

# CRYSTALLEX INTERNATIONAL CORPORATION

## Policy on Independence of Directors

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### 1. Background

The board of directors (**Board**) of Crystallex International Corporation (**Corporation**) has developed this Policy after consideration of recent changes in the corporate governance requirements in Canada and the United States relating to the independence of directors applicable to the Corporation.

Certain of these requirements require that a majority of the directors of the Corporation (**Directors**), and all the Directors on the audit, compensation and nominating committees of the Board, are independent.

### 2. Purpose

The purposes of this Policy are:

- (a) to set out the test that the Board will use to determine whether a Director is independent;
- (b) to identify the criteria that the Board will use to assess whether a Director is independent; and
- (c) to describe the disclosure that the Board will provide to the shareholders of the Corporation with respect to its determination of the independence of Directors.

### 3. Test of Independence

The test that will be used by the Board to determine whether a Director is independent is:

*Independent of management or any other direct or indirect material business or other relationship with the Corporation and its subsidiaries and any other entity that is consolidated with the Corporation's financial statements (**Crystallex Group**) that could interfere with the exercise of independent judgment by the Director or the ability of the Director to act in the best interests of the Corporation.*

### 4. Assessment Process

Each Director will provide the Board with information sufficient to enable the Board to assess whether the Director is independent, including information with respect to the criteria set out below.

The Board will assess whether a Director is independent annually and whenever new information is provided to the Board. The Board will consider all relevant information in assessing whether a Director is independent.

Generally, a Director will be considered to be independent if he/she satisfies all the criteria set out below. A Director may, however, be considered to be independent even though he/she does not satisfy one or more of the criteria set out below. For example, the director independence criteria set out below are in some cases more restrictive than those prescribed under requirements applicable to the Corporation (*Prescribed Requirements*). Also, the Prescribed Requirements for qualification for membership on an audit committee are more restrictive than those for qualification for membership on a compensation or nominating committee or a board of directors generally. If a Director satisfies the Prescribed Requirements, the Board may, in certain circumstances, determine that a Director is independent.

## 5. Criteria used to Assess Independence

The criteria that the Board will use in assessing whether a Director is independent are set out below. Defined terms used in connection with one of the criteria apply to all of the criteria.

- (1) *Is not an officer or employee* – neither the Director nor an immediate family member of the Director is, or within the last three years has been, an officer or employee of a member of the Crystallex Group.

An *immediate family member* of an individual is the individual's spouse, parent, child, sibling, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law and anyone, other than an employee, who resides in the individual's home.

An *officer* of an entity includes an individual who performs a policy making function in respect of the entity or who makes, or participates in making, decisions that affect all or a substantial part of the business of the entity, whether or not the individual is employed by the entity and whether or not the individual does so directly or through another entity.

A Director may be considered to be independent if an immediate family member of the Director is only an employee of a member of the Crystallex Group.

- (2) *Is not a substantial shareholder* – the Director is not a substantial shareholder of a member of the Crystallex Group or affiliated with a substantial shareholder of a member of the Crystallex Group.

A *substantial shareholder* of an entity is a person who beneficially owns, directly or indirectly, or exercises control or direction over, 10% or more of the voting interests of the entity.

An individual is *affiliated* with an entity if the individual is a director, officer, employee, principal, partner or managing director of, or occupies a similar position with, the entity or is a substantial shareholder of the entity.

A Director who is a director of a substantial shareholder of a member of the Crystallex Group may be considered to be independent if the Director is independent of the substantial shareholder.

- (3) *Has no material contractual relationship* – the Director does not have any material contractual relationship with a member of the Crystallex Group other than as a Director.

The test of whether a contractual relationship is *material* will be based on all the circumstances relevant to the Director.

- (4) *Does not receive consulting or other advisory fees or payments* – neither the Director nor an immediate family member or related entity of the Director receives, or within the last three years has received, consulting or other advisory fees or payments from the Crystallex Group that in any year exceed the lesser of C\$75,000 and the Canadian dollar equivalent of US\$60,000, other than compensation for Board services, payments arising from investments in securities of the Corporation or, in the case of an immediate family member who is not an officer of a member of the Crystallex Group, compensation for services as an employee of a member of the Crystallex Group.

An entity is a *related entity* of a Director if the Director or an immediate family member of the Director is a director, officer, employee, principal, partner or managing director of, or occupies a similar position with, the entity or is a substantial shareholder of the entity.

- (5) *Does not receive incentive compensation* – the Director does not participate in any share based incentive scheme or performance related pay scheme of the Crystallex Group.

This criterion does not preclude the payment of all or part of a Director's compensation for Board services in the form of shares or options to receive shares of the Corporation.

- (6) *Is not a professional consultant or advisor* – neither the Director nor an immediate family member of the Director is, or within the last three years has been, an auditor or other professional consultant or advisor to a member of the Crystallex Group or affiliated with an auditor or other professional consultant or advisor to a member of the Crystallex Group.

A *professional consultant or advisor* includes an entity that provides accounting, actuarial, consulting, legal, investment banking or financial advisory services.

A Director may be considered to be independent if an immediate family member of the Director is only an employee of an auditor or other professional consultant or advisor to a member of the Crystallex Group and does not participate in a material way in the provision of services to the member of the Crystallex Group by the auditor or other professional consultant or advisor.

- (7) *Is not a material supplier or customer* – neither the Director nor an immediate family member of the Director is, or within the last three years has been, a material supplier or customer of the Crystallex Group or affiliated with a material supplier or customer of the Crystallex Group.

A *material supplier or customer* of the Crystallex Group is a person to which the Crystallex Group made or from which Crystallex Group received payments (other than payments arising from investments in securities of the Corporation) in any year that

exceed the greater of 5% of the consolidated gross revenues of the person for the year and the Canadian dollar equivalent of US\$200,000.

- (8) *Has no board remuneration committee connection* – neither the Director nor an immediate family member of the Director is, or within the last three years has been, an officer of any entity, the compensation committee of which includes, or within the last three years included, an officer of the Corporation.
- (9) *Has no other material business relationship* – neither the Director nor an immediate family member or related entity of the Director has, or within the last three years has had, directly or indirectly, any other material business relationship with the Crystallex Group.

The test of whether a business relationship is *material* will be based on the circumstances relevant to the Director.

- (10) *Has no significant links with other Directors* – the Director does not hold cross-directorships or have any significant links with any other Director (eg, through involvement in other entities) that would materially interfere with the exercise of independent judgment by the Director or the ability of the Director to act in the best interests of the Crystallex Group.
- (11) *Has not served too long* – the Director has not served on the Board for a period that could, or could reasonably be perceived to, materially interfere with the Director's ability to act in the best interests of the Crystallex Group.
- (12) *Is independent in character and judgment* – the Director is independent in character and judgment.

## 6. Disclosure

The Board will provide to the shareholders of the Corporation annually disclosure with respect to its determination of the independence of the Directors, including:

- (a) identifying which Directors are and are not independent and the basis of the determination of independence;
- (b) explaining any determination of independence of a Director who does not satisfy all the criteria set out above; and
- (c) describing all the material relationships of each Director with the Crystallex Group (whether or not falling within the criteria set out above), including relationships which the Board believes do not affect independence but which the Board believes could be perceived as interfering with the exercise of independent judgement by the Director or the ability of the Director to act in the best interests of the Crystallex Group.

The Board will provide to the shareholders of the Corporation as soon as practicable disclosure with respect to any change in its determination of the independence of a Director.