

ALUMINA REFINERY
(MITCHELL PLATEAU)
AGREEMENT.

No. 90 of 1985.

AN ACT to amend the Alumina Refinery (Mitchell Plateau) Agreement Act 1971.

[Assented to 4 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Alumina Refinery (Mitchell Plateau) Agreement Amendment Act 1985*.

Short title
and principal
Act.

(2) In this Act the Alumina Refinery (Mitchell Plateau) Agreement Act 1971 is referred to as the principal Act.

Act No. 67
of 1971
amended by
Act No. 60
of 1972.

Commence-
ment.

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Section 2
amended.

3. Section 2 of the principal Act is amended by deleting the definition of "the Variation agreement" and substituting the following definitions—

“ “the First Variation Agreement” means the agreement a copy of which is set out in the Second Schedule;

“the Second Variation Agreement” means the agreement a copy of which is set out in the Third Schedule. ”.

Section 3A
amended.

4. Section 3A of the principal Act is amended by inserting immediately before "Variation" the following—

“ First ”.

Section 3B
inserted.

5. After section 3A of the principal Act the following section is inserted—

“ 3B. (1) The Second Variation Agreement is ratified.

(2) Without limiting or otherwise affecting the application of the Government Agreements Act 1979, the Second Variation Agreement shall operate and take effect according to its terms notwithstanding any other Act or law. ”.

Ratification
of Second
Variation
Agreement.

Third
Schedule
added.

6. After the Second Schedule to the principal Act the following Schedule is added—

“ THIRD SCHEDULE. (Section 2).

1985.] *Alumina Refinery (Mitchell Plateau) Agreement.* [No. 90.

THIS AGREEMENT is made the 29th day of October, 1985

BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the one part and

MITCHELL PLATEAU BAUXITE CO. PTY. LIMITED a company incorporated in the Australian Capital Territory and having its principal place of business in the State of Western Australia at 191 St. George's Terrace Perth ALCOA OF AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at Cnr. Davy and Marmion Streets Booragoon THE SHELL COMPANY OF AUSTRALIA LIMITED a company incorporated in Victoria and having its principal place of business in Western Australia at 200 St. George's Terrace, Perth, SUMITOMO ALUMINIUM SMELTING COMPANY LIMITED a company incorporated in Japan and having its registered office at 7-9 Nihonbashi, Chuo-ku, Tokyo SUMITOMO CORPORATION a company incorporated in Japan and having its registered office at 11-1 Kandanshikicho 3-Chome, Chiyoda-ku, Tokyo and MARUBENI CORPORATION a company incorporated in Japan and having its registered office at 4-2 Ohtemachi 1-Chome, Chiyoda-ku, Tokyo (hereinafter called "the Company") of the other part.

WHEREAS:

- (a) on the 17th day of November, 1971 Alumax Bauxite Corporation (then called Amax Bauxite Corporation) entered into an agreement with the State (hereinafter called "the 1971 Agreement") relating to the mining, beneficiation, transport and refining of bauxite and alumina from the Kimberley Region of Western Australia and incidental and other purposes which agreement was ratified by the Alumina Refinery (Mitchell Plateau) Agreement Act 1971;
- (b) on the 31st day of August, 1972 Alumax Bauxite Corporation entered into an agreement with the State (hereinafter called "the 1972 Agreement") inter alia amending the 1971 Agreement which agreement was ratified by the Alumina Refinery (Mitchell Plateau) Agreement Act Amendment Act 1972 and was amended by an agreement between the parties thereto bearing date the 15th day of May, 1973;

No. 90.] *Alumina Refinery (Mitchell Plateau) Agreement.* [1985.

(c) by various assignments Alumax Bauxite Corporation transferred and assigned (with the consent of the State) all its interest in and to the 1971 Agreement and the 1972 Agreement (each as amended as hereinbefore recited) to the undermentioned companies as tenants in common the following shares—

Mitchell Plateau Bauxite Co. Pty. Limited	52.5%
Alcoa of Australia Limited	17.5%
Billiton Aluminium Australia B.V. (formerly called HA Bauxite Australia N.V.)	10%
Sumitomo Chemical Co. Ltd.	10%
Sumitomo Corporation (formerly called Sumitomo Shoji Kaisha Ltd.)	5%
Marubeni Corporation	5%

(d) the said Sumitomo Chemical Co. Ltd. has transferred and assigned (with the consent of the State) its 10% interest in and to the 1971 Agreement amended as mentioned above to Sumitomo Aluminium Smelting Company Limited;

(e) the said Billiton Aluminium Australia B.V. has transferred and assigned (with the consent of the State) its 10% interest in and to the 1971 Agreement amended as mentioned above to The Shell Company of Australia Limited;

(f) the parties hereto desire to amend the 1971 Agreement amended as mentioned above (hereinafter referred to as "the principal Agreement").

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.

2. (1) The provisions of this Agreement other than this Clause and Clause 3 hereof shall not come into operation until a Bill to ratify this Agreement is passed by the Parliament of Western Australia and comes into operation as an Act.

(2) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st day of December, 1985, or such later date if any as the parties hereto may mutually agree upon.

4. The principal Agreement is hereby varied as follows—

(1) Clause 1—

(a) by deleting the definition of “Mining Act” and inserting the following definitions—

“ “Mining Act 1904” means the Mining Act 1904 and the amendments thereto and the regulations made thereunder as in force on the 31st day of December, 1981;

“Mining Act 1978” means the Mining Act 1978; ”;

(b) in the definition of “mining areas”, by inserting after “identification” the following—

“ less any part or parts thereof surrendered by the Company pursuant to Clause 4 (6) hereof ”;

(c) in the definition of “Minister for Mines”, by deleting “Mining Act” and substituting the following—

“ Mining Act 1904 and the Mining Act 1978 ”;

(d) by inserting after the definition of “port” the following definition—

“ “project” means the project contemplated by this Agreement; ”;

(e) in the paragraph commencing “Reference in this Agreement to an Act”, by inserting after “Act”, where it first occurs, the following—

“ other than the Mining Act 1904 ”.

(2) Clause 2—

(a) subclause (1) paragraph (a) by deleting “five thousand dollars thereafter” and substituting the following—

“ five thousand dollars (\$5,000) during the period from the 1st day of July 1982 until the 31st day of December 1985;

thereafter an amount equal to the rentals which would be payable under the Mining Act 1978 in respect of exploration licences over areas equivalent to the mining areas ”;

- (b) by inserting after subclause (2) the following subclause—

“ (3) The rights of occupancy referred to in this Clause shall, subject to this Agreement, continue to be granted and in force under the Mining Act 1904 as though that Act had not been repealed. ”.

- (3) Clause 4—by inserting after subclause (4) the following subclauses—

“ (5) Whether or not the Company is undertaking the studies and other matters mentioned in subclause (1) of this Clause the Company shall except during any period the Company's rights and obligations are suspended under Clause 4A (3) hereof or during the periods known in the region in which the mining areas are situated as the “wet season” normally running from approximately December in one year to March in the next year) maintain or cause to be maintained in operational condition the airstrip within the mining areas and the Mitchell Plateau access road from its junction with the Gibb River/Kalumuru Road to the airstrip.

- (6) The Company shall on or before the 31st day of December, 1985 surrender to the State out of the rights of occupancy granted pursuant to Clause 2 (1) hereof areas equal to not less than one half of the aggregate area of the mining areas but so that after such surrender the area of land that remains subject to the said rights of occupancy consists of not more than 5 discrete areas each of which constitutes a single area the shape of which is rectangular (without any restriction as to the ratio of length to breadth) or as near thereto as is practicable.

- (7) (a) The Company shall submit to the Minister during December 1987 a detailed programme for the development of the project.

1985.]

Alumina Refinery (Mitchell Plateau) Agreement. [No. 90.]

(b) The Minister shall within one (1) month of receipt of the programme submitted pursuant to paragraph (a) of this subclause give to the Company notice either of—

(i) his approval (subject to paragraph (d) of this subclause) thereof; or

(ii) any objections or alterations desired thereto with his reasons therefor and in such case shall afford the Company an opportunity to consult with and submit a revised programme to the Minister.

(c) If within three months of a notice pursuant to paragraph (b) (i) of this subclause agreement is not reached as to the said programme the Minister may—

(i) allow a further period for the submission by the Company of a further programme for the development of the project and the provisions of paragraphs (a) and (b) of this subclause shall apply thereto with the substitution for “during December 1987” of such later time as the Minister may specify; or

(ii) advise the Company of his intention to invite third parties to submit a detailed programme for the development of the project whereupon the provisions of Clause 4A hereof shall apply,

PROVIDED THAT if the Minister does not do either of those things by the 31st day of December, 1988 the provisions of this Agreement (other than Clause 4A hereof) shall continue to apply without modification.

(d) If a programme approved or agreed pursuant to this subclause contains provision for the development of the

project otherwise than as contemplated by this Agreement any such approval or agreement shall be subject to—

- (i) the Company entering into an agreement with the State in a form satisfactory to the Minister to amend this Agreement to allow such programme to proceed; and
 - (ii) the passing of a Bill to ratify that agreement by the Parliament of Western Australia and the coming into operation of that Bill as an Act.
- (8) If the Company shall fail to submit a detailed programme pursuant to subclause (7) of this Clause that failure shall not be an event of default under Clause 10 (m) hereof but the Minister may advise the Company of his intention to invite third parties to submit a detailed programme for the development of the project whereupon the provisions of Clause 4A hereof shall apply. ”.

(4) By inserting after Clause 4 the following Clause—

- “ 4A. (1) This Clause shall apply only if the Minister has given the advice to the Company referred to in Clause 4 (7) (c) (ii) or Clause 4 (8) hereof.
- (2) (a) From the time of giving such advice up to and including the 31st day of December, 1988 the Minister may invite third parties to undertake appraisals with a view to submitting a detailed programme for the development of the project and for the purpose of facilitating such appraisals the State shall be at liberty to provide those third parties with such information concerning the project as the State has in its possession or control (other than written information submitted by the Company for the purposes of this Agreement and not being in the public domain unless the Company gives its prior approval).

(b) Up to and including the 31st day of December 1988, the Minister may nominate in writing to the Company a party (comprising one or more of the third parties mentioned in paragraph (a) of this subclause) to proceed with the submission of a programme for the development of the project (hereinafter called "the nominated party") and the Company shall, subject to the nominated party first executing a confidentiality agreement in favour of the Company upon terms previously agreed between the Company and the Minister whereby the nominated party agrees to keep confidential the information hereinafter mentioned, without undue delay make available to the nominated party such of the following information in the possession or control of the Company concerning the project as the nominated party may require—

- (i) written information submitted by the Company for the purposes of this Agreement;
- (ii) information on all work done in connection with exploration in the mining areas since the date of this Agreement including the matters required to be reported on annually to the Department of Mines by a holder of an exploration licence pursuant to section 68 (2) of the Mining Act 1978;
- (iii) information relating to the investigations into and work carried out with respect to sites for and designs of the refinery, the port and the Company's wharf and other refineries, ports and wharves within the said State for the purposes of this agreement,

together with such other information in the possession or control of the Company as the nominated party may reasonably require for the purpose of evaluating the project and the preparation and submission of a programme and detailed proposals for the development of the project but the Company shall not be obliged to divulge—

- (A) technology of a proprietary nature (not including standard tests used in industry to determine the suitability of a resource for beneficiation and processing to alumina) relating to bauxite beneficiation and alumina production;
- (B) bauxite and alumina market and marketing information;
and
- (C) project cost information and financial analyses.

Provided that if the release of any information requested pursuant to this paragraph comprises data, records, processes and other documents or things would be contrary to an agreement or agreements relating to confidentiality between the Company and third parties entered into before 1st September 1985 or after that date with the consent of the Minister, the release of that information pursuant to this paragraph shall be subject to the Company obtaining the consent of such other parties to that release and the Company shall use its best endeavours to obtain such consent without undue delay.

- (3) If the State nominates a third party as mentioned in subclause (2) of this Clause, the rights and obligations of the Company under this Agreement (other than under this Clause) shall be

suspended until such time as they are revived under subclause (4) of this Clause or are assigned under subclause (5) of this Clause. Any suspension under this subclause shall not affect the Company's rights of occupancy or other mining tenements in respect of the mining areas save that the nominated party, subject to it first executing a deed of covenant in favour of the Company containing terms previously agreed between the Company and the Minister in respect of the nominated party's observance and performance of all the obligations of the Company under this Agreement (other than this Clause 4A) and related matters during the period of suspension and subject to it paying the rentals payable in respect of the rights of occupancy and any other government charges imposed upon the Company in respect of the mining areas during the period of the suspension, may have unrestricted access to the mining areas (and to the facilities established by the Company in connection with the project in the Kimberley region on reasonable terms and conditions) for purposes related to the preparation and submission of a programme and detailed proposals for the development of the project and may construct such facilities thereon and carry out such tests and take and remove such samples as the nominated party may require for such purposes.

- (4) On the occurrence of any of the following events the rights and obligations of the Company under this Agreement shall revive and be of full force and effect—
- (a) the nominated party fails to submit to the Minister by the 30th day of June, 1990 detailed proposals and evidence of the nature set out in paragraphs (a) and (b) respectively of Clause 5 (1) hereof;
 - (b) the Minister fails to approve or agree (whether voluntarily or by virtue of an arbitration award)

with the nominated party by the 30th day of June, 1991 all detailed proposals covering the matters set out in paragraph (a) of Clause 5 (1) hereof; or

(c) the Minister notifies the Company that the nominated party has withdrawn from the project or that the Minister has withdrawn nomination from that party.

(5) (a) If the rights and obligations of the Company shall not have revived under subclause (4) of this Clause and the Minister approves or agrees the detailed proposals of the nominated party as mentioned in paragraph (b) of that subclause (4), the Company shall on the expiration of three months' notice from the Minister requiring the same assign to the nominated party free of all encumbrances all the Company's right title and interest in—

(i) this Agreement;

(ii) rights of occupancy and mining tenements in respect of the mining areas;

(iii) leases sub-leases licences or other title or right granted under this Agreement; and

(iv) improvements constructed on any of the foregoing for the purposes of this Agreement

on reasonable terms and conditions and for the consideration mentioned in paragraph (b) of this subclause.

(b) As consideration for the said assignment the Company shall be entitled to be paid by the

nominated party (except to the extent that the nominated party may have already made payment therefor to the Company) the fair values of—

- (i) the right title and interest of the Company in the improvements to be assigned under paragraph (a) of this subclause as at the date that the Minister gives notice to the Company under paragraph (a) of this subclause;
and
 - (ii) the information made available by the Company under subclause (2) of this Clause (but excluding any such information which was either in the public domain or already known to the nominated party or not taken by the nominated party) as at the time when that information was made available together with interest at fair and reasonable rates on the value thereof from the time the information was made available in each case up to the date on which payment takes place.
- (c) If within one month after the Minister gives notice to the Company under paragraph (a) of this subclause the Company and the nominated party have not agreed on the reasonable terms and conditions mentioned in that paragraph or on the fair values and interest rates mentioned in paragraph (b) of this subclause, as the case may be, the same shall be determined by two independent experts, one nominated by the Company and other nominated by the nominated party (and if the experts cannot agree by a third expert selected by them). The decision of the experts (or their umpire) shall be final

and binding on the parties. If a party shall fail to nominate an expert within one month of the other party giving notice specifying the matters of disagreement which are to be referred to the experts hereunder then the matters of disagreement the subject of the notice shall be determined by the expert nominated by the party giving the notice. The costs of the experts shall be borne equally by the Company and the nominated party.

- (6) Notwithstanding the provisions of Clause 14 (2) hereof, on an assignment of the rights of the Company hereunder pursuant to subclause (5) of this Clause, the Minister shall agree to release the Company from all liability under the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (5). ”.

(5) Clause 5 (1)—

by deleting “By the 30th day of June 1980 or if the Company submits a detailed report to the Minister that in the opinion of the Company development of the bauxite reserves within the mining areas is not then economically feasible or is not feasible due to an insufficient number of participants for the project, and the Company requests a deferral of its obligations up to the 30th day of June, 1984 then by that date” and substituting the following—

“ By the 30th day of June, 1990 (or, if the Company's rights and obligations revive under—

(A) Clause 4A (4) (a) hereof, then by the 30th day of June, 1991;

(B) Clause 4A (4) (b) hereof, then by the 30th day of June, 1992; or

(C) Clause 4A (4) (c) hereof after the 30th day of June 1989, then by the anniversary of the date on which the Minister notifies the Company under Clause 4A (4) (c) hereof) ”.

(6) Clause 6 (3)—

(a) by deleting "30th day of June 1985" and substituting the following—

" the first anniversary of the final date for submission of detailed proposals under Clause 5 (1) hereof ";

(b) by inserting at the end thereof the following—

" The provisions of Clause 17 hereof shall not apply to this subclause. "

(7) Clause 18—

(a) by deleting "Notwithstanding" and substituting the following—

" (1) Subject to subclause (2) of this Clause but otherwise notwithstanding ";

(b) by inserting the following subclause—

" (2) The Minister may at the request of the nominated party from time to time extend either or both of the dates referred to in paragraphs (a) and (b) of Clause 4A (4) hereof for a single period of three months and on any such extension taking effect the dates of the 30th day of June 1990 and/or the 30th day of June 1991 mentioned in Clause 5 (1) hereof as the case may be shall be extended accordingly. "

5. Any reference in the Principal Agreement to the Mining Act without any reference to a year shall be read and construed as a reference to the "Mining Act 1904" as defined in the Principal Agreement as amended by this Agreement.

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

SIGNED by the HONOUR-
ABLE BRIAN THOMAS
BURKE, M.L.A. in the
presence of:

BRIAN BURKE.

D. PARKER
MINISTER FOR MINERALS
AND ENERGY:

THE COMMON SEAL of MIT-
CHELL PLATEAU BAUXITE
CO. PTY. LIMITED was hereto
affixed in the presence of:

(C.S.)

D. E. FITZGERALD Director

I. R. NANKIVELL Secretary

No. 90.] *Alumina Refinery (Mitchell Plateau) Agreement.* [1985.

THE COMMON SEAL of
ALCOA OF AUSTRALIA (C.S.)
LIMITED was hereunto
affixed in the presence of:

P. SPRY-BAILEY Director
M. GUILMARTIN Secretary

THE COMMON SEAL of THE
SHELL COMPANY OF AUSTRALIA LIMITED was here- (C.S.)
unto affixed in accordance
with its Articles of Association
in the presence of:

P. H. CHEW Director
V. M. JOHNSON Authorised
Signatory

SIGNED, SEALED and
DELIVERED on behalf of
SUMITOMO ALUMINIUM E. TANIGUCHI Authorised
SMELTING COMPANY Representative
LIMITED by its duly
authorised representative in
the presence of:

N. ITONAGA Witness

SIGNED, SEALED and
DELIVERED on behalf of
SUMITOMO CORPORATION T. UMEMOTO Authorised
by its duly authorised repre- Representative
sentative in the presence of:
Y. EGUCHI Witness

SIGNED, SEALED and
DELIVERED on behalf of M. HARA Authorised
MARUBENI CORPORATION Representative
by its duly authorised repre-
sentative in the presence of:

M. KAJITANI Witness