



## ASX Release

### CURRENT MATERIAL ISSUES ANNOUNCEMENT

**Eastland Medical Systems Ltd (ASX:EMS)** The following announcement is made to ensure that all shareholders are fully informed of all current material issues as part of the Board's continuous disclosure obligations under ASX Listing Rule 3.1

#### Clinical Trial Results

The Board advises that it expects to make an announcement in relation to the recent Clinical Trial during the week commencing Monday April 26, 2010.

#### hc Berlin Pharma AG

On December 10, 2009 EMS, based on the advice of EMS's German lawyers Lovells LLP requisitioned an Extraordinary General Meeting of hc Berlin Pharma AG (Berlin Pharma) to address a range of issues which included:

- Submission of Berlin Pharma's approved annual financial statements as of 31 December 2008 as well as the report of the Management Board and the report of the Supervisory Board for financial year 2008.
- Cancellation of both the unissued authorised capital and contingent capital.
- Dismissal of Supervisory Board members Herr Rudolf Schötteldreier and Mr Douglas A Sims.
- Appointment of a Special Auditor pursuant to Section 142 Para 1 AktG to review the management activities of the Management Board's in regard to:
  - a) the cash capital increase in March 2008 in the total amount of €2,000,000, subscribed in its entirety by Mr Schötteldreier in five subscriptions and five payments;
  - b) the cash capital increase in September 2008 in the amount of €1,091,000, solely subscribed by Mr Schötteldreier;

## Highlights

- **Positive results achieved from Phase 1 multi and single dose clinical studies for ArTiMist™ indicating the formulation was well tolerated and showed no adverse effects in any of the study subjects.**
- **ArTiMist™ Clinical Field Trial completed in February 2010 in Rwanda.**



## ASX Release

- c) the subscriptions by outside shareholders prior to the shares being listed on the Open Market on 23<sup>rd</sup> October 2008;
- d) any breaches of obligations or duties in connection with the extraordinary shareholders' meeting on 9 October 2008.

As of April 20, 2010 Berlin Pharma has failed to provide a proper set of Audited Financial Accounts for the years ended December 31 2008 or 2009 and has failed to call a meeting of shareholders. EMS has now lost all confidence in the current Supervisory Board of Berlin Pharma. The principal reasons are set out below.

Over the past 5 months EMS in conjunction with lawyers Lovells LLP has conducted extensive investigations into the affairs of Berlin Pharma which have included obtaining a range of publicly available documents which in the opinion of EMS establish:

1. A failure (despite request by EMS) of Mr Schötteldreier to transfer to EMS 50,000 "foundation shares" in Berlin Pharma which Mr Schötteldreier holds on trust for EMS.
2. Possible irregularities in related party transactions involving Berlin Pharma and Mr Schötteldreier.

As the principal shareholder in Berlin Pharma EMS has requested a Special Audit into these related party transactions. The majority of the three person Berlin Pharma Supervisory Board, of which Mr Schötteldreier is Chairman, has been singularly uncooperative. Mr Schötteldreier has also been requested to step down from the Supervisory Board due to the irregularities. Mr Schötteldreier has refused to step down.

3. In 2008, the execution of a number of critical documents on behalf of EMS by Mr Douglas Sims without a resolution of the EMS Board.

The documents concern EMS's dealings with Berlin Pharma. In 2008, Mr Sims was both an executive director of EMS and on the Berlin Pharma Supervisory Board.

EMS is of the opinion that Mr Sims was in a position of conflict when executing such documents, and in so doing breached his fiduciary and statutory duties. Mr Sims remains a member of the Berlin Pharma Supervisory Board.

## Highlights

For personal use only



## ASX Release

## Highlights

4. Potential irregularities in connection with a valuation commissioned and paid for by Berlin Pharma as a basis for determining the value of various contracts including the conditional **ArTiMist™** Manufacturing Licence.

Agreement executed between EMS Group and Berlin Pharma. The Valuation documents, which were never made available to the EMS Board, formed the basis for EMS being issued with 8.0m Berlin Pharma shares in August 2008.

EMS has become aware that the basis of the valuation was constructed around both product manufacturing and distribution. This was and remains inconsistent with the contractual position of EMS that the rights granted by EMS to Berlin Pharma in respect of **ArTiMist™** are manufacturing rights only.

In April 2009 EMS prepared, and Berlin Pharma executed, an Addendum Agreement in favour of EMS confirming the contractual position in relation to **ArTiMist™** as being manufacturing rights only. Further, based on the advice of Lovells LLP, EMS is concerned that inconsistencies between the Valuation and the underlying documents submitted to the Valuer and Commercial Registrar by Berlin Pharma render the €8.0m in kind capital contribution invalid.

EMS has however also been advised by Lovells LLP that it may use various offset provisions under German Law to repair the invalid contribution in order to avoid any default cash contribution.

EMS also advises that Lovells LLP have indicated that EMS has a strong cause of action to counterclaim against Berlin Pharma in relation to any such default cash contribution.

### **Circulation of Defamatory Material**

Over the past 6 months a number of documents and emails have been sent to selected EMS shareholders and other parties containing accusations, threats and statements against the present EMS Board members and RM Capital which are defamatory, unsubstantiated and in the opinion of EMS malicious in their intent.

We urge shareholders to ignore these documents.



## ASX Release

## Highlights

### Reporting

EMS advises that all relevant matters are being addressed by the Board to protect the assets of the Company and the interests of Shareholders. Appropriate matters have been referred for investigation by ASIC and the Major Fraud Squad.

### Fair Work Australia Claim

On 14 April 2010, Fair Work Australia ordered the dismissal of a claim by Mr Douglas Sims for unlawful, harsh, unjust or unreasonable termination of employment. The dismissal of the claim was ordered on the basis that it was not lodged within the prescribed time and that there were no grounds supporting an exercise by Fair Work Australia of its discretion to extend that time.

Dermot Patterson  
CEO and Company Secretary