THE DE BEERS BOTSWANA MINING COMPANY (PROPRIETARY) LIMITED AGREEMENT ACT 1970

No. 19 of 1970

AN ACT TO RATIFY AN AGREEMENT ENTERED INTO BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND DE BEERS BOTSWANA MINING COMPANY (PROPRIETARY) LIMITED

Date of Assent: 3.6.1970

Date of Commencement: 10.6.1970

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as The De Beers Botswana Mining Company (Proprietary) Limited Agreement Act, 1970.

Ratification

2. The agreement entered into between the Government of the Republic of Botswana and De Beers Botswana Mining Company (Proprietary) Limited on the 2nd March, 1970, and set out in the Schedule to this Act is hereby ratified.

Application

3. For the avoidance of doubt it is declared that this Act shall be a ratifying Act for the purposes of Section 6A of the Income Tax (Consolidation) Proclamation.

SCHEDULE

MEMORANDUM OF AGREEMENT made and entered into by and between :-

THE HON. JAMES GEORGE HASKINS, O.B.E., J.P., M.P., MINISTER OF FINANCE 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 HARRY FREDERICK OPPENHEIMER

he being authorised hereto by Resolution of the Board of Directors dated 2nd March, 1970 a certified copy of which is attached hereto.

(hereinafter referred to as the MINING COMPANY) of the other part.

WITNESSETH:

THAT WHEREAS on the 9th May, 1969, an Agreement was entered into between the GOVERNMENT and DE BEERS PROSPECTING BOTSWANA (PROPRIETARY) LIMITED which related to the consequences flowing from the successful prospecting for diamonds and which would lead to the actual mining thereof.

AND WHEREAS DE BEERS PROSPECTING BOTSWANA (PROPRIETARY) LIMITED has in its prospecting proved the existence of sufficient diamonds for the economic mining thereof at Orapa in the Bamangwato Tribal Territory in respect of which the MINING COMPANY has applied for a Mining Lease covering an area of approximately 64 (SIXTY FOUR) square miles.

AND WHEREAS the MINING COMPANY has been incorporated as a Private Company.

AND WHEREAS in terms of the aforesaid Agreement the GOVERNMENT would enjoy participation in the MINING COMPANY to be formed.

AND WHEREAS certain State Grants Nos. 1/68, 3/68 and 10/69 have been issued to DE BEERS PROSPECTING BOTSWANA (PROPRIETARY) LIMITED respectively on the 19th January, 1968, 19th January, 1968 and on the 16th September, 1969, conferring rights to prospect for precious stones over areas covering the Bamangwato Tribal Territory, it is the intention that the MINING COMPANY take cession of those rights which would enable it to carry out exclusive prospecting operations throughout the Bamangwato Tribal Territory.

NOW THEREFORE THE PARTIES hereto agree as follows –

1.

IN terms of the powers vested in Government by section 53(4) as read with section 55(2) of the Mines and Minerals Act, 1967 (No. 50 of 1967) as amended, ROYALTY at the rate of 5% (FIVE PER CENTUM) on gross proceeds of sales of diamonds to the Diamond Corporation shall be payable to the GOVERNMENT from the date of commencement of mining operations within the lease area covered by the proposed Mining Lease.

G.T. MATENGE,
Clerk of the National Assembly

2.

GOVERNMENT undertakes that the Minister shall, in terms of section 55(2) of the Mines and Minerals Act waive the additional diamond royalties provided for in section 54 of the said Act.

3.

GOVERNMENT will be entitled to a PROFITS TAX OF 10% (TEN PER CENTUM) of the annual net profits of the MINING COMPANY as from date of commencement of mining operations within the lease area covered by the proposed Mining Lease. For the purpose of calculating annual net profits royalties paid in terms of Clause 1 hereof shall rank as deductible expenditure.

For the purpose of this Clause, annual net profits shall be calculated as for income tax assessment including deductions for capital expenditure in terms of Clause 7 of this Agreement.

4.

(a) THE rates of company taxation in respect of companies applicable in Botswana from time to time shall apply.

(b) THE Royalty and Profits Tax respectively paid in terms of Clauses 1 and 3 hereof shall be allowable expenses for the purpose of calculating taxable income.

5.

THE provisions contained in Clauses 1, 2, 3 and 4(b) hereof shall apply during the currency of the proposed Mining Lease and any extension thereof, but the parties hereto agree that in the event of abnormal circumstances arising either of them shall be entitled to negotiate to change any or all of the provisions therein contained.

6.

THE MINING COMPANY undertakes that it will allocate 15% (FIFTEEN PER CENTUM) of its equity free of consideration to the GOVERNMENT in respect of all shares issued by the Company from time to time.

7.

IT is further agreed between the parties that, there shall in lieu of the quotient referred to in section 17(1)(c) of the Income Tax (Consolidation) Proclamation, 1959, as amended, be deducted in respect of the year of assessment during which the production of diamonds commences, the amount of capital expenditure incurred up to the close of that year of assessment and thereafter in respect of each succeeding year of assessment the actual capital expenditure incurred during such year of assessment.

8.

IN regard to the prospecting expenditure incurred in the Bamangwato Tribal Territory prior to actual production, the parties hereto agree that such prospecting expenditure as incurred by or taken over by the MINING COMPANY from DE BEERS PROSPECTING BOTSWANA (PROPRIETARY) LIMITED including that taken over from its predecessors-in-title shall rank as redeemable capital expenditure for income tax purposes.

9.

FOR the purposes of this Agreement the Bamangwato Tribal Territory shall be as defined in the Laws of Botswana as at the date of this Agreement.

10.

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. JAMES GEORGE HASKINS, O.B.E., J.P., M.P., Minister of Finance for and on behalf of the Government of the Republic of Botswana at GABORONE on the 2nd day of March, 1970, in the presence of the undersigned Witnesses.

AS WITNESSES:

1. J.T. LISLE

J.G. HASKINS.

2. PAT. W. REARDON.

SIGNED for and on behalf of De Beers Botswana Mining Company (Proprietary) Limited at Gaborone on the 2nd day of March, 1970, in the presence of the undersigned Witnesses.

AS WITNESSES:

1. A. WILSON

H.F. OPPENHEIMER.

2. W.C. KROGH.

RESOLUTION PASSED AT A MEETING OF THE BOARD OF DIRECTORS OF DE BEERS BOTSWANA MINING COMPANY (PROPRIETARY) LIMITED HELD AT GABORONE ON 2ND MARCH, 1970