

Securities Act (Aurecon Australia Group Limited and Aurecon 37 Limited) Exemption Notice 2012

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- Title**

This notice is the Securities Act (Aurecon Australia Group Limited and Aurecon 37 Limited) Exemption Notice 2012.
- Commencement**

This notice comes into force on 1 April 2012.
- Expiry**

This notice expires on the close of 31 March 2017.
- Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978
approval meeting means the meeting of Aurecon Australia Group shareholders that is to be held to consider and vote on whether to approve the arrangement



arrangement means the scheme of arrangement relating to the proposal to be voted on at the approval meeting and at the SA shareholders' approval meeting

Aurecon Australia Group means Aurecon Australia Group Limited, a company registered in Victoria, Australia

Aurecon Australia Group shares means the ordinary shares in the capital of Aurecon Australia Group

Aurecon Australia Group shareholders means all holders of Aurecon Australia Group shares (excluding the SA shareholders) as at the effective date

Aurecon Group means, before the implementation of the arrangement, Aurecon Australia Group and all of its subsidiaries, and after the implementation of the arrangement, Aurecon 37 Limited and all of its subsidiaries

Aurecon 37 means Aurecon 37 Limited, a company registered in Victoria, Australia

Aurecon 37 shares means the ordinary shares issued by Aurecon 37 to Aurecon Australia Group shareholders, pursuant to the arrangement

ASIC means the Australian Securities and Investments Commission

Corporations Act means the Corporations Act 2001 (Aust)

Corporations Regulations means the Corporations Regulations 2001 (Aust)

Court means the Supreme Court of Victoria, Australia

effective date means the date that an order of the Court made under section 411(4)(b) of the Corporations Act is lodged with ASIC, and upon being so lodged, takes effect, or is taken to have taken effect, or such earlier date as the Court determines and specifies in the order as the date on which that order has effect

proposal means the restructure of the Aurecon Group involving the allotment of Aurecon 37 shares to Aurecon Australia Group shareholders in exchange for the transfer of the Aurecon Australia Group shares held by the Aurecon Australia Group shareholders to Aurecon 37 in accordance with the arrangement

Regulations means the Securities Regulations 2009

SA shareholders means the three holders of Aurecon Australia Group shares resident in South Africa who will not participate in the exchange of Aurecon Australia Group shares for Aurecon 37 shares under the arrangement

SA shareholders' approval meeting means the meeting of the SA shareholders that is to be held to consider and vote on whether to approve the arrangement

scheme booklet means the scheme booklet prepared by Aurecon Australia Group in accordance with the Corporations Act and Corporations Regulations and containing the information prescribed in subclauses 6(h) and 6(i).

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions from sections 37, 37A, and 51 to 54 of the Act

Aurecon Australia Group and Aurecon 37, and every person acting on behalf of either or both of them, are exempted from sections 37, 37A, and 51 to 54 of the Act in respect of the Aurecon 37 shares offered in accordance with the arrangement.

6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the conditions that—

- (a) the proposal must proceed by way of the arrangement approved by the Court under Part 5.1 of the Corporations Act;
- (b) the offer and allotment of the Aurecon 37 shares must comply with the laws of Australia;
- (c) it is a term of the offer that Aurecon 37 issues the Aurecon 37 shares to Aurecon Australia Group shareholders, credited as fully paid, in exchange for their shares in Aurecon Australia Group in accordance with the arrangement and its obligations under the deed poll referred to in the scheme booklet;
- (d) it is a term of the offer that, immediately after the implementation of the arrangement, Aurecon 37 is the parent company of the Aurecon Group;
- (e) it is a term of the offer that the assets and business of the Aurecon Group immediately following the implementation of the arrangement are the same as the assets and business of the Aurecon Group immediately prior to the implementation of the arrangement, except that the assets of the Aurecon Group after implementation of the arrangement include the shares in Aurecon Australia Group transferred to Aurecon 37 pursuant to the arrangement;
- (f) it is a term of the offer that Aurecon 37 and Aurecon Australia Group have each submitted to the non-exclusive jurisdiction



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- of the courts of New Zealand and have each appointed an agent in New Zealand who is authorised to accept service in New Zealand of documents on its behalf;
- (g) the scheme booklet is distributed to Aurecon Australia Group shareholders and SA shareholders together with the notice of meeting for the approval meeting and the SA shareholders' approval meeting;
 - (h) the scheme booklet includes particulars of all matters that are material to an Aurecon Australia Group shareholder making a decision on whether to approve the proposal; and
 - (i) without limiting (h) above, the scheme booklet includes the following:
 - (i) the terms of the Aurecon 37 shares;
 - (ii) the purpose and effect of the proposal;
 - (iii) information prescribed by the Corporations Act or the Corporations Regulations;
 - (iv) the steps necessary to bring the proposal into effect;
 - (v) a statement as to why the directors of Aurecon Australia Group recommend that Aurecon Australia Group shareholders and SA shareholders vote in favour of the proposal;
 - (vi) a summary of the material advantages, and material disadvantages of the proposal, and the risks associated with holding Aurecon 37 shares;
 - (vii) a summary of the costs of the proposal;
 - (viii) a statement that Aurecon 37 and Aurecon Australia Group have each submitted to the non-exclusive jurisdiction of the courts of New Zealand;
 - (ix) in respect of each of Aurecon Australia Group and Aurecon 37, the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service at that address of documents on its behalf;
 - (x) a statement of the material differences (if any) between the constitution of Aurecon 37 and the constitution of Aurecon Australia Group;

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- (xi) the name and address of every person who will be a director of Aurecon 37 immediately following the implementation of the proposal; and
- (xii) an opinion by an independent expert about whether the proposal is in the best interests of Aurecon Australia Group shareholders and a statement of the relevant qualifications of the independent expert giving the opinion.

Dated at Wellington this 21st day of March 2012



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 1 April 2012 and expires on 31 March 2017, exempts Aurecon Australia Group Limited (Aurecon Australia Group), and Aurecon 37 Limited (Aurecon 37), and every person acting on behalf of either or both of them, subject to conditions, from sections 37, 37A, and 51 to 54 of the Securities Act 1978 (the **Act**), in relation to shares offered in Aurecon 37 under the arrangement.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant these exemptions because—

- the offer is made in connection with a proposal to restructure the Aurecon Group. It asks shareholders to exchange their shares in Aurecon Australia Group, the current parent company of the Aurecon Group, for shares in Aurecon 37, the proposed new parent of the same group. This means that the offer is limited to shareholders of Aurecon Australia Group and therefore to persons who may be expected to already be familiar with the assets and business of the Aurecon Group. Conditions of the exemption

require that the offer can only be made if Aurecon 37 becomes the parent, and the underlying assets and business of the Aurecon Group are the same after the implementation of the exchange proposal as before it. The Act and the Securities Regulations 2009 (the **Regulations**) focus on providing information about the securities being offered including the assets and business of the issuer and so would only require information to be provided about the shares being offered in the proposed new parent. However, in these circumstances, investors require information about the exchange proposal including its effects, in order to decide whether to approve it. Therefore the nature of the information investors require to assess the offer is different from that prescribed by the Act and Regulations:

- the offer is made in accordance with the laws of Australia and particularly pursuant to a scheme of arrangement under the Corporations Act. In order to comply with the requirements of the Corporations Act, shareholders must be provided with a scheme booklet containing information that is relevant to evaluating the exchange proposal and which is approved by ASIC and by the Supreme Court of Victoria, Australia. Conditions of the exemption also require that the offer and allotment proceed in accordance with the laws of Australia and the scheme of arrangement, and that investors receive all material information in the scheme booklet to enable them to make a decision on the exchange proposal:
- further the scheme booklet and notice of meeting will be an advertisement under the Act and therefore prohibited from containing untrue or misleading information about a material particular. Additionally, conditions of the exemption require that it is a term of the offer that both the current parent, and proposed new parent, submit to the non-exclusive jurisdiction of the courts of New Zealand. These factors provide further protections to New Zealand subscribers:
- the exemptions from the requirements relating to the register, accounting records, and securities certificates recognise that the protection for investors under Australian law is comparable to that under New Zealand law.

In summary, the conditions of the exemption require New Zealand subscribers to receive the same protections and information available to Australian subscribers, as well as particularly ensuring they receive all material information to enable them to make a decision on the

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exchange proposal, and preserving key protections usually available to New Zealand subscribers. The exemptions will not therefore cause significant detriment to subscribers for the securities who are members of the public in New Zealand. Further these exemptions are limited to the offer of securities made in the context of the exchange proposal, and their key impact is to provide relief from the requirement to provide information about the issuer which is not material to the subscribers' decision on whether to approve the exchange proposal. In these circumstances, the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.
