MALABAR COAL LIMITED ABN 29 151 691 468 (COMPANY)

CORPORATE ETHICS POLICY

DATE: Wednesday 23 January 2013

H. Corporate Ethics Policy

H. 1 Introduction

Directors of the Company are subject to certain stringent legal requirements regulating the conduct both in terms of their internal conduct as directors of the Company and in their external dealings with third parties both on their own behalf and on behalf of the Company. To assist directors in discharging their duty to the Company and in compliance with relevant laws to which they are subject, the Company has adopted the following Corporate Ethics Policy (Policy).

This Policy sets out rules binding Directors in respect of:

(a) a Director's legal duties as an officer of the Company;
(b) a Director's obligations to make disclosures to the ASX and the market generally; and
(c) dealings by Directors in shares in the Company.

H. 2 Directors' Powers and Duties

Each Director of the Company is required to comply strictly with the legal, statutory and equitable duties as an officer of the Company. Broadly, these duties are:

(1) to act in good faith and in the best interests of the Company;
(2) to act with due care and diligence;
(3) to act for proper purposes;
(4) to avoid conflicts of interest or duty; and
(5) to refrain from making improper use of information gained through the office of Director, or taking improper advantage of the office of Director.

H. 3 General

Directors of companies owe a variety of duties to those companies which may impact upon the appropriateness of their attendance and participation in meetings of the board of directors. These duties arise as a result of the general law and also under the Corporations Act.

Directors should be aware that if they breach their fiduciary duties to the company, they may be liable to account to the entity for any profit they derive or indemnify the entity against any loss their breach has caused.

Breaches of the *Corporations Act* duties may also give rise to an action for damages, fines and penalties or disqualification.

Common Law Fiduciary Duties

A director is said to be in a fiduciary, as opposed to an arm's length, relationship with the Company. As such a director will owe various fiduciary duties to the Company which underlie matters relating to the conduct of a director, including attendance and participation at meetings. The positive duties of a director include the duty to act in good faith in the best interests of the Company, to act for proper corporate purposes and to give adequate consideration to matters for decision and to keep discretions unfettered.

Corporations Act

A director of a corporation will also be subject to duties imposed by the *Corporations Act*. They include the duty to exercise care and diligence, to exercise their powers in good faith and for a proper purpose and not to misuse their position or information obtained from their position to gain an advantage for themselves or others or cause detriment to the company.

H. 4 General Duties of Directors

(a) Proper Corporate Purpose

General law duty - to act for proper corporate purposes.

The duty to act for proper corporate purposes requires directors to exercise the powers granted to them for the purpose for which they were given, not for collateral purposes.

(b) Adequate Consideration

General law duty – to give adequate consideration and duty not to fetter a director's discretion

The duty to give adequate consideration to matters for decision and to keep discretions unfettered requires directors to give adequate consideration to matters when exercising their discretions. They must take positive steps to inform themselves about matters and not simply acquiesce in the decision making process.

(c) Care and diligence

General law and Corporations Act duty – to act with a reasonable degree of care and diligence in exercising a director's powers and discharging a director's duties

Under the *Corporations Act*, a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

(1) were a director of a corporation in the same circumstances as the Company; and

(2) occupied the same office and had the same responsibilities as the director.

Case law on these provisions illustrates that the scope of the obligation of care and diligence will depend upon the nature of the director's role and their position with the Company. For instance, generally executive directors will be subject to a higher standard of care and it has been held that a Chairperson of a Company who is also Chairperson of the Audit Committee may have a higher duty of care than a mere non-executive.

Apart from the *Corporations Act* obligation, a failure of a director to act with a reasonable degree of care and diligence is also likely to be considered negligent.

Business Judgment Rule

The Corporations Act provides for a mechanism for directors to avoid a breach of their duty of care and diligence where certain parameters are met. This is known as the 'business judgment rule'. All directors of the Company are expected to be familiar with this rule. In summary, a director who makes a business judgment is taken to meet the duty of care and diligence (whether under statute or the general law) if they:

(1) make the judgment in good faith and for a proper purpose;

(2) do not have a material personal interest in the subject matter of the judgment;
(3) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
(4) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is rational one unless that belief is one that no reasonable person in their position would hold.

A 'business judgment' is any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

Whilst the business judgment rule assists directors to avoid a breach of their duty of care and diligence both under the *Corporations Act* and under the general law, it does not relieve breaches of the other duties of directors, whether under the *Corporations Act* or otherwise, described above.

(d) Act in Good Faith

General law and Corporations Act duties:

(1) *To act in good faith in the best interests of the Company*
(2) *To act for a proper purpose*
(3) *Not to improperly use the director's position*
(4) *Not to improperly use information obtained by virtue of the director's position*

The duty to act in good faith in the best interests of the company requires directors to use their discretions honestly and with reasonable care and diligence for the purposes for which they were conferred. Directors must not promote his or her personal interest by making or pursuing a gain in circumstances in which there is a conflict, or a real possibility of a conflict, between his or her personal interests and those of the company. Additionally, a director must not act to promote the interest of a third person where there is a conflict, or a real possibility of conflict, between duties owed by the fiduciary, on the one hand, to the company and on the other, duties owed to the third person.

H. 5 Avoiding Conflicts

Attending and Participating in Board Meetings

The duties in relation to conflict are of particular importance when a director is considering whether or not they should attend and participate in Board meetings.

This rule requires a director to avoid situations in which there is a 'real and sensible possibility' of conflict between the director's personal interests and the company's interests. This duty is also of particular significance where directors hold multiple directorships. Whilst merely holding multiple directorships, even in competing companies, is not a breach of the rule against conflict, the rule will be breached if the director discloses confidential information which the director has gained as a result of their directorship of the other company. Consequently, if a director has a conflicting personal interest, whether direct or indirect, in a matter to be discussed at a board meeting, they should firstly disclose this matter to the Board and secondly consider whether participating in the matter would result in a breach of their fiduciary duties.

Material Personal Interest

A director who has a material personal interest in a matter that relates to the affairs of the Company is required to disclose this to the Company.

Directors of the Company who have a material personal interest in a matter generally must not attend a directors meeting while the matter is being considered or vote on the matter.

However, a director may do these things if a resolution of the Board is passed to this effect or if ASIC consents.

Despite this, the same cautions must be exercised as discussed above if the other directors consent to a conflicting director participation in the meeting. The conflicting director should ensure that participation would not be in breach of their fiduciary duties or the duties imposed by the *Corporations Act*.

Common Directorships

These duties become particularly relevant where companies have directors in common and a decision involving a potential conflict of interest is required to be taken by one of the companies. In this case it is prudent for the common directors not to participate in the relevant Board's decision making process on that matter.

Directors Providing Services to the Company

In order to capitalise on the professional/technical expertise or experience of directors of the Company from time to time (other than in their capacity as directors), the Company may engage the services of that director (or a firm associated with the director) only on the following terms and conditions:

(1) the scope of the consultancy (or other services) is identified, together with a schedule of estimated costs and charge out rates to be incurred with the director or their firm;
(2) (where considered necessary or appropriate) the directors seek additional quotations for the same services; and
(3) the consultancy services are approved by the directors.

H. 6 Confidentiality

Directors of the Company will have access to any information which the Directors may consider necessary to perform their responsibilities and exercise their independent judgment when making decisions. All information received by a Director in these circumstances must be considered confidential and at all times remains the property of the Company.

Any confidential information of the Company acquired by a Director during the Director's appointment must not be disclosed by the Director, or the Director must not allow it to be disclosed, to any other person unless the disclosure is authorised by the chairperson or is required by law or regulatory body (including a relevant stock exchange).

H. 7 Independence

The Board is required to regularly assess the independence of Directors to ensure that Directors do not have any relationship or interest that interferes with their unfettered and independent judgment, or could reasonably give the impression that the Director's independence has been compromised.

Set out in Section B is a Charter applying to the Corporate Governance Committee, which is charged with assessing the independence of Directors on behalf of the Board.

Directors are required to co-operate fully with any assessment process and give all reasonable information requested.

Directors are required to fully and frankly tell the Board about anything that:

(1) may lead to an actual or potential conflict of interest or duty;
(2) may lead to a reasonable perception of an actual or potential conflict of interest or duty;
(3) interferes with a Director's unfettered and independent judgment; or
(4) could reasonably give the impression that a Director's independence has been compromised.

Directors are also required to tell the Company about any interest which they may have in securities of the Company (or of a related body corporate) or interest in any contract relating to those securities. This is discussed in greater detail below.

H. 8 Dealings by Directors and others in Securities of the Company

The Company strongly encourages its Directors and employees to become shareholders in the Company. However, when a director trades in shares of the Company it is important to ensure that these transactions do not reflect badly on either the Director or the Company. This section of the Policy is designed to ensure that Directors do not deal in shares of the Company at inappropriate times or in inappropriate circumstances.

When buying or selling shares in the Company, Directors must ensure that they do not contravene the insider trading provisions contained in Part 7.10 of the Corporations Act. Inside information is information that is not generally available which could reasonably be expected to have a material effect on the price or value of securities of a body corporate. Information is taken to have 'material effect' on the price or value of a security if it would be likely to influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy, or sell the securities. Thus, to constitute inside information the information must be both price sensitive and not generally available.

It is readily apparent that Directors of the Company in the course of carrying out their duties often possess information which would be regarded as inside information under the Corporations Act. The following are examples of information which could be regarded as inside information:

(1) proposed strategic business acquisition;
(2) financial records not yet released to the market; and
(3) a proposed takeover not yet announced to the market.

Where Directors possess inside information, they must not engage in dealings with the securities of the Company and cannot, either directly or indirectly, communicate the inside information to other persons. Directors can be liable for insider trading if they recommend the Company's shares to other persons while they are in possession of price sensitive information which is undisclosed to the general public. Directors should be aware that they can be liable for insider trading by communicating inside information to other persons, for example their spouse, family or friends. This liability arises notwithstanding the fact that the Director has not dealt with the securities of the Company. Spouses, family or friends who learn inside information and subsequently act on it before the information becomes public can also be held liable for insider trading.

It is therefore essential that all Directors avoid direct or indirect communication of price sensitive information before it enters the public domain. It is equally essential that directors refrain from trading in shares of the company whilst they possess such information.

H. 9 Restrictions on Directors' Dealings with Company Shares

As a general policy, before engaging in transactions involving the shares of the Company, a Director must notify the Chairperson of the intended transaction at least 24 hours beforehand. It is then a matter for the Chairperson to advise other directors of the intended course of action.

The Company's policy regarding dealings by directors in the Company's shares is that Directors should **never** engage in short term trading and should not enter into transactions in the following circumstances:

(1) When they are in possession of price sensitive information not yet released by the Company to the market; or
(2) any time outside the 20 business days following:

(A) the announcement to the ASX of the half year results;
(B) the announcement to the ASX of the full year results; and
(C) the annual general meeting,

or such shorter period as may be approved of by the Board of Directors after receipt of notice of intention to buy or sell by a director to other members of the Board.

In relation to 'price sensitive information', all Directors will be conscious of the fact that, as the Company is a listed company, it has an obligation under Chapter 3 of the Listing Rules to make continuous disclosure. Briefly stated, that is an obligation to advise the market as soon as events and developments occur which result in the information that a reasonable person would expect to have a material effect on the price or value of the Company's shares.

The obligation is **not** absolute and there are a number of exceptions to when 'price sensitive information' need not be disclosed, which are addressed below.

Accordingly, there **will** be occasions where price sensitive information is in the possession of some or all of the Directors and not yet released to the market, nor required to be released.

In relation to the half-yearly and annual reports, it is apparent that these reports will contain financial information concerning the Company. That information will be collated by the Company's auditors based on management accounts. It is a notorious fact that at some time before preparation of the audited yearly and annual reports, some or all of the Directors will have access to the financial figures based on the data coming from the management accounts. That being so, that material may, in appropriate circumstances, be price sensitive information not yet released. For example, a company may have glowing half year profits at the commencement of the half year and then find, based on its management accounts that it fell well behind or will fall well behind (as the case may be) those profit forecasts. That would classically be a case when any Directors in possession of such information could not deal in the Company's securities.

However, Directors will generally be permitted to engage in trading (subject to due notification being given to the Chairperson) at the following times:

(1) For the 20 business day periods commencing one (1) business day after the release of half yearly and annual reports to the market and after the Company's annual general meeting;
(2) Where price sensitive information is released to the market and trading is otherwise permitted, for a period commencing one (1) business day following the release of price sensitive information to the market which allows a reasonable period of time for the information to be disseminated among members of the public; and

It is strongly recommended that at least one (1) business day be allowed on the basis that under the *Corporations Act*, directors will only be protected following disclosure to the market of price sensitive information, if that information has become generally available. The *Corporations Act* contains no specific definition, but does indicate that information is 'generally available' if it has been made known in a manner that would or would be likely to bring it to the attention of persons who commonly buy and sell shares in companies of a kind whose price or value might be affected by the information that has been released.

(3) Where the proposed acquisition of securities is under:
(A) a bonus issue made to all shareholders;

(B) a dividend reinvestment or top up plan available to all shareholders; and
(C) an employee share plan.

H. 10 Notification to ASX of Directors' Interests

Directors must also be aware that pursuant to the provisions of the Corporations Act they are obliged to provide the ASX with appropriate notifications of their interests in the Company.

Pursuant to section 205G of the Corporations Act, directors must notify the ASX of their:

(1) relevant interests in securities of the Company or of a related body corporate;
(2) contracts:
    (A) to which the director is a party or under which the director is entitled to a benefit; and
    (B) that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate.

Directors must also ensure that the above interests are notified to the ASX in accordance with Listing Rule 3.19A. This Rule requires the Company, not the particular director, to notify the ASX of the above interests.

Accordingly, the Company is to enter into an agreement with its directors under which the directors are obliged to provide the necessary information to the Company. An agreement of this nature, recognises that much of the information required by the ASX, under section 205G, is held by the directors, by virtue of their position and role within the Company. By entering into a formal agreement, the Company ensures that the directors of the Company have been notified of their disclosure obligations under the *Corporations Act* and the directors authorise the Company to give the information provided by directors to ASX on their behalf and as their agent.

In particular, Listing Rule 3.19A provides that:

(1) where a director is appointed – the Company must notify the ASX of the above interest within five (5) business days after the appointment (the appropriate form is Appendix 3X). Accordingly, directors will provide the following information as at the date of their appointment as a director:
    (A) details of all securities registered in their name, including the number and class of the securities;
    (B) details of all securities not registered in the director's name but in which he/she has a relevant interest within the meaning of Section 9 of the *Corporations Act*, including the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and
    (C) details of all contracts to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the director's interest under the contract.
(2) where a change in the above interests of a director occurs – the Company must outline the change in the director's interests to the ASX no more than 5 business days after the change occurs (the appropriate form is Appendix 3Y). Directors will need to provide to the Company on an on-going basis, as soon as reasonably possible after the date of the change and, in any event, no later than three (3) business days after the date of the change:
    (A) details of changes in securities registered in the director's name, including the following:
        - date of change;
        - number and class of securities held before and after the change;
        - nature of change (e.g., on-market, off-market);
        - consideration paid or received in connection with the change;

- if off-market, the value of the securities the subject of the change; and
- Whether the interests in the securities were traded during a Prohibited Period where prior written clearance was required and, if so, whether prior written clearance was provided and the date clearance was provided;

(B) details of changes in securities not registered in the director's name but in which he/she has a relevant interest within the meaning of Section 9 of the Corporations Act, including the following:

- date of change;
- number and class of securities held before and after the change;
- name of the registered holder before and after the change;
- circumstances giving rise to the relevant interest;
- nature of change (e.g., on-market, off-market);
- consideration paid or received in connection with the change;
- if off-market, the value of the securities the subject of the change;
- Whether the interests in the securities were traded during a Prohibited Period where prior written clearance was required and, if so, whether prior written clearance was provided and the date clearance was provided; and

(C) details of all changes to contracts to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the following:

- date of change;
- number and class of the shares, debentures or interests to which the interest relates before and after the change;
- name of the registered holder if the shares, debentures or interests have been issued;
- nature of your interest under the contract; and
- Whether the interests in the contracts were traded during a Prohibited Period where prior written clearance was required and, if so, whether prior written clearance was provided and the date clearance was provided.

(3) Where a director ceases to be a director – the Company must notify the ASX of the interests of the director at the time the director ceases to be a director, no more than five (5) business days after the director ceases to be a director (the appropriate form is Appendix 3Z). Directors must supply to the Company as soon as reasonably possible after the date of ceasing to be a director and, in any event no later than three (3) business days after the date of ceasing to be a director, the following information:

(A) details of all securities registered in the director's name, including the number and class of the securities;

(B) details of all securities not registered in the director's name but in which he/she has a relevant interest within the meaning of Section 9 of the Corporations Act, including the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and

(C) details of all contracts to which the director is a party or under which he/she is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the director's interest under the contract.

Directors should also be aware of the substantial shareholder provisions contained in section 671B of the Corporations Act which require certain notices to be served on the Company and the ASX when a shareholder is entitled to at least 5% of the issued shares in the Company and any changes of more than 1% to those holdings.

H. 11 The Company's Obligation of Disclosure

(a) The Listing Rules

As a listed entity, the Company must comply with certain continuous disclosure obligations imposed by the Corporations Act and the ASX Listing Rules. Chapter 3 of the ASX Listing Rules requires the Company to provide the ASX with immediate notice of certain material information.

The general disclosure rule imposed on the Company is contained in clauses 3.1 and 3.1A of the ASX Listing Rules:

'3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.

3.1A Listing Rule 3.1 does not apply to particular information while each of the following are satisfied:

3.1A.1 A reasonable person would not expect the information to be disclosed

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential

3.1A.3 One or more of the following applies

- *It would be a breach of a law to disclose the information.*
- *The information concerns an incomplete proposal or negotiation.*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure.*
- *The information is generated for the internal management purposes of the entity.*
- *The information is a trade secret.'*

There is also the "false market"/"rumours" disclosure rule in clause 3.1B as follows:

'3.1B If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to correct or prevent the false market.'

The provisions of Chapter 3 are reinforced by Chapter 6CA of the Corporations Act. In particular, section 674(2) provides that:

'If:

(a) [provisions of the listing rules of a listing market in relation to an entity require an entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market]; and
(b) the entity has information that those provisions require the entity to notify to the market operator; and
(c) that information:
(i) is not generally available; and
(ii) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity;

the entity must notify the market operator of that information in accordance with those provisions.'

It is therefore essential that directors acquaint themselves not only with their personal

obligations of disclosure, but also the disclosure obligations imposed on the Company.

(b) The Disclosure Obligation

Under the provisions of Listing Rule 3.1, the Company is required to **immediately notify the ASX of any information concerning the Company of which it is, or becomes, aware, and which a reasonable person would expect to have a material effect on the price and value of the Company shares.**

(a) **When is the Company aware of information**

The Listing Rules provide that the Company is 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 the Company. An "executive officer" of the Company means a person who is concerned in, or takes part in, management of the Company. A person can be an executive officer regardless of his or her designation, and irrespective of whether or not the person is a Director.

(b) **What information has a material effect on price?**

The effect of information on the price or value of the Company shares is to be judged by the expectations of a "reasonable person". A reasonable person would expect information to have a material effect on the price or value of the Company shares if the information would, or would be likely to, influence investors who commonly invest in shares in deciding whether or not to deal in the Company shares. The Company and each director should be aware of ASX policy with respect to the disclosure of material information relating to the:

- financing arrangement of the Company; and
- existence and terms of any finance arrangements that may be in place in relation to director's shareholdings (for example margin loans).

Finance Arrangements

Where the Company has in place or enters into new material financing arrangements or alters existing material financing arrangements which include terms that may be activated upon the occurrence of certain events (particularly those beyond the control of the Company, such as market events) disclosure may be required under Listing Rule 3.1 at the time any such term is activated or becomes likely to be activated.

The disclosure required may include the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the company's relationship with its bankers, or financial position or financial performance. It may also be appropriate in some circumstances for the Company to request a trading halt if the Company is unable to immediately release the information.

Unless the exceptions in the Listing Rule 3.1 apply to the terms of the Company's material financial arrangements, the Company should disclose to the ASX, upon entering into the arrangements, the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the Company's relationship with its bankers, or financial position or financial performance.

Margin Loans

Listing Rule 3.19A and 3.19B require the Company to disclose the notifiable interests of a director within five business days of the appointment or resignation of the director or a

change to the notifiable interests occurring. Information about shareholders and their shareholdings can be material under Listing Rule 3.1 and require immediate disclosure.

Where a director has entered into a margin loan or similar funding arrangements for a material number of securities, Listing Rule 3.1 in appropriate circumstances, may operate to require the Company to disclose the key terms of the arrangements, including the number of securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details. Whether a margin loan arrangement is material is a matter which the Company must decide having regard to the nature of its operations and the particular circumstances of the Company.

Listing Rule 3.1B applies where the ASX considers that there is or is likely to be a false market, and in such circumstances the Company must disclose information necessary to correct or prevent a false market. This requirement may arise even though the Company is not aware of any information that would be required to be disclosed under Listing Rule 3.1.

A Director must disclose to the Company any financial arrangements or margin loan the Director has entered into in respect of any securities which the Director holds in the Company. Such disclosure by the Director should be on entering into the arrangements and should include key terms of the arrangements, including the number of securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details.

(c) Ramifications of Failing to Comply

The ramifications of failing to comply with the continuous disclosure obligations under Listing Rule 3.1 are extremely serious, and may result in the following actions being taken:

(1) Removal from the ASX

The ASX may at any time remove an entity from the Official List of the ASX if the entity breaks a Listing Rule.

(2) Criminal Liability

Under the Corporations Act, a failure to make a disclosure under Listing Rule 3.1, intentionally or recklessly, amounts to a criminal offence, and may result in a fine of $110,000 for a corporation.

In addition, individuals who are ‘involved’ in the contravention (who would include officers or advisers who aid, abet, counsel, procure or are knowingly concerned in the contravention) are also liable. The maximum penalty for individuals is $22,000, or imprisonment for five years, or both.

A negligent failure to make a disclosure under Listing Rule 3.1 is a contravention of the Corporations Act, but will not amount to a criminal offence.

(3) Civil Liability

Civil liability arises if the failure to disclose is intentional, reckless or negligent. A person who suffers loss or damage as a result of such failure may recover that loss or damage from the Company, or against ‘any person involved in the contravention”. This would include the directors and executives officers of the Company.

(d) Exemption from Disclosure

The Listing Rules provide that the Company does not need to disclose information under Listing Rule 3.1A if **each** of the following is satisfied:

(1) A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.1); **and**
(2) The information is confidential (Listing Rule 3.1A.2); **and**
(3) One or more of the following applies (Listing Rule 3.1A.3):
    (A) it would be a breach of a law to disclose the information;
    (B) the information concerns an incomplete proposal or negotiation;
    (C) the information comprises matters of supposition, or is insufficiently definite to warrant disclosure;
    (D) the information is generated for internal management purposes of the Company; or
    (E) the information is a trade secret.

It must be noted that the above exemption from the requirement to make disclosure only **operates while all three elements are satisfied. If any of the requirements cease to be satisfied, the entity must disclose the information immediately.**

By way of example, if information that has not been disclosed by relying on the exemption becomes known in some way to participants in the market, then it must be given to the ASX for release to the market, as it would no longer satisfy the confidentiality requirement. If does not matter how the matter became known in the market.

Looking at each of the three elements that must be established for information to be exempt from disclosure:

(1) **A reasonable person would not expect the information to be disclosed** (Listing Rule 3.1A.1)

A reasonable person would not expect information to be disclosed if the result would be to cause unreasonable prejudice to the entity. Similarly, a reasonable person would not expect disclosures of an inordinate amount of detail.

(2) **Confidentiality** (Listing Rule 3.1A.2)

Listing Rule 3.1A.2 requires that the information that is not to be disclosed be confidential. 'Confidential' in this context has the sense of secret, and generally implies control by the Company of the use that can be made of the information. The mere fact that a confidentiality agreement has been entered into will not automatically satisfy this element. Confidential means that no one in possession of the information is entitled to trade in the Company's shares. Unusual activity in the Company's shares may suggest that the information is no longer confidential. The ASX accepts that confidentiality is not breached if information is given to the Company's advisers, a person with whom the Company is negotiating, or other regulatory authorities, if it is given on a basis which restricts its use to the stated purpose.

(3) **One of the Elements in Listing Rule 3.1A.3**

One of the five elements in Listing Rule 3.1A.3 must also be established. Refer to (3) above.

(e) Applying the Exemption in Practice

The exemption from disclosure would apply, for example, to information which is confidential, which a reasonable person would not expect to be disclosed, and which falls within any one of the following descriptions:

(1) proposed acquisitions or disposals or other commercial arrangements in the process of

negotiation;
(2) internal budgets and forecasts;
(3) management accounts;
(4) business plans;
(5) internal market intelligence;
(6) information prepared for lenders;
(7) dispute settlement negotiations.

It is possible to foresee, however, matters which are commercially sensitive, the disclosure of which would be **detrimental** to the Company, which may be required to be disclosed because they do not fall within the exemptions. For example:

(1) a serious claim against the company prior to the commencement of proceedings;
(2) an investigation or allegation by a regulatory body (that is not being disputed by the company);
(3) information about a 'complete' proposal;
(4) terms of settlement of a dispute which the parties wish to keep confidential, and which is not supported by a Court order of confidentiality;
(5) material terms of a trading agreement with a major supplier.

Whether these sorts of matters will fall within any of the exceptions will depend on, and require, an assessment of particular facts.

The Listing Rules and Guidance Note issued by the ASX provide a number of examples of matters that may require disclosure.

(f) ASX Policy

The ASX has issued a Guidance Note in relation to Listing Rule 3.1A. The ASX states that the guidance note is only a guide as to ASX practice, and that entities should contact the ASX to discuss their particular circumstances and the application of the Listing Rules. Set out below is a brief summary of some of the more pertinent aspects of the Guidance Note.

(1) Prime Importance

The ASX states that timely disclosure of relevant information is of prime importance to the operation of an efficient market. The fundamental principle under which the Listing Rules operate is that 'timely disclosure must be made of information in which security holders, investors and ASX have a legitimate interest'.

(2) Continuous Disclosure Practice

The Listing Rules make it clear that all Listing Rules (including Listing Rule 3.1A) must be complied with in the 'spirit' of continuous disclosure. The ASX states that the Listing Rules are not intended to be interpreted in a legalistic or restrictive manner.

(3) Market Speculation

The ASX notes that from time to time it may be necessary to respond to speculation in order for the market to remain properly informed. The ASX states that it does not expect companies to respond to all comments make in the media, or to respond to all market speculation. However, when the comment or speculation becomes reasonably specific, or the market moves in a way that appears to be referable to the comment or speculation, the company should make a statement in response to ensure the market remains properly informed. It is ASX policy that whatever the information, and however much it might otherwise have been reasonable not to disclose it, the information should be released to the whole market once it becomes known to any part of the market.

(4) Disclosure of Information to Brokers and Press

Listing Rule 15.7 has the effect that the Company must not release information which is for release to the market to any person (including the media, even on an embargoed basis) until it has given the information to the ASX, and has received an acknowledgement that the ASX has released it to the market. With respect to analysts, the ASX states that a company must only disclose public information in answering analysts' questions, or reviewing analysts' draft reports. The ASX states that it is inappropriate for a question to be answered, or a report corrected, of doing so involves providing material information that is not public. The ASX states that when analysts visit the company, care should be taken to ensure that they do not obtain material information that is not public.

(5) Internal Disclosure

Employees will have access to information that is confidential. The employees with such access should be made aware of its confidential nature. The ASX notes that companies should ensure that confidential information does not find it was into 'in house' publications.

(g) Analyst and Institutional Briefings

In November 1999 ASIC issued its draft "Heard it on the Grapevine …' Guidance Paper dealing with the selective disclosure of information to institutional investors and analysts.

This Guidance Paper addresses ASIC's concern that 'ordinary" shareholders have a perception that significant information is disclosed by listed companies to analysts and institutions such that they can profit by trading on that information at the expense of the 'ordinary' shareholders. ASIC is concerned that this perception could cause "ordinary" shareholders to lose trust in the fairness of the market place.

In this regard, ASIC notes that documents lodged with the ASX are often supplemented with more comprehensive background information provided to analysts and institutions at private briefings.

ASIC specifically identifies the following situations at which there is a risk that selective disclosure may occur:

(1) analyst briefings, roadshows and presentations;
(2) individual analyst briefings;
(3) ad hoc communications with analysts and institutions;
(4) reviewing draft analyst reports;
(5) informal social events.

ASIC states that it wishes to see companies exploring ways of improving investor access, both to:

(1) their ASX announcements; and
(2) all significant information provided at private briefings to analysts or institutions (regardless of whether it is viewed as price sensitive).

To this end, ASIC suggests:

(1) information disclosed to the ASX be added to the releasing company's web site (following ASX acknowledgement of receipt and release to the market);
(2) non-material information and supplementary material made available to institutions and analysts to be made available to shareholders and the wider investment community on

the disclosing company's web site.

ASIC notes that some companies are giving investors access via the internet to live broadcasts of analyst briefings and are posting transcripts of briefings (including questions and answers) on their web sites. ASIC states that it encourages other companies to follow these practices. ASIC in its Paper suggests a number of procedures to ensure that:

(1) price sensitive material is disclosed to the ASX;
(2) briefings do not disclose price sensitive material that has not been released; and
(3) information disclosed at private briefings is captured for disclosure to 'ordinary investors',

such that there is equal access to information for all investors. Certain of these ASIC suggestions are incorporated in the Disclosure Programme set out in (h) below.

ASIC's focus is on giving investors access to all significant information disclosed to analysts or institutions that is not already publicly available, regardless of whether it is considered price sensitive. ASIC considers it is good practice to provide shareholders with access to all significant background information that is provided to analysts and institutions.

(h) Analyst and Institutional Briefings

As will be apparent from the above, it is essential for the Company to design a disclosure system to ensure:

(1) a breach of Listing Rule 3.1A does not occur; and
(2) that information is made available to all investors equally.
(3) **Directors and Executive Officers**

Each of the following personnel (the '**Reporting Group**') will need to participate in the 'continuous disclosure' system, because information in their possession will need to be considered in order to comply with the continuous disclosure obligation:

(A) the Directors
(B) Managing Director or Chief Executive Officer
(C) Chief Financial Officer and Company Secretary

(4) **Overseeing and Co-ordinating Disclosure**

The Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary will be responsible for:

(A) ensuring the Company complies with its continuous disclosure obligations (i.e. Market sensitive material)
(B) overseeing and co-ordinating disclosure of information to the ASX;
(C) reviewing information to be provided to analysts, brokers, the media and the public, in order to be able to ensure any market sensitive material has been released to the ASX.

(5) **Information Collecting Procedures to ensure Listing Rule 3.1A (market sensitive information) is identified**

The responsibilities of each member of the Reporting Group are:
(A) To ensure all notifiable (market sensitive) information is kept confidential within Reporting Group;
(B) To collect and forward to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary all information which is, or may be required to be disclosed, and consult with him if in doubt;
(C) To make senior personnel within his or her area of responsibility aware of the

Company's disclosure obligations to ensure that all relevant information is provided to him or her.

(6) **Releasing Information to the ASX**

The system for releasing information to the ASX for the Company is as follows:

(A) When any of the Reporting Group becomes aware of information which they believe may need to be disclosed on the basis of the principles described in this document, they should immediately contact and give full details to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary.
(B) Chairperson, Managing Director or Chief Executive Officer and Company Secretary will take the following steps in relation to information forwarded to them:
- Assess whether disclosure is required;
- Consult the Chairperson and other advisers (including the ASX) as necessary;
- Prepare a market release for provisions to the ASX;
- Inform the Managing Director or Chief Executive Officer;
- Forward the release to the ASX.

(C) Prior to each Board Meeting, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should contact the executive members of the Reporting Group to confirm that there is no material requiring disclosure.
(D) For each set of Board Papers, there should be an agenda item entitled 'Continuous Disclosure". In this item, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should either:
- Confirm that there was no material brought to his attention requiring disclosure for the preceding month; or
- Outline material which has been disclosed.

(7) **Company Spokespersons**

In order to maintain control over disclosures, the following persons only will be authorised to speak on the Company's behalf to analysts, brokers and institutional investors, and to respond generally to shareholder queries:

(A) Chairperson
(B) Managing Director or Chief Executive Officer
(C) Chief Financial Officer and Company Secretary
(D) Where appropriate, Chairperson-appointed non-executive directors

In order to safeguard against inadvertent disclosure of non-public information to brokers, investors, analysts and institutions prior to it being disclosed to the ASX, contact must be made with the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary prior to making contact with these persons in order that he or she may provide a briefing of what has been disclosed by the Company to the ASX.

(8) **Authorising Disclosures in Advance**

Again, in order to avoid an inadvertent breach of the continuous disclosure obligations, materials to be presented and issues to be discussed at external presentation must be discussed with the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary prior to presentation in order that he or she may confirm no non-public material information is being disclosed.

(9) **Maintenance of Released Material**

The Company Secretary will maintain a register of information disclosed to the ASX and also register of information disclosed on the Company web site.

(10) **The Company Web-site**

It is intended to implement the inclusion of information released to the ASX on the Company web site. In addition, it is intended to add to the web site:

(A) Other materials presented to analysts and institutions; and
(B) A summary of briefings made to analysts and institutions.

(11) **Handling Rumours, Leaks and Inadvertent Disclosures**

It should be noted that any unauthorised leak of information may place the Company in breach of the Listing Rules and could expose persons to allegations of insider trading.

If external contact is made seeking clarification of a rumour in the market place, the enquiry should be referred to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary. The recommended response to such query is that 'the Company does not respond to market rumours'. Consideration will then be given by the Chairperson, Managing Director or Chief Executive Officer and Company Secretary as to whether a public announcement is required.

The Reporting Group should notify the Chairperson, Managing Director or Chief Executive Officer and Company Secretary of any unauthorised disclosure of information (even if regarded as non-public sensitive). Consideration will then be given to the need to make an ASX disclosure.

(12) **Reviewing Discussions**

In order to ensure no price sensitive material has been inadvertently disclosed, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should be kept appraised of the contents of any substantive contact with analysts, brokers and institutional investors.

(13) **Draft Financial Statement and Reports**

Typically, analysts will seek to obtain the Chief Financial Officer's review of draft analyst reports. It is permissible to comment on errors in factual information and underlying assumptions, but comment on price sensitive information should be avoided.