

OUTLINE AND EXPLANATION OF THE EFFECTS OF CERTAIN POWERS IN THE CONSTITUTION

Overview

- 1 On 14 December 2016, the Company's shareholders passed a special resolution to amend the Constitution to include provisions which, amongst other things, allow the Company to:
 - (a) more accurately determine and monitor its level of foreign ownership; and
 - (b) act to reduce the level of foreign ownership of the Company, if necessary, to protect the Company's holdings of fishing quota from the possibility that they will have to be forfeited under the Fisheries Act 1996 as a result of the Company becoming an Overseas Person under the OIA.
- 2 In connection with the amendments to the Constitution, NZX Regulation granted the Company:
 - (a) a waiver (*NZX Waiver*) from the then current NZX Main Board Listing Rule 11.1.6 (now NZX Listing Rule 8.1.5) to the extent that this Rule would otherwise prevent the Company from suspending the voting rights attaching to securities that the Board has determined, in accordance with the process set out in the Fourth Schedule of the Constitution, are Affected Shares; and
 - (b) approval (*NZX Approval*) under the then current NZX Main Board Listing Rule 11.1.5 (now NZX Listing Rule 8.1.6(b)) to allow the Company to include provisions in its Constitution which allow the Board to restrict the transfer of the Company's securities to Overseas Persons and which allow the Board to require certain documentation and/or information in relation to a proposed transfer or transferee of the Company's securities, in the circumstances permitted under clause 15, and clauses 3 and 5 of the Fourth Schedule, of the Constitution.
- 3 Following the implementation of the new NZX Listing Rules dated 1 January 2019, NZX re-documented the NZX Waiver under the new NZX Listing Rules and that waiver was released on 22 May 2019 (*Re-issued Waiver*). The NZX Waiver (as subsequently re-documented as the Re-issued Waiver) and the NZX Approval are referred to together as the *NZX Decision*.
- 4 A copy of the original NZX Waiver and the NZX Approval is available here: <https://www.nzx.com/announcements/293474>. A copy of the Re-issued Waiver is available here: <https://www.nzx.com/companies/SAN/documents>.
- 5 The NZX Decision is conditional on, amongst other things, the Company publishing an outline and explanation of the provisions in its Constitution that restrict the transfer of securities, and of the circumstances in which voting rights may be suspended, on the

Company's website. To satisfy that condition, the Company has prepared and published this document.

- 6 Capitalised terms used in this document have the meanings given to them in the glossary on page 5.

Explanation of the new powers in the Constitution

- 7 There are four key concepts (defined in clause 2 of the Fourth Schedule of the Constitution) which drive the Board's ability to take the actions outlined in paragraph 1 above:

- (a) The "Legislative Limit": this is the statutory level at which the number of securities in the Company held by Overseas Persons makes the Company itself an Overseas Person (and hence potentially subject to forfeiture of fishing quota in the absence of a remedy or exemption). The Legislative Limit in the OIA is currently 25%.
- (b) The "Overseas Ownership Threshold": this is the point at which the Board is able to exercise certain of its powers. It is a specified percentage of the Legislative Limit. The initial level is 90%, which means the Board's powers effectively start at an overseas ownership level of 22.5%. The provisions allow the percentage to be increased by the Board from the default of 90%, including to above 100%. Further explanation of this threshold is set out below.
- (c) "Breach the Overseas Ownership Threshold": this means for the Company either to breach the Overseas Ownership Threshold OR to increase the extent to which it is in breach of the Overseas Ownership Threshold.
- (d) "Affected Shares": these are shares which the Board determines (via the process outlined below) are implicated in a Breach of the Overseas Ownership Threshold and in respect of which the Board can exercise its powers to suspend voting rights and require (or effect) a sale.

- 8 Using those four key concepts, the provisions in the Constitution:

- (a) empower the Company to:
 - (i) require a current, or proposed new, shareholder to provide information concerning whether they are an Overseas Person (*Required Disclosure*) (clause 3 of the Fourth Schedule of the Constitution) – and the Company must keep a record of all such disclosures (clause 4 of that Fourth Schedule); and
 - (ii) determine whether or not that current or proposed new shareholder may cause, or may have already caused, a Breach of the Overseas Ownership Threshold;

- (b) entitle the Company to refuse to register a share transfer if it considers that registration of that transfer will, or is likely to, cause the Company to Breach the Overseas Ownership Threshold as a result - or if a potential transferee has provided no, or an inadequate, Required Disclosure (clause 5 of the Fourth Schedule of the Constitution);
- (c) enable the Board to determine that some shares are Affected Shares, via a two-stage process:
 - (i) notification to a holder who:
 - (A) has not provided an adequate Required Disclosure within 15 working days from the date of the notice requesting that Required Disclosure; or
 - (B) has provided a Required Disclosure as a result of which the Board considers the holder may have caused the Company to Breach the Overseas Ownership Threshold,

that the Board is considering exercising its relevant powers under the Fourth Schedule, and inviting them to make representations to the Company within 15 working days from the date of that notice (clause 7 of the Fourth Schedule of the Constitution); and

- (ii) following receipt of any such representations (or if none are provided within the 15 working day period), notification to the holder that:
 - (A) certain of the holder's securities in the Company are Affected Shares;
 - (B) the voting rights attaching to those Affected Shares are suspended (if the Board so determines); and
 - (C) the holder has 20 working days to sell the Affected Shares to a person who is not an Overseas Person (i.e. to "remedy" the Company's Breach of the Overseas Ownership Threshold) - failing which the Company may sell the Affected Shares on behalf of that shareholder pursuant to a method of sale which has been given prior approval by NZX,

(clauses 8 and 9 of the Fourth Schedule of the Constitution).

- 9 The remaining clauses in the Fourth Schedule deal with consequential matters or matters required to effectively implement the provisions outlined above, including:
- (a) *No liability*: clause 13 of the Fourth Schedule, which provides that, except for as specifically provided for in the Constitution and to the maximum extent permitted by law, neither the Company nor any of its directors, officers,

employees, agents or advisers shall have any liability to any person in connection with the exercise of any of the powers set out in the Fourth Schedule.

- (b) *Finality of decisions*: clause 16 of the Fourth Schedule which provides that any decisions and actions made or performed by or on behalf of the Company or the Board in connection with the exercise of any of the powers set out in the Fourth Schedule are final and not subject to appeal or review.

10 Finally, there are three key features of the provisions in the Fourth Schedule which deserve further comment:

- (a) The Overseas Ownership Threshold is set at a percentage of the Legislative Limit. The initial percentage will be 90% - that is, 22.5% ownership by Overseas Persons. This will provide 2.5% "headroom" before the Legislative Limit is met. The Company considers this significant because:
 - (i) it will give the Board an ability to proactively intervene where it is aware that the Legislative Limit is close to being exceeded;
 - (ii) it will mean that increases of Overseas Person ownership which have not yet been identified will be less likely to trigger the Legislative Limit; and
 - (iii) it will mean the Company is not put in a position where it is potentially constantly right on the Legislative Limit (which would be the case if it only had the ability to force a reduction to just below the 25% level).
- (b) The provisions outlined are designed to result in a "last in, first out" regime. Existing holdings by Overseas Persons will not be subject to potential compulsory sale as a result of subsequent acquisitions by (or existing holders subsequently becoming) Overseas Persons. Rather, only holdings which have caused the Company to Breach the Overseas Ownership Threshold (which includes a further breach of the Overseas Ownership Threshold) will be potentially subject to compulsory sale.
- (c) The provisions rely on a degree of Board judgment, for example as to whether or not information received from a shareholder is adequate. The Company considers this is inevitable, as it is very difficult to see how provisions which were purely mechanical could be reliably considered effective in all cases. Directors, however, would be required to exercise those powers consistently with their usual duties – including, in particular, the duty to act in good faith and what they consider to be the best interests of the Company.

GLOSSARY

Term	Definition
Affected Shares	has the meaning given to that term in clause 1 of the Fourth Schedule (and is explained above on page 2)
Breach the Overseas Ownership Threshold	has the meaning given to that term in clause 1 of the Fourth Schedule (and is explained above on page 2)
Company	means Sanford Limited
Constitution	means the constitution of the Company
Legislative Limit	has the meaning given to that term in clause 1 of the Fourth Schedule (and is explained above on page 2)
MPI	means the Ministry for Primary Industries
NZX Decision	has the meaning given to that term in paragraph 2
OIA	means the Overseas Investment Act 2005
Overseas Ownership Threshold	has the meaning given to that term in clause 1 of the Fourth Schedule (and is explained above on page 2)
Overseas Person	has the meaning given to that term in section 7 of the OIA
Required Disclosure	has the meaning given to that term in clause 1 of the Fourth Schedule
Rules	means the NZX Listing Rules