

# BCL LIMITED (AMENDMENT OF MINING LEASE) ACT, 1985

No. 21



of 1985

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title
2. Interpretation
3. Ratification of amendment to mining lease
4. Reference to mining lease deemed to be references to mining lease as amended by Minister in accordance with this Act

### SCHEDULE

**An Act to ratify the amendment made to the Mining Lease granted in accordance with the Bamangwato Concessions Limited Mining Lease Act, 1970, and to make consequential provision**

*Date of Assent: 15.10.85*

*Date of Commencement: 25.10.85 O. 85*

**ENACTED** by the Parliament of Botswana.

1. This Act may be cited as the **BCL Limited (Amendment of Mining Lease) Act, 1985**. Short title

2. In this Act "the mining lease" means the mining lease granted by the Minister to BCL Limited in accordance with section 2 of the Bamangwato Concessions Limited Mining Lease Act, 1970, and issued in terms of the Mines and Minerals Act, 1967 Inter-pretation

3. The amendment to the mining lease, State Grant No. 4/72, set out in the Schedule hereto is hereby ratified. Ratification of amendment to mining lease

4. Unless the context otherwise requires, every reference to the mining lease in any law or other instrument shall be deemed to be a reference to the mining lease as amended in accordance with this Act. Reference to mining lease deemed to be references to mining lease as amended by Minister in accordance with this Act

**SCHEDULE**  
**AMENDMENT TO MINING LEASE**  
*State Grant No. 4/72*

WHEREAS BCL LIMITED, a company incorporated under the Laws of the Republic of Botswana (hereinafter referred to as "the Grantee") and the Republic of Botswana (hereinafter referred to as "the Government") acting by and through the Minister of Mineral Resources and Water Affairs (hereinafter referred to as "the Minister"), have agreed that the Mining Lease dated 7th March, 1972, as amended, (hereinafter referred to as "the Mining Lease") should be further amended in certain respects:-

NOW THEREFORE, the Minister hereby amends the Mining Lease as follows:-

1. Clause 12 of the Mining Lease is amended by deleting sub-clauses (A) to (D) and substituting in lieu thereof the following:

"12 (A) For the purposes of this clause the following expressions shall, except as the Minister and the Grantee may otherwise agree, have the following meanings:-

- (i) 'Matte' means nickel-copper-cobalt matte produced from ore mined in the area of Grant;
- (ii) 'business day' shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions are authorised or obliged by law to close in the Republic of Botswana, England, the Federal Republic of Germany, the Republic of South Africa and New York, United States of America;

(B) From and after 1st January, 1986, in accordance with the terms and provisions of this Mining Lease, in respect of ore mined in the area of Grant, the Grantee shall pay to the Ministry of Mineral Resources and Water Affairs (hereinafter referred to as the "Ministry") on behalf of the Government, in respect of each calendar year, a royalty in cash in an amount equal to 3,41 per cent. (3,41%) of the gross value of the nickel, copper and cobalt elements of the Matte as to which title has passed from the Grantee (and, if applicable, any of its subsidiaries) or which has been lost, such loss being covered by insurance, or which has otherwise been disposed of by the Grantee and, if applicable, any of its subsidiaries (the occurrence of any such event being hereinafter referred to as a "Matte Shipment"), which royalty shall be to the exclusion of any royalty payment which might otherwise be payable by the Grantee in respect of ore mined in the area of Grant (other than as set out in sub-clause (D)).

(C) Subject to the provisions of sub-clauses (E) (iii) and (iv), the gross value of the nickel, copper and cobalt elements of the Matte shall be calculated as follows:

- (i) The metal content in the Matte shall be determined for each Matte Shipment by weighing, sampling and assaying such matte at the area of Grant in accordance with the terms of any contract pursuant to which such Matte Shipment is being made or in such other manner as may from time to time be agreed.

- (ii) Solely for purposes of computation of the royalty, the value of the respective metals contained in the Matte shall be deemed to be the quantity multiplied by the price attributable to such metal under the terms of the relevant contract provided that if the terms of any contract to which the Grantee is presently a party are amended or if the Grantee enters into any new or additional contracts relating to ore mined in the area of Grant and, in the opinion of the Minister taking market conditions into account, the terms of such new or amended contract, as to pricing, time of payment or passing of title, are such that the royalties payable hereunder will be unreasonably diminished, then the Minister shall, within 30 days after receiving details of such new or amended contracts, so notify the Grantee and the Minister and the Grantee shall agree an alternative basis for calculating royalties payable hereunder or, failing agreement, shall refer the matter to an umpire in accordance with the provisions of sub-clause (E) (iv). The Grantee will supply to the Minister full details of all new or amended contracts within 7 days of the same being executed.
- (iii) Translation of the prices referred to in sub-clause (C) (ii) hereof from various foreign currencies into Pula shall be made on the basis of the average of the Bank of Botswana's official daily buying and selling rates for the relevant currency on the business day preceding the day on which payment of a royalty is due.
- (iv) Notwithstanding the provisions of sub-clauses (E) (iii) and (iv) hereof, in the event of manifest error in the calculation of gross value of the metal content in the Matte in accordance with this clause, such error shall be adjusted as promptly as possible after the discovery of the error by payment from the Grantee to the Minister or *vice versa* as appropriate.
- (v) The gross value of the metal content in the Matte for each Matte Shipment shall be equal to the sum obtained by adding together the results of the computations made under sub-clause (C) hereof and shall be the basis of the payments to be made under sub-clause (E) below.

(D) If metals other than nickel, copper and cobalt shall be recovered from the Matte and the Grantee shall receive consideration therefor, the value of such other metals, including precious metals, if any, contained in any Matte Shipment shall be the quantity (taking into account such Metallurgical deductions as may be agreed by the parties) as determined under sub-clause (C) (i) hereof of such metals contained therein multiplied by the price attributable to such metals under the terms of the relevant contract or, if no such price is attributable thereto, the price received by the Grantee. The provisions of sub-clauses (C) (iii) to (v) shall apply to this Clause, *mutatis mutandis*.

(E) The royalty shall accrue as follows:—

- (i) (a) To the extent a royalty is due in each calendar year remaining

during the term of this Grant commencing with January 1, 1986, the Grantee shall pay on account of the royalty payable in respect of such calendar year an amount of P375,000 on or before the 30th day of June, or if it is not a business day, the next succeeding business day, and a further amount of P375,000 on or before the 31st day of December in each such calendar year, or if it is not a business day, the immediately preceding business day.

- (b) With respect to all Matte Shipments in the six months ended June 30 and December 31 in each year, an additional amount shall be paid representing the difference between the royalties payable with respect to the Matte Shipments for the immediately preceding six months and the relevant payment made pursuant to (a) above. Those amounts shall be paid on or before June 30 or December 31 in such year or if the relevant date for any payment is not a business day, the immediately preceding business day.
- (ii) Royalties shall be paid when due under this lease, subject only to the terms and conditions of the Restructuring Agreement to which, inter alia, the Grantee and the Government are parties dated July 31, 1985.
- (iii) If at the time for payments of any royalty either the weight, assay or price related to any Matte Shipment in respect of which such royalty is due is not finally settled, then (a) as regards weights and assays, such royalty shall be paid on the basis of Grantee's weights and assays for such Matte Shipment, and (b) as regards price, such royalty shall be paid on such basis as the Grantee and the Minister may agree or, failing such agreement, the price shall be deemed to be the same as the most recent price which has been finally settled pursuant to the terms of the relevant contract but upon the final determination of such weights, assays or prices in accordance with the terms of the relevant contract, appropriate adjustments in the royalty shall be made, and such adjustment shall be reflected in the next following royalty payment, or if no further royalty payment is then expected, by appropriate payment between the parties.
- (iv) If the Minister and Grantee shall have failed to reach agreement under sub-clause (C) (ii) hereof within 45 days of the Minister notifying the Grantee that he requires an alternative basis to be agreed then the matter shall be referred to an umpire to be appointed jointly or, if such appointment cannot be agreed, to be appointed by the President or a Vice-President for the time being of the Chartered Institute of Arbitrators in England. Each of the Minister and the Grantee shall supply such umpire with all relevant information required by him. The costs of the umpire shall be divided equally jointly by the Grantee and the Government and the umpire's decision shall then be the final and binding decision under this lease."

**GIVEN** under my hand at **GABORONE** this 31st day of July One Thousand Nine Hundred and Eighty-five.

**(Signed) M.C. TIBONE,**  
*for Minister, Ministry of Mineral Resources  
and Water Affairs.*

**PASSED** by the National Assembly this 24th day of September, 1985.

**C.G. MOKOBI,**  
*Clerk of the National Assembly.*