



The Independent Directors  
Opus International Consultants Limited  
PO Box 12343  
Wellington

19 March 2013

## ***Independent Appraisal Report in relation to a Joint Venture with a Related Party***

### **Introduction**

Opus International Consultants Limited (Opus or the Company) entered into a joint venture (the JV or JV Agreement) with Opus International (M) Berhad (OIMB) on 5 November 2012. Opus and OIMB (collectively the Parties) are related by common ownership. The purpose of the JV Agreement is to provide consultancy and project management services in certain countries in the Middle East, as described in the Company's Notice of Meeting which accompanies this Report.

Opus is listed on the NZX Main Board. Rule 9.2.1 of the NZSX Listing Rules requires an Issuer to obtain shareholder approval by way of an ordinary resolution prior to entering into a material transaction with a related party. At this stage, the proposed JV operations fall below the size thresholds of Rule 9.2.1. However, Opus expects that the JV operations could exceed the material transaction size thresholds in the future. Opus is seeking shareholder approval to proceed with the JV at this time so as to not cause Opus any issues or delays if future JV operations or opportunities are of sufficient scale to exceed the NZX limits on unapproved related party transactions.

An Appraisal Report is required to accompany any notice to shareholders of a meeting (the Notice of Meeting) to vote on an ordinary resolution to enter into a material transaction with a related party under Rule 9.2.5(b).

This letter comprises the Appraisal Report, setting out our opinion as to whether the consideration and the terms and conditions of the JV Agreement are fair to the Opus shareholders other than those associated with the related party (the Minority Shareholders), and has been prepared in accordance with Rule 1.7.2 of the NZSX Listing Rules.

### **Summary of our Opinion**

In our opinion, the consideration and the terms and conditions of the JV Agreement are fair to the Minority Shareholders of Opus, for the following reasons:

- Partnering with OIMB appears to be a reasonable approach for Opus to develop business operations in the Middle East. The Middle East region has been identified as one of the key geographical areas for Opus' further international growth.

- Subject to the unequal representation on the Board of the JV operating company (it is proposed that Opus has two Board members and OIMB has three), nothing has come to our attention to suggest that the terms of the JV Agreement are not reasonable based on our judgement and experience of commercial arrangements of this nature and nor likely to be materially different from the terms that would be agreed with an unrelated party. The unequal Board representation is inconsistent with the equality in shareholding and capital contribution but is mitigated by the requirement that all matters voted on by the Board must be supported by at least one Director representing each shareholder.

Further detail on the JV Agreement between Opus and OIMB and our opinion is presented in the body of this Report which should be read in its entirety.

### **Scope**

The scope of this Report is limited to an opinion on whether the consideration and the terms and conditions of the JV are fair to Opus' Minority Shareholders and the grounds for that opinion in accordance with Rule 1.7.2 (c) of the NZSX Listing Rules.

This Report is prepared for the benefit of the Minority Shareholders of Opus, to assist them in coming to their decision on how to vote on the ordinary resolution.

In preparing this Report we have relied on the following information:

- The joint venture agreement between Opus and OIMB (the Agreement) dated 5 November 2012.
- The Notice of Annual Meeting of Shareholders for the meeting to be held on 10 April 2013.
- A paper to the Opus Board regarding the proposed Joint Venture dated 13 August 2012.
- The Opus Strategic Plan 2011 – 2015.
- Discussions with Opus management.
- Discussion with a Director in the PwC Middle East member firm with experience in operating in the Middle East market and assisting clients form business arrangements including joint ventures in that region.
- Our knowledge of other joint venture and similar commercial arrangements, most of which is confidential and cannot therefore be directly referenced.

We have obtained all information which we believe is desirable for the purposes of preparing this Report, including all Material Information which is or should have been known to any Director of Opus and made available to the Directors.

In our opinion, the information provided by Opus to the Minority Shareholders in the Notice of Meeting is sufficient to enable them to understand all the relevant factors and make an informed decision as to the fairness of the JV.

There is no material restriction on the scope of this Report.

We note that each shareholder's circumstances and individual objectives will be different. It is therefore not possible to prescribe or advise what action an individual shareholder should take in response to the ordinary resolution. Our advice is necessarily general in nature and is intended to assist each shareholder to form their own opinion as to what action they should take given their specific circumstances.

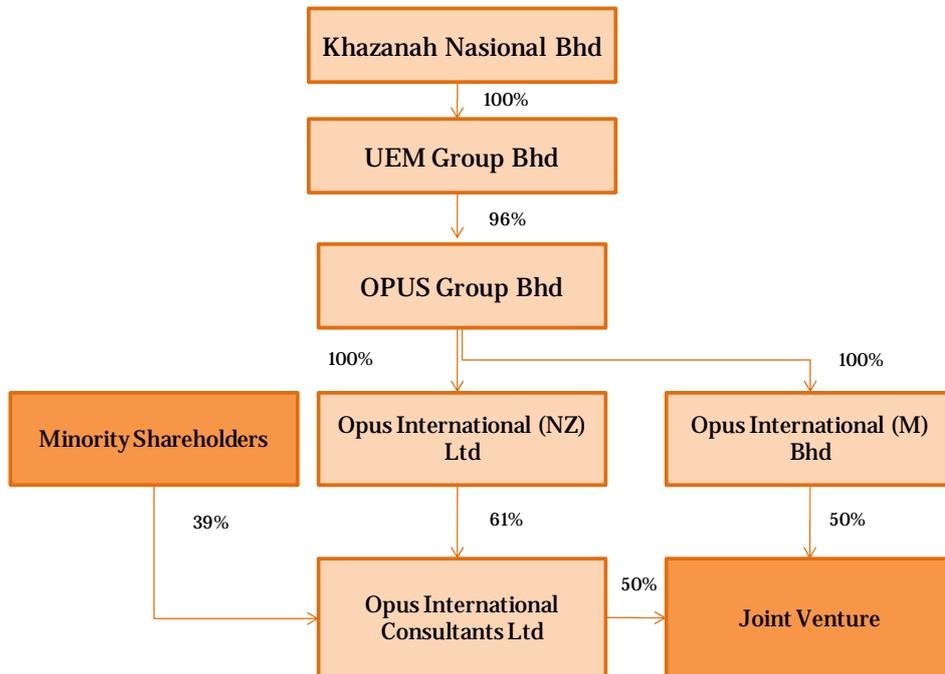
This Report has been prepared under the terms of our engagement letter dated 4 March 2013. This report should be read in conjunction with the restrictions and disclaimers set out in Appendix A.

### Background

Opus is a supplier of consultancy and project management services across a range of disciplines including civil, mechanical and electrical engineering, and environmental, architectural and property management. Opus is based in New Zealand and has operations in other international markets including Australia, Canada and the United Kingdom.

OIMB provides project management services for large-scale infrastructure projects, which include highways, rail, transit transportation, metropolitan townships and integrated-urban development projects. OIMB is based in Malaysia and has offices in Indonesia and India.

Opus and OIMB are related by common ownership as depicted below:



Opus is a subsidiary of Opus International (NZ) Ltd, which itself is a wholly-owned subsidiary of Opus Group Bhd. OIMB is a wholly-owned subsidiary of Opus Group Bhd.

The ultimate parent company of the Parties is Khazanah Nasional Bhd, a Malaysian registered company.

## **Joint Venture**

Opus's 2011 – 2015 strategic plan records the following key objectives for the Company:

- Annual growth targets for its business operations.
- Develop a business in the Middle East.
- Develop strategic partnerships, where appropriate, to enable entry into new markets and delivery of new services.
- Formalise and solidify the relationship with the UEM Group/OIMB and jointly explore new opportunities.

As part of achieving these objectives, Opus has entered into the JV Agreement with OIMB with the intention of establishing a joint venture company (JV Co). The principal business of JV Co will be to engage in consultancy and project management works for infrastructure and the built environment in certain countries in the Middle East (Saudi Arabia, Qatar, United Arab Emirates, Bahrain, Kuwait and any other countries that are agreed by the Parties).

The scope of JV Co's operations will include:

- Surveys and investigation works;
- Feasibility, conceptual, preliminary and detailed design and documentation; and
- Construction supervision and management.

### **Terms of the Joint Venture Agreement**

The key terms of the JV Agreement between the Parties are summarised below.

#### *Exclusivity*

The Parties agree not to enter into any agreement that competes with JV Co without the prior written consent of the other party. However, the Parties retain the right to acquire business operations in the region that compete with JV Co on the undertaking that the acquiring party will:

- Inform the other party of its intentions; and
- Take all reasonable steps within a 12 month period to ensure that the acquisition will not result in it breaching its obligations under the JV Agreement.

#### *Ownership of JV Co*

The share capital of the JV Co will be held in equal proportions between Opus and OIMB.

Each party has pre-emptive rights over the other party's shares. Where a party wishes to sell its shares in JV Co, and the other party does not exercise its pre-emptive rights to acquire the shares, the JV Co shares may be sold to a third party so long as:

- The terms of sale are no more favourable than the terms offered to the other party; and
- The acquiring third party signs up to the terms of the JV Agreement.

### *Consideration*

Opus' management inform us that the Parties intend to contribute NZ\$300,000 to JV Co as consideration for the issue of JV Co shares.

### *Operations of JV Co*

The Board of JV Co will appoint a Senior Manager who will be responsible for the day-to-day operations of JV Co. JV Co may undertake work using resources contributed by the Parties. If either party provides staff to JV Co, that party will charge JV Co at a rate based on the staff member's fixed remuneration plus a multiplier that allows for overhead costs. JV Co will reimburse each party for staff provided when payments for services to clients are received.

### *Distribution of Profits*

Any operating surplus generated by JV Co will be distributed annually as follows:

- 50% in proportion to the total value of resources contributed by the Parties to projects carried out by JV Co; and
- 50% in proportion to the respective shareholdings of the Parties.

In our view, this profit distribution arrangement makes commercial sense and provides incentives for both Parties to provide resources to support the development of the JV.

### *Governance*

JV Co's Board comprises five members, of which three will be nominated by OIMB and two nominated by Opus. The Chairman of the Board is appointed from the OIMB Directors.

A Board resolution may only be passed where at least one of the Directors appointed by OIMB and one of the Directors appointed by Opus vote in favour of the resolution. In effect, Opus and OIMB have the ability to block any resolution of the JV Co Board.

In the event that the Board is not able to reach agreement on a matter (Board deadlock), the matter is referred to the Chairs of Opus and OIMB for resolution (the Committee). If the Committee is not able to resolve the matter, it is referred to the shareholders of JV Co. Where a matter is not able to be resolved by the shareholders of JV Co (Shareholders deadlock) either party may serve written notice on the other to:

- sell its JV Co shares to the other party; or failing that
- acquire the other party's JV Co shares

at a price specified in the written notice. Any such written notice issued by a party is irrevocable.

### *Events of Default*

In the event that either party defaults on its obligations under the JV Agreement, the non-defaulting party may require the defaulting party to:

- Transfer its JV Co shares to the non-defaulting party or a third party at a price equivalent to 85% of the fair market value of the JV Co shares; or
- Acquire the non-defaulting party's shares at a price equivalent to 85% of the fair market value of the JV Co shares.

## **Our Assessment of the Fairness of JV Agreement**

Opus' strategic plan sets out a commitment to develop business operations in the Middle East. As Opus is committed to this course of action, the question of fairness of the JV Agreement to the Minority Shareholders rests on the following:

- Is a joint venture arrangement with another partner a reasonable approach for Opus to develop business operations in the Middle East?; and
- Are the consideration and terms and conditions of the JV Agreement fair to the Minority Shareholders?

We have evaluated the fairness of the JV to the Minority Shareholders on this basis.

### *Approach for Opus to enter the Middle East Market*

Opus management consider that a joint venture arrangement with another partner is a reasonable approach for the Company to enter the Middle East market. The following factors support Opus management's view:

- Opus management's experience of operating in the Middle East is that this market is characterised by differences in language, culture, regulatory environment and business norms. The right partner can provide Opus with the benefit of experience in effectively managing these differences.
- This approach allows Opus to share the costs, risks and rewards of establishing a presence in the Middle East.
- A partnering agreement allows Opus to leverage from the partner's technical skills and commercial relationships in the market.
- This approach is consistent with Opus's strategic objective (noted above) to develop partnerships to enter new markets.

Accepting that a joint venture arrangement with a partner is a reasonable approach for Opus to enter the Middle East market, the question becomes which party should Opus partner with? Opus management consider that OIMB is the best party available to pursue this approach for the following reasons:

- OIMB and Opus have collaborated on over 20 initiatives since July 2007 and are currently working together on transportation projects in Malaysia for local authorities and in India with the National Highway Authority and the World Bank.
- If the Parties were to enter the Middle East market independently of each other, this may result in duplication of the Opus brand in the market which could be disadvantageous to both Parties.
- OIMB has a greater understanding of the culture, regulatory environment and business norms in the Middle East than Opus because of the markets in which it is already trading in.
- The Parties have complementary skills and experience: OIMB's skills and experience in project management complement Opus's technical engineering skills and experience.

Opus management has not identified any other potential partner with attributes that it considers are more likely to result in lower risks or greater rewards in establishing a strategic partnership to enter the Middle East market. Partnering with OIMB appears to be a reasonable approach for Opus to develop business operations in the Middle East.

We also note that it is likely that it will be necessary for the JV itself to have a local partner or partners to operate in the region in terms of the rules applying to foreign businesses.

#### *Fairness of the Terms of the JV Agreement*

We have considered the fairness to the Minority Shareholders of the terms contained in the JV Agreement between Opus and OIMB on the following basis:

- Is there anything to suggest that the terms contained in the JV Agreement are not reasonable based on our judgement and experience with arrangements of this nature?; and
- Are the terms of the JV Agreement fair to the Minority Shareholders given that the JV is with a Related Party?

#### *Reasonableness of the Terms and Conditions*

The key terms contained in the JV Agreement are summarised above. We have considered the reasonableness of these terms in light of our judgement and experience with commercial arrangements of this nature. The terms of the JV Agreement provide Opus with:

- A 50% shareholding in JV Co.
- An obligation on OIMB (and Opus) to refrain from competing with JV Co in the Middle East without the prior consent of the other party. However, each party may acquire businesses competing with JV Co in the region so long as the acquiring party first informs the other party and takes all reasonable steps to ensure that the acquisition will not result in it breaching its obligations under the JV Agreement. It is also possible for either party to terminate the JV Agreement and establish its own operations in the Middle East.
- A share in any distributions made by JV Co. The requirement that 50% of JV Co's distributable profit is allocated in proportion to the contribution of resources by each party provides an incentive for the Parties to contribute the resources necessary to grow the business operations of JV Co. The balance of the distributable profit is distributed in proportion to the shareholdings of the Parties.
- A process to resolve issues that might arise between the Parties and a means to exit the JV Agreement where issues cannot be resolved, similar to arrangements we have seen in other joint venture arrangements.
- Means for termination of the Agreement and acquisition/disposal of its JV Co shares in the event of default of the other party, similar to arrangements we have seen in other joint venture arrangements.
- A process to realise the JV Co shares and exit the JV Agreement also similar to arrangements we have seen in other joint venture arrangements.

The terms of the Agreement provide OIMB with the right to appoint three Directors to the JV Co Board (compared to two Directors for Opus) and the right to appoint the Chairman of the JV Co Board. However, a resolution of the Board may only be passed with the vote of at least one Director appointed by each party. The unequal representation on the JV Co is inconsistent with the equality in shareholding and capital contribution but is mitigated by the additional requirement that a Board resolution must be endorsed by both parties. In effect this provides each party with the ability to block a resolution of the Board.

Subject to our comment in the preceding paragraph, in our view there is nothing to suggest that the key terms of the JV Agreement are not reasonable based on our judgement and experience of commercial arrangements of this nature.

*Fairness of the Terms of the Agreement to Minority Shareholders*

We have also considered whether the terms of the JV Agreement are fair to the Minority Shareholders given that the JV is with a Related Party. The terms of the JV Agreement should be viewed as fair to the Minority Shareholders if the terms are no different from those that Opus would have agreed with an unrelated party.

As noted above, OIMB has the right to appoint the majority of the Directors on the Board of JV Co. In light of this, the requirement for at least one of the Directors appointed by OIMB and one of the Directors appointed by Opus to vote in favour of a Board resolution constitutes a key mechanism to protect Opus's and the Minority Shareholders' interests. For this mechanism to be effective, the interests of the Directors appointed to the JV Co Board by Opus must be:

- Aligned with the interests of Opus and the Minority Shareholders; and
- Free from influence of OIMB or any other party controlled by Khazanah Nasional Bhd.

In recognition of this, the decision regarding who would be Opus's representatives on the JV Co Board was taken by Opus's Independent Directors. The Independent Directors have appointed David Prentice (Opus Chief Executive Officer) and Alec Webster (Opus Director International Growth) as Opus's representatives on the JV Co Board. In our view, it is appropriate that the decision to appoint Opus's representatives to the JV Co Board is undertaken by Opus's Independent Directors as their role is to be free from the influence of any related party while acting in the best interests of the Company.

Other than the governance matter addressed above, nothing has come to our attention to suggest that the key terms of the Agreement are likely to be materially different from the terms that Opus would agree with an unrelated party.

Yours faithfully  
**PricewaterhouseCoopers**



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## **Appendix A – Statement of Independence, Disclaimer, Restrictions, Limitation of Liability, and Indemnity**

### **Qualifications**

This Report has been prepared by the Corporate Finance division of PricewaterhouseCoopers, which provides advice on mergers, acquisitions and divestments, valuations, independent expert's reports and appraisals, financial investigations and strategic corporate advice.

The Partners responsible for this Report are Richard Longman BCA, LLB, CA and David Bridgman M.Com, LLB, CA, both of whom have extensive experience in relation to valuations, mergers and acquisitions, corporate restructurings and the preparation of independent expert's reports and independent appraisal reports for the benefit of investors and stakeholders.

### **Independence**

PricewaterhouseCoopers considers itself independent of Opus International Consultants Ltd (Opus) and Opus International (M) Berhad in relation to the Joint Venture.

Our fee for preparation of this Report is based on the time required for its completion, and it is not contingent on the success or development of the Joint Venture.

We are not, and do not intend to be, a director, officer, or employee of Opus.

In addition to this Report we have provided the following advice and reports to Opus during the last five years:

- May 2012: Payroll advice.
- November 2011: WACC and valuation advice.
- November 2010: WACC advice.
- September 2010: WACC advice.
- November 2009: Option valuation.
- June 2009: WACC advice.
- December 2008: Options and share valuation.
- May 2008: WACC advice.
- April 2008: WACC advice.
- February 2008: Share valuation calculations.

### **Scope, Disclaimer and Restrictions**

The purpose of this Report is to set out our opinion as to whether the consideration and the terms and conditions of the Joint Venture are fair to Opus' Minority Shareholders, in accordance with Rule 1.7.2(c) of the NZSX Listing Rules.

This Report is prepared solely for this purpose and should not be used or relied upon for any other purpose.

The statements and opinions expressed in this Report are based on information available as at the date of the Report.

In preparing our Report, we have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of Opus or any of its related entities. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied.

The statements and opinions expressed in this Report have been made in good faith and on the basis that all relevant information for the purposes of preparing our Report has been provided by Opus and / or its directors and advisers, and that all such information is true and accurate in all material aspects and not misleading by reason of omission or otherwise.

Accordingly, neither PricewaterhouseCoopers nor its partners, employees or agents, accept any responsibility or liability for any such information being inaccurate, incomplete, unreliable or not soundly based or for any errors in the analysis, statements and opinions provided in our Report resulting directly or indirectly from any such circumstances or from any assumptions upon which our Report is based proving unjustified.

Our opinions have been arrived at based on economic, market and other conditions prevailing at the date of our Report. Such conditions may change significantly over relatively short periods of time.

We reserve the right, but will be under no obligation, to review or amend our Report, if any additional information, which was in existence on the date of our Report, was not brought to our attention, or subsequently comes to light.

**Limitation of Liability**

PricewaterhouseCoopers will accept liability to pay damages for losses arising as a direct result of breach of contract or negligence on our part in respect of services provided in connection with, or arising out of, this engagement but, to the extent permitted by law, any liability of PricewaterhouseCoopers, its partners and staff (whether in contract, negligence or otherwise) shall in no circumstances exceed five times the fees paid in the aggregate in respect of all such services.

We accept no liability to any party other than the addressee, as our client.

**Indemnity**

Opus has agreed to indemnify us against claims brought by any third party (which includes but is not limited to Opus's Minority Shareholders). The indemnity covers PricewaterhouseCoopers for any loss or liability suffered or incurred as a result of or in connection with the preparation of our Report.