

Wilson Bayly Holmes - Ovcon Ltd

(Incorporated in the Republic of South Africa)

(Registration number 1982/011014/06)

Share code: WBO ISIN: ZAE000009932

ANNOUNCEMENT REGARDING THE SETTLEMENT AGREEMENT CONCLUDED WITH THE SOUTH AFRICAN GOVERNMENT

Shareholders are advised that WBHO Construction (Pty) Ltd (WBHO) a subsidiary of Wilson Bayly Holmes – Ovcon Limited entered into a settlement agreement (the **Settlement Agreement**) with the government of the Republic of South Africa (the **Government**), together with other construction companies (collectively, the **Construction Companies**), in an effort to address the Construction Companies' exposure to potential claims for damages from certain identified public entities (the **Claims**) arising primarily from the fast track settlement process launched by the South African Competition Authorities in February 2011 (the **Fast Track Settlement Process**), as well as to significantly advance the transformation of the South African construction sector.

SETTLEMENT AGREEMENT WITH THE SOUTH AFRICAN GOVERNMENT

Following an extensive period of negotiation, the Government and the Construction Companies have concluded the Settlement Agreement which addresses outstanding legacy issues and commits to a plan which will ensure the repositioning of the South African construction sector. All parties to the Settlement Agreement acknowledge the need to foster a better relationship between the Government and the construction industry going forward.

1. The Settlement Agreement

1.1 In summary, the Settlement Agreement stipulates that:

(a) **Payments:**

Over the next 12 years, the Construction Companies will be required to make a collective, annual payment into a fund (**Fund**). In the case of WBHO, the annual payment amounts to R21.25million. The Fund will be constituted as a trust (**Trust**). The first of such annual payments by WBHO of R21.25million will be structured so that 25% thereof is payable within five (5) business days following the signature date of the Settlement Agreement and the remainder shall be paid no later than 90 days following the signature date. Thereafter, each subsequent instalment will be payable annually on 1 July.

(b) **Application of payments to Fund:**

The Trust will use the payments made to the Fund to (i) implement initiatives that will develop and enhance the construction industry, in conformity with the Government's transformation objectives; and (ii) promote the development of emerging contractors and suppliers in South Africa. The Trust shall be governed by a Board of Trustees appointed by the Government, the Construction Companies and the South African Forum of Civil Engineering Contractors.

(c) **Settlement of Claims:**

Other than the civil claim received from the City of Cape Town, any Claims or potential claims for damages that certain, identified public entities have made, or may be entitled

to make, against the Construction Companies, in relation to projects primarily arising from the Fast Track Settlement Process, will be settled .

(d) **Development initiatives or the disposal of a meaningful interest in the construction business to an emerging contractor:**

The Construction Companies have also individually undertaken to either:

- (i) launch development initiatives with the aim of identifying, developing and mentoring up to three emerging contractors (**Emerging Contractors**), to ensure that the Emerging Contractors will have the necessary skills and quantity of work required to generate a cumulative combined annual turnover equal to at least 25% of the annual South African civil engineering and general building construction works turnover of the relevant Construction Company within 7 years. Aligned to this obligation, are fixed interim period transformation targets on each Construction Company as well as penalties calculated in accordance with a formula, for a failure to meet such targets; or
- (ii) to dispose of not less than a 40% economic interest in its South African civil engineering and general building construction business, to an enterprise that is more than 51% black owned, managed and controlled, in which case, it is released from (i) above.

(e) **Limitation of liability:**

- (i) The aggregate liability of a Construction Company arising from (i) its annual contribution payments in 1.1(a) above; and (ii) from any potential penalties in 1.1(d)(i) above, shall not exceed the lower of R1.2 billion or 29% of the Construction Company's market capitalisation as at the signature date of the Settlement Agreement.
- (ii) WBHO liability in terms of the Settlement Agreement is as set out in the financial effects in 1.1.(a) above.

(f) All Construction Companies commit to an integrity undertaking, in terms of which sound ethical and legal principles are adopted in addition the construction companies will report irregular tender awards to the PICC Ministers and they will be obliged to investigate such irregularities especially where they involve wasteful expenditure.

1.2 **Benefits of concluding the Settlement Agreement**

- (a) Enhancing transformation in the South African construction sector, ensuring a positive future relationship with Government and State Owned Enterprises.
- (b) Allowing Construction Companies to focus on their businesses as opposed to engaging in lengthy, costly and protracted litigation.
- (c) Creating and promoting black-owned and managed construction companies through Enterprise Development.
- (d) Enhancing innovation in the sector.
- (e) Provides certainty to stakeholders that any existing or potential Claims from identified public entities, as well as the associated litigation costs and disruptions to operations are avoided. Importantly, by committing to the critical transformation initiatives of this Settlement Agreement, the construction sector in South Africa will be a more sustainable

and competitive industry, ready to partner with the Government for the advancement of infrastructure development in South Africa and for all South Africans.

- (f) Any successful Claims (or settlement thereof) other than the claim from the City of Cape Town, brought against the Construction Companies following signature date, in relation to those public entities specifically identified in the Settlement Agreement will be deducted from the aforementioned annual payments made by the Construction Companies to the Fund.
- (g) Settlement with the Construction Industry Development Board, avoiding possible black listing of the Construction Company which would result in a suspension of public sector work.

1.3 **Outstanding civil claims**

The Settlement Agreement settles all Claims and pending Claims by identified public entities, which, with respect to WBHO, includes the claims received on 19 April 2016 from the South African National Roads Agency Limited (“SANRAL”) The Construction Companies will still be exposed to any claims brought by state-owned enterprises and public departments that are not listed in the Settlement Agreement which, with respect to WBHO, includes the civil claim received from the City of Cape Town..

In conclusion, this settlement signifies the Government and Construction Companies’ commitment in promoting sustainability, transformation and development in the construction sector.

Johannesburg
11 October 2016

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