

**DE BEERS BOTSWANA MINING COMPANY (PROPRIETARY)
LIMITED AGREEMENT (AMENDMENT) ACT, 1972**

No. 23



of 1972

**AN ACT TO AMEND DE BEERS BOTSWANA MINING
COMPANY (PROPRIETARY) LIMITED AGREEMENT, 1970
BY PROVIDING FOR THE SALE OF ORAPA DIAMONDS
TO A LOCAL COMPANY, AND TO PROVIDE FOR OTHER
MATTERS INCIDENTAL THERETO.**

Date of Assent: 18.10.1972

Date of Commencement: 3.11.72

ENACTED by the Parliament of Botswana.

1. This Act may be cited as De Beers Botswana Mining Company (Proprietary) Limited Agreement (Amendment) Act, 1972. Short title

2. The Agreement entered into between the Government of the Republic of Botswana and De Beers Botswana Mining Company (Proprietary) Limited on the 10th August, 1972 and set out in the Schedule to this Act is hereby ratified. Ratification

SCHEDULE

MEMORANDUM OF AGREEMENT made and entered into by and between: —
THE HONOURABLE LEMME MAKGEKGENENE, M.P., ASSISTANT MINISTER, MINISTRY OF FINANCE AND DEVELOPMENT PLANNING FOR AND ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA (hereinafter referred to as the GOVERNMENT) of the one part; and DE BEERS BOTSWANA MINING COMPANY (PROPRIETARY) LIMITED (a company incorporated under the Laws of Botswana, and having its registered office at Tswana House, The Mall, GABORONE, Botswana) represented herein by WALTER CURLEWIS KROGH he being authorised hereto by Resolution of the Board of Directors dated 28th June, 1972 a certified copy of which is attached hereto (hereinafter referred to as the Mining Company) of the other part.

WITNESSETH:

THAT WHEREAS on the 2nd day of March, 1970, an Agreement was entered into between the Government and the Mining Company which related to the mining of diamonds and the payment of tax and royalty.

AND WHEREAS in that Agreement it was provided that royalty would be paid on gross proceeds of sales of diamonds to the Diamond Corporation.

AND WHEREAS the parties have now decided that the Mining Company shall sell diamonds to a local company i.e. the Diamond Corporation Botswana (Proprietary) Limited, a company resident in Botswana and having its registered office at Tswana House, The Mall, GABORONE, Botswana, and to that end the Mining Company has entered into a Sales Agreement with the said Diamond Corporation Botswana (Proprietary) Limited and the Diamond Corporation (Proprietary) Limited to sell its diamonds from Orapa Mine only to the said Diamond Corporation Botswana (Proprietary) Limited.

AND WHEREAS it is no longer necessary to refer to the Diamond Corporation in the aforesaid Agreement.

AND WHEREAS the Government and the Mining Company are desirous of training Botswana citizens to satisfy the country's manpower requirement both in the private and in the public sector and to that end the Government wishes to extend the provisions of section 13 of the Income Tax (Consolidation) Proclamation, 1959 to the Mining Company.

NOW THEREFORE the parties hereto agree as follows: —

1.

Clause 1 of the Agreement is amended by the deletion of the words "to the Diamond Corporation" appearing therein.

2.

Clause 3 of the Agreement is amended by the deletion of the word "paid" and the substitution therefor of the word "payable".

Clause 3 of the Agreement is further amended by the addition of the following:
“The Profits Tax shall be administered by the Collector of Income Tax and the provisions of Parts IV to VIII inclusive of the Income Tax (Consolidation) Proclamation, 1959, shall apply in relation to the Profits Tax as they apply in relation to Income Tax subject to any necessary modification.”.

3.

Clause 4 (b) of the Agreement is amended by the deletion of the word “paid” and the substitution thereof of the word “payable”.

4.

The Agreement is amended by the insertion therein immediately after Clause 10 thereof of the following new clause: —

“11. For the purposes of section 13 of the Income Tax (Consolidation) Proclamation, 1959, the De Beers Botswana Mining Company (Proprietary) Limited shall with effect from the 1st July, 1971, be deemed to be a public company.”.

5.

This Agreement shall be ratified by the Parliament of Botswana and shall come into force on such ratification.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands.

SIGNED by the Hon. LEMME MAKGEKGENENE, M.P., Assistant Minister, Ministry of Finance and Development Planning for and on behalf of the Government of the Republic of Botswana on the 10th day of August, 1972, in the presence of the undersigned Witnesses.

AS WITNESSES:

1. F.G. Mogae
2. H.C.L. Hermans

L. MAKGEKGENENE,

SIGNED for and on behalf of De Beers Botswana Mining Company (Proprietary) Limited at GABORONE on the 10th day of August, 1972, in the presence of the undersigned Witnesses.

AS WITNESSES:

1. F.G. Mogae
2. H.C.L. Hermans

W.C. KROGH,

DE BEERS BOTSWANA MINING COMPANY (PROPRIETARY) LIMITED
(Incorporated in the Republic of Botswana)

Extract taken from the Minutes of the Meeting of the Board of Directors held on Wednesday 28th June, 1972 at 2.00 p.m.

"10. EXPENDITURE ON APPROVED EDUCATIONAL AND VOCATIONAL TRAINING:

The Chairman referred to the discussions which had been held that morning and noted with appreciation that Government proposed to take steps to amend the tax agreement with the Company so as to enable the company to become eligible for the training allowances provided for in Section 13 (1A) of the Income Tax Proclamation.

He noted also, that in conjunction with this amendment, a further amendment to the tax agreement would provide for the deletion, in section one thereof, of the words, "to the Diamond Corporation" and that the appropriate steps would be taken to have these amendments ratified by Parliament once the relative agreement had been signed.

RESOLVED that any one director of the company be hereby authorised to sign any such agreement on behalf of the company."

Certified as a true extract
ANGLO BOTSWANA SERVICES (PROPRIETARY) LIMITED
Secretaries

Per K.C. FICK

GABORONE.
8th August, 1972.

Passed by the National Assembly this 19th day of September, 1972.

I.P. GONTSE,
Clerk of the National Assembly.