

# **EVER- GOTESCO RESOURCES AND HOLDINGS, INC.**

## **CHARTER OF THE BOARD OF DIRECTORS**

### **PREAMBLE**

This Charter of the Board of Directors (the “Charter”) has been adopted by the Board Members of Ever Gotesco Resources and Holdings, Inc. (the “Company”), to assist the Board and its committees in the exercise of their responsibilities with a view to protect and enhance the value of the Company and achieve sustainable growth. It serves to supplement the Company’s Articles of Incorporation, By-Laws, and Manual of Corporate Governance as it sets out the corporate governance structures, principles, policies and practices to govern the performance of the duties and responsibilities of the Board of Directors.

The Board of Directors shall review this Charter at least annually and, if appropriate, revise this Charter from time to time.

#### **A. Guiding Principles**

As the governing body elected by the shareholders, the Board of Directors shall have the primary responsibility for the conduct of the business and control of all of the properties of the Company, as well as the exercise of all the corporate powers of the Company, unless otherwise provided under the law.

- The Board shall primarily be responsible for the governance of the Company and shall set the policies for the accomplishment of its corporate objectives, sustain its competitiveness and profitability, and safeguard the best interests of its shareholders and other stakeholders.
- The Board shall have the appropriate balance of skills, experience, independence and knowledge of the Company and the industry in which the Company is involved with.
- The Board shall act on a fully informed basis with due diligence and care and in the best interests of the Company and all stakeholders and shall ensure that sound risk management and internal controls are in place.
- The Board shall ensure that its corporate disclosure policies and procedures are consistent with the regulatory requirements and best practices.

#### **B. Board Governance Framework**

##### **1. Composition and Selection of the Board**

The Board of Directors, upon the recommendation of the Nomination and Remuneration Committee, shall consider candidates for Board membership nominated by shareholders, including members of the Board. An orientation process shall be held for the new members of the Board so they may be briefed by the Corporate Secretary, Compliance Officer and Management on their fiduciary responsibilities as directors, the Company’s governance policies and processes, and the regulatory and industry developments affecting its business and operations, respectively.

##### **1.1 Board Membership and Independence**

The membership of the Board shall be a combination of executive and non-executive directors (which include independent directors) who shall be elected individually by the shareholders in accordance with the Company's By-Laws and applicable laws and regulations.

(a) Independent Directors - The number of independent directors shall constitute at least one-third of the entire membership of the Board as currently fixed in the Articles of Incorporation. The independent director must meet the qualification criteria set by under applicable laws, regulations and the policies of the Company.

(b) Non-Executive Directors - To promote objective, independent judgment on corporate affairs and provide for check and balance, Non-Executive Directors, together with Independent Directors, shall be comprised of a minimum of four members of the Board. A non-executive director shall have no executive responsibility and does not perform any work related to the operations of the Company.

## 1.2 Selection and Diversity

The Board shall be composed of directors of proven integrity and who possess the background, skills and expertise to make a significant contribution to the Board, to the Company and to its subsidiaries, with demonstrated experience in an area helpful to the Board, including high level leadership experience in business or administrative activities, specialized expertise in the industry, knowledge of issues affecting the Company and its subsidiaries, and the ability and willingness to provide objective and independent oversight to Board activities.

The Board shall regularly review its composition, taking into account the evolving requirements of the business, regulatory environment and SEC corporate governance standards. The Board shall also consider diversity in its composition as to age, gender, culture, skills, competence and knowledge as may be appropriate.

## 1.2 Qualifications of a Director

In addition to the qualifications provided in the Revised Corporation Code, Securities Regulation Code, the Code of Corporate Governance for Publicly Listed Companies and other relevant laws and regulations, a Director shall also possess the following qualifications:

- a. Must be at least twenty-one (21) years old and owner of at least one (1) share of the capital stock of the Company;
- b. With a college degree or its equivalent education or shall have been engaged or exposed to the general business of the Company for a least five (5) years;
- c. With relevant experience and credentials such as previous business experience in a corporation, membership in good standing in relevant industry and membership in business or professional organizations and practical understanding of the business of the Company and its subsidiaries
- d. With high standards of integrity, probity and assiduousness;
- e. Has none of the disqualifications prescribed under the By-Laws, Revised Corporation Code, Securities Regulations Code and its implementing rules, SEC Code of Corporate Governance and such other applicable laws and regulations; and

f. Shall submit to a low indicative limit on director appointments in other non-listed, non-group companies.

The non-executive directors of the Board may concurrently serve in other directorships up to a maximum of five publicly listed companies to demonstrate their commitment and availability to attend to the affairs of the Company and carry out their duties adequately.

### 1.3 Permanent and Temporary Disqualifications of a Director

In addition to the disqualifications provided in the By-Laws, Revised Corporation Code, Securities Regulation Code and other relevant laws, the following persons shall be permanently disqualified to be elected to the Board:

a) Any person convicted by final judgment or order by a competent judicial or administrative body of any crime that

(i) involves the purchase or sale of securities, as defined in the Securities Regulation Code;

(ii) arises out of the person's conduct as an underwriter, broker, dealer, investment adviser, principal, distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; or

(iii) arises out of his fiduciary relationship with a bank, quasi-bank, trust company, investment house or as an affiliated person of any of them;

b) Any person who, by reason of misconduct, after hearing, is permanently enjoined by a final judgment or order of the SEC or any court or administrative body of competent jurisdiction from:

(i) Acting as underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker;

(ii) Acting as director or officer of a bank, quasi-bank, trust company, investment house, or investment company;

(iii) Engaging in or continuing any conduct or practice in any of the capacities mentioned in sub-paragraphs (i) and (ii) above, or willfully violating the laws that govern securities and banking activities.

The disqualification shall also apply if such person is currently the subject of an order of the SEC or any court or administrative body denying, revoking or suspending any registration, license or permit issued to him under the Revised Corporation Code, Securities Regulation Code or any other law administered by the SEC or Bangko Sentral ng Pilipinas (BSP), or under any rule or regulation issued by the SEC or BSP, or has otherwise been restrained to engage in any activity involving securities and banking; or such person is currently the subject of an effective order of a self-regulatory organization suspending or expelling him from membership, participation or association with a member or participant of the organization;

c) Any person convicted by final judgment or order by a court or competent administrative body of an offense involving moral turpitude, fraud, embezzlement, theft, estafa,

counterfeiting, misappropriation, forgery, bribery, false affirmation, perjury or other fraudulent acts;

d) Any person who has been adjudged by final judgment or order of the SEC, court, or competent administrative body to have willfully violated, or willfully aided, abetted, counselled, induced or procured the violation of any provision of the Revised Corporation Code, Securities Regulation Code or any other law administered by the SEC or BSP, or any of its rule, regulation or order;

e) Any person earlier elected as independent director who becomes concurrently an officer, employee or consultant of the Corporation;

f) Any person judicially declared as insolvent;

g) Any person found guilty by final judgment or order of a foreign court or equivalent financial regulatory authority of acts, violations or misconduct similar to any of the acts, violations or misconduct enumerated in sub-paragraphs (a) to (d) above;

h) Conviction by final judgment of an offense punishable by imprisonment for more than six (6) years, or a violation of the Revised Corporation Code committed within five (5) years prior to the date of his election or appointment;

i) Any person who is engaged in any business which competes with or is antagonistic or harmful to the business of the Corporation, its subsidiaries and affiliates, or where such person is serving as a director, will suffer a serious conflict of interest which adversely affects the business of the Corporation, its subsidiaries and affiliates;

j) An independent director who has served the maximum cumulative term of 9 years as independent director shall be disqualified from being re-elected as independent director of the Company; and

k) Any other ground as the Securities and Exchange Commission may hereafter be provided. Unless otherwise decided by the Board, a director may be temporarily disqualified for any of the following reasons:

a. Refusal to comply with the disclosure requirements of the Securities Regulation Code and its Implementing Rules and Regulations. The disqualification shall be in effect as long as the refusal persists.

b. Absence in more than fifty (50) percent of all regular and special meetings of the Board during his incumbency, or any twelve (12) month period during the said incumbency, unless the absence is due to illness, death in the immediate family or serious accident. The disqualification shall apply for purposes of the succeeding election.

c. Dismissal or termination for cause as director of any public or listed corporation. The disqualification shall be in effect until he has cleared himself from any involvement in the cause that gave rise to his dismissal or termination.

d. If the beneficial equity ownership of an independent director in the Corporation or its subsidiaries and affiliates exceeds two percent (2%) of its subscribed capital stock. The disqualification shall be lifted if the limit is later complied with. However, the disqualified independent director may run for election as a regular director provided there is a vacancy in the Board.

e. If any of the judgments or orders cited in the grounds for permanent disqualification has not yet become final.

A temporarily disqualified director shall, within sixty (60) business days from such disqualification, take the appropriate action to remedy or correct the disqualification. If he fails or refuses to do so for unjustified reasons, the disqualification shall become permanent, unless otherwise decided by the Board.

#### 1.4 Additional Qualifications of Independent Directors

An Independent Director is one who, apart from his fees and shareholdings, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his exercise of independent judgment in carrying out his responsibilities as a director in the Company and includes, among others, any person who:

- a) Is not a director or officer of the Company or any of its related companies or any of its substantial shareholders except when said directors is an independent director thereof;
- b) Has not been employed in any executive capacity by the Company or any of its related companies or any of its substantial shareholders within the last five (5) years;
- c) Has not been appointed in the Company, its subsidiaries, associates, affiliates or related companies as Chairman "Emeritus," "Ex-Officio" Directors/Officers or Members of any Advisory Board, or otherwise appointed in a capacity to assist the Board in the performance of its duties and responsibilities within three years immediately preceding his election;
- d) Is not an owner of more than two per cent (2%) of the outstanding shares of the Company or of its related companies or any of its substantial shareholders;
- e) Is not related to any director, officer, or substantial shareholder of the Company or any of its related companies or of any of its substantial shareholders.

For this purpose, relatives include spouse, parent, child, brother, sister and the spouse of such child, brother or sister;

- f) Is not acting as a nominee or representative of any director or substantial shareholder of the Company or any of its related companies or its substantial shareholders pursuant to a Deed of Trust or under any contract or arrangement;
- g) Is not a securities broker-dealer of listed companies and registered issuers of securities.  
  
"Securities broker-dealer" refers to any person holding any office of trust and responsibility in a broker-dealer firm, which includes, among others, a director, officer, principal stockholder, nominee of the firm to the Exchange, an associated person or salesman, and an authorized clerk of the broker or dealer;
- h) Is not retained, either in his personal capacity or through a firm, or similar entity as a professional adviser by the Company, or any of its related companies or any of its substantial shareholders within the last five (5) years;

i) Has not engaged and does not engage whether by himself or with other persons or through a firm of which he is a partner, or a company of which he is a director or substantial shareholder, in any transaction with the Company or any of its related companies or substantial shareholders, other than such transactions which are conducted at arm's length and are immaterial or insignificant;

A related company shall mean another company which is its holding/parent company and/or its subsidiary and/or subsidiary of its holding company.

#### 1.6. Term of Office and Term Limits

Directors shall hold office for a term of one year from their election during the annual meeting of the shareholders and until their successors are elected and qualified. Independent directors who shall have a maximum cumulative term of nine (9) years.

#### 1.7 Vacancies in the Board

Any vacancy occurring in the Board of Directors other than by removal of the shareholders or by expiration of term which may occur between annual meetings of the shareholders may be filled by vote of at least majority of the remaining members of the Board if still constituting a quorum and in each case based upon the recommendation of the Nomination and Remuneration Committee, otherwise, the vacancy shall be filled by the shareholders at a meeting of the stockholders called for the purpose.

A director so elected to fill the vacancy shall serve only the unexpired term of his/her predecessor in office.

### **2. Board Responsibilities**

The Board shall have the following general responsibilities:

- a. Foster and sustain the long-term success of the Company, its competitiveness and profitability in a manner consistent with its corporate objectives and the best interests of its stockholders and other stakeholders;
- b. Formulate the Company's vision, mission, strategic objectives, policies and procedures;
- c. Monitor and oversee the business and affairs of the Company.

#### 2.1 Powers, Duties and Attributes of the Board

In addition to the powers and duties conferred to the Board of Directors under the Revised Corporation Code, the Company's By-Laws, and other applicable laws, the Board shall have the following authorities and duties:

- a. To implement and adopt a process for the selection of directors and officers who can add value and contribute independent judgment to the formulation of sound corporate strategies and policies and to adopt an effective succession planning program for its

directors, officers and key managers to promote the Company's growth and dynamism, as well as leadership succession;

b. Approve business and strategic plans, policies and programs such as but not limited to corporate strategies, major plans of action, risk management policies, annual budgets and business plans, major capital expenditures, acquisitions and divestitures as well as a remuneration policy for its key and board members that are aligned with the long-term best interests of the Company and will help ensure the business sustainability of the Company and periodically evaluate and monitor the implementation of such plans, policies and programs;

c. Ensure faithful compliance with all relevant laws, rules and regulations, internal charters and policies, and as far as practicable best business practices;

d. Establish and maintain an investor relations program that will keep stockholders and other stakeholders informed on a timely, regular and clear basis, of the important developments in the Company, and serve as feedback channel, and ensure that appropriate corporate disclosure policies and procedures are in place to provide for accurate, reliable and timely disclosures that are disseminated in a non-exclusionary and non-selective way and a fair presentation of Company's financial condition, results and business operations to shareholders and other stakeholders;

e. Promote a mutually beneficial, positive and progressive relationship with the Company's stakeholders and the community in which it operates, and promulgate clear policies and programs for the effective communication and engagement of the Company's stakeholders and their fair treatment and protection, including redress of rights violated;

f. Ensure the adoption, adequacy and effectiveness of sound organizational and operational internal controls and systems (including those for conflict of interest situations) for good governance through regular review and monitoring;

g. Ensure that a sound enterprise risk management framework is in place to effectively identify, monitor, assess and manage key risks of the Company and establish its risk strategies and approach;

h. Formulate and implement policies and procedures that would ensure the integrity and transparency of related party transactions between and among the Corporation and its parent company, joint ventures, subsidiaries, associates, affiliates, major stockholders, officers and directors, including their spouses, children and dependent siblings and parents, and of interlocking director relationships by members of the Board;

i. Constitute an Audit and Risk Oversight Committee, Related Party Transaction Committee, Corporate Governance Committee, Nomination and Remuneration Committee, Executive Committee and such other committees which it may deem necessary to assist the Board in the performance of its duties and responsibilities;

j. Establish and maintain an alternative dispute resolution system to amicably settle conflicts or differences between the corporation and its stockholders, and the corporation and third parties, including the regulatory authorities;

k. Provide stockholders with a balanced and comprehensible assessment of the Company's performance, position and prospects on an annual and quarterly basis, including interim and other reports that could adversely affect its business, as well as reports to regulators that are required by law;

l. Conduct an annual self-assessment of the performance and the effectiveness of the Board, its committees, and each member with the assessment criteria and process based on the mandates, functions, roles and responsibilities provided in its charters and have the assessment supported by an external facilitator every three years;

m. Through the Corporate Governance Committee, ensure that all members of the Board shall go through an orientation process whereby they are briefed on their fiduciary responsibilities as directors, the Company's governance policies and processes, and the regulatory requirements and industry developments affecting the Company's business and operations, and provide for the continuing development program for the members of the Board;

n. Adopt a comprehensive set of policies (i.e., Code of Business Conduct and Ethics) that sets out the personal and professional conduct expected from members of the Company to ensure that directors, officers and employees shall uphold the best interests of the Company and work under a culture of integrity and excellence and with a sense of accountability, transparency and urgency.

It shall monitor and ensure compliance and disseminate copies thereof to the Board, senior management and employees and made available in the Company's website.

o. Meet at such times or as frequently needed. The minutes of such meetings shall be duly recorded. Independent views during Board meetings shall be encouraged and given due consideration.

p. Keep the activities and decisions of the Board within its authority under the Company's Articles of Incorporation and By-Laws, and in accordance with existing laws, rules and regulations; and q. Approve the selection and appointment to the Chief Executive Officer, Chief Compliance Officer who shall have the rank of at least senior vice president, the Chief Risk Officer and Chief Audit Executive and monitor their performance.

## 2.2 Specific Responsibilities of a Director

A director shall observe the following norms of conduct:

a. Always act in a manner characterized by transparency, accountability and fairness;

b. Ensure the conduct of fair business transactions of the Company, and ensure that his/her personal interest does not conflict with the interests of the Company.

(i) A director shall not use his/her position to profit or gain some benefit or advantage for himself/herself and/or his/her related interests;

(ii) He/She shall avoid situations that may compromise his impartiality. If an actual or potential conflict of interest may arise on the part of a director, he shall fully and immediately disclose it and shall not participate in the decision-making process.

A director who has a continuing material conflict of interest shall seriously consider resigning from his position.

A conflict of interest shall be considered material if the director's personal or business interest is antagonistic to that of the Company, or stands to acquire or gain financial advantage at the expense of the Company.

(iii) A director with a material interest in any transaction affecting the Company shall abstain from taking part in the deliberations and recuse themselves from taking any vote.

c. Devote the time and attention necessary to properly and effectively perform his duties and responsibilities.

(i) A director shall devote sufficient time to familiarize himself with the Company's business. He shall be constantly aware of and be knowledgeable with the Company's operations to enable him to meaningfully contribute to the Board's work.

(ii) He shall regularly attend and actively participate in meetings of the shareholders and of the Board and its committee meetings, review meeting materials and, if called for, ask questions or seek explanation.

d. Act judiciously. Before deciding on any matter brought before the Board, a director shall carefully evaluate the issues and, if necessary, make inquiries and request clarification.

e. Exercise independent judgment. A director shall view each problem or situation objectively. If a disagreement with other directors arises, he shall carefully evaluate and explain his position. He shall not be afraid to take an unpopular position. He shall support plans and ideas that he thinks are beneficial to the Company.

f. Have a working knowledge of the statutory and regulatory requirements that affect the Company, including its Articles of Incorporation and By-Laws, the rules and regulations of the Commission and, where applicable, the requirements of relevant regulatory agencies.

A director shall also keep abreast with industry developments and business trends in order to promote the Company's competitiveness.

g. Observe confidentiality. A director shall keep secure and confidential all non-public information he may acquire or learn by reason of his position as director. He shall not reveal confidential information to unauthorized persons without the authority of the Board.

h. Observe compliance with the laws, policies, rules of the Philippines and other regulatory agencies. This shall include reporting to the Company of any dealings in the Company's shares within three business days.

i. Attend a training in corporate governance on an annual basis.

### **3. Board Committees**

The Board may establish such committees as may be necessary to assist it in the discharge of its responsibilities. In accordance with the Company's By-Laws, it shall constitute the following committees to ensure the effective performance of the function of the Board with respect to audit, risk management, related party transactions, nominations and remuneration and other key corporate governance concerns:

(a) Audit and Risk Oversight Committee,

(b) Related Party Transaction Committee,

- (c) Corporate Governance Committee,
- (d) Nomination and Remuneration Committee, and
- (e) Executive Committee.

The composition, functions and responsibilities, organizational, reporting and operating processes of the Board committees shall be defined by the Board in the Committee Charter. The work and actions of these Committees shall be regularly reported to and monitored by the Board and its performance annually evaluated.

#### **4. Meetings**

4.1 The Board shall hold its regular meetings at least six (6) times during the calendar year, which shall be held after the end of the financial year for performance assessment, after the Annual Shareholders' Meeting for its organizational meeting and on a quarterly basis or as often as may be necessary. The quarterly meetings shall consider, among others, the quarterly financial results.

4.2 Special meetings of the Board may be convened at the request of the Chairman or Vice Chairman or by at least three members of the Board.

4.3 Unless otherwise agreed, notice of each meeting confirming the venue, time and date of the meeting shall be forwarded to the directors at least five (5) business days in advance of each scheduled meeting date together with the agenda and supporting papers. The notice of meeting may be transmitted by e-mail, facsimile transmission, personal delivery, or through courier.

4.4 The Board agenda for each meeting shall be set by the Chairman of the Board in consultation with the Chief Executive Officer and Company Secretary. Board papers providing comprehensive information on the agenda items shall be circulated to the Directors at least five (5) business days prior to the meeting to enable them to consider the matters in advance and prepare for the meeting. Operations and financial reports are also provided to the Board on a regular basis.

4.5 The meetings shall be presided by the Chairman of the Board, or in his absence, by the Vice Chairman or such other members of the Board who may be designated for the purpose.

4.6 A majority of the Directors constitute a quorum for the transaction of corporate business.

4.7 A director who is unable to physically attend a meeting in person may participate via audio/video conference or convey his/her views in writing through another director or the company secretary.

4.8 The Board seek to make decisions by consensus. Where there is a divergence of views, decisions are made by majority vote.

4.9 Deliberations and decisions of the Board and Board Committees are minuted and filed.

4.10 Minutes of the meeting will be recorded and maintained by the Corporate Secretary and presented to the Board at the next meeting for approval. It shall be signed by the Secretary and attested by the directors present during the meeting.

4.11 At least once a year, the Non-Executive Directors shall meet on an executive session without the presence of management or any of the executive directors. The non-executive directors shall also hold separate meetings with the external auditor, internal auditor, compliance officer and risk officer without the presence of Management. Such executive session shall be presided by the Lead Independent Director.

4.12 The Board may from time to time, invite corporate officers, other employees and advisors to attend Board or committee meetings whenever deemed appropriate.

## **5. Compensation**

The Directors shall be entitled to receive reasonable per diem allowance to be fixed by the Board for their meeting attendance. Any other arrangement or arrangements pursuant to which directors of the Company are to be compensated for services provided as a director shall be subject to the prior recommendation of the Nomination and Remuneration Committee and subject to the approval or ratification of the shareholders.

Nothing herein shall preclude any director from serving the Company in any other capacity and receiving compensation therefor.

## **6. Miscellaneous Provisions**

6.1 Directors shall have full and free access to Management and staff, the external auditor and information, data, records and properties of the Corporation for the purpose of carrying out their duties.

6.2 The Board shall have the authority to retain, at the Company's expense, such independent advisors, including legal counsel or other experts, as it deems appropriate, and to approve the fees and expenses of such advisors.