



# NATIONAL CONFECTIONERY WHOLESALERS LTD CORPORATE GOVERNANCE STATEMENT – (2012)

## Overview

This Corporate Governance Statement ('CGS') has been approved by the Board and sets out the manner in which the Board discharges its responsibilities in pursuit of the Company's objective. The CGS explains the Company's commitment to corporate governance and to any extent applicable adopts the Corporate Governance Principles and Recommendations issued by the Australian Securities Exchange Corporate Governance Council. It is not an "all inclusive" document and should be read as a broad expression of principles.

1. The Board is responsible for the overall operation and stewardship of National Confectionery Wholesalers Ltd (the Company) and in particular for the appropriate corporate governance structure aimed at creating and protecting shareholder value.
2. The Board is responsible for ensuring that accountability and control systems are in place and that management recognises the Company's legal and other obligations to all legitimate stakeholders.
3. Stakeholders are groups that are likely to experience a social, environmental, economic or financial impact from the Company's actions. Stakeholders that may be affected by the Company's activities include:
  - shareholders,
  - customers,
  - suppliers,
  - employees,
  - government regulators, and
  - members of communities where the Company operates.

## The Constitution

4. The Company operates under a Constitution. It is the Board's role to ensure that the Company complies with the provisions of the Constitution which is reviewed regularly against changes in the law and best corporate practice. Any changes considered desirable by the Board are placed before the shareholders in general meeting.

## Board Composition

5. The Board is to comprise:
  - a. at least 3 directors;; and
  - c. Not more than one-half non-member directors.
6. The Chairman is preferred to be an Independent and Non-Executive Director.

## Director Share Qualification

7. There is no shareholding qualification for Directors.

## **Roles and Responsibilities and Duties of the Board**

8. The Board is responsible for setting the strategic direction of the Company and monitoring the implementation of that strategy by the Company Management, including:
  - a) appointing and removing the General Manager;
  - b) appointing and removing the Company Secretary;
  - c) Board and executive management development and succession planning;
  - d) input into and final approval of corporate strategy;
  - e) input into and final approval of the annual operating budget (including the capital expenditure budget);
  - f) monitoring all relevant legal compliance including tax and the regulatory obligations of the Company;
  - g) reviewing and monitoring systems of risk management and internal compliance and controls, codes of conduct, continuous disclosure, legal compliance and Company policies;
  - h) reviewing at least annually the effectiveness of the Company's risk management system and internal control framework;
  - i) monitoring executive management's performance and implementation of strategy and policies, including assessing whether appropriate resources are available or required;
  - j) approving and monitoring financial and other company disclosures to the market, including shareholders, employees and other stakeholders;
  - k) input into and approval of the Company's Policies; and
  - l) reviewing and recommending to the shareholders appointment, reappointment or replacement of the external Auditor.
9. In discharging his/her duties, each Director must:
  - a) ensure that all material and personal interests are disclosed
  - b) exercise care and diligence;
  - c) act in good faith in the best interests of the Company at all times;
  - d) not improperly use his/her position or misuse Company information; and
  - e) commit the time necessary to discharge his/her role as a Director.
10. At least once each year, the Board will undertake a review this CGS and approve any amendments including those required to comply with changes to the law.
11. At least once each year, the Board will undertake a review of Board's performance during the previous 12 months.

## **Committees**

12. To assist the Board in fulfilling its duties and responsibilities, the Board may from time to time and for a given period of time establish Committees of the Board.
13. Each Committee will have a formal Charter and set out any delegations granted by the Board.
14. Each Committee will report to the Board and the minutes of each Committee Meeting are to be made available to all Directors.
15. The Chairman of a Committee is not to be the Chairman of the Board.

## **The Chairman of the Board**

16. The Chairman
  - a) is to be an Independent Non-Executive Director;
  - b) is not to exercise the role of General Manager of the Company; and
  - c) is not to have previously held the position of General Manager or Chief Executive Officer of the Company.

17. The Chairman is responsible for:
- a) leadership of the Board;
  - b) overseeing the Board in the effective discharge of its supervisory role;
  - c) ensuring that relevant issues are on the agenda and that Directors receive timely, relevant information to enable them to be effective members;
  - d) leadership of the Board, for the efficient conduct of the Board's function, and for the briefing of all Directors in relation to issues arising at Board Meetings;
  - e) the effective contribution of all Directors and promoting constructive and respectful relations between Directors and between the Board and Management;
  - f) chairing Board Meetings and Shareholder Meetings;
  - g) ensuring that independent Directors meet separately, at least annually, to consider, among other things, Management's performance;
  - h) reviewing corporate governance matters with the Company Secretary and reporting on those matters to the Board;
  - i) commence the annual process of Board, Board Committee and Director evaluation;
  - j) mentoring the General Manager and chairing the General Manager evaluation process
  - k) being the spokesperson for the Company at the AGM and matters of Board policy, strategy and the reporting of Company performance; and
  - l) promoting the interests of the Company as a whole to all stakeholders.
18. In the event that the Chairman is unable to so act for any reason, or the Board has not appointed a Deputy Chairman or he/she is also unable to act for any reason, the Board will identify an independent Non-Executive Director to act as Chairman.

#### **Independence of Directors**

19. All directors, whether independent or not must act in the best interests of the company and are to exercise unfettered and independent judgement. Directors are not to participate in discussion when a conflict of interest exists and must abstain from voting, unless otherwise authorised at law.
20. Independent Directors are those who have the capability to exercise independent judgement unfettered by other relationship and are willing and able to express their views free of their position in relation to any third party or related business.
21. The independence of each Director will be assessed annually by the Board. Each Director is required to provide the Board with all relevant information to enable it to make this assessment.
22. The independence of each Non-Executive Director is essential and this must be considered in relation to each Director while taking into account all matters. Matters which may be reviewed include whether the Non-Executive Director:
- a. has been employed in an executive capacity by the Company within the last three years;
  - b. has been a principal of a material professional adviser or a material consultant to the Company or an senior employee associated with a service provided within the last three years;
  - c. is a material supplier or customer of the Company, or an officer of or otherwise associated directly or indirectly with, a material supplier or customer;
  - d. has any material contractual relationship with the Company other than as a Director; or
  - e. is free from any interest and any business or other relationship which could, or could reasonably be perceived to interfere with the Director's ability to act in the best interests of the Company.
23. The relevance of cross-directorships and family ties may be relevant when considering a Director's interests and independence and these should be disclosed by Directors to the Board.

24. Each Director is expected to advise the Chairman immediately if he/she believes they may no longer be independent.
25. Should any Director or the Chairman have any concern about the independence of a Director, they must immediately raise the issue with that Director and the Chairman.
26. Should the Chairman have any concern about his/her own independence, he/she must immediately raise the issue with the Board.
27. All directors are required to inform the Chairman of any new Director appointment, other than with the Company, prior to being appointed.

### **Board and Committee Meetings**

28. Board meetings, Committee meetings and meetings of the non-executive Directors are held on a regular basis, as determined annually in advance by the Board. The Board meets at least eight times a year.
29. Directors must inform themselves and be fully prepared for discussion on matters contained on the Board Agenda.
30. Directors must make every reasonable effort to attend each Board meeting or Committee meeting of which they are a member.
31. If the Chairman is unable to attend a Board meeting, the Deputy Chairman (if appointed) will Chair the Board meeting. If a Deputy Chairman is not appointed or unable to attend the Board meeting the Directors present at the meeting must elect one of their number as Chairman of that meeting.
32. Special meetings of the Board or any Committee may be convened if requested by a Director or member of a Committee.
33. The Agenda for each Board meeting is determined by the Chairman, and Company Secretary to address the matters set out in the annual Corporate operating cycle, including (without limitation) the financial performance of the Company. Directors may request that a particular item be added to the agenda.
34. Board papers including the Agenda are to be delivered to Directors at least three days in advance of each meeting.
35. All matters discussed at Board and Committee meetings are confidential and attendees may only use or disclose this information in the proper discharge of their duties to the Company or in accordance with a requirement to disclose under law.

### **Corporate Code of Conduct**

36. The Board of directors recognises its overriding responsibility to act honestly, fairly and diligently and in accordance with the law in serving the interests of shareholders, as well as its employees, stakeholders and the community. It works to promote and maintain an environment within the company that establishes these principles as basic guidelines for all of its employees and representatives at all times.
37. All directors and managers have an obligation to act in good faith and with the utmost integrity in striving to achieve key stated business objectives.
38. The Company's By-Laws and Code of Conduct sets out the standards by which all members are expected to act in relation to corporate values and trading policies of the company that reflect purchase policies of confectionery and beverage products.

### **Access to Information, Independent Advice and Continuing Development**

39. All information available on a Board Agenda matter is to be provided by the Company Secretary to the Board or any Committee before the Board or Committee within a timeframe and be of a quality that enables the Board to assess the information to undertake their responsibilities and duties.
40. All information circulated to directors in the discharge of the duties of directors is confidential, unless it is within the knowledge of the director or the public domain. Any unauthorised use of confidential information is prohibited at law.
41. Directors may request additional information from management in order to support their decision-making. Any Director has the authority to seek any information he/she requires from any employee of the Company and all employees must comply with such requests.
42. Directors have access to the advice of external experts to best support decision making at the expense of the Company when required. Requests for such advice are made to the Chairman who may facilitate obtaining such advice and, where appropriate provide the advice obtained to the whole Board.
43. Any Director may obtain, at the Company's cost, independent legal, financial or other advice as they consider necessary to professionally undertake their duties as a Director.
44. The Board should understand the structure and operations of the Company and issues affecting the Company and its operations and may request periodic presentations to assist in achieving such an understanding.
45. Any director may obtain, at the Company's cost, continuing development during the period of their appointment. Such training or education is to be assessed by the Chairman as meeting the requirements of the Director to support their understanding and/or development to best undertake their role as a Director of the Company.

### **Appointment and Removal of Directors**

46. The Board should be of a size, composition and range of backgrounds that is conducive to making decisions expediently, with the benefit of a variety of perspectives and skills, and in the best interest of the Company as a whole rather than that of any individual shareholder or other stakeholder.
47. Director's skills, experience and background are to be assessed within the context of the matrix of desired skills, experience and diversity to best meet the operations and objects of the Company and the performance of the Board as a whole.
48. The Board must determine annually the appropriate number of Directors to hold position on the Board. Such determination will be in accordance with a desired composition of skills, background, experience and diversity to undertake the objects and strategy of the Company.
49. A Nominations Committee, if formed, is responsible for making recommendations to the Board relating to the appointment and retirement of Directors, otherwise all members of the Board may be involved in the process of nomination.
50. Directors will retire by rotation and in accordance with the Constitution of the Company or the Corporations Act
51. The determination of the appropriate number of Directors to hold position on the Board is to be no less than and no more than is provided for in the Company's Constitution or the Corporations Act.
52. All new Directors will receive a formal Letter of Appointment setting out the key terms and conditions relative to their appointment.

### **Director Induction**

53. All new Directors appointed are provided with an induction program to assist in fulfilling their duties and responsibilities. Management will conduct additional presentations for Directors, to assist Directors in gaining a broader understanding and knowledge of the Company and its activities.

### **Director's Deed of Indemnity and Right of Access**

54. The Constitution indemnifies each Director to the fullest extent permitted by the law.
55. Each Director is entitled to a Deed of Indemnity and Access which shall include provisions relating to:
- a. access to Board Papers;
  - b. confidentiality;
  - c. indemnity by the Company; and
  - d. the provision of continuity of Directors and Officers Insurance.

### **Risk Management**

56. The Board is responsible to recognise and review the Company's risk management framework and policies. The management of risk and the implementation of controls to mitigate risk, including appropriate strategies to prevent interruption to business continuity, is the responsibility of management.
57. The approach to identify, evaluate, assess and treat risk is aligned across all business sectors that covers, strategic, operational, compliance, financial and occupational and health and safety. This is designed to manage the Company's appetite for risk and recognise it as a part of making informed decisions to optimise outcomes, rather than eliminate risk.
58. The Board assesses the Company's Risk Register at regular intervals and reviews risk ratings against internal and external circumstances to ensure consistently good practice across

### **The General Director**

59. The General Manager is responsible for the day-to-day management of the Company with all powers, discretions and delegations authorised, from time to time, by the Board.
60. The General Manager is to have a formal Employment Agreement describing his/her term of office, duties, rights and responsibilities and entitlements on termination.

### **The Company's Policies**

61. The Board oversees the Company's policies. The Company's policies may include but are not limited to:
- a) political donations;
  - b) prohibited payments;
  - c) giving or receiving Gifts;
  - d) conflicts of Interest;
  - e) retention of records;
  - f) dealing with Auditors;
  - g) making public statements about the Company;
  - h) use of confidential information;
  - i) Whistleblower Policy;
  - j) Privacy Policy; and
  - k) Diversity Policy

### **Shareholder Communications**

62. As part of shareholder communications, the Company will:
- a) maintain and keep current its Corporate Governance Website; and

- b) make available, via its website, materials presented at significant investor briefings or meetings of shareholders or stakeholders.