

## EMPLOYEE INVESTMENT POLICY

<b>Policy Name:</b>	Employee Investment Policy
<b>Effective Date:</b>	27 April 2009
<b>Approved By:</b>	eircom Holdings Board
<b>Owner:</b>	Company Secretary
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## 1. APPLICATION

This Policy applies to all executive directors and employees (**employees**) of the Company and its subsidiaries (collectively the **Group**).

The Policy provides guidance in relation to those circumstances where employees may be permitted to participate in investments offered or arranged by the Company.

### 1.1. Background to the adoption of this Policy

As a publicly listed entity the Company is subject to a high level of regulation and public scrutiny. Accordingly, it has adopted this Policy in order to:

- Ensure that the Company meets appropriate corporate governance standards for listed companies;
- Ensure that the Company complies with applicable laws regarding dealings between the Company and its officers;
- Manage and prevent conflicts of interest which may prejudice the interests of non-employee shareholders of the Group;
- Create and maintain investor confidence in the integrity of the Company's internal controls and procedures; and
- Provide guidance to directors and employees in order to achieve the above.

### 1.2. Key elements of this Policy

The Policy delineates the circumstances in which, and establishes a procedure by which, employees of the Group may participate in investment opportunities offered to or arranged for third party investors by the Company. Such participation would result in employees investing:

- Alongside the Company; and/or
- As part of an offer, syndication or sell-down of an investment by the Company to third parties.

Specifically, this Policy aims to ensure that:

- Employees participate on a basis which is no more favourable than the market-based arm's length terms upon which non-employee investors participate in an investment opportunity offered or arranged by the Company;
- Guidelines are provided for prioritising the opportunity to invest as between different groups of employees;
- There is ultimately independent review and approval of the employee investment process, resulting in the corporate interests of the Company, its shareholders and third party investors being appropriately considered and protected.

In adopting this Policy, the Board recognises that the provision to employees of the opportunity to participate in investment opportunities offered or arranged by the Company is beneficial to the Group and its shareholders for the following reasons:

- It provides another source from which the Company can access investment funding. The availability of this source may enable the successful completion of transactions which might not otherwise have occurred, thereby generating income for the Group;
- It may be attractive to employees, thereby assisting to attract and retain high calibre employees;
- In the case of investment alongside the Company, it further aligns the interests of those employees who participate in an investment with the interests of the Group; and
- It assists in the marketing of investment products to third parties if key executives have committed to invest.

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## 2. PROCEDURAL MATTERS

### 2.1. How does the opportunity for employee investment arise?

From time to time, the Company offers or arranges for third parties to invest in an investment opportunity. Examples of such situations include where the Company:

- a) Acquires an asset and subsequently looks to reduce its holding of that asset by transferring interests in the asset to third party investors. Such a “sell-down” would often involve an inherent profit and/or the payment of fees to the Group in connection with arranging the investment opportunity;
- b) Wishes to acquire an interest in an asset but is either unable or unwilling to take up the entire available interest itself. In such cases, third party investors may be sought to invest alongside the Company in acquiring that interest. This may involve such third party investors acquiring their interests on identical terms as the Company or on different terms. The Company may also receive fees in connection with arranging the investment opportunity; and
- c) Develops or sources a product or investment opportunity that it intends to offer to third party investors (either with or without investing in that product or opportunity itself).

The types of assets that are amenable to such third party investment is unlimited and may include interests in real estate, corporate shareholdings, trust unit holdings, securities, options, loans, debentures, stocks, bonds, insurance policies, foreign exchange contracts or derivatives.

In this Policy, “employee investment” refers to the investment in such opportunities by employees, their family members, controlled entities or other associates, usually alongside independent third party investors. “Family members” include a spouse or partner, minor children, and other persons who reside with an employee or depend upon an employee for financial support, and entities controlled by such persons.

### 2.2. When will employee investment be permitted?

Employee investment will only be allowed where the following steps have taken place:

- a) If the Company is investing in the particular investment opportunity, the Board (or its delegate) has first determined the level of the investment to be made by the Company;
- b) The Board (or its delegate) has approved the offering of the investment opportunity to third party investors and the terms of such offering;
- c) The independent non-executive Directors who are members of the Company’s Audit & Risk Management Committee (“Independent Committee Directors”) have approved the terms of investment by, and the allocation of the investment opportunity among, employees (including in respect of fees and the relative rights and obligations of employees and other parties); and
- d) The Company actively seeks investment from independent third parties in respect of the investment opportunity.

Any subsequent reduction in the level of investment, as determined pursuant to paragraph (a) above, must be approved by the Board (or its delegate) and the Independent Committee Directors.

### 2.3. On what terms will employee investment be permitted?

Employees will only be permitted to invest on exactly the same market-based arm’s length terms as are being offered to independent third party investors (including in respect of fees), or on terms which are no more favourable to employees.

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#### **2.4. Is there a limit on the extent of employee participation in an investment opportunity?**

Yes. The dollar aggregate of all employee investment in a particular transaction must not exceed 50% of the total dollar amount of all third party investment being sought (including from employees).

For example, if the Company seeks to sell down its holding of an investment by sourcing a total of \$5 million of investment monies from third party investors (including employees), a maximum of \$2.5 million of that total may be sourced from employee investment. The remaining investment monies (\$2.5 million or more) must be sourced from independent third parties.

#### **2.5. Are there circumstances in which this limit might be waived?**

The above limit may only be waived in circumstances where the Independent Committee Directors formally resolve that they are satisfied that:

- The Company has genuinely undertaken a “best endeavours” program of seeking investment from independent third party investors;
- The program has been unsuccessful in attracting from independent third party investors 50% of the total dollar amount of all third party investment being sought (including from employees);
- The Company has determined that it does not wish to take up any of the shortfall or only wishes to take up part of the shortfall; and
- It is appropriate in all the circumstances to waive such limit and to make the then remaining shortfall available for employee investment.

In those circumstances, employees may be permitted to participate to the extent of such shortfall, but subject at all times to the response to matter 3.

#### **2.6. What will the Independent Committee Directors require in order to consider employee investment matters?**

In order to undertake their final review and approval as above, the Independent Committee Directors will require:

- Sufficiently detailed information to enable those Directors to understand the investment opportunity and the terms upon which it is proposed to be made available to the Group (if applicable), independent third parties and employees;
- Sufficient details as to how the relevant transaction terms as they affect the Group have been determined and a statement from the Chief Executive Officer confirming that, in his or her opinion, they represent appropriate market-based arm’s length terms or are otherwise appropriate terms in the circumstances; and
- Sufficient time in which to consider the proposal and to seek answers to any questions they may have in respect of any matter relating to the proposal.

If Independent Committee Directors are given insufficient information or time, they cannot be expected to provide the necessary approvals.

The Independent Committee Directors will establish an advisory panel comprising of senior executives of the Company invited by such Directors to join the panel from time to time. The Independent Committee Directors will be assisted in their above deliberations by one or more persons:

- a) Selected by such Directors from the advisory panel; and
- b) Who are not themselves proposing to participate in the relevant employee investment opportunity.

The Independent Committee Directors may seek confirmation from appropriately qualified third parties that the investment opportunity is being offered to employees on market-based arm’s length terms if they are of the view that this has not been adequately established by the process outlined above.

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### **2.7. Do employees need to disclose their employee investments (either before or after making an investment)?**

Yes. Any employee making a submission or recommendation to the Independent Committee Directors in relation to a proposed transaction in which that employee intends to invest must include a statement setting out details of his or her proposed investment in that transaction, together with details of any other relevant employee investments associated with that employee.

Any employee who has acquired, changed or disposed of an employee investment must promptly report the acquisition, change or disposal to a central register maintained by the Company Secretary. Employees whose names appear in such register must also confirm their employee investments upon request by the Company Secretary.

Employees must recognise that, in some circumstances, it may be necessary to publicly disclose their employee investments, e.g. to the Australian Securities Exchange (ASX) or in the Annual Report. By entering into such an investment, employees authorise the Company to make such disclosure as it considers appropriate.

### **2.8. Are there any obligations that apply to employees during the life of an employee investment?**

Yes. It is important that employees at all times ensure that their personal interests in employee investments do not interfere with, or be seen to interfere with, the performance of their roles as employees of the Group.

Accordingly, where an employee has an existing employee investment and a transaction involving the Group is proposed which will have a material financial impact on that existing investment:

- a) Any submission or recommendation by that employee to the Board (or its delegate) in respect of the proposal must include a statement setting out details of the employee's relevant investments;
- b) If that employee would otherwise be involved in the decision-making process in relation to the proposal (whether as a member of the Board or as a delegate of the Board), the employee must exclude himself or herself from the decision-making process in relation to the proposal;
- c) If that employee is an executive director, and
  - the financial impact for that employee would be A\$250,000 or more; **or**
  - the proposed transaction is one which would be the subject of an announcement to the ASX in accordance with the ASX's continuous disclosure requirements, the proposed transaction may only proceed with the approval of the Independent Committee Directors.

Where a proposed transaction must be approved by the Independent Committee Directors in accordance with sub-paragraph (c) above, the Independent Committee Directors should be provided with information as required pursuant to paragraph 10 above (as applicable to the relevant proposal). The Independent Committee Directors must likewise be afforded sufficient time in which to consider the proposal, seek answers to any questions they may have in relation to the proposal and seek any assistance from the advisory panel and any third party confirmation in respect of the proposal.

Note that, in addition to the provisions of this paragraph there may be circumstances where Directors must exclude themselves from the consideration of any proposed transaction in order to comply with the Corporations Act, 2001 (Cth).

### **2.9. Do employees have grounds for complaint if they miss out on an investment opportunity?**

While the Company will endeavour to ensure that employees are given a reasonable opportunity to invest in accordance with this Policy, it gives no assurance that employees will in fact be afforded such opportunities. It must be understood that, within the limits described above, there will necessarily be limited capacity for employee investment. It must also be recognised that the relevant B&B business unit responsible for obtaining third party investment and closing a transaction will be subject to various time constraints and other parameters which must receive priority over employee investment opportunities and allocations in order to ensure that the transaction closes successfully. In addition, there may be circumstances where it is not considered appropriate to offer employee investment in a particular opportunity or considers it appropriate to restrict the level of participation or to apply an order of priority of employee allocations which differs from the general order of priority outlined above.

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As such, employees will have no cause for complaint or other redress if they are not afforded any investment opportunity or if any aspect of this Policy is not applied. The opportunity to participate in employee investments is a privilege, not a right, which may be made available to employees at the discretion of the Company and within the constraints and subject to the discretions outlined in this Policy.

#### **2.10. Are there any overriding legal or regulatory restrictions?**

Yes. Overriding the whole of this Policy is the requirement that any offering of investment opportunities to employees (or their associates):

- Must be made in a manner which complies with the relevant legal and regulatory regime in the jurisdiction in which the offer is made (e.g. the relevant securities law regime).
- Will not be permitted where such offer would require the Company to prepare a prospectus, product disclosure statement or other offer-related documentation which is not otherwise required in respect of the offer.
- Will only be permitted on the strict understanding that, subject to their obligation to comply with relevant laws, employees, as employees of the Group, first and foremost owe a fiduciary duty to act in the best interests of the Group. In the event that those interests come into conflict with the personal interests of the employee as a participant in an investment, the employee must report the conflict to the Chief Executive Officer.
- If the employee concerned is the Chairman or the Chief Executive Officer, they must report the conflict to the Independent Committee Directors.

These restrictions will necessarily lead to situations where an investment opportunity cannot be offered in certain countries or to certain employees.

This Policy does not affect the ability of employees to make personal investments which are not offered or arranged by the Company. However, in light of the fiduciary duty owed to the Company by virtue of their employment, employees should avoid any investment which gives rise to an actual or potential conflict with the interests of the Group. If an employee is in any doubt regarding the appropriateness of a personal investment, he or she should first seek relevant clearance from the Company.

### **3. DELEGATION BY THE INDEPENDENT COMMITTEE MEMBERS**

The Independent Committee Directors may determine that, in certain circumstances, their functions under this Policy should be delegated to any one (acting solely) or more (acting jointly) of the Independent Committee Directors. In such cases, the Independent Committee Director(s) to whom those functions are delegated will have full authority to discharge the functions of the Independent Committee Directors as set out in this Policy and references to "Independent Committee Directors" in this Policy will be construed accordingly.

### **4. AMENDMENTS TO THE POLICY**

This Policy may be amended at any time and without prior notice by the Board of eircom Holdings Limited. Employees will be advised of any changes.

This Policy and the employee investment process will be overseen by, and subject to the governance of, the Independent Committee Directors.

### **5. BREACHES AND QUESTIONS**

This is an important document. It is incumbent upon all employees to uphold this Policy. Breaches of this Policy will be viewed seriously and may lead to disciplinary action being taken against the relevant employee. In serious cases, such action may include dismissal. Any employee who becomes aware of a violation of this policy should immediately report the violation to the Independent Committee Directors.

If you have any queries in relation to this policy, please do not hesitate to refer them to the Chief Executive Officer or the Company Secretary.