



ERM Power Pty Ltd

Board Charter

Date of Charter: 10 November 2009

1. PURPOSE

The purpose of this Charter is to specify how ERM is governed so as to promote ERM and protect the interests of shareholders, employees, customers and the broader community.

The Board is responsible for the governance of ERM. This Charter sets out the role and responsibilities of the Board, which responsibilities are delegated to committees of the Board or to management, as well as the membership and the operation of the Board.

2. ROLE AND RESPONSIBILITIES OF BOARD

The role of the Board is to provide overall strategic guidance for ERM and effective oversight of ERM's management. The Board will monitor ERM's compliance with its Constitution and the Shareholder's Agreement, from which the Board derives its authority to act, and with all legal and regulatory requirements.

To achieve this role, the Board has reserved to itself the following specific responsibilities:

Strategy

The Board is responsible for:

- overseeing the development of ERM's corporate strategy through constructive engagement with senior management;
- reviewing and approving strategic plans and performance objectives consistent with ERM's strategy and reviewing the assumptions and rationale underlying the strategic plans and performance objectives; and
- monitoring implementation of plans to give effect to ERM's strategy.

Oversight of management

The Board is responsible for:

- the appointment and, if appropriate, removal of the Managing Director;
- ratifying the appointment and, if appropriate, removal of the Chief Financial Officer and the Company Secretary;
- approving succession plans for key individuals;
- monitoring performance of the Executive Team and implementation of strategy against measurable and qualitative indicators, encouraging enhanced effectiveness and ensuring that appropriate resources are available;
- approving the remuneration policies and procedures in respect of the Executive Team; and
- providing advice and counsel to management.

Shareholders

The Board is responsible for:

- reviewing the effectiveness of communication with Shareholders;
- facilitating the effective exercise of Shareholders' rights; and
- reporting to Shareholders in accordance with the requirements of the Corporations Act or other relevant law.

Other stakeholders

The Board is responsible for:

- approving and monitoring policies governing ERM's relationship with other stakeholders and the broader community; and
- approving and maintaining environmental, employment and occupational, health and safety policies.

Ethics

The Board is responsible for:

- actively promoting ethical and responsible decision-making;
- approving and maintaining a Code of Business Conduct to guide its Directors and employees in the practices necessary to maintain confidence in ERM's integrity; and
- monitoring the effectiveness of the system of accountability for unethical practices.

Oversight of financial management and capital management

The Board is responsible for:

- reviewing and approving annual financial reports;
- monitoring financial results on an ongoing basis;
- overseeing ERM's accounting and financial management systems;
- reviewing, approving and monitoring the progress of major capital expenditure, capital management, major acquisitions and divestitures and material commitments;
- approving decisions affecting ERM's capital, including capital structure and major financing arrangements; and
- determining ERM's dividend policy and declaring dividends.

Auditors

Having regard to the recommendations of the Audit and Risk Management Committee, the Board is responsible for:

- making recommendations to Shareholders for the appointment and removal of external Auditors;
- select and appoint external Auditors on an interim basis when a vacancy occurs in the office of Auditor.

Compliance and risk management

The Board is responsible for approving, reviewing, ratifying and monitoring:

- ERM's control and accountability systems and reviewing reporting under those systems;
- a system for identifying, assessing, monitoring and managing material risk throughout ERM;
- systems of internal compliance, risk management and control, and systems of legal compliance that govern ERM's operations; and
- written policies, codes and procedures governing compliance, risk oversight and management.

3. ROLE AND RESPONSIBILITIES OF CHAIRPERSON AND COMPANY SECRETARY

The Chairperson is a Director appointed by the Board.

The Chairperson is responsible for:

- leading the Board in reviewing and discussing Board matters;
- chairing (or delegating the chairmanship of) Board meetings and shareholder meetings;
- the efficient conduct of the Board's function;
- briefing all Directors in relation to issues arising at Board meetings;
- facilitating effective contribution by all Directors and monitoring Board performance;
- overseeing that membership of the Board is skilled and appropriate for ERM's needs;
- promoting constructive relations between Board members and between the Board and management;
- reviewing corporate governance matters with the Company Secretary and reporting on those matters to the Board; and
- overseeing the implementation of policies and systems for Board performance review and renewal.

The Company Secretary acts as secretary of the Board, attending all meetings of the Board as required. The Company Secretary is accountable to the Board through the Chairperson and the Managing Director on all corporate governance matters.

The Company Secretary is responsible for:

- organising Board meetings and Director attendance;
- monitoring compliance with Board policy and procedures;
- coordinating the completion and dispatch of the Board agenda and briefing materials;
- preparing minutes of meetings and resolutions of the Board and taking these to the Chairperson for approval and circulation;
- circulating minutes from Committee meetings to the Board; and
- ERM's compliance with its requirements under the Corporations Act regarding registered office, and annual returns and notices to be lodged with the Australian Securities and Investments Commission.

4. DELEGATIONS OF AUTHORITY

Under ERM's Constitution, the Board may delegate responsibility to committees to consider certain issues in further detail and then report back to and advise the Board. Standing committees established by the Board will adopt charters setting out the authority, responsibilities, membership and operation of the committee. ERM may establish other committees from time to time to consider other matters of special importance.

There are currently three standing committees:

- the Audit and Risk Management Committee;
- the Remuneration Committee;
- the Health, Safety, Environmental and Sustainability Committee

The Board has delegated to the Managing Director the authority to manage ERM's day to day affairs and the authority to control ERM's affairs in relation to all matters other than those responsibilities reserved by the Board to itself in this Charter.

The Board may impose further specific limits on Managing Director's delegations. These delegations of authority will be maintained by the Company Secretary and will be reviewed by the Board as appropriate from time to time.

The Managing Director has authority to sub-delegate to the Executive Team.

5. MEMBERSHIP

The Chairperson of the Board will be elected by the Directors.

The Directors will determine the Board size and composition, subject to the limits established by ERM's Constitution and the Shareholder's Agreement.

The number of Directors and the composition of the Board must at all times be appropriate to achieve efficient decision-making.

The Company will seek to have Directors with an appropriate range of skills, experience and expertise and an understanding of, and competence to deal with, current and emerging issues of the business. ERM's succession plans are designed to maintain an appropriate balance of skills, experience and expertise on the Board.

Non-executive Directors will be engaged by a letter of appointment setting out the terms and conditions of their appointment. Directors will be expected to participate in any induction or orientation programs on appointment, and any continuing education or training arranged for them.

Directors must retire from office in accordance with ERM's Constitution and Shareholder's Agreement. Retiring Directors may be eligible for re-election.

A Director is considered independent by ERM if the Director is independent of management and free of any business or other relationship that could materially interfere, or be perceived as interfering, with the exercise of an unfettered and independent judgment in relation to matters concerning ERM.

Directors must at all times act in accordance with legal and statutory requirements, and discharge all their duties as directors.

Directors must:

- discharge their duties in good faith and in ERM's best interests and for a proper purpose;
- act with care and diligence, demonstrate commercial reasonableness in their decision making and act with the level of skill and care expected of a director of a major company;
- avoid conflicts of interest except in those circumstances permitted by the Corporations Act;
- not make improper use of information gained through their position as a Director;
- not take improper advantage of their position as a Director;
- notify other Directors of a material personal interest when a conflict arises;
- make reasonable enquiries if relying on information or advice provided by others;
- undertake any necessary inquiries in respect of delegates;
- give ERM all the information required by the Corporations Act; and
- not permit ERM to engage in insolvent trading.

6. BOARD PROCESS

All Board meetings will be conducted in accordance with ERM's Constitution and the Corporations Act. The Board meets formally at least six times per annum and whenever necessary to deal with urgent matters which might arise between scheduled meetings. Part of each meeting is also taken up in private session (with only the Board members present) to discuss management issues or matters of a particularly sensitive nature. Board meetings may be conducted by telephone or video conferencing.

Directors have a duty to question and raise any issues of concern to them. Matters are to be debated openly and constructively amongst the Directors. Individual Directors must utilise their particular skills, experience and knowledge when discussing matters at Board meetings.

Directors are committed to collective decision making and shall endeavour to arrive at a consensus decision on all matters requiring Board approval. Where a consensus decision is unable to be made, the decision of the Board shall be determined by a majority of votes of the Directors present at the meeting and voting and, subject to the Corporations Act, each Director has one vote.

Directors must keep Board discussions and resolutions confidential, except where they are required to be disclosed. All Directors shall have unfettered access to any ERM records and information they consider necessary to fulfil their responsibilities.

Directors shall also have access to the Company Secretary and other members of the Executive Team to seek additional information concerning ERM's business. Directors shall receive regular detailed financial and operational reports and may request management to provide elaboration or explanation of those reports at any time.

All Directors are generally expected to prepare adequately, attend and participate at each Board meeting. In addition to its formal meetings, the Board undertakes regular and relevant workshops and the non-executive Directors meet on a regular basis without management present.

Senior members of management may attend Board meetings at the Board's request to present reports on, or seek approvals within, their areas of responsibility. The Board may invite external advisers to attend Board meetings where necessary or desirable.

7. REVIEW AND PUBLICATION OF CHARTER

The Board is responsible for reviewing this Charter. The Charter may be amended by resolution of the Board.

The Charter is available on ERM's website.

Approved by the Board 10 November 2009