



# BOARD CHARTER



**kogan.com**

Kogan.com Limited ACN 612 447 293



**Board Charter**

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# 1 Definitions and interpretation

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## 1.1 Definitions

In this document, unless the context requires otherwise:

“**ASX**” means ASX Limited.

“**ASX Listing Rules**” means the official listing rules and requirements from time to time of the ASX.

“**Audit and Risk Management Committee**” means the audit and risk management committee of the Board (if established).

“**Board**” means the board of directors of the Company.

“**Board Meeting**” means a duly convened meeting of the Board.

“**Chair**” means the Chair of the Board from time to time.

“**Chief Executive Officer**” means the chief executive officer of the Company from time to time.

“**Chief Financial Officer**” means the chief financial officer of the Company from time to time.

“**Chief Operating Officer**” means the chief operating officer of the Company from time to time.

“**Committees**” means (if established):

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

and any other committee established by the Board from time to time.

“**Common Director**” has the meaning given to that term in section 6.1(a).

“**Company**” means Kogan.com Ltd.

“**Company Secretary**” means the company secretary of the Company from time to time.

“**Constitution**” means the constitution of the Company.

“**Continuous Disclosure Obligations**” means the obligations of the Company under ASX Listing Rule 3.1.

“**Continuous Disclosure Policy**” means the policy relating to the Company's compliance with its Continuous Disclosure Obligations, as set out in Schedule 6.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Director**” means a director of the Company from time to time.

“**Other Company**” has the meaning given to that term in section 6.1(a).

“**Relevant Interest**” has the meaning given to that term in section 16.1(a).

“**Remuneration and Nomination Committee**” means the remuneration and nomination committee of the Board (if established).

“**Security Trading Policy**” means the policy adopted by the Board relating to trading in the Company’s securities, as set out in Schedule 5.

“**Senior Management**” means the members of the executive management of the Company from time to time, including the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer.

“**Shareholder**” means a holder of shares in the Company.

## **2 Board of directors**

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The Company shall have a Board of an appropriate size, composition, skills and commitment to enable it to discharge its duties effectively. For details on the responsibilities and duties of the Board, refer to section 4.

## **3 Committees**

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### **3.1 Audit and Risk Management Committee**

The Board may establish an Audit and Risk Management Committee of an appropriate size, composition and skills to enable it to discharge its duties effectively.

### **3.2 Remuneration and Nomination Committee**

The Board may establish a Remuneration and Nomination Committee of an appropriate size, composition and skills to enable it to discharge its duties effectively.

### **3.3 General**

The Board may establish other Committees from time to time.

All Directors are entitled to attend any meeting of the Committees.

For details on the responsibilities and duties of each of the Committees (to the extent established), refer to section 7 and their respective charters at Schedules 3 and 4.

## **4 Corporate governance**

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### **4.1 Responsibilities of the Board**

The Directors are responsible for protecting the rights and interests of the Company, its Shareholders and other stakeholders, including creditors and employees, and are accountable to them for the overall management of the Company.

The Board’s responsibilities include:

- (a) protecting and enhancing the value of the assets of the Company;
- (b) providing leadership and setting strategies, directions and monitoring and reviewing against these strategic objectives;
- (c) reviewing and ratifying risk management systems, internal controls, codes of conduct and legal compliance;

- (d) reviewing the Company's financial statements and overseeing the integrity of the Company's accounting and corporate reporting systems, including the external audit;
- (e) approval of the charters of the Committees;
- (f) approval and review of the operating budget for the Company;
- (g) development and review of the strategic plan for the Company;
- (h) evaluating performance and determining the remuneration of Senior Management and the Company's remuneration framework generally;
- (i) approval of transactions relating to acquisitions, divestments and capital expenditure above delegated authority limits;
- (j) setting and approving financial and dividend policy;
- (k) considering and (if thought appropriate) authorising dividends;
- (l) appointment of the Chief Executive Officer and the Chief Operating Officer;
- (m) reporting to Shareholders, including overseeing the Company's process for making timely and balanced disclosure of all material information concerning the Company that a reasonable person would expect to have a material effect on the price or value of the Company's securities;
- (n) ensuring that the Company has in place an appropriate risk management framework and setting the risk appetite within which the Board expects Senior Management to operate, including ensuring the significant risks facing the Company have been identified and adequate control monitoring and reporting mechanisms are in place; and
- (o) monitoring the effectiveness of the Company's governance practices.

To assist in the execution of the above responsibilities, the Board may establish Board Committees, including an Audit and Risk Management Committee and a Remuneration and Nomination Committee.

## 4.2 Structure of the Board

- (a) The number of Directors must not be less than 3 (clause 23.1 of the Constitution and section 201A(2) of the Corporations Act).
- (b) At the Company's annual general meeting in every year, one-third of the Directors for the time being, or, if the number is not a multiple of 3, then the number nearest one-third (rounded upwards in case of doubt), shall retire from office, provided always that no Director except a managing director shall hold office for a period in excess of 3 years, or until the third annual general meeting following his or her appointment (whichever is the longer period) without submitting himself or herself for re-election. A retiring Director is eligible for re-election. An election of Directors shall take place each year (clause 23.10 of the Constitution).
- (c) The Board should at all times comprise a number of independent Directors to ensure that the Company is run in its own best interests and, accordingly, in the best interests of Shareholders.

In assessing the independence of Directors, the Board will apply the definition contained in the ASX Corporate Governance Council, *'Corporate Governance Principles and Recommendations'* (3<sup>rd</sup> Edition) as set out in Schedule 1.

A candidate for election as a Director must disclose to the Company all interests, positions, associations and relationships that may bear on his or her independence.

If there is a change in a non-executive Director's interests, positions, associations or relationships that could bear on his or her independence, the non-executive Director must inform the Board or, if established, the Remuneration and Nomination Committee, at the earliest opportunity.

The Board or, if established, the Remuneration and Nomination Committee, will regularly assess the independence of each non-executive Director, which will take place at least annually at or around the time that the Board or the Remuneration and Nomination Committee (as applicable) considers candidates for election to the Board. In the case of a change in a non-executive Director's interests, positions, associations or relationships, the assessment should be made as soon as practicable after the Board or the Remuneration and Nomination Committee (as applicable) becomes aware of the change.

- (d) The composition of, and terms of reference for, the Board is to be reviewed annually by the Board.
- (e) The Board, under the direction of the Chair, is to evaluate the performance of the Board annually, and disclose in relation to each reporting period that such a performance evaluation was undertaken in the reporting period.

#### **4.3 Policy and procedures for selection, nomination, appointment, retirement and rotation**

- (a) The appointment, election, removal, retirement and rotation of Directors is covered by clause 23 of the Constitution.
- (b) The Board, based on the recommendations of the Remuneration and Nomination Committee (if established), regularly reviews the composition of the Board and the succession plans for Directors.
- (c) If established, the Remuneration and Nomination Committee shall make an initial assessment of the necessary and desirable competencies for any new Director.
- (d) Where appropriate, the Board or the Remuneration and Nomination Committee (as applicable) will engage the services of an external consultant to search for appropriate candidates for directorship.
- (e) Before the Company appoints any person as a Director or puts forward to Shareholders a new candidate for election as a Director, the Company will ensure that appropriate checks are undertaken, including checks as to the person's character, experience, education, criminal record and bankruptcy history. Where appropriate, the Company will provide security holders with all material information in its possession relevant to a decision by security holders on whether or not to elect or re-elect a Director.
- (f) In considering a candidate for directorship, the Board or the Remuneration and Nomination Committee (as applicable) shall review, amongst other things:
  - (i) the skills, knowledge, experience and diversity required on the Board and the extent to which each is currently represented by current Directors on the Board;
  - (ii) the business and strategic needs of the Company;
  - (iii) the need to cater for replacement Directors ahead of scheduled retirements;
  - (iv) the biographical details including competencies, experience, skills and qualifications of the candidate and the candidate's relevant industry experience;
  - (v) the necessary time a new Director will be required to provide to the Company; and



- (vi) details of other commitments of the candidates (including any other material directorships currently held by the candidate).
- (g) The Company has established a Board skills matrix in accordance with the recommendations in the ASX Corporate Governance Council's *'Corporate Governance Principles and Recommendations'* (3<sup>rd</sup> Edition).
- (h) If established, the Remuneration and Nomination Committee will review potential candidates for directorship and make a recommendation to the Board.
- (i) A candidate will be interviewed by the Chair and any other person that the Chair considers appropriate.
- (j) Before being appointed to the Board, and before being submitted as a candidate for election or re-election, candidates for the position of non-executive Director will be required to specifically acknowledge to the Company that they have sufficient time to meet the Company's expectations of them.
- (k) The appointment of any new Director (and each senior executive) will be made by, and in accordance with, a formal letter of appointment / written agreement setting out the key terms and conditions relative to that appointment.
- (l) The Board will ensure that any new Director is appropriately introduced to the Company and amongst other things, will provide to any new Director:
  - (i) a copy of the Constitution;
  - (ii) a copy of this Board Charter;
  - (iii) the most recent Annual Report of the Company;
  - (iv) a draft of the deed of indemnity, insurance and access given by the Company to each Director; and
  - (v) where appropriate, a summary of the most recent strategic plan of the Company.
- (m) The Board will also ensure that any new Director is acquainted with:
  - (i) knowledge of the industry within which the Company operates;
  - (ii) visits to specific Company operations when appropriate;
  - (iii) briefings with Senior Management and industry experts where appropriate.
- (n) Although Directors are elected by the Shareholders to bring special expertise or perspective to Board deliberations, the best interests of the Company will be paramount at all times.
- (o) Re-appointment of the Directors will not be automatic. Any Director seeking re-election will be subject to a performance review by their peer Directors.

#### **4.4 Remuneration for non-executive Directors**

- (a) The fees payable to non-executive Directors are determined by the Board within the aggregate amount approved by Shareholders.
- (b) Non-executive Directors (including the Chair) will collectively be paid from a fixed sum out of the funds of the Company as remuneration for their services as Directors. The fixed sum, and the remuneration of each non-executive director, will be determined in accordance with clause 26 of the Constitution.

#### **4.5 Directors' retirement benefit**

During Directors' tenure as Directors of the Company, the Company will make superannuation guarantee payments on behalf of Directors at the rate prescribed by, and

in accordance with, the provisions of the superannuation guarantee legislation from time to time.

#### **4.6 Independent counsel**

An individual Director may engage separate independent counsel or professional advisors at the reasonable expense of the Company in appropriate circumstances, with the approval of the Chair or by resolution of the Board. Such appropriate circumstances may include, without limitation, whenever a Director judges such independent professional advice to be necessary for them to discharge their responsibility as a Director.

#### **4.7 Board meetings**

##### **(a) Agenda**

The Chair, with the assistance of the Chief Executive Officer, establishes the agenda for each Board Meeting. Each Director may suggest the inclusion of items on the agenda.

##### **(b) Notice**

Each Director must be given reasonable notice of a Board meeting or the resumption of an adjourned Board meeting, including reasonable notice, and relevant materials (if any) relating to, the items to be considered at such a Board meeting. Reasonable notice will depend on the circumstances of the Board meeting and the items to be considered at the Board meeting. Notice may be given in any manner determined or adopted by the Board from time to time.

##### **(c) Number of Meetings**

The Board will meet no less than 6 times a year, unless otherwise determined by the Board. Telephone or video conferences may be held if required.

##### **(d) Attendance by management**

Senior Management may attend Board Meetings by invitation.

##### **(e) Private Meetings**

Where appropriate, the Board will meet in private without Senior Management present prior to a Board Meeting. Where the Board meets to consider a matter in respect of which a Director is conflicted, the Board may meet without that Director present, provided that the Director will be entitled to be present for all matters other than those in respect of which he or she is conflicted.

#### **4.8 Directors' obligations**

##### **(a) Directors must:**

- (i) act in the best interests of the Company;
- (ii) at all times act honestly in the exercise of their powers and the discharge of the duties of their office;
- (iii) exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the Company's circumstances (refer to section 4.8(b));
- (iv) ensure that at all times they have a good understanding of strategies and the businesses conducted by the Company;
- (v) carefully study Board materials and issues;
- (vi) be active, objective and constructive in their participation at meetings of the Board and Committees;

- (vii) assist in representing the Company to the public;
  - (viii) counsel on corporate issues;
  - (ix) ensure that they have a good understanding of general economic trends and corporate governance;
  - (x) ensure that they have an appropriate base level of understanding of accounting matters to fulfil their responsibilities to read the financial statements of the Company carefully and to consider whether what they disclose is consistent with their own knowledge of the Company's affairs; and
  - (xi) minimise the possibility of conflict of interest in their involvement with the Company by restricting their involvement in other similar businesses.
- (b) A Director will be deemed to have met the requirement of care and diligence, as set out in section 4.8(a)(iii), if:
- (i) the judgement was made in good faith and for a proper purpose;
  - (ii) the Director does not have a material personal interest in the subject matter of the judgement;
  - (iii) the Director informed himself/herself about the subject matter of the judgement to the extent he/she reasonably believes to be appropriate; and
  - (iv) the Director rationally believes that the judgement is in the best interests of the Company.

#### 4.9 Approval of financial statements

Notwithstanding any other requirement of the Corporations Act, before the Board approves the Company's financial statements for a financial period, it must receive from the Chief Executive Officer and Chief Financial Officer a declaration that, in their opinion, the financial records of the Company have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the Company and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

## 5 Dividend policy

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The payment of dividends by the Company, if any, is at the complete discretion of the Directors. The decision as to whether or not a dividend will be paid is subject to a number of considerations. The decision or the ability of the Company to pay a dividend is also impacted by the financial position (ie net assets) of the Company as a stand-alone entity, regulatory restrictions and the Corporations Act.

## 6 Conflicts of interest

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### 6.1 Company's acknowledgments

- (a) Some of the Directors (in this section referred to as the "**Common Director**") may, from time to time, hold directorships in other companies (in this section referred to as the "**Other Company**").
- (b) Any information confidential to the Other Company which a Common Director possesses and which came into his or her possession in the course of the performance of his or her duties as an officer of the Other Company cannot and

shall not be communicated to the Company or any officer or employee of the Company without the consent of the Other Company.

- (c) Any information which a Common Director possesses in relation to the Other Company which is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of the Other Company cannot and shall not be communicated to the Company or any officer or employee of the Company.

## **6.2 Meetings at which conflicts arise**

- (a) Where at any meeting of the Company it is proposed to discuss any matter which gives rise or may give rise to a conflict or a real sensible possibility of a conflict of interest between the duties and obligations of the Common Director to the Company and to the Other Company, the Common Director:
  - (i) must not be present while that matter is being considered; and
  - (ii) must not vote on that matter,unless the other Directors pass a resolution that states, effectively, that those Directors, having considered the nature and extent of the conflict or possible conflict, are satisfied that the matter should not disqualify the Common Director from being present or voting.
- (b) A Common Director may at any meeting of the Company request that the meeting be postponed or temporarily adjourned to enable him or her to seek legal advice on whether he or she can:
  - (i) be present while the matter in question is being considered; and
  - (ii) vote on the matter in question.

## **7 Committees**

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### **7.1 General**

- (a) To assist in the execution of its responsibilities, the Board may establish Committees of the Board, including an Audit and Risk Management Committee and or a Remuneration and Nomination Committee.
- (b) The Committees review and analyse policies and strategies, usually developed by management, which are within their terms of reference (detailed in Schedules 3 and 4).
- (c) The Committees examine proposals and, where appropriate, report and/or make recommendations to the Board.
- (d) The Committees do not take action or make decisions on behalf of the Board unless specifically mandated by prior Board authority to do so.
- (e) If established, the composition and terms of reference for the Committees are reviewed annually by the Board.
- (f) The Board, under the direction of the Chair, evaluates the performance of each Committee annually, and the Company must disclose in relation to each reporting period that such a performance evaluation was undertaken in the reporting period.
- (g) A Committee may engage separate independent counsel or advisors at the expense of the Company, in appropriate circumstances, with the approval of the Chair or by resolution of the Board.

## **7.2 Audit and Risk Management Committee**

- (a) A copy of the charter of the Audit and Risk Management Committee is set out in Schedule 3.
- (b) The purpose of the Audit and Risk Management Committee is to assist the Board in fulfilling its corporate governance and oversight responsibilities relating to:
  - (i) the integrity of the Company's financial reporting;
  - (ii) the effectiveness of the Company's systems of financial risk management and internal control;
  - (iii) the external audit functions;
  - (iv) the Company's risk profile and risk policy; and
  - (v) the effectiveness of the Company's risk management framework and supporting risk management systems.

## **7.3 Remuneration and Nomination Committee**

- (a) A copy of the charter of the Remuneration and Nomination Committee is set out in Schedule 4.
- (b) The purpose of the Remuneration and Nomination Committee is to:
  - (i) develop criteria for Board membership and identify specific individuals for nomination;
  - (ii) establish processes for the review of the performance of individual Directors, the Committees and the Board as a whole and implementation of such processes;
  - (iii) review and make recommendations to the Board on board succession planning generally;
  - (iv) review and make recommendations to the Board on the process for recruiting a new Director, including evaluating the balance of skills, knowledge, experience, independence and diversity on the Board;
  - (v) review and make recommendations to the Board on the Company's remuneration framework, remuneration packages and policies applicable to Senior Management and Directors;
  - (vi) review and make recommendations to the Board on equity-based remuneration plans for senior executives and other employees;
  - (vii) define levels at which the Chief Executive Officer must make recommendations to the Remuneration and Nomination Committee on proposed changes to remuneration and employee benefit policies;
  - (viii) ensure that remuneration packages and policies attract, retain and motivate high calibre executives; and
  - (ix) ensure that remuneration policies demonstrate a clear relationship between key executive performance and remuneration.

# **8 Chair of the Board**

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## **8.1 Introduction**

The general role of the Chair is to manage the Board effectively, to provide leadership to the Board and to interface with the Chief Executive Officer.

## **8.2 Working with the Chief Executive Officer**

The Chair will:

- (a) act as the principal sounding board and counsellor for the Chief Executive Officer including helping to define problems, maintaining accountability, building relationships and ensuring the Chief Executive Officer is aware of concerns of the Board and Shareholders;
- (b) lead the Board in monitoring and evaluating the performance of the Chief Executive Officer; and
- (c) co-ordinate with the Chief Executive Officer to ensure that management's strategy, plans and performance are appropriately represented to the Board and Shareholders as appropriate.

## **8.3 Managing the board**

The Chair will:

- (a) ensure that the Board has full governance of the Company's business and affairs and that the Board is alert to its obligations to the Company, Shareholders and management under the law;
- (b) ensure that the composition and size of the Board are appropriate for it to adequately discharge its responsibilities;
- (c) provide leadership to the Board, assist the Board in reviewing and monitoring the aims, strategy, policy and directions of the Company and the achievement of its objectives;
- (d) facilitate the effective contribution of all Directors and promoting constructive and respectful relations between Directors and between the Board and Senior Management;
- (e) communicate with the Board to keep it up to date on all major developments, including timely discussion of potential developments and directing management to ensure that the Board has sufficient knowledge to permit it to make major decisions when such decisions are required;
- (f) set the frequency of the Board meetings and review such frequency from time to time as considered appropriate or as requested by the Board;
- (g) co-ordinate the agenda, information packages and related events for Board meetings with the Chief Executive Officer and the Company Secretary;
- (h) chair Board meetings;
- (i) attend Committee meetings where appropriate; and
- (j) act in a manner such that Board and Committee meetings are conducted in an efficient, effective and focused manner.

## **8.4 Relations with Shareholders and the public**

The Chair will:

- (a) chair meetings of Shareholders; and
- (b) at the request of the Chief Executive Officer, take steps such that the Company's management and, where applicable, the Board are appropriately represented at official functions and meetings with major Shareholder groups, other stakeholder groups (including suppliers, customers, employees, governments, regulators and local communities), financial analysts, financial press, and debt and equity providers.

## **9 Chief Executive Officer**

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### **9.1 Responsibilities**

- (a) The Chief Executive Officer is in charge of the day-to-day operations and management of the Company.
- (b) The Chief Executive Officer, together with the Chair, also has the responsibility of managing and overseeing the interfaces between the Company and the public and to act as the principal representatives for the Company.
- (c) The Chief Executive Officer must report annually to the Board on succession planning and management development.

### **9.2 Evaluation**

- (a) The Board evaluates the performance of the Chief Executive Officer annually.
- (b) The evaluation is based on criteria that includes the performance of the business, the accomplishment of long-term strategic objectives and other non-quantitative objectives established at the beginning of each year.

### **9.3 Delegations of authority**

Refer to section 12.4 for the specific authorities delegated to the Chief Executive Officer.

## **10 Senior Management**

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### **10.1 Obligations**

Senior Management will:

- (a) be responsible for implementing the strategic objectives of the Company and operating within the risk appetite set by the Board;
- (b) develop strategies to deliver a strong market presence and build Shareholder wealth over the long term;
- (c) recommend appropriate strategic and operating plans;
- (d) maintain effective control of operations;
- (e) measure performance against peers;
- (f) be strong, principled and provide ethical leadership;
- (g) assure sound succession planning and management development;
- (h) provide sound organisational structure;
- (i) inform the Board regularly regarding the status of key initiatives;
- (j) be responsible for providing the Board with accurate, timely and clear information to enable the Board to perform its responsibilities and ensure the Board has “no surprises”; and
- (k) advance Board materials which contain the right amount of information and are received sufficiently in advance of Board meetings.

### **10.2 Senior Management remuneration**

- (a) The remuneration packages for Senior Management are reviewed annually by the Board, or the Remuneration and Nomination Committee (as applicable) and recommended to the Board for implementation.

- (b) In making its recommendations the Remuneration and Nomination Committee endeavours to align these packages with the value added objectives of Shareholders.
- (c) The remuneration packages for Senior Management may include participation in executive share plans in order to ensure that the goals of the Company's Shareholders and its Senior Management are aligned.

### **10.3 Evaluation of the Chief Operating Officer**

- (a) The Board evaluates the performance of the Chief Operating Officer annually.
- (b) The evaluation is based on criteria that includes the performance of the business, the accomplishment of long-term strategic objectives and other non-quantitative objectives established at the beginning of each year.

## **11 Company Secretary**

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### **11.1 Obligations**

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

- (a) advising the Board and the Committees on governance matters;
- (b) monitoring that Board and Committee 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.

### **11.2 Policy and procedures for appointment and removal**

The decision to appoint or remove the Company Secretary is to be made or approved by the Board. For the avoidance of doubt, the decision to appoint the Company Secretary must be formally resolved, rather than simply approved, by the Board as required by section 204D of the Corporations Act.

## **12 Delegated authorities**

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### **12.1 Obligations pursuant to Constitution**

Pursuant to the Constitution, the business of the Company will shall be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act, the ASX Listing Rules or the Constitution required to be exercised by the Company in general meeting.

### **12.2 Primary role of the board**

The Board has determined its primary roles include:

- (a) **Fiduciary requirements**
  - (i) Approval of major transactions - acquisition/divestments (certain major transactions may also require the approval of Shareholders pursuant to the Listing Rules of the ASX).
  - (ii) Approval of capital expenditures above delegated authorities.



- (b) **Shareholder Value/Corporate Strategy**
  - (i) Reviewing the Company's performance against its strategic objectives.
  - (ii) Risk profile.
  - (iii) Return expectation.
  - (iv) Financial policy.
  - (v) Results reporting.
- (c) **Organisation**  
Chief Executive Officer and the Chief Operating Officer appointment and remuneration.
- (d) **Selection of Directors**
  - (i) Recruitment.
  - (ii) Performance review.
  - (iii) Remuneration.
- (e) **Processes**  
For the efficient discharge of responsibilities.

### 12.3 Delegation powers

The formulation and implementation of certain aspects of the Board's responsibilities and duties may be through the delegation of certain of its powers to a committee of Directors by the authority of Section 198D of the Corporations Act:

**"Section 198D Delegation"**

**198D(1) [Delegation of powers]** The Directors may delegate any of their powers to a committee of Directors, a Director, an employee of the Company or any other person.

**198D(2) [Exercise by delegate]** The delegate must exercise the powers delegated in accordance with any directions of the Directors.

**198D(3) [Effect of exercise of powers]** The exercise of the power by the delegate is as effective as if the Directors exercised it.

### 12.4 Delegations of authority to the Chief Executive Officer

To assist the Board to discharge its responsibilities and duties it has resolved to delegate responsibility for the day-to-day leadership and management of the Company and its business to the Chief Executive Officer.

### 12.5 Delegations of authority to Executive Directors

The Board may, from time to time, delegate responsibility for the day to day management of the Company to an Executive Director.

## 13 Security Trading Policy

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- 13.1 The Company has adopted a security trading policy relating to trading in the Company's securities in accordance with the ASX Listing Rules. A copy of the Security Trading Policy is set out in Schedule 5.
- 13.2 The purpose of the Security Trading Policy is to ensure compliance with the ASX Listing Rules and the Corporations Act.

## 14 Continuous Disclosure Policy

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- 14.1 The Company has adopted a continuous disclosure policy relating to the Company's continuous disclosure obligations under the Corporations Act and the ASX Listing Rules. A copy of the Continuous Disclosure Policy is set out in Schedule 6.
- 14.2 The purpose of the Continuous Disclosure Policy is to ensure that the Company complies with its disclosure obligations under the Corporations Act and the ASX Listing Rules.

## 15 Other Board Policies

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The Board has adopted a number of other corporate governance policies to ensure that the Company is governed efficiently and effectively, and at a high level of integrity. These policies include:

- (a) a code of conduct (refer to Schedule 7);
- (b) a risk management policy (refer to Schedule 8);
- (c) a shareholder communication policy (refer to Schedule 9); and
- (d) a process for evaluation of the performance of the Board, the Committees, the Directors and Senior Management (refer to Schedule 10).

## 16 Disclosure of Directors' interests

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### 16.1 Corporations Act – directors' obligations

- (a) In this section, "**Relevant Interest**" means:
- (i) a person is the holder of the securities;
  - (ii) a person has the power to exercise, or control the exercise of, a right to vote attached to the securities; or
  - (iii) a person has the power to dispose of, or control the exercise of a power to dispose of, the securities.
- (b) Section 205G of the Corporations Act requires a director of a listed company to notify the ASX of the following interests of the director:
- (i) Relevant Interests in securities of the Company or of a related body corporate;
  - (ii) 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:
    - (A) shares in; or
    - (B) debentures of; or
    - (C) interests in a managed investment scheme made available by, the Company or a related body corporate,(together, "**Notifiable Interests**").
- (c) A notice of Notifiable Interests must give details of the nature and extent of the interests and be given within 14 days of the interest arising or changing.

### 16.2 ASX listing rules – the Company's obligations

In addition to the requirements under the Corporations Act, the Company has an obligation to notify the ASX of the Notifiable Interests of each Director of the Company under ASX Listing Rule 3.19A.

### **16.3 What action is required by a Director?**

- (a) A Director will be relieved of his or her obligations under Section 205G of the Corporations Act if the Company complies with ASX Listing Rule 3.19A.
- (b) In order for the Company to comply with its obligations, and thus relieve the Director from his or her obligations, the Director must provide the necessary information to the Company.
- (c) Each Director must enter into an arrangement with the Company which will require him or her to disclose to the Company all of the information necessary for the Company to comply with its obligations to notify the ASX. A pro-forma agreement is set out in Schedule 2.

### **16.4 Initial notification**

- (a) The Company must notify the ASX of a Director's Notifiable Interests in the Company's securities within 5 business days of being appointed a Director of the Company.
- (b) In the event that the Company does not notify the ASX due to non-disclosure by the relevant Director, that Director would not be relieved of his or her obligations under Section 205G of the Corporations Act. Consequently, the Director would still have an obligation to notify the ASX of his or her Notifiable Interests in the Company's securities within 14 days of being appointed a Director of the Company.
- (c) A Director who retires and is then re-appointed at the same meeting is not required to notify the ASX of his or her Notifiable Interests again.

### **16.5 Notification of changes**

- (a) The Company must notify the ASX of a change in the Director's Notifiable Interests in the Company's securities within 5 business days after the change occurs.
- (b) In the event that the Company does not notify the ASX of any change due to non-disclosure by the relevant Director, that Director would not be relieved of his or her obligations under Section 205G of the Corporations Act. Consequently, the Director would still have an obligation to notify the ASX within 14 days of any change in his or her Notifiable Interests unless the Director has already given the information to the ASX pursuant to the substantial holding provisions of the Corporations Act. In contrast to the substantial shareholder notices required under Section 671B of the Corporations Act, notices under Section 205G of the Corporations Act cover any change to the Director's Notifiable Interests.

### **16.6 Notification on ceasing to be a Director**

The Company must notify the ASX of a Director's Notifiable Interests in the Company's securities as at the date the Director ceases to be a Director of the Company within 5 business days after cessation.

## **17 Substantial Shareholders**

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### **17.1 Obligation of Shareholders**

Section 671B of the Corporations Act requires each Shareholder of the Company to notify the ASX and the Company if:

- (a) they begin, or cease, to have a substantial holding in the Company;
- (b) they are a substantial shareholder and there is a movement of at least 1% in their holding; or

- (c) they make a takeover bid for securities of the Company.

## **17.2 Are you a substantial Shareholder?**

A Shareholder has a substantial holding in the Company if the total votes attached to voting shares in the Company in which they (and/or their associates) have a relevant interest in, is 5% or more of the total number of votes attached to the voting shares in the Company.

## **17.3 Information and documentation to be provided**

- (a) The information to be provided includes:
  - (i) details of the Shareholder's relevant interest in voting shares in the Company;
  - (ii) details of any relevant agreement through which they would have a relevant interest in voting shares in the Company;
  - (iii) the name of each associate who has a relevant interest in voting shares in the Company together with details of the nature of the association, the relevant interest of the associate and any relevant agreement through which the associate has the relevant interest;
  - (iv) the size and date of any movement in the holding (if applicable); and
  - (v) the name of any person who ceases to be an associate (if applicable).
- (b) The above information must be accompanied by:
  - (i) a copy of any document setting out the terms of any relevant agreement that contributed to the situation giving rise to the shareholder needing to provide the information, which is in writing and readily available to the Shareholder; or
  - (ii) if the agreement is not in writing and readily available to the shareholder – a statement by the Shareholder giving full and accurate details of any contract, scheme or arrangement that contributed to the situation giving rise to the Shareholder needing to provide the information.

## **17.4 Lodging requirements**

- (a) When a person becomes a substantial Shareholder in the Company they must give an initial substantial holder notice to the Company and the ASX within 2 business days after the day on which the person becomes aware that they became a substantial Shareholder. The form of notice is contained in ASIC Form 603.
- (b) A substantial Shareholder is required to notify the Company and the ASX of any change in their shareholding by more than 1% within 2 business days after the day on which the substantial Shareholder becomes aware of the change. The form of notice is contained in ASIC Form 604.
- (c) Where a person ceases to be a substantial Shareholder, that person must notify the Company and the ASX within 2 business days after the day on which the person ceased to be a substantial Shareholder. The form of notice is contained in ASIC Form 605.

# **18 Specific operational authorities**

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## **18.1 Appointment of consultants**

Any Director with the prior approval of the Chair, or by resolution of the Board, can appoint legal or financial consultants at the expense of the Company. Each of the Chief

Executive Officer and the Chief Operating Officer are authorised to appoint consultants to advise on specific aspects of the Company's operations, acquisitions and/or divestments. They may also appoint legal or financial consultants or other management advisors where deemed appropriate.

## **18.2 Legal advisors - auditors - taxation advisors**

Any change to these advisors must be approved by the Board. The Chief Executive Officer may authorise specific advice to be taken from an advisor who is not deemed to be the official corporate advisor.

## **18.3 Initiation of or participation in litigation**

- (a) Any material litigation or litigation with sensitive public relations must be approved by the Chief Executive Officer before being actioned, and the Chief Executive Officer must notify the Directors promptly following giving his or her approval.
- (b) Notice of any legal action taken by an outside party against the Company or any employees of the Company is to be given as soon as possible to the Chief Executive Officer or the Company Secretary.

## **18.4 Donations and gifts**

### **(a) Political Donations**

No person other than the Board shall have authority to make donations to any political party, whether local, provincial or central. The Board has currently resolved that there will be no political donations.

### **(b) Giving (non political)**

Corporate 'giving' that is aimed at the standing of the Company as a whole in the community is the responsibility of the Board and delegated to the Chief Executive Officer.

## SCHEDULE 1 - DIRECTOR INDEPENDENCE

The ASX Corporate Governance Council, '*Corporate Governance Principles and Recommendations*' (3<sup>rd</sup> Edition) ("**Recommendations**") provide that a director of a listed entity should only be characterised and described as an independent director if he or she is free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect his or her capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the entity and its security holders generally.

The Recommendations provide the following examples of interests, positions, associations and relationships that might cause doubts about the independence of a director:

- 1 is, or has been, employed in an executive capacity by the entity or any of its child entities and there has not been a period of at least three years between ceasing such employment and serving on the board;
- 2 is, or has within the last three years been, a partner, director or senior employee of a provider of material professional services to the entity or any of its child entities;
- 3 is, or has been within the last three years, in a material business relationship (eg as a supplier or customer) with the entity or any of its child entities, or an officer of, or otherwise associated with, someone with such a relationship;
- 4 is a substantial security holder of the entity or an officer of, or otherwise associated with, a substantial security holder of the entity;
- 5 has a material contractual relationship with the entity or its child entities other than as a director;
- 6 has close family ties with any person who falls within any of the categories described above; or
- 7 has been a director of the entity for such a period that his or her independence may have been compromised.

In relation to the above examples, the Recommendations provide that:

- 1 in each case, the materiality of the interest, position, association or relationship needs to be assessed to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity and its security holders generally;
- 2 in relation to the fourth example (being or being an associate of a substantial security holder), the holding of securities in the entity may help to align the interests of a director with those of other security holders, and such holdings are therefore not discouraged. The example simply reflects that a director holding or representing a substantial stake in the entity is likely to be seen as having a different interest to security holders with smaller stakes; and
- 3 in relation to the last example (length of service as a director), the Council recognises that the interests of a listed entity and its security holders are likely to be well served by having a mix of directors, some with a longer tenure with a deep understanding of the entity and its business and some with a shorter tenure with fresh ideas and perspective. It also recognises that the chair of the board will frequently fall into the former category

rather than the latter. The mere fact that a director has served on a board for a substantial period does not mean that he or she has become too close to management to be considered independent. However, the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years.

## SCHEDULE 2 - PRO-FORMA AGREEMENT - DISCLOSURE OF DIRECTORS' INTEREST

[Title] [Last Name]  
[Company]  
[Address]  
[City] [State] [Country]

Dear [First Name]

### Re: ASX Listing Rule 3.19B

Kogan.com Limited (“**the Company**”) is required, under the Listing Rules of the ASX Limited (“**ASX**”), to disclose to ASX details of directors’ interests in securities, and in contracts relevant to securities. The Company is also required to enter into an agreement with directors under which directors are obliged to provide the necessary information to the entity.

If you agree to the following terms, please sign and return the **enclosed** copy of this letter.

### Initial disclosure

- 1 You will provide the following information as at [date].
  - (a) Details of all securities registered in your name. These details include the number and class of the securities.
  - (b) Details of all securities not registered in your name but in which you have a relevant interest within the meaning of section 9 of the Corporations Act. These details include the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest.
  - (c) Details of all contracts (other than contracts to which the Company is a party) to which you are a party or under which you are 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. These details include 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 you interest under the contract.
- 2 You will provide the required information as soon as reasonably possible after [date] and in any event no later than ten business days after [date].

### Ongoing disclosure

- 3 You will provide the following information.
  - (a) Details of changes in securities registered in your name other than changes occurring as a result of corporate actions by the Company. These details include the date of the change, the number and class of the securities held before and after the change, and the nature of the change, for example on-market transfer. You will also provide details of the consideration payable in connection with the change, or if a market consideration is not payable, the value of the securities the subject of the change.
  - (b) Details of changes in securities not registered in your name but in which you have a relevant interest within the meaning of section 9 of the Corporations Act.



These details shall include the date of the change, the number and class of the securities held before and after the change, the name of the registered holder before and after the change, and the circumstances giving rise to the relevant interest. You will also provide details of the consideration payable in connection with the change, or if a market consideration is not payable, the value of the securities the subject of the change.

- (c) Details of all changes to contracts (other than contracts to which the Company is a party) to which you are a party or under which you are 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. These details include the date of the change, the number and class of the shares, debentures or interests to which the interest relates before and after the change, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of your interest under the contract.

- 4 You will provide the required information as soon as reasonably possible after the date of the change and in any event no later than three business days after the date of the change.

#### **Final disclosure**

- 5 You will provide the following information as at the date of ceasing to be a director.
  - (a) Details of all securities registered in your name. These details include the number and class of the securities.
  - (b) Details of all securities not registered in your name but in which you have a relevant interest within the meaning of section 9 of the corporations Act. These details include the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest.
  - (c) Details of all contracts (other than contracts to which the Company is a party) to which you are a party or under which you are 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. These details include 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 interest under the contract.
- 6 You will provide the required information as soon as reasonably possible after the date of ceasing to be a director and in any event no later than three business days after the date of ceasing to be a director.

#### **Agency**

- 7 You authorise the Company to give the information provided by yourself to ASX on your behalf and as your agent.

#### **Securities**

- 8 **"Securities"** for the purposes of this letter means securities of the Company or a related body corporation.

Very best regards

Company Secretary

**SCHEDULE 3 - AUDIT AND RISK MANAGEMENT COMMITTEE CHARTER**

## SCHEDULE 4 - REMUNERATION AND NOMINATION COMMITTEE CHARTER

## SCHEDULE 5 - SECURITY TRADING POLICY

## SCHEDULE 6 - CONTINUOUS DISCLOSURE POLICY

## SCHEDULE 7 - CODE OF CONDUCT

## SCHEDULE 8 - RISK MANAGEMENT POLICY

**SCHEDULE 9 - SHAREHOLDER COMMUNICATION POLICY**



**SCHEDULE 10 - PROCESS FOR EVALUATION OF PERFORMANCE**