



9 November 2011

CONDITIONAL AGREEMENT WITH MITR PHOL SUGAR CORP., LTD. THAT MAY LEAD TO \$4.45 PER SHARE TAKEOVER OFFER

MSF Sugar Limited ("**MSF**") advises that it has entered into agreements (the "**Agreements**") with its 22% major shareholder Mitr Phol Sugar Corp., Ltd. ("**Mitr Phol**") under which Mitr Phol, subject to the satisfactory completion of limited due diligence, will make an off-market takeover offer to acquire all the outstanding shares in MSF not held by Mitr Phol for an offer consideration of \$4.45 cash per share ("**Mitr Phol Offer**"). MSF can give no assurance that the limited due diligence will be satisfactorily completed and that the Mitr Phol Offer will proceed.

If the Mitr Phol Offer proceeds, MSF has agreed to procure that each MSF Director would recommend the Mitr Phol Offer subject to there being no superior proposal and subject to an independent expert determining that the Mitr Phol Offer is fair and reasonable.

The Agreements

Under the terms of the Agreements, Mitr Phol has been granted exclusivity from 4 November 2011 to 21 November 2011 (inclusive) to complete limited due diligence. Mitr Phol will conduct due diligence limited to the areas set out in Appendix 1 of this announcement and other areas incidental to those areas, and subject to satisfactory completion of this due diligence on or before 21 November 2011 will make a takeover offer on the terms described below.

Mitr Phol Offer

Under the Agreements, if Mitr Phol satisfactorily completes its limited due diligence, it will make an off-market takeover offer to acquire all MSF's outstanding shares not held by Mitr Phol for cash consideration of \$4.45 per share (adjusted for any distributions made). The Mitr Phol Offer would value MSF's total equity at \$313 million.

The cash consideration payable under the Mitr Phol Offer would represent a premium to the trading price of MSF's shares as indicated below:

- 30.9% to the closing share price of \$3.40 on 4 November 2011, the last trading day prior to the MSF trading halt announced 7 November 2011;
- 37.8% to the 1 month volume weighted average price to 4 November 2011 of \$3.23; and
- 37.3% to the 3 month volume weighted average price to 4 November 2011 of \$3.24.



Key conditions for the Mitr Phol Offer include:

- 50.1% minimum acceptance condition;
- Approval by the Foreign Investment Review Board ("FIRB");
- Required approvals from Thai regulatory authorities;
- No prescribed occurrences and various other standard restrictions for offers of this nature on the conduct of MSF's business during the Mitr Phol Offer period; and
- There not occurring a material adverse change in MSF during the Mitr Phol Offer period.

MSF has undertaken not to solicit an alternative proposal from the date on which Mitr Phol satisfactorily completes confirmatory diligence up to 30 April 2012 subject to carve outs reflecting the fiduciary duties of MSF Directors. Under certain circumstances, MSF would pay Mitr Phol a break fee of \$3.1 million, however, this break fee would only apply once a takeover offer is announced by Mitr Phol.

A summary of key details of the Implementation Agreement is set out in Appendix 2.

Chairman's Comment

MSF Chairman Mr James A. Jackson said today "The Board of Directors and I believe the approach received from Mitr Phol is a strong endorsement of the MSF business and strategy for growth which the Board has been pursuing over recent times. MSF will work with Mitr Phol to see if the due diligence requirements can be quickly satisfied and a takeover offer formalised on the terms agreed. Assuming Mitr Phol satisfactorily completes its limited due diligence, I together with the Board of Directors intend to recommend the Mitr Phol Offer if it is made, subject to there being no superior proposal and subject to an independent expert determining that the Mitr Phol Offer is fair and reasonable.

"MSF is a high quality business with approximately 4.7 million tonnes of cane crushing capacity, 550,000 tonnes of sugar production capacity, independent marketing capabilities and a significant stake in strategic industry sugar terminal infrastructure through Sugar Terminals Limited. Working together with Mitr Phol, we believe we would be uniquely positioned to take advantage of growth opportunities in sugar, both in Australia and in the Asian region."

The MSF Board makes no recommendation to shareholders at this time and notes that shareholders do not need to do anything in relation to the commercial agreements with Mitr Phol described in this announcement.

MSF will keep shareholders informed of any material developments.

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About MSF Sugar Limited

MSF Sugar Limited (ASX: MSF) is an integrated sugar company based in Queensland, Australia. It first listed on the Australian Stock Exchange in 1956 and in 2010 entered into a dynamic new phase of its history with the acquisition of additional sugar producing assets in Far North Queensland. It is the only listed sugar miller on the ASX.

About Mitr Phol Sugar Corp., Ltd.

Mitr Phol is one of the world's largest sugar producers, with a history dating back over 70 years starting as a grower. Presently Mitr Phol is one of the largest sugar producers in Asia, with an estimated market share of 19% in Thailand (ranked #1 in production and exports), and 9% in China (Mitr Phol first invested in China mills in 1993 and today is ranked #2 in terms of production).

Mitr Phol has six principal lines of business: sugar production and sales in Thailand, China and ASEAN, plus ethanol, energy, logistics and particle board operations. Current sugar production capacity in Thailand is approximately 1.5 mtpa and capacity in China is approximately 1.0 mtpa.

Mitr Phol currently owns approximately 22% of MSF's issued shares.

Appendix 1 – Scope of Mitr Phol Limited Due Diligence

- Review of summaries of material insurance agreements and claims
- Review of details of property titles and water allocation rights
- Review of summaries of material lease agreements
- Review of details of MSF's existing debt facilities
- Review of details of any material litigation
- Review of details of any material contingent liabilities not disclosed in public information
- Review of summaries of material sugar supply agreements
- Review of summaries of change of control and termination provisions in material contracts

Appendix 2

1 Summary of Takeover Implementation Agreement

MSF and Mitr Phol have entered into a Takeover Implementation Agreement dated 9 November 2011 whereby MSF and Mitr Phol have agreed to co-operate with each other in relation to the Mitr Phol Offer. A summary of certain key terms of the Takeover Implementation Agreement is set out below. Certain key definitions are set out at the end of this summary.

This summary does not purport to be exhaustive or constitute a definitive statement of the rights and liabilities of each of MSF and Mitr Phol under the Takeover Implementation Agreement.

1.1 The Mitr Phol Offer

Under the Takeover Implementation Agreement, Mitr Phol has agreed, subject to the satisfaction or waiver of the Bid Condition (detailed below), to make the Mitr Phol Offer to all MSF shareholders in respect of all of their fully paid ordinary shares in MSF.

1.2 Condition precedent to the making of the Mitr Phol Offer

The obligation of Mitr Phol to make the Mitr Phol Offer is subject to Mitr Phol being satisfied with the outcome of its due diligence enquiries in relation to the limited matters set out in Appendix 1 of this announcement prior to 21 November 2011 ("**Bid Condition**").

1.3 Offer Conditions

The Takeover Implementation Agreement sets out the conditions to the Mitr Phol Offer ("**Offer Conditions**"), should it proceed, and any contract which results from its acceptance. These Offer Conditions are:

- (a) (**50.1% minimum acceptance condition**) during, or at the end of, the Offer Period, the number of MSF shares in which Mitr Phol and its associates together have relevant interests (disregarding any relevant interest that Mitr Phol has merely because of the operation of section 608(3) of the Corporations Act) is at least 50.1% of all the MSF shares;
- (b) (**FIRB approval**) prior to the end of the Offer Period, either:
 - (i) Mitr Phol receives written advice from the Treasurer (or his delegate) that there are no objections under Australia's foreign investment policy to the Mitr Phol Offer and such advice is either unconditional or, if conditional, on the basis of conditions that impose only non-material requirements; or
 - (ii) following notice of the Mitr Phol Offer having been given by Mitr Phol to the Treasurer under the Foreign Acquisitions and Takeovers Act 1975

(Cwlth), the Treasurer has ceased to be empowered to make any order under Part II of that Act because of lapse of time;

- (c) **(Other regulatory approvals)** before the end of the Offer Period, all regulatory approvals (including the approval of the Bank Thailand in respect of the Mitr Phol Offer and its financing) that are required by law or by any regulatory authority as are necessary to permit:

- (i) the Mitr Phol Offer to be lawfully made to, and accepted by, MSF shareholders; and
- (ii) any transaction contemplated by the Mitr Phol Offer to be completed; and
- (iii) the continued operation of the business of MSF and its subsidiaries or of Mitr Phol and its subsidiaries,

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all material respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same. In each case on an unconditional basis or on the basis of conditions that impose only non-material requirements incidental to the approvals set out in this Offer Condition and, at the end of the Offer Period, all of those regulatory approvals remain in full force and effect in all material respects and are not subject to any notice or indication of intention to remove, suspend, restrict, modify or not renew those regulatory approvals;

- (d) **(No termination)** between the announcement date and the end of the Offer Period, there is no material breach by MSF of the “prohibited actions” clause of the Takeover Implementation Agreement;
- (e) **(no Prescribed Occurrence)** there not occurring a prescribed occurrence in respect of MSF during the Offer Period;
- (f) **(no Material Adverse Change)** there not occurring a Material Adverse Change in the period between 9 November 2011 and the end of the Offer Period;
- (g) **(No actions of regulatory authorities)** between the announcement date and the end of the Offer Period:
 - (i) there is not in effect any preliminary or final decision, order or decree issued by a regulatory authority;
 - (ii) no action or investigation is announced, commenced or threatened by any regulatory authority; and
 - (iii) no application is made to any regulatory authority (other than by Mitr Phol or any of its associates) or commenced by a regulatory authority,

in consequence of or in connection with the Mitr Phol Offer (other than application, decision or order made under, or relating to a breach of, Chapters 6, 6A, 6B or 6C of the Corporations Act or unacceptable circumstances for the purposes of the Corporations Act), which:

- (iv) restrains or prohibits or impedes, or threatens to restrain, prohibit or impede, or otherwise materially adversely impacts on, the making of the Mitr Phol Offer, the acquisition of MSF shares by Mitr Phol under the Mitr Phol Offer, the rights of Mitr Phol in respect of its capacity as a shareholder of MSF or the completion of any transaction contemplated by the Offer; or
- (v) seeks to require the divestiture by Mitr Phol of any MSF shares or any material assets of MSF or its subsidiaries;
- (h) **(No untrue statements)** between the announcement date and the end of the Offer Period, Mitr Phol does not become aware that any document filed by or on behalf of MSF, with ASX or ASIC, contains a statement which is incorrect or misleading in any material particular or from which there is a material omission; and
- (i) **(No change of control rights)** except as fairly disclosed in information provided by MSF to Mitr Phol or its representatives, or is otherwise known to Mitr Phol or its representatives on or prior to the bid announcement date or otherwise disclosed in public filings by MSF with ASIC or provided to ASX on or prior to the bid announcement date, between the bid announcement date and the end of the Offer Period (each inclusive), as a result (directly or indirectly) of the acquisition or proposed acquisition of any MSF shares by Mitr Phol, no person becomes entitled to exercise, exercises, purports to exercise or states an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), any rights under any provision of any agreement or other instrument to which MSF or any of its subsidiaries is a party or by or to which MSF or any of its subsidiaries or any of their assets is bound, which results, or could reasonably be expected to result in:
 - (i) the termination or amendment of any material contractual relationship between any person and MSF or any of its subsidiaries (for this purpose, amendment includes an amendment, alteration or change as a result of the operation of an agreement or instrument, whether or not that altered operation is provided for under the existing terms of the contract or agreement);
 - (ii) a requirement to terminate, modify or dispose of, or agree to terminate, modify or dispose of, any material interest or asset of MSF or any of its subsidiaries (or any arrangements relating to such an interest or asset); or
 - (iii) the acceleration of the performance of, or adverse modification of, any obligation of MSF or any of its subsidiaries under any material agreement, lease, instrument or other legal arrangement,

and, in each case, have a material adverse affect on the business, assets, financial condition, operations, reputation or prospects of the MSF group.

1.4 Recommended bid

Under the Takeover Implementation Agreement, MSF acknowledges that each of its directors intend to:

- (a) recommend acceptance of the Mitr Phol Offer to MSF shareholders in the absence of a Superior Proposal and provided the Independent Expert determines that the Mitr Phol Offer is fair and reasonable; and
- (b) accept the Mitr Phol Offer in respect of all MSF shares held by that director or any associate of that director, subject to there being no Superior Proposal and provided the Independent Expert determines that the Mitr Phol Offer is fair and reasonable.

MSF also consents to Mitr Phol sending the offers and accompanying documents under the takeover bid under item 6 of section 633(1) of the Corporations Act to MSF shareholders 7 days earlier than the earliest date for sending under item 6 of section 633(1) of the Corporations Act.

1.5 Conduct of business

From the date of the Takeover Implementation Agreement up to the end of the Offer Period, MSF must conduct its business in the ordinary and proper course and in substantially the same manner as previously conducted and must consult with Mitr Phol on the manner of conduct of the business.

MSF also has specific obligations and is prohibited from specific actions in relation to the business of MSF, without the prior approval of Mitr Phol.

1.6 Exclusivity

No shop

During the Exclusivity Period, MSF has agreed not to solicit, invite, facilitate, encourage or initiate any enquiries, negotiations or discussions with any person in relation to a Competing Transaction.

No talk and no due diligence

Subject to the fiduciary duties of its directors in relation to a bona fide Competing Transaction, during the Exclusivity Period, MSF must ensure that it does not negotiate or enter into, or participate in negotiations or discussions with any other person regarding a Competing Transaction, even if that Competing Transaction was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by MSF. Similarly, but again subject to the fiduciary duties of its directors in relation to a bona fide Competing Transaction, MSF must not without Mitr Phol's prior written consent allow another party to undertake due

diligence investigations in relation to MSF with a view to facilitating a Competing Transaction.

Notification

Subject to the fiduciary duties of its directors in relation to a bona fide Competing Transaction, during the Exclusivity Period, MSF must promptly inform Mitr Phol if it receives any unsolicited approach with respect to any Competing Transaction which is or which is reasonably likely to develop into a Superior Proposal and must disclose to Mitr Phol all material details of the Competing Transaction.

Matching right

If MSF is permitted under the “fiduciary carve-outs” to respond to a bona fide Competing Transaction, MSF must not enter into any agreement, arrangement or understanding in relation to a Competing Transaction or announce a Competing Transaction publicly (and must contractually prohibit the person or persons who are proposing the Competing Transaction from announcing or pursuing publicly the Competing Transaction in advance of the matching mechanism having been exhausted in accordance with its terms) unless it has given Mitr Phol notice of the Competing Transaction and allowed Mitr Phol the period of three business days from the giving of such notice to propose a counterproposal. If Mitr Phol proposes such a counterproposal, the MSF Board must review the counterproposal in good faith to determine whether Mitr Phol’s counterproposal is at least as favourable to MSF shareholders than the relevant Competing Transaction taking into account all terms and conditions of both proposals. If the MSF Board determines, in good faith and after having obtained written advice from its legal and financial advisers, that the Mitr Phol counterproposal is more favourable to MSF shareholders than the relevant Competing Transaction, then MSF must recommend the counterproposal.

1.7 Break fee

MSF has agreed to pay Mitr Phol a break fee of \$3,100,000 if:

- (a) a Competing Transaction is announced during the Exclusivity Period and at any time during the Exclusivity Period or on or prior to the date six months after end of the Exclusivity Period the maker of the Competing Transaction or its associates acquire a relevant interest in more than 15% of MSF shares;
- (b) any director of MSF does not recommend the Mitr Phol Offer to MSF shareholders or, having recommended it, withdraws his or her recommendation of the Takeover Bid unless:
 - (i) the Takeover Implementation Agreement has already been terminated by MSF for a breach by Mitr Phol; or
 - (ii) the Independent Expert opines that the Mitr Phol Offer is not fair and is not reasonable; or

- (c) Mitr Phol terminates the Takeover Implementation Agreement for a material breach by MSF.

1.8 Representations and warranties

Each of Mitr Phol and MSF give usual corporate warranties to the other, including as to their legal capacity, solvency and power to perform their respective obligations under the Takeover Implementation Agreement. MSF gives certain additional warranties in relation to there being no regulatory action and its compliance with its general legal and continuous disclosure obligations.

1.9 Termination

Either MSF or Mitr Phol may terminate the Takeover Implementation Agreement by notice to the other if:

- (a) the other party is in material breach of the Takeover Implementation Agreement;
- (b) Mitr Phol withdraws the Mitr Phol Offer for any reason including non satisfaction of an Offer Condition or allows the bid to lapse;
- (c) there is a breach of a representation or warranty made by either party;
- (d) the Bid Condition has not been satisfied; or
- (e) agreed to in writing by MSF and Mitr Phol.

Mitr Phol may also terminate the Takeover Implementation Agreement by notice in writing to MSF if:

- (f) a Superior Proposal is made or publicly announced for MSF by a third party; or
- (g) any member of the board of directors of MSF does not recommend the Mitr Phol Offer be accepted by MSF shareholders or having recommended it changes his or her recommendation.

1.10 Summary of certain key definitions

Competing Transaction means a transaction which, if completed, would mean a person (other than Mitr Phol or its related bodies corporate or representatives) would:

- (a) directly or indirectly, acquire an interest or relevant interest in or become the holder of:
 - (i) 50.1% or more of MSF shares; or
 - (ii) all or a substantial part or a material part of the business conducted by MSF,

including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of shares or joint venture, but not as a custodian, nominee or bare trustee;

- (b) acquire control of MSF, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with MSF.

Corporations Act means the Corporations Act 2001 (Cwlth).

Exclusivity Period means the period commencing on the date of the Takeover Implementation Agreement and ending on 30 April 2012 (unless earlier terminated in accordance with its terms).

Independent Expert means the independent expert appointed by MSF to prepare an expert's report to be included in the target's statement.

Material Adverse Change means one or more occurrences or any fact, matter or circumstance (whenever occurring) that is announced or becomes known to Mitr Phol that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has had or is reasonably likely to have one of the following effects:

- (a) to materially adversely affect the status or terms of any material regulatory consent that is applicable to the MSF group;
- (b) to prevent or would be likely to prevent MSF from discharging in a material respect its obligations under this agreement;
- (c) to diminish the total consolidated net assets of the MSF group (calculated on the basis of AIFRS) by A\$11 million or more;
- (d) to otherwise materially adversely affect the business, financial condition, operations, reputation or prospects of the MSF group including:
 - (i) any material default by the MSF group or any member of the MSF group under their existing financing facilities; or
 - (ii) the termination of any material contract of the MSF group,

unless that occurrence, fact, matter or circumstance:

- (e) is required to be done or procured by MSF pursuant to this agreement;
- (f) relate to changes in business conditions affecting the industry in which MSF operates, provided that the changes or disruptions do not have a materially



disproportionate effect on MSF compared to other participants in the industries in which the MSF business operate; or

- (g) is fairly disclosed, or that is reasonably apparent on its face as potentially to flow from the event, occurrence, matter or information that is fairly disclosed, in information provided by MSF to Mitr Phol or its representatives, or is otherwise known to Mitr Phol or its representatives on or prior to the date of this agreement or otherwise disclosed in public filings by MSF with ASIC or provided to ASX on or prior to the date of this agreement.

Mitr Phol Offer means each offer to acquire MSF shares to be made by Mitr Phol to each MSF shareholder for an offer consideration of \$4.45 cash per MSF share.

Offer Period means the period during which the Mitr Phol Offer is open for acceptance.

Superior Proposal means a publicly announced Competing Transaction which the board of directors of MSF, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction; and
- (b) more favourable to MSF shareholders than the Mitr Phol Offer, taking into account all terms and conditions of the Competing Transaction.