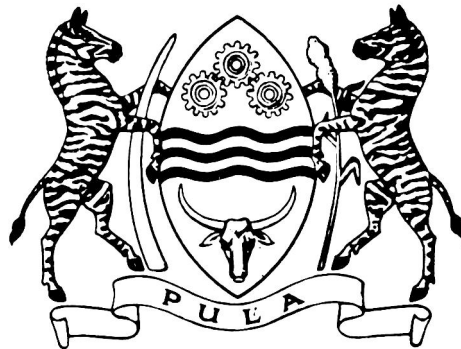


REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

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Bill No 21 of 1985

BCL LIMITED (AMENDMENT OF MINING LEASE) BILL, 1985

(Published on 13th August, 1985)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The mining lease held by BCL Limited in respect of the copper nickel mine at Selebi-Phikwe was granted to that company by the Minister of Mineral Resources and Water Affairs on 7th March, 1972.

3. The grant of the mining lease, State Grant No. 4/72, registered on 7th March, 1972 was made in accordance with the Bamangwato Concessions Limited Mining Lease Act, 1970 (No. 7 of 1970), as subsequently amended by the Bamangwato Concessions Limited Mining Lease (Amendment) Act, 1971 (No. 10 of 1971), the Bamangwato Mining Lease (Amendment No. 2) Act, 1971 (No. 27 of 1971) and the Bamangwato Concessions Limited Mining Lease (Amendment No. 3) Act, 1971 (No. 55 of 1971) and the Mines and Minerals Act of 1967.

4. The various parties to the copper nickel mine and infrastructure project have agreed to a restructuring of the existing financial and marketing arrangements relating to the (BCL Limited) dated 31st July, 1985.

5. The mining lease at present provides that the royalty payable by BCL Limited shall be at the rate of three per centum of the gross value of the metal content in the matte as to which title has passed from the Grantee.

6. As a condition of its agreement to the above-mentioned restructuring, the Government has required that the royalty be revised to three decimal four one per centum of the gross value of the nickel, copper and cobalt elements of the matte as to which title has passed from the Grantee.

7. This Bill is presented to the National Assembly in terms of section 66 of the Mines and Minerals Act (Cap. 66:01) for the ratification of the amendment to the mining lease signed on behalf of the Government on 31st July, 1985 and reproduced as the Schedule to the Bill.

A.M. MOGWE,
*Minister of Mineral Resources and
Water Affairs.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Ratification of amended 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

A BILL

—entitled—

An Act to require amendment of the Mining Lease granted in accordance with the Bangwato Concessions Limited Lease Act, 1970, and to make consequential provision

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

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

Inter-pretation 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.

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

Reference to mining lease deemed to be references to mining lease as amended by Minister in accordance with this Act 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.

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 metals 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.*

Bill No 22 of 1985

**SELEBI—PHIKWE TAX AGREEMENT (AMENDMENT)
RATIFICATION BILL, 1985**

(Published on 13th August, 1985)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to give effect to the amendment of the Selebi—Phikwe Tax Agreement, 1970, following the Fourth BCL Restructuring.

P.S. MMUSI,
*Vice President and Minister of Finance
and Development Planning.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Ratification

SCHEDULE

A BILL

—entitled—

An Act to ratify an agreement amending clause 11A of the Selebi-Phikwe Tax Agreement set out in the Schedule to the Selebi-Phikwe Tax Agreement Ratification Act, 1970.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Selebi-Phikwe Tax Agreement (Amendment) Ratification Act, 1985. Short title

2. The Agreement set out in the Schedule hereto entered into between the Government, BCL Limited, Botswana RST Limited and BCL (Sales) Limited on 31st July, 1985 is hereby ratified. Ratification

SCHEDULE

AGREEMENT

THIS AGREEMENT is made this 31st day of July, 1985, One Thousand, Nine Hundred and Eighty Five **BETWEEN THE GOVERNMENT OF THE**

REPUBLIC OF BOTSWANA (hereinafter called "the Government") of the first part, BCL Limited (hereinafter called "BCL" whose registered office is the Administrative Block BCL Mine Site Selebi-Phikwe in the Republic of Botswana, of the second part, Botswana RST Limited (hereinafter called "BRST") a company incorporated in the Republic of Botswana and having its registered office at the Administrative Block BCL Mine Site aforesaid of the third part and BCL (SALES) LIMITED (hereinafter called "BCL (SALES)") a company incorporated in the Republic of Botswana having its registered office at the Administrative Block BCL Mine Site aforesaid of the fourth part.

WHEREAS THE Government, BCL and BRST on March 5, 1970 entered into an Agreement relating to certain tax matters which was subsequently amended by an Agreement dated June 22, 1971, between the said parties and by an Agreement dated March 1, 1972, between the said parties and BCL (SALES) and by an Agreement dated March, 15, 1978 among the Government, BCL, BRST and BCL (SALES) and by an Agreement dated 25th June, 1982 between the Government, BCL, BRST, BCL (SALES) which Agreement, as so amended, is hereinafter called "the principal Agreement;

AND WHEREAS the Government, BCL, BRST and BCL (SALES) desire further to amend the principal Agreement the better to express their common intentions,

NOW IT IS HEREBY AGREED as follows:

1. The Government will introduce legislation for this Agreement to be ratified by Parliament.
2. The principal Agreement shall be read and construed as amended by the deletion of the second sentence of clause 11(A) in its entirety and the substitution therefor of —

"The expression 'interest' where hereinafter used in this Part of this Agreement means interest payable by BCL or BCL (SALES) or BRST on monies borrowed by BCL, BCL (SALES) or BRST and applied for the purposes of the operations, and in the case of BCL shall include interest payable on any outstanding amount of the Amax Nickel Inc. Indemnification Amount in terms of the Restructuring Agreement (BCL Limited) among the Republic of Botswana, Kreditanstalt Fuer Wiederaufbau, Industrial Development Corporation of South Africa Limited, Tusitala (Proprietary Limited, The Chase Manhattan Bank N.A., Amax Inc., Anglo American Corporation of South Africa Limited, Botswana RST Limited, Charter Consolidated P.L.C., De Beers Consolidated Mines Limited, RST International Inc., and BCL Limited, dated as of July 31st, 1985 as read with the Termination Agreement (Matte Purchase Agreement) between BCL Limited and Amax Nickel Inc., dated as of July 31st, 1985, and on notes issued by BCL, under the Note Agreement dated 15th day of March, 1978, between the Government, BCL, Amax Inc., and Anglo American Corporation of South Africa Limited, in respect of monies so applied and shall also include interest accrued on Subordinated Notes and

Emergency Funding referred to in Section 4.02 of the Agreement and Plan of Reorganization (BCL Limited) among BCL and its creditors dated as of June 15, 1982."

3. The principal Agreement is amended by the insertion after clause (F) thereof of a new clause (G) as follows:—

"In the event of a change in the Income Tax Act having the effect of making the principal amount of the Amax Nickel Inc. Indemnification Amount liable to income tax, such amount shall be exempt from such income tax."

IN WITNESS whereof the parties hereto have hereunder set their hands.

SIGNED as of the day and year first above written for and on behalf of THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA.

AS WITNESS

1. E.W.M.J. LEGWAILA
2. P. FREEMAN

B. GAOLATHE

SIGNED as of the day and year first above written for and on behalf of BCL LIMITED.

AS WITNESS

1. J.B. GALEFOROLWE
2. P. SCOTT

A.W. LEA

SIGNED as of the day and year first above written for and on behalf of BOTSWANA RST LIMITED.

AS WITNESS

1. J.B. GALEFOROLWE
2. P. SCOTT

A.W. LEA

SIGNED as of the day and year first above written for and on behalf of BCL (SALES) LIMITED.

AS WITNESS

1. J.B. GALEROLWE
2. P. SCOTT

M.A. FOREMAN