

## Asia Pacific Data Centre Group

### BOARD CHARTER

---

#### 1. Overview

- 1.1 The Asia Pacific Data Centre Group (**APDC Group**) comprises Asia Pacific Data Centre Holdings Limited (**APDC Holdings**) and Asia Pacific Data Centre Limited (**APDC Limited**) as responsible entity for Asia Pacific Data Centre Trust (**APDC Trust**). APDC Limited holds Australian Financial Services Licence (**AFSL**) No 426 503.
- 1.2 The shares of APDC Holdings and the units of APDC Trust are stapled and listed on the Australian Stock Exchange (**ASX**).
- 1.3 The board of APDC Holdings and the Board of APDC Limited (as the responsible entity of APDC Trust) have different members. The term '**Board**' hereafter should be read as only a reference to the board of APDC Holdings.
- 1.4 This Charter is the Charter of the board of APDC Holdings (the **Charter**). The Charter governs the operations of the Board. It sets out the Board's role and responsibilities, composition, structure and membership requirements.
- 1.5 The Board is responsible for the overall operation and stewardship of the APDC Group and, in particular, is responsible for:
- (a) approving the strategic objectives of the APDC Group and establishing goals designed to promote the achievement of those strategic objectives;
  - (b) approving investments and ongoing evaluation of those investments;
  - (c) approving and monitoring systems of risk management and internal compliance and control, codes of conduct, legal compliance, ethical standards, exposure to economic, environmental and social sustainability risks;
  - (d) approving and monitoring financial and other reporting;
  - (e) approving the remuneration and nomination policies of the APDC Group;
  - (f) appointing senior management and monitoring their performance (against the goals and objectives established by the Board);
  - (g) approving any public statements which reflect APDC Group's policy or strategy;
  - (h) establishing an investor relations program to facilitate communication with investors.
- 1.6 In performing the responsibilities set out above, the Board should act at all times in a manner designed to create and continue to build sustainable value for

securityholders and in accordance with the duties and obligations imposed on them by the APDC Group's constitutions and by law.

- 1.7 The Board must review and reassess this Charter at least annually and, if required, make any amendments to the Charter.
- 1.8 The following sections describe the responsibilities and operation of the Board.

---

## 2. Strategy and Investments

- 2.1 Providing input to, and approval of, the APDC Group's strategic direction and budgets as developed by management.
- 2.2 Directing, monitoring and assessing the APDC Group's performance against strategic and business plans, to determine if appropriate resources are available.
- 2.3 Approving and monitoring capital management and major capital expenditure, acquisitions and divestments.

---

## 3. Board Committees

- 3.1 Establishing the:
  - (a) Audit and Risk Committee; and
  - (b) such other committees that the Board determines should be established in the interests of good governance,each committee being a **Board Committee**.
- 3.2 Adopting Charters setting out the membership, responsibilities and reporting obligations of each Board Committee and evaluating the performance of the Board Committees.
- 3.3 Ensuring the external auditors are not constrained from raising matters directly with the Board.
- 3.4 Undertaking an annual performance evaluation of each Board Committee that compares the performance of the Board Committee with the requirements of the relevant Board Committee Charter, setting forth the goals and objectives of the Board Committee for the upcoming year and effecting any amendments to the relevant Board Committee Charter considered necessary or desirable.

---

## 4. Risk Management

- 4.1 Identifying the principal risks of the APDC Group's business and ensuring the APDC Group has in place an appropriate risk management framework and establishing the acceptable levels of risk within which the Board expects the management of the APDC Group to operate.
- 4.2 Reviewing and ratifying the APDC Group's systems of risk management to determine the integrity and effectiveness of those systems.

---

## **5. Corporate Governance**

- 5.1 Encouraging and monitoring ethical behaviour and compliance with the APDC Group's policies, including the APDC Group's Code of Conduct.
- 5.2 Monitoring and evaluating the APDC Group's compliance with corporate governance standards.

---

## **6. Remuneration**

- 6.1 Determining APDC's Group's remuneration framework for directors and executives.
- 6.2 Approving remuneration packages and conditions of senior executives, non-executive Directors (within shareholder approved fee pool) and executive Directors, equity-based incentive plans and other employee benefit programs.
- 6.3 Reviewing and approving the APDC Group's remuneration, recruitment, retention and termination policies.
- 6.4 Reviewing and approving the APDC Group's superannuation arrangements.
- 6.5 Considering and recommending those aspects of the APDC Group's remuneration policies and packages, including equity-based incentives, which should be subject to securityholder approval.

---

## **7. Nomination**

- 7.1 Monitoring the size, composition and skills mix of the Board, including Board succession generally, identifying individuals who may be qualified to become Directors, having regard to such factors as judgement, skill, diversity, experience with business and other organisations of a comparable size, the interplay of the candidate's experience with the experience of other Board members and the extent to which the candidate would be a desirable addition to the Board and any Board Committee.
- 7.2 Determining whether a Director (whose term of office is expiring) should be proposed for re-election at the APDC Group's next annual general meeting and ensuring appropriate information is included in the notice of meeting for securityholders.
- 7.3 Ensuring an effective induction program is available to new Directors to ensure they understand their responsibilities and the business activities of the APDC Group.
- 7.4 Ensuring a continuing program for Directors to update their skills.
- 7.5 Monitoring the APDC Group's diversity policy, diversity at different levels of APDC Group and achievements of objectives that may be established.

---

## 8. Reporting

Approving and monitoring internal and external financial and other reporting, including (but not limited to):

- (a) reporting to securityholders, the ASX and other stakeholders; and
- (b) overseeing the APDC Group's processes for making timely and appropriate disclosure of all material information concerning the APDC Group that a reasonable person would expect to have a material effect on the price or value of the APDC Group's securities.

---

## 9. Management

- 9.1 Appointment and removal of the Managing Director (or equivalent), Chief Executive Officer, Executive Directors, Chief Financial Officer, the Company Secretary and Senior Executives with total remuneration packages in excess of \$100,000.
- 9.2 There will be:
  - (a) a written agreement with each person appointed as a senior executive setting out the terms of their appointment; and
  - (b) a process for ensuring that the performance of senior executives is reviewed at least annually.
- 9.3 Establishing and monitoring executive succession planning.
- 9.4 Delegating authority to the Chief Executive Officer as outlined in the Delegations Policy.
- 9.5 Approving criteria for assessing performance of senior executives and monitoring and evaluating the performance of senior executives.
- 9.6 Undertaking an annual performance evaluation of itself that compares the performance of the Board with the requirements of this Charter, sets forth the goals and objectives of the Board for the upcoming year and effecting any amendments to this Charter considered necessary or desirable.
- 9.7 Where appropriate, engaging external facilitators to conduct performance evaluations
- 9.8 Setting specific limits of authority for management.

---

## 10. Appointment of Directors

- 10.1 Directors are provided with formal letters setting out the key terms and conditions of their employment, which includes terms and conditions relating to disclosure of directors' interests.

- 10.2 Prior to the appointment of any Director, and before a candidate is put forward as a candidate for election as a Director, appropriate checks will be undertaken of the person including checks regarding the person's experience, education, disqualification from holding certain offices, criminal record and bankruptcy history.
- 10.3 A candidate may also be asked to provide details of any commitments that will be in addition to those they will undertake if elected or re-elected, including a statement that they will have sufficient time to fulfil their responsibilities as a Director.
- 10.4 Each new Director will be required to participate in an induction program which includes meeting with the Board, the Chief Executive Officer of APDC Holdings, other executives and the Company Secretary of APDC Holdings to familiarise themselves with the Company, its strategy and operations, and policies and procedures. Directors may request and undertake training as appropriate to their role, with the permission of the Chairman of APDC Holdings.

---

## 11. Board Composition and Tenure

- 11.1 The Board shall comprise no less than three and no more than ten Directors. A majority of the Directors must be independent. It is intended that the Board be comprised of Directors with a range of skills, diversity, expertise and experience, while taking into account specific skills and experience that may be of specific relevance to the APDC Group and its operations. The Chairman of APDC Holdings should be an independent Non-Executive Director.

---

## 12. Director Independence

- 12.1 An independent director is a Non-Executive Director who is not a member of management and who is free of any business or other relationship that could interfere, or might be seen to interfere, with a director's capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of the Company and APDC Group security holders generally.
- 12.2 In its assessment of independence, the Board will take account of the factors set out in relation to Recommendation 2.3 of the *ASX Corporate Governance Principles & Recommendations (3<sup>rd</sup> Edition)* and any other factors it considers relevant. Family ties and cross-directorships may be relevant in considering interests and relationships which may compromise independence and should be disclosed by Directors to the Board.
- 12.3 The Board will:
- (a) assess the independence of each Director annually in light of interests disclosed and will disclose any change to ASX, as required by the ASX Listing Rules; and
  - (b) review the independence of any director who has served in that position for more than 10 years to confirm that their independent status can be maintained.

---

### **13. Disclosure of Interests**

13.1 Directors must disclose to the Board:

- any material personal interest that he or she or any associate may have in a matter relating to the affairs of the APDC Group; and
- any other interest or relationship that may affect the Director's independence.

13.2 Notice of any such interest may be a standing notice. A register of interests will be kept by the Company Secretary of APDC Holdings.

---

### **14. Code of Conduct**

14.1 The Board will approve, and the Directors of APDC Holdings will abide by the APDC Group's Code of Conduct which assists Directors and staff to understand their responsibilities in upholding the APDC Group's goals and values, and to conduct business in accordance with applicable laws and regulations

14.2 Directors of APDC Holdings will act in accordance with the duties and obligations imposed on them by the APDC Group's Constitutions and by law.

---

### **15. Securities Trading Policy**

15.1 The Board will approve, and Directors of APDC Holdings will abide by, the APDC Group's Securities Trading Policy

---

### **16. Meetings**

16.1 The Board will hold a minimum of seven meetings per year, at a time and location that the Chairman reasonably deems appropriate for all members to attend.

16.2 Additional meetings may be held as required including meetings without management present.

16.3 The Board members will receive appropriate notice of meetings and be given the opportunity to attend in person or by teleconference.

---

### **17. Company Secretary**

17.1 The Company Secretary of APDC Holdings must report to and is accountable directly to the Board, through the Chairman, on all matters to do with the proper functioning of the Board of APDC Holdings and any Board Committee.

17.2 The Board of APDC Holdings has access to the Company Secretary at any time.

---

### **18. Indemnity and Insurance**

APDC provides a Deed of Indemnity and Access (**Deed**) in favour of each of the Directors and officers of APDC Holdings and its subsidiary companies. The Deed

indemnifies these persons on a full indemnity basis to the extent permitted by law for losses, liabilities, costs and charges incurred as a director or officer of its subsidiaries or such other entities.

---

## **19. Protocols where a director has a conflict of interest**

From time to time a Director may have a conflict of interest. To help Directors manage any such conflicts the Board has developed protocols setting out the structures and procedures to be followed with the aim of ensuring that the consideration of matters by the Board and any Board committees is undertaken free from any actual influence or appearance of influence from persons with conflicts of interest, and that the disclosure of confidential information is to be subject to appropriate corporate governance controls. Those protocols are set out in Annexure A.

---

## **20. Independent Professional Advice**

- 20.1 To ensure independent decision-making in relation to the fulfilment of their duties, each Director may take independent professional advice where necessary at the expense of the APDC Group.
- 20.2 Before obtaining independent professional advice, a Director must inform the Chairman that they wish to obtain the advice and provide an estimate of the cost of the advice. The budget for the advice must then be approved by the Chairman (such approval not being unreasonably withheld) before the cost is incurred. Notwithstanding this, independent professional advice can be obtained without the involvement of management where the Board or the Chair considers it appropriate to do so.
- 20.3 A suitable qualified expert in the appropriate field should be instructed. Prior to instructing the expert, the Director should advise the Board or Chair of the fee payable which must be reasonable having regard to the nature of the advice sought and the fees charged by comparable experts.
- 20.4 All instructions to the expert must be in writing specifying the party instructing and the capacity in which that party is acting and the party to whom the advice is to be addressed.
- 20.5 Except in circumstances of competing interests between the Directors or the Director and the APDC Group, a copy of the advice, the letter of instruction, and all materials which accompanied the letter must be provided to the Board.

---

## **21. Review of this Code**

This Code will be reviewed regularly by the Company Secretary or the Chief Executive Officer.

---

## **22. Inconsistency**

To the extent that there is any inconsistency between this Charter and the constitution of any APDC Group company, that constitution will prevail.

---

## 23. Further Information

If you have any questions regarding this Charter you should contact:

Address: Company Secretary  
Asia Pacific Data Centre Holdings Limited  
Level 13  
135 King Street  
Sydney NSW 2000

Telephone: 02 8405 8872

Email: [info@asiapacificdc.com](mailto:info@asiapacificdc.com)

Last updated: 12 June 2018 (by resolution of the Board of Directors of APDC Holdings)

## Annexure A (Board Protocols - Conflicted Directors)

---

### 1. Background

#### 1.1 Purpose

The purpose of these protocols is to set out the structures and procedures which have been put in place by the Board to ensure that the consideration of matters by the Board and any Board committees is undertaken free from any actual influence or appearance of influence from persons with conflicts of interest, and that the disclosure of confidential information is to be subject to appropriate corporate governance controls.

#### 1.2 Directors duties

Annexed to these protocols is:

- (a) an outline of duties of directors in relation to the disclosure of interests and avoiding conflicts; and
- (b) a discussion of certain conflicts which may arise with nominee directors.

Nothing in these protocols is intended to limit in any way the duties owed by Directors.

---

### 2. Disclosure of information to Directors

#### 2.1 Directors disclosure of interests

Directors must at all times comply with their duties and obligations as directors under statute, common law and the relevant constitution to disclose certain interests to the Board and avoid conflicts of interest. The duties of the Directors also include a duty of confidentiality. An outline of certain duties and obligations of Directors is set out in Annexure B to these protocols.

#### 2.2 Review of information before disclosure to directors

Before any information is circulated by management to the Board or any Board committee, it must first be provided to the Company Secretary (**Probity Officer**) who will determine whether the disclosure of that information to any of the Directors may give rise to a conflict of interest or potential conflict of interest (a **conflict**) in relation to one or more of the Directors. Information which must first be provided to the Probity Officer includes any agendas or papers for Board meetings or Board committee meetings and any documents generated internally or by advisors. The Chair may, as appropriate, make certain senior executives and management aware of this requirement.

In making that determination in respect of a particular Director, the Probity Officer may consult with the Chair of the Board. If the Chair considers it appropriate, he or she may establish a committee comprising of those Directors who do not have a conflict for the purposes of making the determination (**Independent Directors**).

The Chair, or any committee of Independent Directors established by the Chair may also for the purposes of making the determination:

- (a) request further information from the relevant Director; and/or

- (b) seek advice from legal or other advisors.
- 

### **3. Procedures**

#### **3.1 Procedures to be followed before board meeting**

Before notice of any matter to be considered by the Board or a Board committee (**Relevant Matter**) is circulated to Directors, the procedure set out in paragraph 2.2 of these protocols must be adopted for the purpose of determining whether the involvement of any of the Directors in the Board's or Board committee's consideration of that Relevant Matter would give rise to a conflict.

#### **3.2 Exclusion of conflicted director**

If the Board or a Board committee is required to consider a Relevant Matter and it has been determined in accordance with paragraph 2.2 of these protocols that the involvement of a Director (**Conflicted Director**) in the Board's consideration of the Relevant Matter, or a Board committee's consideration of the Relevant Matter, would give rise to a conflict, then the Conflicted Director:

- (a) must not receive any information about the Relevant Matter; and
- (b) is not entitled to participate in any discussions regarding, nor take part in any decision-making process in relation to, the Relevant Matter,

unless the Independent Directors make a determination under paragraph 3.3 of these protocols.

#### **3.3 Inclusion of conflicted director on limited basis**

After following the procedures set out in paragraph 2.2 of these protocols, depending on the nature of the conflict or potential conflict and the application of the particular facts, the Independent Directors may decide that the Conflicted Director can:

- (a) receive part of the information in respect of the Relevant Matter;
- (b) receive redacted versions of information distributed to the Board in respect of the Relevant Matter; or
- (c) participate in the discussions regarding the Relevant Matter but not to vote on resolutions covering the Relevant Matter.

#### **3.4 Procedures where conflicted director excluded**

If the Relevant Matter is to be considered at a Board meeting or Board committee meeting and a determination is made under paragraph 3.2 of these protocols (and not under paragraph 3.3 of these protocols):

- (a) the Conflicted Director may only receive modified versions of the agenda and other papers circulated to Directors in respect of that meeting which exclude all information relating to the Relevant Matter;
- (b) the Conflicted Director may attend the meeting provided that the Conflicted Director excuses himself or herself from the meeting during any discussion of the Relevant Matter and takes no part in any decision-making process in relation to the Relevant Matter;

- (c) the Independent Directors must not disclose to the Conflicted Director any information relating to the Relevant Matter including the content of any relevant discussions at Board meetings and any other relevant discussions, negotiations or agreements;
- (d) the Company Secretary will prepare minutes of all meetings of the Board and circulate those minutes to the members of the Board. However, if the Relevant Matter was considered at a meeting, the Conflicted Director will only be provided with a modified version of the minutes of that meeting which excludes those minutes relating to the Board's consideration of the Relevant Matter;
- (e) the Probity Officer will be responsible for establishing and implementing appropriate measures to ensure that the Conflicted Director does not have access to email or any other folders where any documents or other information relating to the Relevant Matter are stored or to any relevant hard copy documents (and if requested by an Independent Director, the Probity Officer will report to the Board on the methodology employed to achieve this result);
- (f) if the Conflicted Director acquires any information about the Relevant Matter in his or her capacity as a Director which is not publicly available, the Conflicted Director must keep that information confidential in accordance with the duties owed by the Conflicted Director to the Company.

### **3.5 Compliance with protocols**

Each Director:

- (a) must use all reasonable efforts to ensure that each person to whom these protocols apply complies with the protocols;
- (b) must notify the Chair promptly if the Director becomes aware of any circumstances which, or which are likely to, result in a breach of these protocols, giving sufficient details of those circumstances to the Chair so that remedial action may be taken;
- (c) acknowledges that if these protocols are breached, the Board reserves the right to at any time terminate the involvement of the relevant Director, or any associate or involved person, in the Relevant Matter.

These protocols do not limit any other rights against a Director in respect of any breach of any legal or contractual obligations of a Director.

## Annexure B (Disclosures of interests and conflicts of interest)

---

### 1. Statutory duty to disclose material personal interest

Subject to certain exceptions, a director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest (refer to section 191 of the Corporations Act 2001 (the Act)).

---

### 2. Restrictions on attendance and voting

Unless the other directors approve, a director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter (refer to section 195 of the Act).

---

### 3. Standing notice

A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter (refer to section 192 of the Act). The standing notice may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given. The standing notice may be given before the interest becomes a material personal interest. Each director is responsible for promptly updating the information contained in a standing notice it provides to the company.

---

### 4. General law – Conflicts of interest

- (a) At general law, directors have a fiduciary duty to avoid conflicts of interest. It is an established principle that directors of a company must not, in any matter falling within the scope of their service, have a personal interest or inconsistent engagement with a third party, except with the company's fully informed consent (often referred to as the **Conflict Rule**).
  - (b) Amongst many of the general principles that have been developed by the Courts in respect of the Conflict Rule, in certain circumstances, mere disclosure of a conflict between interest and duty and abstaining from voting on the matter is insufficient to satisfy a director's fiduciary obligations. Disclosure is generally the minimum requirement, however, in certain circumstances, a positive duty to protect the interests of the company by, for instance, taking steps to prevent a transaction from going ahead, may lie with the directors.
- 

### 5. Common form of conflict - use of information by nominee directors

- (a) A common situation in which a conflict may arise is where a nominee director acquires information as a result of the nominee's position as a director that the nominee knows will be of interest to the nominating company. The conflict in this situation includes:
    - (i) a duty of confidentiality owed to the company of which it is a director; and
-

- (ii) a commercial desire to communicate knowledge acquired to the nominating company as a result of his or her position as a nominee.
- (b) As a basic principle, the duty of confidentiality owed to the company in paragraph 5(a)(i) of this annexure is greater than any duty owed to the nominating company.
- (c) Consequently, as a general rule, if a director acquires any information in his or her capacity as director of a company (which is not otherwise publicly available), the director cannot communicate that information to the nominating company. To do so would potentially breach a number of directors' duties, including the common law duties to act honestly and to avoid conflicts of interest, and the statutory duties to act in good faith, not to misuse position, and not to misuse information (refer to sections 181 to 184 of the Act).

---

## **6. Nominee Directors**

- (a) From time to time there may be Directors on the Board who are nominated representatives of shareholders of the Company. If the Board is required to consider a matter which involves, or affects the interests of, a shareholder, any involvement in the Board's consideration of that matter by a Director who is the nominated representative of that shareholder may give rise to a conflict for that Director (for instance, as contemplated in paragraph 5 of this annexure).
- (b) In those circumstances, the procedure set out in paragraph 2.2 of the protocols must be adopted for the purposes of making a determination as to whether the Director's involvement in the Board's consideration of the matter would give rise to a conflict.
- (c) If it is determined that the Director's involvement in the Board's consideration of the matter would give rise to a conflict, that Director must not:
  - (i) be provided with any information relating to that matter;
  - (ii) participate in any discussions regarding that matter; and
  - (iii) take part in any decision-making process in relation to that matter.
- (d) In addition, if that Director acquires any information about the matter, he or she must not, without the consent of the Board, disclose any of that information to the shareholder he or she represents nor attend any discussions or negotiations in relation to the matter between the Company on the one hand and that shareholder.