

**Dear Fellow eSense Shareholders and CDI Holders**

**WE NEED YOUR SUPPORT TO GET ESENSE BACK ON TRACK**

On 29 March 2018, eSense-Lab Limited (ASX:ESE) (**Company** or **eSense**) will hold its 2017 Annual General Meeting (**AGM**). On the same day, the Company will also hold an extraordinary shareholder meeting requisitioned by us (being Romfal Sifat Pty Ltd (**Romfal**), Buzz Capital Pty Ltd (**Buzz**) and Attollo Investment Pty Ltd (**Attollo**)) (together, **we** or the **Requisitioning Shareholders**) (**Requisitioned Meeting**).

Our decision to request the Requisitioned Meeting was not made lightly. However, we have completely lost confidence in the existing Board, and have requested the Company to despatch this letter to shareholders to ensure you are fully informed ahead of the AGM and Requisitioned Meeting. We need your support to get eSense back on track and as such, at the AGM, we strongly encourage you to vote **AGAINST** the re-election of Haim Cohen, Eran Gilboa, Ilan Saad and Benjamin Karasik as Directors, and **FOR** the election of Brendan de Kauwe, Andreas Gedeon, Faldi Ismail and Tim Wise as Directors. At the Requisitioned Meeting, we strongly encourage you to vote to remove Messrs Cohen, Gilboa and Saad as Directors (if they are re-elected at the AGM) and to elect Messrs de Kauwe, Gedeon, Ismail and Wise as Directors (if they are not already elected at the AGM).

**We are very concerned about eSense:**

**1. Inappropriate Continued Delays of 2017 AGM**

The Company's 2017 AGM was originally scheduled to be held on 29 November 2017. On 24 November 2017, the Company announced that the AGM will be postponed to 29 December 2017, and on that same day, the Company announced a further postponement of the AGM to 15 February 2018, citing that a number of Israel-based shareholders had not received their meeting documents. On 9 February 2018, the Company announced that the AGM had been cancelled, and convened a new AGM (with a new record date) to be held on 29 March 2018. This means that the AGM will be held 4 months after it was originally scheduled to be held.

We consider the continued postponement of the AGM to be extremely inappropriate, and an indication of a lack of appropriate governance and control within the Company. Annual general meetings provide the central forum by which companies can effectively communicate with shareholders, and provide them with access to information about the company and corporate proposals and enable their participation in decision-making. As such, Israeli companies are expected to hold an AGM each calendar year and at least once every 15 months. eSense did not hold an AGM in 2017, depriving shareholders an important opportunity to access information on the Company and its business.

We are also disappointed at the surrounding circumstances in which the AGM has been continually delayed. The Company's 29 December 2017 ASX announcement cited the reason for the delay to 15 February 2018 was that a number of Israel-based shareholders had not received their meeting documents. The meeting materials were released by the Company on ASX (and therefore available to all shareholders), and provided it (and its share registry) has complied with the notice requirements of its Articles and applicable law, the Board's duty should be to ensure the meeting is held on time for the benefit of all shareholders rather than ensuring that each and every shareholder has received the meeting materials.

## 2. Timing of postponement and cancellation of AGMs

The timing of the further postponement of the AGM was also questionable. The postponed AGM was scheduled to be held on 29 December 2017, and it was not until that very day that the further postponement to 15 February 2018 was announced, causing undue inconvenience to shareholders intending on attending the meeting. Further, at that point in time, all proxy voting for the AGM would have been received and it is likely the Board would have had an indication of the likely outcome of the resolutions to be considered.

The Company announced the cancellation of the AGM on 9 February 2018, a mere 1 business day before the close of proxy voting for the meeting, and convened a new AGM to be held on 29 March 2018, as the date of 15 February 2018 chosen by the Board was not in accordance with Israeli laws. Again, at this point in time, the Board would have had a very good idea of how proxies were being voted for the AGM. The announcement also noted the AGM will be held in Israel instead of Australia, despite the fact only ~0.02% of the Company's greater than ~1200 shareholders have a registered address in Israel. Cancellation of the AGM and convening a new meeting meant that the record date for voting at the AGM was also reset. This action was so concerning that two Directors took Court action to seek to have the AGM held as contemplated on 15 February 2018. In its judgement, the Court noted that whilst it is possible there was a flaw with the Board's decision to postpone the AGM, it declined to make orders because the original record date was not in accordance with Israeli regulations (due to the various postponements) and the fact the cancellation had already been announced. The Court further ordered that the AGM not be further postponed without Court approval.

In the above circumstances, we can't help but query the motives of the Board in continually postponing the AGM at such late stages.

We are extremely disappointed about the continued delays to the AGM and consider that appropriate action needs to be undertaken to ensure this will not occur again.

## 3. Lack of clarity regarding Distribution Agreement

On 15 January 2018, the Company announced that it had entered into a binding distribution and sales agreement with IC Access, a United Arab Emirate's entity, under which IC Access has agreed to a minimum commitment to purchase Terpene Strains from the Company for \$1.1 million over 3 years (**Distribution Agreement**). The announcement provided little detail of the key terms of the agreement, and little is known about IC Access. We note the Company's listing prospectus dated 6 December 2016 noted it had received a purchase order from Allor Vaporizers (**Allor**) to purchase US\$470,000 worth of the Company's cannabis Terpene Profiles, noting that the purchase order does not specify an 'end date' by which the order must be satisfied, but that its intention is to satisfy the order in April 2017. The Company subsequently announced on 26 September 2017 that receipts of only US\$85,000 had been received from Allor with the balance contracted for fulfillment by 30 December 2017. Given this history of performance by counterparties, we consider that the Board should be particularly vigilant in entering into new contracts and provide better disclosure to the market in this regard.

The Company's share price did not move following the announcement of the Distribution Agreement, and in fact fell in the following days. We are concerned that this is an indication

the market is questioning the merits of the Distribution Agreement and has lost confidence in the existing Board.

#### **4. Purported vesting of Class C Performance Rights**

On 29 January 2018, the Company released an Appendix 3B for the issue of 9,537,503 CDI's and 6,429,111 Class E Performance Rights following the vesting of the Company's Class C Performance Rights. The Company had a total of 15 million Class C Performance Rights on issue but the Appendix 3B noted that holders of 5,462,497 rights had not yet made an election to convert. On 19 February 2018, the Company announced that the Board had resolved to cancel the conversion of the Class C Performance Rights and Class E Performance Rights, and for these securities to be held in trust, but gave no explanation for these actions.

The performance condition of the Company's existing Class C Performance Rights is the signing of a binding distribution agreement worth A\$1 million to supply Terpene Profiles within 12 months of the Company's admission to the ASX (which period ended on 14 February 2018). The Board had previously determined that the IC Access Distribution Agreement satisfied the Class C Performance Rights performance condition, and as such has issued CDIs which has significantly diluted shareholders.

The Directors of the Board subject to removal at the Requisitioned Meeting are Messrs Cohen, Gilboa and Said, all of whom have elected to convert their Class C Performance Rights and were issued 766,586, 1,942,471 and 104,901 CDIs respectively, with the balance elected to be converted by parties known to the aforementioned Directors. As noted in the Company's 19 February 2018 announcement, these CDIs will now be held in trust.

The holders of the remaining 5,462,497 Class C Performance Rights have not yet elected to convert their rights into CDIs, notwithstanding the Board's prior determination that they had vested. These holders include the Requisitioning Shareholders, being Dr Brendan de Kauwe (currently a Director of the Company), Faldi Ismail and Buzz Capital Pty Ltd. We were concerned about the Board's decision to vest the Class C Performance Rights for a number of reasons, in particular:

- as detailed in section 3, we question the legitimacy of the Distribution Agreement and the lack of disclosure to the market in this regard, as well as the Board's decision that the signing of this agreement should satisfy the Class C Performance Rights performance condition (particularly given members of the Board hold the rights);
- in addition, we query the rationale and timing for the Board to determine that the Class C Performance Rights should vest and issue the CDIs immediately after the Requisitioned Meeting has been requested;
- furthermore, as clearly noted in the Class C Performance Rights terms (in Section 9.4 (C)(ii) of the Company's listing prospectus, even if the Board determines that the performance condition has been met, the Class C Performance Rights do NOT vest until the date "two years from the date of Admission".

#### **5. Cancellation of conversion of Class C Performance Rights**

The 19 February 2018 announcement notes that the CDIs and Class E Performance Rights will be held in trust until the earlier of (i) a resolution of an authorised body of the Company to release such securities from the trust, or (ii) the Company receiving A\$1,000,000 pursuant to binding distribution contracts for the Company's reconstructed terpene profiles signed by

the Company between 10 February 2017 and 10 February 2018. The Board's decision in this regard is very confusing and concerning, and raises a number of issues:

- it is unclear if the performance hurdle of the Class C Performance Rights has been met, and raises questions about the legitimacy of the Distribution Agreement;
- the treatment of the Class C Performance Rights is inconsistent with their terms of issue, as disclosed in the Company's listing prospectus;
- having such a significant number of CDI's held in trust affects the liquidity of the Company's stock, and has significantly diluted existing shareholders;
- it is not clear what happens to the securities if the Company does not receive \$1,000,000 pursuant to agreements signed between 10 February 2017 and 10 February 2018, or the time period within which this has to be achieved; and
- in the circumstances, having a term that the securities can be released from trust on approval by an authorised body of the Company is plainly unacceptable.

Whilst the Requisitioning Shareholders acknowledge the desire for the Board and management to be incentivised through the issue of performance rights with appropriate performance conditions, we think there should be a stronger focus on ensuring the value of the agreements the Company enters into is actually translated to shareholders before such significant dilution is caused.

## **6. Sudden Departures of Key Personnel**

The intellectual property of eSense's business was developed by Dr Yaron Penn, the former Chief Technology Officer (CTO) of the Company. Dr Penn's importance to the business was outlined in the Company's listing prospectus. Dr Penn resigned as a result of frustration with the current management, and Eyal Kalo was later appointed CTO.

On 9 January 2018, the Company announced that it had appointed Mr Ian Pamensky as Company Secretary to replace Mr Steven Wood. Mr Wood was the Company Secretary of eSense since its listing on ASX February 2017, and as such had an intimate knowledge of the Company's business and operations.

Little explanation has been given for the departures of Messrs Penn and Wood from the Company, and given their importance to the Company and business, in particular Dr Penn as developer of the intellectual property behind the Company's products, we consider that more could have been done in the interests of shareholders.

## **7. Inappropriate Board Composition**

We are concerned that there appears to be a lack of appropriate experience on the Board in the medicinal cannabis space, particularly given the departure of Dr Penn.

In addition, the current Board is comprised of 4 Israelis and 2 Australians. On 9 February 2018, the Company announced that it had replaced its Australian Chairman Dr Brendan de Kauwe with Mr Ilan Saad who is Israeli based, but gave no explanation for this change. Given the Company is listed on the ASX and a significant percentage of its members are Australian, we consider that a Board composition more representative of the Australian shareholder base is appropriate to ensure that Australian shareholders are properly represented.

At the Requisitioned Meeting, shareholders will be asked to approve the appointment of Mr Faldi Ismail, Mr Andreas Gedeon, Mr Tim Wise and (if he is not re-elected at the AGM) Dr de Kauwe who is currently a Director, all of whom bring significant skills, networks and experience to the Board, including industry specific experience in the medicinal cannabis space.

## **8. Profile of Director nominees**

Dr. Brendan de Kauwe (Director). BDSc (UWA), Grad Dip App Fin, Dip Music Industry. Dr. de Kauwe studied a Bachelor of Science and Bachelor of Dental Surgery from the University of Western Australia. He also holds a Post Graduate Diploma in Applied Finance, majoring in Corporate Finance, and is an ASIC complaint (RG146) Securities Advisor. Dr. de Kauwe is a Director of Otsana Capital, a corporate advisory firm, with vast experience in corporate restructuring and recapitalisations, mergers and acquisitions, IPO/RTO and capital markets. Dr. de Kauwe's corporate experience, coupled with his extensive technology, science and bio-medical background gives him an integral understanding in the evaluation and execution of projects and assets over a diverse range of sectors. He has held numerous ASX Listed roles including: Chairman/Director of the eSense Lab Ltd, Director - G Medical Innovations Holdings Ltd (ASX:GMV), Director - Race Oncology Ltd (ASX:RAC), Director - Ookami Ltd (ASX:OOK).

Mr. Gedeon, a former Officer in the German Navy, holds a degree in Educational Science from the University of the German Federal Armed Forces. As the founder of the Canadian Licensed Cannabis Producer United Greeneries Ltd. and the Swiss cannabis pharmaceutical and nutraceutical manufacturer Satipharm AG, he has strong operational expertise and networking contacts in the international cannabis industry. Mr Gedeon is the CEO and Managing Director of Harvest One Cannabis Inc. (**Harvest One**) (TSXV: HVST), a Canadian company focused on serving both the medical and recreational cannabis markets, in Canada and internationally. As detailed in the Company's 14 November 2017 ASX announcement, Company, Harvest One and MMJ Phytotech Limited are parties to a collaboration agreement.

Mr Ismail is an experienced corporate advisor who specialises in the restructure and recapitalisation of a wide range of ASX-listed companies. He has many years of investment banking experience and has advised on numerous cross border transactions including capital raisings, structuring of acquisitions and joint ventures overseas. Mr Ismail is currently a director of a number of ASX listed companies.

Mr Wise has had a broad range of business experience in public companies, SMEs and investing. He was the founder and CEO of ASX listed Wasabi Energy (renamed Kalina Power Ltd, ASX:KPO), and has been a Non-Executive Director across a range of both public and private companies. He was founder of 'The Tap Doctor', one of Australia's largest maintenance and services companies, growing it from a startup to national franchise. Mr Wise has also trained and consulted to BHP, Western Power, Panoramic Resources, Aurecon GE and National Australia Bank in the domain of business storytelling, and is a regular keynote speaker at corporate events. He is a partner at Xponova, a small investment consultancy making investments in early stage tech and industrial innovation opportunities.

## **9. Intentions of Director nominees**

If Messrs Ismail, Gedeon, Wise and/or de Kauwe are elected to the Board, they intend to lobby the eSense Board to undertake the following actions in the interests of all shareholders:

- Ensure that moving forward, the Board composition better reflects the Company's Australian shareholder base, and also ensure that the experience and skills of the Board are appropriate for the Company's business and implementation of its strategy;
- Consider re-domiciling the Company from Israel to Australia, which will mean the Company will be governed by Australian laws moving forward;
- Consider the re-appointment of the former CTO and developer of the Company's intellectual property Dr Yaron Penn as well as the former Company Secretary Steven Wood; and
- Implement appropriate protocols and procedures to seek to address the governance issues raised above.

**Disclosures pursuant to the Israeli Companies Regulations (Voting in Writing and Position Statements), 5766-2005 (the Regulations)**

The following information regarding the Requisitioning Shareholders is provided pursuant to the Regulations:

- the Requisitioning Shareholders are Romfal, Buzz and Attollo;
- Romfal holds approximately 3.68% of the issued capital of the Company and is controlled by Faldi Ismail. Aside from this holding, Faldi Ismail also holds approximately 1.15% of the issued capital of the Company;
- Buzz holds approximately 2.04% of the issued capital of the Company and is controlled by Zaakir Ismail;
- Attollo holds approximately 2.04% of the issued capital of the Company and is controlled by Brendan de Kauwe;
- Romfal, Buzz and Attollo have cooperated to requisition the Requisitioned Meeting and in preparing the Position Statement, but are otherwise unassociated entities controlled by different persons, and will act independently of each other (and any third parties) in relation to voting and general matters at the Requisitioned Meeting;
- Faldi Ismail, Zaakir Ismail and Brendan de Kauwe are Directors of Otsana Capital, a boutique corporate advisory firm which provides corporate advisory services to the Company. Save for this or as noted above, they do not have a personal interest in the results of voting at the Requisitioned Meeting.

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