



# CONTINUOUS DISCLOSURE POLICY



**kogan.com**

Kogan.com Limited ACN 612 447 293



**Kogan.com Limited**

## **Continuous Disclosure Policy**

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Ref: JDL:JAV 011891123  
ABL/4842277v3

## 1 The Company's obligations

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- 1.1 Australian Securities Exchange (“**ASX**”) Listing Rule 3.1 requires Kogan.com Limited (“**Company**”) to “immediately” disclose to ASX any information concerning the Company:
- (a) when the Company is or becomes aware of the information; and
  - (b) which a reasonable person would expect the information to have a material effect on the price or value of the Company's securities (commonly referred to as “price sensitive information”).

This obligation imposed by ASX Listing Rule 3.1 is commonly referred to as the continuous disclosure obligations of a listed entity.

- 1.2 The test for determining whether information is price sensitive information (and therefore needs to be immediately disclosed to ASX under ASX Listing Rule 3.1) is set out in section 677 of the *Corporations Act 2001* (Cth) (“**Corporations Act**”). Under that section, a reasonable person is taken to expect information to have a material effect on the price or value of the Company's securities (such that the information is price sensitive information) if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of those securities.

- 1.3 The requirement to disclose this information does not apply if, and only if, each of the following requirements is, and remains, satisfied in relation to the information:

- (a) one or more of the following five situations applies:
  - (i) it would be a breach of a law to disclose the information;
  - (ii) the information concerns an incomplete proposal or negotiation;
  - (iii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - (iv) the information is generated for the internal management purposes of the Company; or
  - (v) the information is a trade secret; and
- (b) the information is confidential and ASX has not formed the view that the information has ceased to be confidential; and
- (c) a reasonable person would not expect the information to be disclosed.

- 1.4 If ASX considers that there is or is likely to be a false market in the Company's securities and asks the Company to give it information to correct or prevent a false market, the Company must immediately give ASX that information.

- 1.5 Section 674 of the Corporations Act has given ASX Listing Rule 3.1 statutory force. A listed entity which breaches ASX Listing Rule 3.1 may also breach that section and this can attract serious legal consequences for the entity and its officers, including criminal and civil penalties.

## 2 When the Company is deemed to have become aware of the information

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Under the ASX Listing Rules, the Company will be deemed to have become aware of information if, and as soon as, an officer of the Company (which includes a Director, secretary or senior manager) has, or ought reasonably to have, come into possession of the information in the course of performance of their duties as an officer of the Company.

### **3 Procedures adopted by the Board to ensure compliance**

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The board of Directors of the Company (“**Board**”) has established procedures to ensure compliance with its continuous disclosure obligations under the Corporations Act and the ASX Listing Rules. These include the appointment of a compliance officer (“**Compliance Officer**”) and deputy compliance officer (“**Deputy Compliance Officer**”) to ensure that the Company complies with its obligations of continuous disclosure.

### **4 The Compliance Officer**

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#### **4.1 Appointment of Compliance Officer and Deputy Compliance Officer**

- (a) The Board has delegated responsibility to the Chief Executive Officer of the Company (the “**CEO**”) and the Chief Operating Officer of the Company (the “**COO**”) to appoint a Compliance Officer and a Deputy Compliance Officer for the Company. The Deputy Compliance Officer shall act when the Compliance Officer is not available.
- (b) Unless otherwise determined by the CEO and the COO, the Compliance Officer shall be the Company Secretary and the Deputy Compliance Officer shall be the Chief Financial Officer of the Company.
- (c) The Compliance Officer is primarily responsible for ensuring that the Company complies with its disclosure obligations under the Corporations Act and the ASX Listing Rules, and is primarily responsible for deciding what information will be disclosed (subject to consultation with the CEO and/or the COO).
- (d) The Compliance Officer’s role will involve:
  - (i) considering, in the first instance, what information should be disclosed;
  - (ii) presenting a case to the CEO and/or the COO (or in both their absence, the Chair of the Board) and through them, to the Board, as to what disclosure is required; and
  - (iii) consulting, when necessary, with the Company’s legal advisers on matters relating to the Company’s disclosure obligations.

#### **4.2 Responsibilities of the Compliance Officer**

The Compliance Officer shall:

- (a) consider, in the first instance, what information should be disclosed to the ASX and, in this regard, present such information to the CEO and/or the COO (or in both their absence, the Chair of the Company Board) and consult with the Company’s legal advisors when necessary;
- (b) monitor trading volumes and price fluctuations in the Company’s securities;
- (c) monitor media and social media, analyst commentary and other reports regarding the Company and its securities;
- (d) conduct all disclosure discussions with the ASX;
- (e) maintain a disclosure file containing:
  - (i) all reports received by the Compliance Officer setting out information required, or potentially required, to be disclosed to the ASX;
  - (ii) copies of all disclosure correspondence with the ASX; and
  - (iii) copies of all material that has not been disclosed to the ASX;
- (f) review the periodic reports received from reporting managers of the Company (as designated by the Board or the CEO or the COO from time to time) to ensure that

matters that may potentially affect the price or value of the Company's securities are resolved, whether by disclosing a matter to the ASX or by providing valid reasons as to why the matter need not be disclosed to the ASX;

- (g) as required, submit periodic reports to the Board, setting out:
  - (i) details of the matters reported to the Compliance Officer for consideration as to whether they should be disclosed to the ASX;
  - (ii) details of those matters disclosed to the ASX; and
  - (iii) ensure that each of the Company's Directors, executive officers and employees has a copy of the Continuous Disclosure Memorandum attached as Schedule 1, and institute such other procedures as the Compliance Officer considers necessary and expedient to ensure that all are aware of and understand the Company's continuous disclosure requirements and of their responsibilities under this policy; and
- (h) institute such procedures as the Compliance Officer and Deputy Compliance Officer consider necessary and expedient to ensure that the reporting managers and their subordinates are aware of and understand the Company's continuous disclosure requirements and of their responsibilities under this protocol.

## **5 Reporting and disclosure procedure**

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### **5.1 Reporting to the Compliance Officer**

- (a) Where any information comes to light about the Company which may need to be disclosed, all Directors, executive officers and employees are obliged to bring that information to the attention of the Compliance Officer or, in his or her absence, the Deputy Compliance Officer (as the case may be) with all possible expediency.
- (b) In the case of an emergency, or where any delay would prejudice the Company, initial verbal notification should be given directly to the Compliance Officer, to be followed by a written report supported by all available background information and explanatory material.

### **5.2 Determining whether the information must be disclosed**

Subject to complying with paragraph 5.3, upon receipt of a report from a Director, executive officer, employee or any other person, the Compliance Officer shall, subject to consultation with the CEO and/or the COO, determine whether the information contained in that report is required to be disclosed to the ASX. In making that determination, the Compliance Officer shall decide whether the information:

- (a) is price-sensitive and must be disclosed, in which case the Compliance Officer shall follow the procedure set out in paragraph 5.3;
- (b) is not price-sensitive and does not have to be disclosed, in which case the Compliance Officer shall follow the procedure set out in paragraph 5.4; or
- (c) does not have to be disclosed because it falls under each element of the permitted exception to ASX Listing Rule 3.1, in which case the Compliance Officer shall follow the procedure set out in paragraph 5.4.

If the Compliance Officer is unsure, or if the Compliance Officer and the CEO and/or the COO or Chair of the Board respectively (as the case may be) cannot agree on whether the information is required to be disclosed, he or she shall follow the procedure set out in paragraph 5.5.

### **5.3 If the information must be disclosed**

- (a) If the information is price-sensitive and the Compliance Officer forms the view that it must be disclosed, the Compliance Officer shall, immediately:
- (i) **(discuss)** if necessary, further discuss the matter with the CEO and/or the COO or, in both their absence, the Chair of the Board (who may, in turn, arrange for the Boards' sign-off in relation to the matter);
  - (ii) **(prepare)** prepare an appropriate draft release which must be factual, complete, balanced (disclosing both positive and negative information) and expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions, to be reviewed and approved in accordance with paragraph 5.3(a)(iv) below;
  - (iii) **(provide)** provide the draft release to:
    - (A) where practicable, all directors of the Board for comment and review; or
    - (B) where the urgency of the subject-matter precludes reference to the Board, the CEO and/or the COO or, in both their absence, the Chair of the Board;
  - (iv) **(approve)** seek the approval of the draft release by:
    - (A) the Board, where the disclosure is a significant announcement as set out in paragraph 5.3(d) and the Board is available to approve the release; or
    - (B) in all other cases, the CEO and/or the COO or, both their absence, the Chair of the Board (including significant announcements where the urgency of the subject-matter precludes the ability to seek the approval of the full Board);
  - (v) **(release)** once the release is finalised and approved in accordance with paragraph 5.3(a)(iv), the Compliance Officer must send the finalised release to the ASX's Company Announcements Office by facsimile or electronic means; and
  - (vi) **(record)** place a copy of the release on the disclosure file and distribute a copy of the release to all directors.
- (b) It is acknowledged that where a continuous disclosure obligation arises, notwithstanding that a release may be a significant announcement, disclosure cannot be delayed to accommodate the availability of members of the Board.
- (c) If a conflict or potential conflict situation exists with respect to a director and a proposed announcement, the conflicted director will not receive a copy of the proposed announcement or any relevant Board papers and will be absent from any meetings where a Board discusses the matter. In the case of a conflict or potential conflict with respect to:
- (i) the CEO, the COO or the Chair of the Board, any urgent announcements to be made in accordance with paragraph 5.3(a)(iv)(B) above must be approved by the relevant non-conflicted person; and
  - (ii) the CEO, the COO and the Chair of the Board, any urgent announcements must be approved by any other director of the Company available.
- (d) All significant announcements are to be circulated to all directors and, subject to paragraph 5.3(a)(iv), approved by the Board.

For the avoidance of doubt, in addition to the matters listed in paragraph 2.1 of Schedule 1, the following disclosures will be considered significant:

- (i) release of any financial results, including quarterly, half-yearly and annual reports;
  - (ii) declaration or payment of dividends and/or distributions;
  - (iii) an agreement between the Company and any director or related party;
  - (iv) any material transaction relating to a Company asset by way of acquisition, divestment or scheme of arrangement; and
  - (v) the issuing of any equity or debt securities.
- (e) Significant announcements of a recurring nature, such as the Company's half-year and end-of year results, are as a matter of course presented for consideration by the full Board prior to their release to the market.
- (f) If the Compliance Officer and the CEO and/or the COO or the Chair of the Board (as the case may be) are unable to agree on whether the information must be disclosed, whether in whole or in part, or as to the terms of the disclosure, the Company's legal advisors should be consulted immediately.

#### **5.4 If the information does not have to be disclosed**

If the information is not price-sensitive or does not have to be disclosed because it falls under all elements to the permitted exception to ASX Listing Rule 3.1, then the Compliance Officer must:

- (a) record the information and the reason for it not being disclosed; and
- (b) place a copy of all notes and correspondence relating to the matter on the disclosure file.

#### **5.5 If the Compliance Officer is unsure**

- (a) If the Compliance Officer and the CEO and/or the COO or Chair of the Board respectively (as the case may be) are either unsure whether the information is price sensitive or whether it falls under a permitted exception to ASX Listing Rule 3.1, or cannot agree on whether the information is required to be disclosed, then the Compliance Officer shall immediately seek advice from the Company's legal advisors.
- (b) It may also be appropriate in some circumstances for the Board to be contacted to discuss, and if appropriate, sign off on any proposed disclosure. The CEO and/or the COO or Chair of the Board (as the case may be) is authorised to make the determination as to whether to contact the Board in such circumstances.

#### **5.6 Release of Information**

- (a) The Company must not disclose the information in any way until disclosure has been made to the ASX and the Company has received acknowledgement from the ASX that the information has been released to the market.
- (b) After receipt of the ASX's acknowledgement, the Compliance Officer will arrange for a copy of the announcement to be posted on the Company's website.
- (c) All announcements must be kept separate from any promotional material found on the Company's website.

#### **5.7 Use of trading halts**

- (a) In some circumstances, after having determined that disclosure is required, the Company may not yet be in a position to immediately make an announcement to ASX.
- (b) The Company should therefore consider requesting a trading halt in the Company's securities.

- (c) Placing the Company's securities in a trading halt can provide the Company with sufficient opportunity to prepare its ASX announcement, while at the same time, minimising the risk that the securities will trade on an uninformed basis before the announcement has been given to ASX.
- (d) Subject to the procedures in paragraph 5.3, each of the Compliance Officer, the CEO and the COO (or, in their absence, the Chair of the Company) have each been authorised by the Board to request trading halts in circumstances in which they deem it appropriate to do so.

## **6 Confidential information**

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If a determination is made that the information which comes to light is confidential, the Compliance Officer will ensure that anyone who has a copy of, or knows about, the information is aware that it is confidential.

## **7 Relationship with media, public and analysts**

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- 7.1 Care must be taken not to make comments to the media or others which could result in rumours or speculation about the Company. Directors must comply with the media relations policy of the Company.
- 7.2 The policy limits media contact to the CEO, the COO and the Chair of the Board. Other Directors and executives may only speak with the media in relation to a particular matter concerning the Company if they have obtained the prior express approval of the CEO and/or the COO.
- 7.3 It is also important to ensure that any speeches, or external addresses given, do not result in rumours or speculation about the Company or unauthorised disclosure. The text of all speeches and external addresses must receive prior endorsement of the CEO and/or the COO.
- 7.4 During any briefings and discussions with analysts, directors and executives must only disclose information that has been publicly released through the ASX. If a question arises which can only be answered by disclosing price sensitive information, the director or executive must decline to answer the question or take it on notice and then announce the information through the ASX before responding.

## **8 Maintenance of continuous disclosure policy**

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- 8.1 This Continuous Disclosure Policy shall, at all times, be kept under review by the Compliance Officer to ensure that the Company complies with its continuous disclosure obligations under the Corporations Act and the ASX Listing Rules. Where appropriate, the Company's legal advisors shall be consulted to ensure that the Continuous Disclosure Policy complies with all relevant legislation.
- 8.2 Any queries about the Continuous Disclosure Policy should be referred to the Compliance Officer.



# SCHEDULE 1 - CONTINUOUS DISCLOSURE MEMORANDUM

## 1 Introduction

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- 1.1 Kogan.com Limited (“**Company**”) must notify the Australian Stock Exchange Limited (“**ASX**”) of price sensitive information, and must do so immediately once it is or becomes aware of it, unless certain requirements are satisfied.
- 1.2 Price sensitive information is information that is not generally available and, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of the Company’s securities.
- 1.3 A reasonable person is taken to expect information to have a material effect on the price or value of the Company’s securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of those securities.
- 1.4 Failure to notify the ASX of price sensitive information constitutes a breach of the Company’s obligations under the ASX Listing Rules and a contravention of the *Corporations Act 2001* (Cth), exposing the Company and its Directors and executives who are involved, to a range of sanctions including fines, criminal charges or civil liability. It could also result in suspension of the Company’s securities from quotation or possible delisting.
- 1.5 The procedures set out in this Memorandum apply to all the Company’s personnel to ensure compliance by the Company with its continuous disclosure obligations under the *Corporations Act 2001* (Cth) and the ASX Listing Rules.

## 2 Information required to be disclosed

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- 2.1 The following are non-exhaustive examples of the type of information that, depending on the circumstances, could require disclosure by the Company to ASX:
  - (a) a transaction that will lead to a significant change in the nature or scale of the Company’s activities;
  - (b) a material acquisition or disposal;
  - (c) the granting or withdrawal of a material licence;
  - (d) the entry into, variation or termination of a material agreement;
  - (e) becoming a plaintiff or defendant in a material law suit;
  - (f) the fact that the Company’s earnings will be materially different from market expectations;
  - (g) the appointment of a liquidator, administrator or receiver;
  - (h) the commission of an event of default under, or other event entitling a financier to terminate, a material financing facility;
  - (i) under subscriptions or over subscriptions to an issue of securities (a proposed issue of securities is separately notifiable to ASX under ASX Listing Rule 3.10.3);
  - (j) giving or receiving a notice of intention to make a takeover; and
  - (k) any rating applied by a rating agency to the Company or its securities and any change to such a rating.
- 2.2 The above is not a definitive list and the Compliance Officer should always be informed if there is any doubt.

### **3 Exception to the disclosure rule**

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3.1 The requirement to disclose information under ASX Listing Rule 3.1 does not apply if, and only if, each of the following requirements is, and remains, satisfied in relation to the information:

- (a) One or more of the following 5 situations applies:
  - (i) It would be a breach of a law to disclose the information;
  - (ii) The information concerns an incomplete proposal or negotiation;
  - (iii) The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - (iv) The information is generated for the internal management purposes of the Company; or
  - (v) The information is a trade secret; and
- (b) The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and
- (c) A reasonable person would not expect the information to be disclosed.

Ultimately, it is for the Compliance Officer and Chair of the Board to determine whether the above conditions are satisfied.

### **4 Reporting process**

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- 4.1 Any personnel that becomes aware of any actual or potential price sensitive information concerning the Company must report it to the Compliance Officer immediately.
- 4.2 If the Compliance Officer is not available, the information must be reported to the Deputy Compliance Officer, and if the Deputy Compliance Officer is not available, the information must be reported to another senior person in the Company.
- 4.3 A recipient of information under section 4.2 must immediately pass on the information to the Compliance Officer or, in his or her absence, the Deputy Compliance Officer.
- 4.4 Reports of price sensitive information can be made by telephone but must in all instances be followed up by a comprehensive written report.
- 4.5 All managers must keep up to date with all matters within their responsibility which may be or become material to the Company.

### **5 Confidentiality**

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- 5.1 The price sensitive information must not be passed on to anyone outside of the Company before the ASX is notified and the Company receives an acknowledgment from the ASX that the information has been released to the market. Further, the information must not be passed on to anyone within the Company, other than the Compliance Officer, the Deputy Compliance, the Chief Executive Officer, the Chief Operating Officer or the Chair of the Board, unless the person concerned needs to know in order to do their job properly.
- 5.2 Any person who passes the information on improperly, may be committing a criminal offence.

- 5.3 If it is discovered that persons outside of the Company are aware of the information before the ASX has been notified, the Compliance Officer (or if unavailable, the Deputy Compliance Officer) must be immediately informed.