

Mr Wade Baggott  
Principal Adviser, Listings Compliance (Perth)  
ASX Limited  
Level 40, Central Park, 152-158 St Georges Terrace  
Perth WA 6000

By email: [Wade.Baggott@asx.com.au](mailto:Wade.Baggott@asx.com.au)

28 March 2018

Dear Wade

**eSense-Lab Ltd (ASX:ESE) ("Company") - Response to ASX Queries of 26 March 2018**

I refer to your email to me dated 26 March 2018 and, on behalf of the Company, provide the following responses to your queries (the numbers below correspond to the numbers on the query received):

**1. Financial Condition**

As reported in the Quarterly report for the period ended 31 December 2018, the Company had US\$2.425m in the various Company bank accounts, of which US\$2.075m was held in the Company's Australian bank account (excluding a US\$165,192 security deposit in a Israeli bank account) (the "**Account**"). In accordance with a resolution passed at Board Meeting held on 19 January 2018, the signature rights on the Australian bank accounts were changed. This included the replacement of the former Company Secretary and the removal of Dr Brendan de Kauwe. Dr Brendan de Kauwe has chosen to ignore the Board's resolution and has refused to execute the necessary documents in order to give effect to the aforementioned resolution and at the same time refused to execute payment orders issued by the Company with the exception described below. Since this time and for the above reason, the Company has not had access to the funds that are held in the Australian bank accounts as two signatories are required (the signatories are the former Company Secretary, who has had his access revoked, Dr de Kauwe and Haim Cohen).

The Company has been able to pay all salaries and wages to March 2018, after reaching an agreement with the Australian bank and Dr Brendan de Kauwe to pay a specified amount based on a payment list prepared. The Company does have outstanding creditors, which it is hoping to pay after tomorrow's AGM and EGM, when the Board is finalised, and the Account signatories can be changed. The current list of creditors is less than the balance in the Account.

**2. Level of Operations - Listing Rule 12.1**

Since 25 January 2018, when shareholders, including an entity of which Dr de Kauwe is the sole shareholder and director) requested an EGM, the Company has spent a considerable amount of time on dealing with matters relating to this meeting and the AGM scheduled for the same day, but the general operations of the entity including research and development, sales & marketing and general administration have continued. During this time, the Company has made a number of ASX announcements (See announcements on 31 January 2018, 9 March 2018 and 14 March 2018). During this period no staff have been laid off.

**3. Legal opinion – AGM + EGM**

Attached to this letter please find a legal opinion by Goldfarb, Seligman, in relation to the annual general meeting and extraordinary general meeting (the "Meetings") to be held tomorrow.

**4. De Kauwe Position Statement**

The De Kauwe Position Statement has been released to the market as part of Notice of Meeting – AGM + EGM announced on 7 March 2018.

**5. Disclosure**

The Company is satisfied that it has disclosed the information required to be disclosed regarding the nature and extent of the dispute with Dr de Kauwe and as required to vote at the Meetings to be held on 29 March 2018.

**6. Has the Company reported its allegations against BDK to the relevant corporate regulator in Israel?**

No. The Company is not a "Reporting Company" as defined by the laws of Israel and thus is not required to make any report or announcement to any regulatory body in Israel.

**7. Has the Company reported BDK's allegations to the relevant corporate regulator in Israel?**

No. The Company is not a "Reporting Company" as defined by the laws of Israel and thus is not required to make any report or announcement to any regulatory body in Israel.

**8. Authorisation of ASX Announcements**

Until early this month, announcements have generally been released with the approval of a majority of directors. On 5 March 2018, the Board voted to approve a new process for approval of ASX announcement and disclosure related matters (including delegated authority) and the Company has complied with that resolution since that date with respect to announcements and disclosure issues.

**9. Approval of this letter**

The Company's responses to the questions above have been authorised the Chairman of the Company with delegated authority from the board to respond to ASX on disclosure matters.

**10. Continuous Disclosure obligations**

The Company confirms that it is in compliance with the Listing Rules, in particular, Listing Rule 3.1.

Please contact me if you have any further queries.

Yours sincerely



**Ian Pamensky**  
Company Secretary  
eSense-Lab Limited



**Goldfarb Seligman**  
Law Offices Established 1930

**AMPA TOWER**  
98 Yigal Alon Street  
Tel Aviv 6789141, Israel  
Tel +972 (3) 608-9999  
Fax +972 (3) 608-9909

INFO@GOLDFARB.COM  
WWW.GOLDFARB.COM

Gabriel Hake, Partner  
Direct: +972 (3) 710-1656  
Fax: +972 (3) 566-9355  
gabi.hake@goldfarb.com

March 27, 2018

To  
eSense Lab Ltd. (the "**Company**")  
att. Mr. Ilan Saad, Chairman of the Board  
by email: [IlanS@dtas.co.il](mailto:IlanS@dtas.co.il)

File: 30826/1

Dear Sir,

Re: **Legal Opinion**

We have been requested by you to give our legal opinion whether the annual general meeting and extraordinary general meeting (the "**Meetings**") to be held on 29 March 2018 have been called, and the Notices of Meeting (including the associated proxy forms and voting instructions) have been prepared, in accordance with the laws of the State of Israel which apply to the Company and include all materials required to be provided to shareholders in connection with the business to be conducted at the Meetings under that law.

We are duly qualified to practice the laws of the State of Israel and such qualification has not been revoked, suspended, restricted or limited in any manner whatsoever. Accordingly, we are duly qualified to issue this legal opinion.

In providing this opinion, we have examined originals or copies only of the documents listed below, which were provided by the Company. We have assumed, based on the information given to us by the Company, that no amendments and/or revisions have been made in the said documents nor that there are any other documents, which individually or in the aggregate, may affect the validity or the provisions of the said documents or our opinion as set forth below:



- Notices of Meeting issued by the Company for the Annual General Meeting dated 29 March 2018;
- Notices of Meeting issued by the Company for the Extraordinary General Meeting dated 29 March 2018;
- The Proxies forms and voting instructions associated with the aforementioned general meetings;
- The Company's Articles of Association.

Having reviewed the aforesaid documents and based on the Israeli laws, it is our legal opinion, that the Meetings have been called, and the Notices of Meeting (including the associated proxy forms and voting instructions) have been sufficiently prepared, in accordance with the laws of the State of Israel which apply to the Company, and include all materials required to be provided to shareholders in connection with the business to be conducted at the Meetings under that law.

This opinion is governed by, and shall be interpreted solely in accordance with, the laws of the State of Israel. We express no opinion as to any laws other than the laws of the State of Israel as the same are in force on the date hereof and we have not, for the purpose of giving this opinion, made any investigation of the laws of any other jurisdiction, nor did we make any investigation with respect to any issues of conflict of laws between the law of the State of Israel and the law of other jurisdictions, and any issue which may arise with respect to this opinion will be resolved solely pursuant to the laws of the State of Israel.

Sincerely,

Goldfarb, Seligman, Law Firm





26 March 2018

Ian Pamensky  
Company Secretary  
e-Sense Lab Limited

By Email: [ian@cfo2grow.com.au](mailto:ian@cfo2grow.com.au)

Dear Mr Pamensky

**e-Sense Lab Limited ("ESE")**

ASX Limited ("ASX") refers to the following:

- A. The announcement lodged by ESE entitled "Shareholder Requisition of General Meeting" lodged on the ASX Market Announcements Platform ("MAP") on 25 January 2018.
- B. ASX's query letter dated 5 February 2018 ("ASX Query Letter") and ESE's response to the ASX Query Letter dated 6 February 2018, released to MAP on 7 February 2018 ("ASX Query and Response").
- C. The notice of annual general meeting lodged on MAP on 20 February 2018 ("Notice of AGM").
- D. The notice of extraordinary general meeting lodged on MAP on 20 February 2018 ("Notice of EGM").
- E. The announcement entitled "AGM – Proposal Requests" lodged on MAP on 2 March 2018.
- F. The amalgamated notices of annual general meeting and extraordinary general meeting lodged on MAP on 7 March 2018 which replaced the Notice of AGM and Notice of EGM ("Notices of Meeting").
- G. The announcement entitled "eSense Appoints Examiner to Investigate Conduct of Director" lodged on MAP on 13 March 2018 ("Examiner Appointment Announcement").
- H. The announcement entitled "Position Statement" lodged on MAP on 21 March 2018 ("ESE Position Statement").
- I. The announcement entitled "Commencement of Legal Proceedings" lodged on MAP on 22 March 2018 ("Commencement of Legal Proceedings Announcement").
- J. Listing Rule 12.1, which requires that the level of an entity's operations must, in ASX's opinion, be sufficient to warrant the continued quotation of the entity's securities and its continued listing.
- K. Listing Rule 12.2, which requires that an entity's financial condition must, in ASX's opinion, be sufficient to warrant the continued quotation of the entity's securities and its continued listing.
- L. Listing Rule 3.1, which requires a listed entity to give ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- M. The definition of "aware" in Chapter 19 of the Listing Rules. This definition states that:

*“an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.”*

Additionally, you should refer to section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B “When does an entity become aware of information”*.

- N. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

*“3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*

*3.1A.1 One or more of the following applies:*

- It would be a breach of a law to disclose the information;*
- The information concerns an incomplete proposal or negotiation;*
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- The information is generated for the internal management purposes of the entity; or*
- The information is a trade secret; and*

*3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

*3.1A.3 A reasonable person would not expect the information to be disclosed.”*

Having regard to the above, we ask that you answer the following questions and provide the following information in a format suitable for release to the market in accordance with Listing Rule 18.7A:

1. ASX notes statements by ESE within the ESE Position Statement and the Commencement of Legal Proceedings Announcement to the effect that ESE cannot currently access its Australian bank accounts to enable it to conduct its ongoing business activities, including paying staff salaries. Please confirm whether or not that is the case and, if it is, please explain how ESE currently complies with Listing Rule 12.2, commenting specifically on any other funding available to ESE and whether ESE is able to pay its debts as and when they fall due.
2. Please explain how ESE currently complies with Listing Rule 12.1, commenting specifically on what operations ESE is currently carrying out and how those operations are able to be carried out, given that ESE cannot currently access its Australian bank accounts.
3. Please provide to ASX a legal opinion from a reputable Israeli law firm confirming that the annual general meeting and extraordinary general meeting (the “Meetings”) to be held on 29 March 2018 have been called, and the Notices of Meeting (including the associated proxy forms and voting instructions) have been prepared, in accordance with the law of Israel and include all materials required to be provided to shareholders in connection with the business to be conducted at the Meetings under that law.

4. In the ESE Position Statement, ESE referred to having received a separate “position statement” from requisitioning shareholders under section 88(a) of the Israeli Companies Law (“De Kauwe Position Statement”). Please confirm that the De Kauwe Position Statement, has been released to the market.
5. ASX is aware of further allegations made by Dr de Kauwe regarding the conduct of the Board of ESE (other than himself) following the release of the ESE Position Statement. Please confirm that ESE has disclosed to ASX all information required to be disclosed regarding the nature and extent of the dispute with Dr de Kauwe and that shareholders are fully informed to vote at the Meetings to be held on 29 March 2018.
6. Has the board of ESE reported its allegations, as set out in the ESE Position Statement, regarding the allegedly unlawful conduct of Dr de Kauwe, and that ESE has commenced legal proceedings against him, to the relevant corporate regulator in Israel? If not, why not?
7. Has the board of ESE reported the allegations made by Dr de Kauwe, as set out in the De Kauwe Position Statement and subsequent materials published by Dr de Kauwe, regarding the allegedly unlawful conduct of the board of ESE (other than Dr de Kauwe) to the relevant corporate regulator in Israel? If not, why not?
8. Please confirm that ESE’s announcements to ASX since its date of admission to ASX on 2 February 2018 have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of the Company with delegated authority from the board.
9. Please confirm that ESE’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of the Company with delegated authority from the board to respond to ASX on disclosure matters.
10. Please confirm that ESE is in compliance with the Listing Rules, and in particular, Listing Rule 3.1.

Once ASX has received and analysed the information above, it may make further enquiries of ESE.

In providing the information above, ASX would remind you that an officer or employee of a listed entity who gives, or authorises or permits the giving of, materially false or misleading information to ASX:

- knowingly, breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by a fine of up to 200 penalty units and/or imprisonment for up to 5 years; or
- without taking reasonable steps to ensure that the information was not false or misleading, breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.

#### **When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than **7.00 a.m. WST on Wednesday, 28 March 2018**.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, ESE’s obligation is to disclose the information “immediately”. This may require the information to be disclosed before the deadline set out in the previous paragraph.

ASX reserves the right to release a copy of this letter and your response on MAP under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [wade.baggott@asx.com.au](mailto:wade.baggott@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on MAP.

**Listing Rule 3.1**

Listing Rule 3.1 requires a listed entity to give ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities. Exceptions to this requirement are set out in Listing Rule 3.1A.

In responding to this letter, you should have regard to ESE's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

It should be noted that ESE's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

*[sent electronically without signature]*

Wade Baggott

**Principal Adviser, Listings Compliance (Perth)**