



**AEP ENERGY AFRICA LIMITED**

**(Registration number: 2017/024904/06)**

Incorporated in the Republic of South Africa

(the **Company**)

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**BOARD CHARTER**

**(approved at a meeting of the board of directors of the Company held on 7 April 2017 and reviewed on 28 June 2018)**

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**1 Introduction**

- 1.1 The board of directors (**Board**) of the Company acknowledges the need for a board charter as recommended in the King IV Report on Corporate Governance for South Africa (**King IV** or the **Code**). This board charter (**Charter**) is subject to the provisions of the Companies Act, No. 71 of 2008, as amended from time to time (the **Companies Act**), the Company's memorandum of incorporation (**MOI**), the listings requirements of the JSE Limited, as amended from time to time (the **Listings Requirements**) and any other applicable law or regulatory provision (as amended or substituted from time to time).
- 1.2 In the event of any conflicts between this Charter and the MOI, the MOI will prevail.
- 1.3 Terms used but not defined herein shall have the meaning ascribed to such terms in the MOI, the Companies Act, the Listings Requirements and/or the Code, as applicable.

**2 Purpose of the board charter**

- 2.1 The purpose of this Charter is to set forth the Board's role and responsibilities as well as the requirements for its composition and meeting procedures, noting that the Company is subject to the corporate governance requirements of the Companies Act, and following its listing on the JSE, the Company will also be subject to: (i) the mandatory corporate governance requirements set forth in the Listings Requirements; and (ii) the recommended corporate governance practices set forth in the Code.
- 2.2 Additionally, compliance with the corporate governance principles outlined in the Listings Requirements must be disclosed in the Company's prospectus and, following its listing on the JSE, its annual reports.

### **3 Composition**

- 3.1 The Board must at all times consist of at least 5 directors, in addition to the number of directors required to establish each mandatory board committee.
- 3.2 The Board must comprise a balance of executive and non-executive directors, with a majority of the directors appointed to the Board being non-executive directors. The majority of the non-executive directors must be independent (as contemplated in the Code, and at the date of this Charter to be measured using the criterion / guidance for determining an independent non-executive directors set forth in Annexure A hereto).
- 3.3 Directors are to be appointed through a formal and transparent process and the nomination committee assists with the process of identifying suitable candidates to be proposed to the shareholders of the Company for election, with due regard to: (i) the election and eligibility and disqualification criteria for the election and continued appointment of directors as prescribed by the Companies Act; and (ii) the relevant provisions of the Listings Requirements and the Code.
- 3.4 The Listings Requirements prescribe that listed companies must appoint a chief executive officer and a chairperson to their board of directors. The Listings Requirements further prescribe that the foregoing positions cannot be held by the same person and that the chairperson must either be an independent non-executive director failing which the company must appoint a lead independent director. The Company, as a special purpose acquisition vehicle, is exempt from the foregoing principle until such time as it has converted into an ordinary listed company on the main board or the AltX board of the JSE. However, the Company has elected to comply with the foregoing as if it is a company listed on the main board or the AltX board of the JSE as at the date on which this Charter was adopted.
- 3.5 In addition to appointing a chief executive officer and chairperson, the Company is required to appoint a financial director or chief financial officer. The chief financial officer must be an executive director of the Company. The Listings Requirements prescribe that the audit committee must, on an annual basis, consider and satisfy itself on the competence, expertise, qualifications and experience of the financial director.
- 3.6 Consistent with the foregoing, and as a minimum, two executive directors must be appointed to the Board, namely the chief executive officer and the chief finance officer.

### **4 Director development**

- 4.1 A formal programme must be established by the company secretary for the induction and ongoing development of new directors, which programme should generally focus on highlighting to the fiduciary duties owed by directors and the corporate governance requirements to which the directors would be required to observe as prescribed by the Companies Act and the Listings Requirements, including, but not limited to, the disclosure and transparency obligations and director dealing in securities requirements prescribed in section 3 of the Listings Requirements.

4.2 Continuing professional development programmes must be implemented, which programmes will ensure that directors receive regular briefings on changes in risks; laws and the business environment of the Company.

## 5 **Role and responsibilities**

5.1 The Board assumes ultimate accountability and responsibility for the performance and affairs of the Company and, in doing so, effectively represents and promotes the legitimate interests of the Company and its shareholders. The Board, at all times, will retain full and effective control over the Company and will direct and supervise the business and affairs of the Company. The Board does, however, not assume the functions of management, which remain the responsibility of the executive directors, prescribed officers, other members of senior management.

5.2 The Board is committed to ensuring good corporate governance throughout the Company in line with its fiduciary duties and the requirements of King IV, the Listings Requirements and the Companies Act. The role and responsibilities of the Board are to: -

5.2.1 act as the focal point for, and custodian of, corporate governance by managing its relationship with management, the shareholders and other stakeholders of the Company to build and maintain stakeholders' trust and confidence in the Company along sound corporate governance principles. In this regard, the Board will be expected to:

5.2.1.1 acquire a working knowledge and understanding of the Company's business and the laws, regulations and processes that govern its activities;

5.2.1.2 be able to make sound business decisions and recommendations;

5.2.1.3 exercise judgement independently; and

5.2.1.4 exercise stewardship at all times and uphold the highest degree of ethics in all forms of conduct;

5.2.2 appreciate that strategy, risk, performance and sustainability are inseparable and to give effect to this by:

5.2.2.1 contributing to and approving the strategy;

5.2.2.2 satisfying itself that the strategy and business plans do not give rise to risks that have not been thoroughly assessed by management;

5.2.2.3 identifying key performance and risk areas, which includes the responsibility of setting the Company's level of risk tolerance and limits for its risk appetite on an annual basis and monitoring the same accordingly;

5.2.2.4 ensuring that the strategy will result in sustainable outcomes; and

5.2.2.5 considering sustainability as a business opportunity that guides strategy formulation;

5.2.3 provide effective leadership on an ethical foundation;

- 5.2.4 ensure that the Company is and is seen to be a responsible corporate citizen by having regard to not only the financial aspects of the business of the Company but also the impact that business operations have on the environment and the society within which it operates;
  - 5.2.5 ensure that the Company's ethics are managed effectively;
  - 5.2.6 ensure that the Company has an effective and independent audit and risk committee;
  - 5.2.7 be responsible for the governance of risk;
  - 5.2.8 be responsible for IT governance, which includes ensuring that information assets are identified, managed and treated as important business assets;
  - 5.2.9 ensure that the Company complies with applicable laws and considers adherence to non-binding rules and standards;
  - 5.2.10 ensure that there is an effective risk-based internal audit for approaching the control environment which must be aligned with the risk assessment process;
  - 5.2.11 appreciate that stakeholder's perceptions affect the Company's reputation;
  - 5.2.12 ensure the integrity of the Company's integrated report;
  - 5.2.13 act in the best interests of the Company by ensuring that individual directors:
    - 5.2.13.1 adhere to legal standards of conduct;
    - 5.2.13.2 are permitted to take outside or other independent advice as it deems necessary in connection with their duties following an agreed procedure;
    - 5.2.13.3 disclose real or perceived conflicts to the Board and deal with them accordingly; and
    - 5.2.13.4 **dealing in securities:** deal in securities only in accordance with the applicable provisions of the Listings Requirements, the Financial Markets Act, No. 19 of 2012 and other applicable laws and regulation. Without limiting the generality of the foregoing, directors should have regard to (and familiarise themselves with) paragraphs 3.63 through 3.74 of the Listings Requirements;
  - 5.2.14 commence business rescue proceedings as soon as the Company is financially distressed;
  - 5.2.15 report on the effectiveness of the Company's system of internal control;
  - 5.2.16 elect a chairperson of the Board that is an independent non-executive director; and
  - 5.2.17 appoint and annually evaluate the performance of the chief executive officer.
- 5.3 The Board will comply with all relevant legislation and be required to maintain strict confidentiality of all information relating to the business of the Company, except to the extent that disclosure is required by law or regulation.

5.4 The Board will have unrestricted access to all Company information, records, documents and property. The company secretary will assist the Board by providing any required information or documents.

5.5 The Board should do everything necessary to fulfil its role and responsibility set forth above.

## 6 **Delegation**

The Board may delegate certain functions to well-structured committees, but cannot (and does not) abdicate its responsibilities. Delegation is formal and involves the following:

6.1 formal terms of reference are established and approved for each committee of the Board;

6.2 the committees' terms of reference are reviewed by the Board once a year;

6.3 the committees are duly constituted in accordance with applicable law and regulation, and with due regard to the skills required by each committee;

6.4 the Board establishes a framework for the delegation of authority to management;

6.5 the Board will, as a minimum, establish an audit committee, a social and ethics committee, a remuneration committee and a nomination committee; and

6.6 the chairperson of each committee will report back to the Board regularly and immediately after a committee's meeting on the general principle of transparency and full disclosure.

## 7 **Membership**

7.1 The size of the Board will be sufficiently large to ensure a wide range of skills, knowledge and experience without compromising common purpose, involvement, participation and a sense of responsibility among the members necessary to meet the Company's strategic objectives.

7.2 The office of the chairperson and chief executive officer will be separate. There will at all times be a clearly-defined division of responsibilities in both offices to ensure a balance of authority and power. Where the chairperson is not an independent non-executive director, a lead independent director shall be appointed in accordance with the Code - see discussion in paragraph 3 of this Charter.

7.3 On appointment, new directors will undergo an induction programme to facilitate their understanding of the business environment and markets in which the Company operates. This programme will be facilitated by the company secretary and will include, *inter alia*, information and guidance on:

7.3.1 group structure and business objectives;

7.3.2 financial performance of the business;

7.3.3 reciprocal expectations;

7.3.4 familiarisation through site visits and consultation with senior management; and

- 7.3.5 corporate policies and procedures and information on directors' roles and responsibilities in terms of legislation, regulatory requirements and best practice.
- 7.4 All directors will undergo continuing professional development and will be required to attend regular briefings on changes in legislation, governance and the business environment.
- 7.5 The directors will be individuals of calibre and credibility, with the necessary skills, experience and diversity required for an effective Board.
- 7.6 The termination of service of any executive director for whatever reason will result in the resignation of that director from the Board.

## 8 Meeting procedures

### 8.1 Frequency.

- 8.1.1 The Board must hold sufficient scheduled meetings to discharge all its duties as set forth in this Charter but subject to a minimum of four meetings per year.
- 8.1.2 Meetings in addition to those scheduled may be held at the instance of a Board member.

### 8.2 Attendance.

- 8.2.1 Members of senior management, assurance providers and professional advisors may be in attendance at meetings, but by invitation only and they may not vote.
- 8.2.2 Board members must attend all scheduled meetings of the Board, including meetings called on an *ad hoc*-basis for special matters, unless prior apology, with reasons, has been submitted to the chairperson or company secretary.
- 8.2.3 The company secretary is the secretary to the Board.
- 8.2.4 If the nominated chairperson of the Board is absent from a meeting, the members present must elect one of the members present to act as chairperson.

### 8.3 Agenda and minutes.

- 8.3.1 The Board must establish an annual work plan for each year to ensure that all relevant matters are covered by the agendas of the meetings planned for the year. The annual plan must ensure proper coverage of the matters laid out in this Charter, the more critical matters will need to be attended to each year while other matters may be dealt with on a rotation basis over a three-year period. The number, timing and length of meetings, and the agendas are to be determined in accordance with the annual plan.
- 8.3.2 Unless under exceptional circumstances, a detailed agenda, together with supporting documentation, must be circulated, at least one week prior to each meeting to the members of the Board and other invitees. The chairperson may meet with the chief executive officer and chief finance officer and/or company secretary prior to a meeting to discuss important issues and agree on the agenda.

- 8.3.3 Board members must be fully prepared for Board meetings to be able to provide appropriate and constructive input on matters for discussion.
- 8.3.4 To support quality decision-making, directors will be informed in an efficient and timely manner prior to meetings and, as far as possible, be provided with sufficient information to prepare adequately on all agenda points to be discussed.
- 8.3.5 The minutes must be completed as soon as possible after the meeting and circulated to the chairperson and members of the Board for review thereof. The minutes must be formally approved by the Board at its next scheduled meeting.

#### 8.4 Quorum.

- 8.4.1 A representative quorum for meetings is as provided for in the MOI.
- 8.4.2 Individuals in attendance at Board meetings by invitation may participate in discussions but they do not form part of the quorum for, and may not vote at, Board meetings, with due regard to the eligibility, disqualification and qualification criteria prescribed by the Companies Act and other applicable laws and regulation.

#### 8.5 Evaluation.

The evaluation of the Board, its committees and individual directors, including the chairperson, must be performed at least annually.

### 9 **Individual roles and responsibilities**

#### 9.1 Chairperson.

The chairperson:

- 9.1.1 will be an independent non-executive director;
- 9.1.2 is responsible for representing the Board to shareholders of the Company and indirectly to other stakeholders relating to performance;
- 9.1.3 is responsible for ensuring the integrity and effectiveness of the governance process of the Board;
- 9.1.4 must, in collaboration with the company secretary, ensure the contents and order of the agenda are correct; is responsible for maintaining regular dialogue with the chief executive officer over all operational matters; and will consult with the remainder of the Board promptly on any matter that gives him/her cause for major concern;
- 9.1.5 will act as facilitator at Board meetings to ensure that no director, whether executive or non-executive, dominates discussion, that appropriate discussion takes place and that the relevant opinion among members is forthcoming and discussions result in logical and understandable outcomes; and
- 9.1.6 will play a crucial role in ensuring the Board is properly led.

#### 9.2 Chief executive officer.

The chief executive officer is responsible for:

- 9.2.1 ensuring the Company achieves the strategic and financial objectives approved by the Board;
- 9.2.2 monitoring and managing the day-to-day operational requirements and administration of the Company;
- 9.2.3 developing and recommending business plans, policies and objectives for consideration by the Board and taking into consideration business, economic and political trends that may affect the operations of the Company;
- 9.2.4 submitting reports, financial statements and consolidated budgets for consideration by the Board;
- 9.2.5 implementing all approved plans, policies and programmes;
- 9.2.6 overseeing the financial management of the Company including financial planning, cash flow and management reporting;
- 9.2.7 involving himself in group affairs via the executive committee;
- 9.2.8 acting as chairperson of the executive committee;
- 9.2.9 overseeing plans for compliance with legislation applicable to the Company and the group, and designing and implementing appropriate compliance structures, processes and systems, with the assistance of the audit and risk committee and, where necessary, external counsel; and
- 9.2.10 not causing or permitting any practice, activity or decision by or within the Company that is contrary to commonly accepted good business practice, good corporate governance or professional ethics.

### 9.3 Company secretary.

- 9.3.1 The company secretary or, in the absence of the company secretary, the person to whom the function has been delegated, will be the secretary of the Board.
- 9.3.2 The Board will recognise the pivotal role to be played by the company secretary in achieving good corporate governance and empower this individual accordingly.
- 9.3.3 The company secretary is accountable to the Board to:
  - 9.3.3.1 guide the directors collectively and individually on their duties, responsibilities and powers;
  - 9.3.3.2 make directors aware of any law relevant to the Company and keeps the Board informed of relevant laws, rules, codes and standards including any changes;
  - 9.3.3.3 report any failure on the part of the Company or a director to comply with the MOI, the Companies Act or the Listings Requirements;
  - 9.3.3.4 ensure Board procedures are followed and reviewed regularly;

- 9.3.3.5 ensure applicable rules and regulations for conducting the affairs of the Board are complied with;
- 9.3.3.6 facilitate a programme for the induction and ongoing development of directors;
- 9.3.3.7 maintain statutory records in accordance with legal requirements;
- 9.3.3.8 guide the Board on how its responsibilities should be properly discharged in the best interest of the organisation;
- 9.3.3.9 keep abreast of, and inform, the Board of current and new developments regarding corporate governance thinking and practice; and
- 9.3.3.10 fulfil all other functions assigned to the position by the Companies Act and by any other applicable legislation and regulation.

#### 9.4 Individual directors.

- 9.4.1 Non-executive directors may meet separately with management, without executive directors present.
- 9.4.2 Directors act jointly when discharging their duties and no individual director has authority to act on behalf of the Company unless specifically authorised or requested by the Board.
- 9.4.3 Directors are jointly and severally accountable for Board decisions and actions.
- 9.4.4 Directors must declare conflicts of interest with the Company in accordance with the procedures and requirements set forth in section 75 of the Companies Act, and they must generally account for any advantages gained in discharging their duties on behalf of the group.
- 9.4.5 Directors who have a real or prospective interest in any of the businesses of the Company should declare this interest at a Board meeting as soon as they become aware of such specific interest.
- 9.4.6 On first appointment and once every year, or at any time when circumstances change, all directors will, in good faith, disclose to the Board for recording any business or other interest that is likely to create a potential conflict of interest, including:
  - 9.4.6.1 all business interests, direct or indirect in any other company, partnership or business venture;
  - 9.4.6.2 membership to trade, business or other economic companies;
  - 9.4.6.3 shareholding, share options and/or other interests in the Company;
  - 9.4.6.4 any direct or indirect interest in any transaction with the Company; and
  - 9.4.6.5 any gifts, monies, commissions, benefits or other favours extended or received from any party because of any business dealings with the organisation.
- 9.4.7 Directors acknowledge that the fiduciary responsibilities of any director of the Company serving on a subsidiary board are as stringent as such director's fiduciary responsibilities to the Company.

## 10 **Reporting**

10.1 The Board must report in accordance with the disclosure requirements included in the Companies Act, the Listings Requirements and King IV.

10.2 The chairperson or, in his absence, another director, will attend the annual general meeting of the Company's shareholders to answer questions on matters falling within the ambit of the Board's responsibilities based on this Charter.

## 11 **Approval of this Charter**

This Charter was approved by the Board on 7 April 2017.

## 12 **Amendment of this Charter**

This Charter may be reviewed at the instance of the Board, and must be reviewed annually to ensure it remains relevant to the business objectives of the Company. The review process will be initiated by the company secretary in consultation with the chairperson.

**Criterion for determining independence of board member**

The factors listed below are indicators that a member of the Board is not independent. The Board should consider the following and other indicators holistically, and on a substance-over-form basis, when assessing the independence of a member of the board for purposes of categorising such a member as independent.

**1 King IV**

1.1 Directors that participate in a share incentive scheme of the Company are not regarded as independent.

1.2 King IV Report defines an **independent** non-executive director as one who:

- is not a representative of a shareholder who has the ability to control or significantly influence management or the board;
- does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which exceeds 5% of the group's total number of shares in issue;
- does not have a direct or indirect interest in the company which is less than 5% of the group's total number of shares in issue, but is material to his personal wealth;
- has not been employed by the company or the group of which it currently forms part in any executive capacity, or appointed as the designated auditor or partner in the group's external audit firm, or senior legal adviser for the preceding three financial years;
- is not a member of the immediate family of an individual who is, or has been during the preceding three financial years, employed by the company or the group in an executive capacity;
- is not a professional adviser to the company or the group, other than as a director;
- is free from any business or other relationship (contractual or statutory) which could be seen by an objective outsider to interfere materially with the individual's capacity to act in an independent manner, such as being a director of a material customer or supplier to the company; or
- does not receive remuneration contingent upon the performance of the company.