations which may mean that the director's interest, business or relationship could, or could be reasonably perceived to, materially interfere with the director's ability to act in the best interests of the Company.