

Bell Annex I
Select Clauses⁷

Ownership Representation:

1.1 Representations and Warranties of the Company.

The Company represents and warrants to the Government at the date of this Agreement and on the Effective Date as follows:

- a. The Company is a corporation duly organized, validly existing and in good standing under the laws of Liberia, and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement.
- b. This Agreement has been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Schedule 5 contains (except as otherwise noted) complete and correct lists or tables setting forth:
 - i) the Company's shareholders;
 - ii) the Company's Affiliates showing forth, in each case, its relationship to the Company and the jurisdiction in which it is organized;
 - iii) the directors and senior officers of the Company, each shareholder of the Company, and each Person deemed to Control the Company, and
each Person that is the ultimate beneficial owner of 5% or more of (x) the voting rights ordinarily empowered to control the management of the Company or (y) the rights to share in the profits of the Company, and the chain through which such rights are exercised.
- d. None of the Affiliates, directors, officers or other Persons identified in Schedule 5 is a Prohibited Person. The Company is an "Eligible Applicant" under the Mining Law and no officer or director of the Company is a Person described in Sections 4.2(a), (d), (f) or (g) of the Mining Law.
- e. A "Prohibited Person" is a Person identified as such in regulations issued under the authority of the Ministry of Finance and the Ministry of Justice and applicable to the holders of licenses issued under the Mining Law. Pending the issuance of such regulations, a "Prohibited Person" is a Person:

⁷ Clauses except as otherwise indicated are from two public agreements recently negotiated by the Government of Liberia, one with BHPB and one with Severstal (PIOM).

- i) who is identified on any of the following lists maintained by the United States government: (1) the United States Department of Commerce Denied Persons list (located at <http://www.bis.doc.gov/dpl/thedeniallist.asp>) and Entity list (located at <http://www.bis.doc.gov/entities/default.htm>); (2) the United States Department of the Treasury Specially Designated Nationals and Blocked Persons lists (both located at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>); (3) United States Department of State Foreign Terrorist Organizations list (located at <http://www.state.gov/s/ct/rls/other/des/123085.htm>) or Debarred Parties list (located at <http://www.pmdtdc.state.gov/compliance/debar.html>); or (4) the Financial Action Task Force on Money Laundering list of non-cooperative countries or territories (located at http://www.oecd.org/document/57/0,3343,en_2649_201185_1900665_1_1_1_1,00.html), or
- ii) who is identified on the European Union Sanctions list (http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm); or
- iii) who is identified on a Sanctions List published by a Sanctions Committee of the United Nations Security Council; or
- iv) who is (i) identified on the Interpol Red Notice List (<http://www.interpol.int/Public/Wanted/Search/Form.asp>); or (ii) the subject of an arrest warrant issued by the International Criminal Court; or
- v) who is identified on the World Bank ineligible firms list (<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>).
- vi) “Prohibited Person” also includes any Person that issues bearer shares or other instruments to evidence ownership of such Person that do not permit the identification of the owners of such Person.

1.1 Partial Exemption of Capital Goods From Import Duties.

From the Effective Date until the expiry of five years following Substantial Achievement of Nameplate Capacity the Company shall be exempt from all import duties, customs and excise charges, and related fees, subject to the payment of a customs user fee pursuant to Section 14.3(f), on all modules, plant, equipment, construction material, machinery, and light and heavy vehicles, spare parts as well as raw materials, intermediate inputs and consumables (other than gasoline and gas oil), including those items referred to in Exhibit 9 to this Agreement.

The Company shall pay a customs user fee in respect of all items not subject to the import duty as provided for in Section 14.3(e) on the following basis:

- a. US\$400,000 per annum from the Effective Date until the date a board resolution of the Company is passed approving the start of construction ("Start of Construction") following the issue of a Mining License or the date which is 12 months following date on which a Mining License is issued, whichever is the earlier;.
- b. US\$600,000 per annum from the Start of Construction or the date which is 12 months following date on which a Mining License is issued, whichever is the earlier, until Substantial Achievement of Nameplate Capacity; and
- c. 1.5% of the CIF Liberian Port value (within the meaning of the Agreed Revenue Code) of the imported goods thereafter.

1.1 Right to Encumber, and Related Transfers and Changes of Control.

The Company or any Affiliate of the Company may mortgage, charge or otherwise encumber (collectively, a “Mortgage”) all or part of the Company’s interest under this Agreement and each Mining License as security for an obligation or indebtedness as contemplated by Section 9.18 of the Mining Law (the “Mortgaged Property”) and the holder of such Mortgage agrees in writing with the Minister prior to the granting of such Mortgage that it will cause a foreclosure or other exercise of remedies under such Mortgage against the rights of the Company or any Affiliate of the Company in the Mortgaged Property to occur only if:

- a. the Mortgaged Property either (A) comprises the entirety of a Mining License (including the Mine and Mining Plant situated within a Production Area relating to that Mining License) or (B) the entirety of a piece of Infrastructure which is capable of being separately financed being non-process infrastructure (e.g., residential camp, buildings, hospitals, sewage and water treatment facilities, etc), power generation facilities, port facilities (including any related processing facilities) or railroad or rolling stock;
- b. the exercise of remedies results in a Transfer of 100% of the interest of the Company or any Affiliate of the Company in the Mortgaged Property to a corporation other than the Company organized and validly subsisting under the laws of Liberia;
- c. the transferee delivers to the Government prior to such Transfer:
 - i) its agreement to assume and perform or discharge the obligations and liabilities of the Company under this Agreement and, where relevant, any Mining License relating to the Mortgaged Property;
 - ii) its written representations and warranties to the effect set forth in Section 21.1 stated to be true and correct as of a time immediately after giving effect to such Transfer;
- d. the transferee has demonstrated prior to such Transfer to the satisfaction of the Government, acting reasonably, that it has directly or indirectly the technical skills, experience, and financial resources necessary (or could be reasonably expected to obtain the financial resources necessary as evidenced by a viable financing plan, which is supported by an appropriate commitment letter from any provider of finance) to carry out its obligations under this Agreement and, where relevant, each Mining License; and
- e. all outstanding failures of the Company to make any payments due to the Government under this Agreement cured at the time of such Transfer (including a failure to pay royalties due but excluding any failure to pay taxes due on income or profits) and the transferee has undertaken to cure all other material defaults of the Company then existing (to the extent they can be cured by an entity other than the Company) within 270 days of the date of the transfer.

1.1 Community Funding Obligation.

- a. The Company shall provide the annual social contribution set forth below, which shall be paid annually in accordance with Exhibit 8, commencing with the first day of the calendar quarter beginning next after the Effective Date and on each anniversary of the Effective Date for the Term. Upon payment of such annual social contribution, the Company shall have no obligation to pay any further sums pursuant to Section 9.3 of the Exploration Regulations or other applicable Law.

- b. The Annual Social Contribution and utilization of such funds for specific projects shall be managed by a dedicated committee (the “Committee”) in accordance with the structures established by the Government from time to time provided, that in all cases (i) the Company shall at all times have at least one representative on the Committee; (ii) structures and processes will be established to provide for the participation (in a decision-making or advisory capacity as the Government shall determine from time to time) of officials, businesses and residents from the affected counties in the identification and selection of projects to be supported with funds from the Annual Social Contribution; (iii) no funds shall be dispersed from the Annual Social Contribution, if, in the Company’s view, the disbursement of the funds or the project supported by the funds would cause the Company to be in violation of applicable law, including any applicable anti-corruption laws; (iv) funds from the Annual Social Contribution may be disbursed (A) only for direct delivery of services and community Infrastructure improvements, and not to fund the general work programs of administrative offices or officials save funding of customary and reasonable compensation and benefits for the Committee’s administrative assistant and of reasonable amount for basic office supplies, and (B) except as provided in Exhibit 8, only for the benefit of Liberian communities in the affected counties. Projects supported with funds from the Annual Social Contribution and the actual disbursements from the Annual Social Contributions shall be publicly disclosed and shall be subject to the same audit procedures provided for expenditures by the Government of Liberia and as may be further provided by Law. Periodic reports and audit reports shall be made available to the Company and to the public and the Company shall have the right to independently audit (at its own expense) any disbursement or expenditure made or project supported with funds from the Annual Social Contribution and for this purpose shall be provided with and have access to all relevant documentation and information.

1.1 Adequate Capital.

- a. After the issuance of a Mining License to the Company under this Agreement and prior to the satisfaction of the capacity demonstration test required by Section 6.2, unless the Company or any of its Affiliates has an investment grade credit rating with an internationally recognized credit rating agency, the Company must maintain a ratio of Indebtedness to Net Worth that is equal to or lower than 3:1 provided however that where the Company is not required to maintain a ratio of Indebtedness to Net Worth that is equal to or lower than 3:1 under this Section 20.4, to the extent that the ratio of Indebtedness to Net Worth exceeds 3:1, any interest payments due and payable on such excess Indebtedness shall not be capable of deduction from gross income for the purposes of the computation of the Company's liability for income Tax.
- b. After satisfaction of the capacity demonstration test required by Section 6.2, the Company may make no Restricted Payment unless after giving effect thereto, the ratio of Indebtedness to Net Worth of the Company does not exceed 3:1 (unless the Company is not subject to this restriction in accordance with Section 20.4(a)). For purposes of this Section 20.4, the amount of any Restricted Payment made in property is be the greater of (i) the fair market value of such property (as determined in good faith by the board of directors of the Company) and (ii) the net book value of such property on the books of the Company, in each case determined as of the date on which such payment is made.
- c. "Indebtedness" means, at any time, without duplication:
 - i) the liabilities of the Company for borrowed money and the redemption obligations of the Company in respect of mandatorily redeemable shares or other securities of the Company that are entitled to preference or priority over any other shares of the capital stock of such corporation in respect of payment of dividends or distribution of assets upon liquidation;
 - ii) the liabilities of the Company for the deferred purchase price of property acquired by the Company (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);
 - iii) all liabilities appearing on the Company's balance sheet in accordance with GAAP or IFRS, as applicable under Section 17.4(a) in respect of leases with respect to which the Company is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP or IFRS, as applicable under Section 17.4(a);
 - iv) all liabilities for borrowed money secured by any Lien (whether or not the Company has assumed or otherwise become liable for such liabilities), excluding any Lien arising in the ordinary course of business or by operation of law;
 - v) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions representing or supporting the payment of obligations referred to in clauses (i) through (iv) above; and

- vi) any guarantee or similar undertaking of the Company appearing on the Company's balance sheet or noted in its accounts in accordance with GAAP or IFRS, as applicable under Section 17.4(a), with respect to liabilities of a type described in any of clauses (i) through (v) hereof.

Indebtedness of the Company shall also include all obligations of the Company of the character described in clauses (i) through (vi) to the extent the Company remains legally liable in respect of such obligations notwithstanding that any such obligation is deemed to be extinguished under GAAP or IFRS, as applicable under Section 17.4(a).

- d. "Restricted Payment" means (i) any dividends or other distributions or payments on capital stock or other equity interest of the Company (except distributions in such stock or other equity interest) and the redemption or acquisition of any stock or other equity interests in the Company or of warrants, rights or other options to purchase such stock or other equity interests (except when solely in exchange for such stock or other equity interests) unless made, contemporaneously, from the net proceeds of a sale of such stock or other equity interests, including, without limitation, any such action resulting in the acquisition by the Company of securities that would constitute treasury stock, and (ii) any payment, repayment, redemption, retirement, repurchase or other acquisition, direct or indirect, by the Company of, on account of, or in respect of, the principal of any subordinated debt (or any installment thereof) held by the Company, any shareholder of the Company, or any Affiliate of the Company.

Parental Guarantee:

1.1 Guarantees.

- a. Within five Business Days following the Effective Date, the Company shall provide the Government an executed guarantee (the "Exploration Guarantee") from BHP Minerals Holdings Proprietary Ltd (the "Exploration Guarantor"), in the form attached as Exhibit 6 hereto, guaranteeing the obligations of the Company under Section 10.1 of the Exploration Regulations, and the amount of any such Exploration Guarantee shall be equal to US\$5,000,000. At all times the Exploration Guarantor shall have a Net Worth (by reference to the Net Worth in its latest balance sheet (which balance sheet shall be certified by the chief financial officer of such entity as being true and correct in all material respects)) which is greater than or equal to US\$ 10,000,000 (the "Exploration Guarantor Net Worth Requirements").
- b. Unless the Company elects to provide an alternative form of funding in respect of its closure management obligations pursuant to Section 5.5(g), prior to issuance to the Company of a Mining License the Company shall provide the Government an executed guarantee (the "Mining Guarantee") from an Affiliate of the Company (the "Mining Guarantor") which has a Net Worth (by reference to the Net Worth in the relevant entity's latest balance sheet (which balance sheet shall be certified by the chief financial officer of such entity as being true and correct in all material respects)) which is equal to or greater than US\$100,000,000 (the "Mining Guarantor Net Worth Requirements"), in the form attached as Exhibit 6 hereto, guaranteeing the obligations of the Company under each approved EMP and Section 13 (Environmental Protection and Management), and the amount of any such Mining Guarantee shall be equal to the estimate for closure costs as set out in the agreed closure plan comprised in the EMP (provided that such amount shall include a contingency amount of 15% of the estimate for closure costs), which amount shall be revised, and the Mining Guarantee shall be amended accordingly, to reflect any updates to closure costs set forth in any updated EMP.
- c. Upon the provision of the Mining Guarantee by the Company to the Government pursuant to Section 20.6(b), any Exploration Guarantee shall terminate to the extent it related to that part of the Exploration Area which constitutes the Production Area covered by a Mining License in respect of which the Company has provided a Mining Guarantee.

1.1 Non-discrimination; Expropriation.

Subject to Article 24 of the Constitution of Liberia, the Government undertakes not to expropriate except upon payment of prompt and just compensation:

- a. any Mining Plant, Infrastructure or other property of the Company to the extent used in, connected with or affecting Operations; or
- b. Minerals resulting from Operations, the Mining of which is authorized under the Company's Mining License(s), or the Product(s) derived therefrom; or
- c. any equity, shares or ownership interests of whatever nature held in or issued by the Company.

The Government further undertakes not to adopt any provision of Law that imposes a material financial or other burden solely on the Company or any of its Affiliates, whether or not such provision specifically identifies the Company or any of its Affiliates as the target thereof, provided that this provision shall not apply to any Law reasonably intended to protect the safety, health, welfare or security of the Government or citizens of Liberia or to fulfill the Government's international obligations.

Financial Accounting; Related Party Transactions; Officer Certificates; Contemporaneous Documentation

1.1 Financial Statements and Audit.

- a. The Company shall deliver to the Government within 90 days after the end of each Financial Year of the Company:
 - i) a balance sheet of the Company as at the end of such year, and
 - ii) statements of income, changes in shareholders' equity and cash flows of the Company for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, and certified by the chief financial officer of the Company as having been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") or generally accepted accounting principles as reflected in International Financial Reporting Standards as in effect from time to time in the European Union ("IFRS"), consistently applied except as otherwise noted.

- b. Such financial statements shall be accompanied by an opinion thereon of independent public accountants of recognized international standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP or IFRS, consistently applied except as otherwise noted, that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances.
- c. Each year's financial statements shall be accompanied by a certificate of the chief financial officer of the Company to the effect that during the Financial Year then ended the Company was in compliance with (i) Section 20.3, (ii) if applicable, Section 20.4 (setting forth in such certificate the value of the ratio provided for in such Section as at the end of each quarter of such Financial Year) and (iii) Section 20.7 (or setting forth the extent of non-compliance at such time (if any) and the actions taken and being taken to remedy such non-compliance), and has made all deposits or contributions (if any) required by the closure management component of the Company's approved EMP.
- d. Each year's financial statements shall be accompanied by a listing of all transactions with Affiliates of the Company reflected in such financial statements, identifying the amount of the transaction, the Affiliate involved, and the nature of the transaction, certified by the chief financial officer of the Company as being correct and complete. Transactions of the same type with the same entity that are individually immaterial may be aggregated rather than separately listed. The Company shall maintain contemporaneous documentation of each such transaction with any such Affiliate evidencing the pricing of the transaction, including all documentation required by the Revenue Code or any regulations issued thereunder.
- e. Each year's financial statements shall be accompanied by certificate of the chief financial officer of the Company to the effect that (i) with respect to goods or services

covered by any Pricing Agreement in effect during the relevant period, the Company's transfer prices during such year were computed in accordance with the requirements of such Pricing Agreement and (ii) with respect to goods or services sold or provided in a transaction between the Company and an Affiliate of the Company which are not covered by such Pricing Agreement, the prices thereof imposed during the relevant period were computed in accordance with Section 20.7.

1.1 No Payment Covenant.

None of the Company, any Affiliate of the Company or any Person acting on behalf of the Company or any Affiliate of the Company has made or promised to make any payment or transfer of anything of value, directly or indirectly, to or for the benefit of an Official or an Official's family member or to an intermediary for payment to or for the benefit of an Official or an Official's family member in connection with this Agreement or the transactions contemplated hereby. (For the purposes of this paragraph, "Official" means (i) any employee or officer of the Government, including any regional or local department or agency or instrumentality thereof, (ii) any employee or officer of any enterprise owned or controlled by the Government, (iii) any official of a political party in Liberia, (iv) any official or employee of a public international organization, (v) any other person acting in an official capacity for, or on behalf of, any of the entities described in clauses (i) through (iv), or (vi) any candidate for political office in Liberia.)

1.1 Inspection.

The Ministry and other agencies of the Government having jurisdictions (such as the EPA and any governmental entity at the time responsible for employee safety and welfare) shall have the right to monitor Operations (including inspecting relevant documents) from time to time and may, following receipt by the Company of at least three Business Days' prior written notice, visit and inspect any of the facilities and Operations of the Company in Liberia, provided that no prior written notice is required where the inspection relates to a concern regarding employee health and safety or a negative environmental impact. As a condition to permitting such inspection, the Company may require (i) receipt of a copy of written instructions to conduct such inspection from an official senior to the official purporting to conduct the inspection, manually and legibly signed on the letterhead of the relevant ministry or Government agency, and (ii) viewing and copying the identification of the persons claiming the right to conduct such inspection.

1.1 Capital Expenditures; Construction.

- a. Upon the issuance to the Company of a Mining License pursuant to Section 5 and until the termination or surrender of such license in accordance with this Agreement, subject to any delays as a result of any of the events contemplated in Section 6.2(b), Section 19.11, Section 24.5 or Section 29, the Company shall use commercially reasonable efforts in good faith to:
 - i) incur capital expenditures and commence, continue and cause to be completed construction, acquisition and installation of each proposed Mine and all related Mining Plant, Infrastructure and equipment, in accordance in all material respects with the schedule set forth in the Development Plan contained in the approved Feasibility Report relating to such Mining License; and
 - ii) carry out the capacity demonstration test provided for in Section 6.2 within the period of time provided in Section 6.2.
- b. The Company may not make material changes to the Development Plan unless it receives the approval of the Minister to appropriate amendments, and to the extent applicable, the Feasibility Report and the related plans, reports and studies provided for in Sections 5.4 through to 5.6, which approval may not be unreasonably withheld or delayed. Any such application shall be accompanied by the processing fee required by Section 16.1(f).

1.1 Arbitration Additional Provisions.

a. Special Provisions.

- i) The decision of the arbitrators shall be public. Any monetary award shall be assessed and payable in Dollars (determined at the Prevailing Market Rate of Exchange if the award involved an obligation expressed in any currency other than Dollars). The arbitrators may not award specific performance or similar equitable remedies against the Government. Neither party shall have any liability for either consequential damages or exemplary or punitive damages.

b. Shareholder Benefit and Appointment and Government Acknowledgement.

- i) The "Shareholder" means the Person which has direct Control of the Company.
- ii) BHP Billiton Iron Ore Holdings Pty Ltd, a corporation organized under the laws of Australia is and shall be the initial Shareholder.
- iii) The Shareholder shall benefit from the rights conferred on the Company under this Agreement, including but not limited to under this Section 27, and shall be entitled to be a party and to make claims in its own name in any arbitration under this Agreement and to all the remedies that would be available to the Company and the Government hereby acknowledges and consents to the Shareholder having such rights. Whether advanced in the name of Shareholder or the Company, only a single claim may be made with respect to any Dispute under this Agreement and any award shall be limited by the amount that the Company could claim for breach of this Agreement.

1.1 General Change of Control Rule.

No Change of Control of the Company is permitted unless it has received the prior written consent of the Government or is otherwise permitted under the terms of Section 23.5 or 23.6. For the avoidance of doubt, the granting of any pledge, mortgage, charge or other encumbrance, which, if exercised would result in a Change of Control, will not be treated as a Change of Control until exercised.

1.2 Permitted Changes of Control.

- a. A Change of Control with respect to the Company is permitted if the Change of Control occurs solely by operation of a Transfer otherwise permitted under Section 23.3 or if:
 - i) at the time of the Change of Control the Company has not been notified by the Government that it is in material default in the performance of its obligations or the discharge of its liabilities under this Agreement (other than any obligations that have been waived by the Government or defaults that have been cured by the Company to the reasonable satisfaction of the Government) and no order suspending Work by the Company issued under Section 24 of this Agreement or Section 16 of the Exploration Regulations is outstanding and unresolved;
 - ii) the Company delivers to the Government prior to the Change of Control its written representations and warranties to the effect set forth in Section 21.1 stated to be true and correct as of a time immediately after giving effect to such Change of Control;
 - iii) the Company has demonstrated to the satisfaction of the Government, acting reasonably, prior to the Change of Control that after giving effect to the Change of Control it will have directly or indirectly the technical skills, experience and financial resources necessary (or could be reasonably expected to obtain the financial resources necessary as evidenced by a viable financing plan, which is supported by an appropriate commitment letter from any provider of finance) to carry out its obligations under this Agreement, each Exploration License and each Mining License; and
 - iv) prior to the Change of Control, either the Guarantors under the Guarantees issued pursuant to Section 20.6 have confirmed to the Minister of Finance in writing the continued effectiveness of the Guarantees notwithstanding the Change of Control or the Company has delivered to the Minister of Finance new Guarantees in the form and from an entity or entities required by Section 20.6 guaranteeing the specified obligations of the Company under this Agreement.
- b. If the Government objects to any Changes of Control on the basis that following such proposed Change of Control the Company would not satisfy the requirements specified in clause (iii) of Section 23.5(a), it shall notify in writing its objection to the Company, giving reasons therefor, within one month from the date it receives notification from the Company that it proposes to make a permitted Change of Control in accordance with this Section 23.5. If the Company has not received such notification from the Government within one month from the date the Government received its notification of a proposed permitted Change of Control, the Company

shall be treated as having satisfied the requirements specified in clause (iii) of Section 23.5(a) following such Change of Control.

- c. Any failure by the Government to give notice to the Company in accordance with clause (i) of Section 23.5(a) shall not affect the Government's rights and remedies under this Agreement to the extent the Company was in default in a material respect in the performance of its obligations or the discharge of its liabilities under this Agreement or under the Exploration Regulations (as modified by this Agreement), which have not been cured to the reasonable satisfaction of, or waived by, the Government.
- d. If a Person who acquires Control is a wholly-owned subsidiary of a Person who has Control and such acquiring Person continues to have Control after such transaction then such transaction will not be treated as a Change of Control.

1.1 Government Events of Default.

A "Government Event of Default" shall exist:

- a. if (i) the Government shall have failed to comply with its material obligations under this Agreement and such failure has had a Material Adverse Effect on the Company, (ii) such failure is continuing for more than 90 days after the Company notifies the Government of such failure and (iii) within such 90 day period the Government has not cured the adverse impact of such failure; or
- b. any representation or warranty of the Government continued in Section 21.2 proves to be false or incorrect in any material respect on the date as of which made.

1.2 Company Events of Default.

A "Company Event of Default" shall have occurred if any of the following conditions or events shall occur and be continuing:

- a. the Company shall have failed to make any payment of surface rent and, subject to Section 25.3, such failure not cured within 15 days of notice from the Minister or the Minister of Finance;
- b. the Company shall have failed to make any other payment due under this Agreement, the Exploration Regulations, any Mining License issued pursuant to this Agreement or any undertaking of the Company provided for in this Agreement and, subject to Section 25.3, such failure is not cured within 30 days of notice from the Minister or the Minister of Finance; or
- c. the Exploration Guarantor or the Mining Guarantor (if applicable) shall revoke the Exploration Guarantee or the Mining Guarantee, as applicable, and the applicable Guarantor shall no longer satisfy the applicable Guarantor Net Worth Requirements and the Company shall have failed to provide a replacement Exploration Guarantee or Mining Guarantee (if applicable) provided by a Person which meets the applicable Guarantor Net Worth Requirements within 90 days after receipt of notice thereof from the Minister or the guarantor under Environmental Restoration Obligations Guarantee is no longer an Acceptable Third Party Financial Institution and the Company shall have failed to provide a replacement guarantor in accordance with Section 5.5(c); or
- d. any representation or warranty of the Company contained in Section 21.1 or Section 20.6(a) proves to have been false or incorrect in any material respect on the date as of which made; or
- e. the Company shall default in the performance of any other material obligation of the Company under this Agreement, any Mining License, the Environmental Restoration Obligations Funding Agreement (if applicable) or any undertaking of the Company provided for in this Agreement and shall have failed to cure such default within 60 days after notice thereof from the Minister (from the Minister of Finance, in the case of a failure to pay any Taxes and Duties within the grace period provided by applicable Law); or
- f. the Company shall (i) voluntarily make an assignment of all or substantially all of its assets for the benefit of creditors other than an assignment made to secure

indebtedness incurred in the ordinary course of business, (ii) file a petition or application to any tribunal for the appointment of a trustee or receiver for all or any substantial part of its assets, (iii) commence any proceedings for its bankruptcy, reorganization, arrangement (other than a scheme of arrangement not involving an insolvent company) or insolvency under any laws applicable it whether now or hereafter in effect, or if any such petition or application is filed, or any such proceedings are commenced against it, indicate its approval thereof, consent thereto or acquiescence therein, or (iv) if any order is entered appointing any such trustee or receiver, or adjudicating it bankrupt or insolvent, or approving the petition in any such proceedings, permit such order to remain in effect for more than 90 days.

1.3 Disputed Payments.

If the Company is notified by the Minister or the Minister of Finance in accordance with Section 25.2 that it has failed to make any payment due under this Agreement, the Exploration Regulations (as modified by this Agreement), any Mining License issued pursuant to this Agreement or any undertaking of the Company provided for in this Agreement (a "Payment Notice"), and the Company disputes part or all of the amount which is the subject of the Payment Notice, it shall, within ten Business Days of receipt of the Payment Notice, notify the Minister or the Minister of Finance of that fact, giving reasons therefor. To the extent the parties are unable to resolve the dispute within a reasonable period of time (taking into account the subject matter of the dispute), the parties shall resolve such dispute in accordance with Section 27. Nothing in this Section 25.3 shall relieve the Company from being obliged to pay any undisputed amount which is the subject of a Payment Notice within the time periods referred to in Section 25.2.

1.4 Nature of Notice of Default.

Any notice of an alleged Event of Default by either party shall identify with reasonable clarity the principal provision or provisions with respect to which the default arises and the facts alleged to constitute such default.

1.5 Notice of Termination; Termination When a Mortgage Exists; Arbitration of Disputes as to Existence of Event of Default.

- a. If an Event of Default with respect to a party has occurred and is continuing, the other party may give the defaulting party notice of termination (a "Termination Notice"). This Agreement and each Exploration License or Mining License shall terminate 60 days after receipt of the Termination Notice by the defaulting party (or at such later time as may be provided in the Termination Notice), subject to Sections 25.5(b) and (c), provided that if the defaulting party cures the Event of Default in respect of which a Termination Notice has been served prior to the termination of this Agreement in accordance with this Section 25.5, the Termination Notice shall be automatically revoked and shall have no effect and neither this Agreement nor any Exploration License or Mining License issued under this Agreement shall terminate.
- b. If a Mortgage permitted under Section 23.6 exists, the Termination Notice will not be effective so long as the Company, the holder of the Mortgage and the responsible officer of any relevant tribunal referred to in Section 25.2(f) are diligently seeking to transfer the rights and obligations of the Company under this Agreement, any Mining License, the Mine and substantially all of the Mining Plant, Infrastructure and related property of the Company to a transferee that would be permitted under Section 23 so long as (i) such a transfer is completed within 18 months from the commencement of such proceedings, (ii) the operations of the Company continue on a commercial scale throughout such period (subject to Force Majeure) in substantial compliance

with the requirements of this Agreement and the relevant Mining License, and (iii) the Company becomes and remains in compliance with its EMP and its payment obligations under this Agreement.

- c. Any dispute relating to the existence of an Event of Default, its remedy and any purported termination in connection therewith pursuant to this Section 25 shall be resolved in the manner set out in Section 28. If a party asserts the existence of an Event of Default and the other party refers to arbitration in accordance with Section 27 a dispute as to the existence of such Event of Default, termination of this Agreement may not take effect other than after the finality of, and in accordance with, an arbitration award upholding the existence of such Event of Default. In the event that an arbitration award upholds the existence of such Event of Default, the party in default shall be entitled to cure the default in accordance with the relevant cure period specified in this Section 25. Failure to cure the default within such period shall entitle the non-defaulting party to terminate this Agreement in accordance with Section 25.5(a). *[The Company shall reimburse the Government for all expenses incurred by it in connection with arbitration held pursuant to this Section 25.5(c) if the Government's determination that a Company Event of Default exists is upheld in the arbitration. The Government shall reimburse the Company for all expenses incurred by it in connection with arbitration held pursuant to this Section 25.5(c)]*⁸ For the avoidance of doubt, Section 18 of the Exploration Regulations or any other equivalent provision under applicable Law shall not apply.

Bell Annex II
Excerpts from draft amendments to Liberian Revenue Code re Mining

Chapter 7. Income Taxation of Natural Resources

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Section 700. Definitions

(a) *Producer*. A producer is a mining project producer or a petroleum project producer.

(b) *Mining Project*.

- (1) A “mining project producer” is a person who has entered into an agreement with the Government of Liberia to carry out mineral exploration, development, or production activity under a mining exploration license or class A mining license issued in accordance with the Mining Law.
- (2) *Mining Exploration Contract Area*. A “mining exploration contract area” is the geographic area covered by a mining exploration license.
- (3) *Mining License Contract Area*. A “mining license contract area” is the geographic area covered by a class A mining license.
- (4) A “mining project” carries out mining and related activities within the mining license contract area.
- (5) Mining carried out under another class of mining license is not a “mining project” and is taxable under

the general rules of Chapter 2 rather than as a “mining project” under this Chapter, except that the royalty rates of Section 704 apply to the sale or other disposition of minerals mined under a license other than a class A license.

(c) *Petroleum Project.*

- (1) A “petroleum producer” is a person who has entered into an agreement with the Government of Liberia to carry out petroleum exploration, development, or production of petroleum in accordance with the Petroleum Law.
- (2) A “petroleum area” is the geographic area that is the subject of the agreement.
- (3) A “petroleum project” carries out the extraction of petroleum and related activities within the petroleum area.

(d) *Capital Goods.* For purposes of this Chapter, the term “capital goods” has the same meaning as in Section 1001(g)(5).

(e) *Commercial Production.*

- (1) A mining or petroleum project begins “commercial production” on the date of the first shipment of mineral or petroleum extracted from a mining license area or petroleum area as part of a regular program of profit-seeking activity.
- (2) Commercial production ends on the last day of a tax period in which the number of shipments is less than one-tenth of the average shipments during the first three years of commercial production.

(f) *Mining Exploration Expenditures.* Mining exploration expenditures are costs associated with exploration of a mining exploration contract area to determine whether it is possible to develop the area for production of minerals.

(g) *Mining Development Expenditures.* Mining development expenditures are costs associated with the development of a mining license contract area, or a part thereof, to prepare it for commercial production.

(h) *Attribution of Expenditures.* Exploration, development, and capital goods expenditures incurred prior to a project’s first tax period are attributable to it for income tax purposes as follows—

- (1) In the case of a mining project, expenditures incurred prior to the existence of any mining project within a mining exploration contract area are attributable to the first project established within the first mining license contract area within a mining exploration contract area. Subsequent expenditures in the exploration contract area after the date of the first class A mining license, but outside the first project’s license contract area, are attributed to subsequent projects under subsequent class A mining licenses issued for the exploration contract area. Exploration, development, and capital goods expenditures not attributable to a project as described in this paragraph are not deductible in determining taxable income.
- (2) In the case of a petroleum project, exploration expenditures incurred prior to the identification of a site for development are attributable to the first development site established within a petroleum area and

leading to commercial production. Subsequent exploration expenditures within the petroleum area are attributed in the same fashion to any subsequent development site leading to commercial production. Exploration, development, and capital goods expenditures not attributable to a project as described in this paragraph are not deductible in determining taxable income.

- (i) *Advance Pricing Agreement.* The term “advance pricing agreement” means an agreement between the Government of Liberia and a producer establishing prices by reference to an index and methodology for determining the deemed value of a product. Any reference price must be public and, as a minimum standard, must meet the Organization for Economic Cooperation and Development (OECD) transfer pricing guidelines used to evaluate the validity of a valuation or price. The Minister shall publish regulations stipulating minimum guidelines.

Subchapter A. Mining

Section 701. Scope of Subchapter

- (a) *Income Taxation.* In accordance with the provisions of Part II (to the extent applicable) and as specifically provided in this Chapter, income tax is imposed on taxable income from a mining project (as defined in Section 700). In case of inconsistency with other provisions of Part II, the provisions of this subchapter are determinative.
- (b) *Rate of Tax.* Taxable income from a mining project is subject to income tax at the rate stated in Section 702 and, to the extent the surtax on income applies under Section 730, at the rate determined under that section.
- (c) *Form of Organization Disregarded.* Regardless of the legal form of organization adopted by one or more persons having an interest in a mining project, a producer’s taxable income shall be determined separately for each project, and a person with an interest in more than one project shall not be permitted to consolidate income or loss of one project with that of any other.
- (1) For purposes of determining income tax, income from a mining project is considered to be income of a resident legal person or of a Section 803 permanent establishment taxable according to rules applicable to a resident legal person. Taxable income and income tax liability are determined under provisions of the regular income tax of Chapter 2 subject to special rules provided in this Chapter.
 - (2) In accordance with Section 10(y), a producer who holds a Class A mining license (“license”) granted under the Mining Law is considered to have an interest in the mining project that is the subject of the license and is the taxpayer legally responsible for paying tax with respect to income of the project.
 - (3) The Chapter 9 filing and advance payment rules for the regular income tax apply to a producer with income from a mining project.
- (d) *Mining Law.* The Mining Law governs non-tax terms of extraction of minerals in Liberia, including licenses and fees.
- (e) *Valuation of Minerals.* Extracted minerals shall be valued for all purposes of this Code using the valuation method described in Section 703.

- (f) *US Dollar Accounting Permitted.* Books and records of a project may be kept in US Dollars and a project's tax and taxable income shall be determined in US Dollars, but tax or taxable income shall be re-stated into Liberian dollars at the Minister's request or under conditions stated in regulations.

Section 702. Rate of Tax

- (a) *Rate.* The rate of tax on taxable income from a mining shall be 30 percent.
- (b) *Surtax on Income from High-Yield Projects.* Income from a high-yield mining project, as defined in Section 730, shall be subject to a higher marginal rate of income tax on taxable income under the conditions and using the calculation method set out in that section.

Section 703. Valuation

- (a) *Fair Market Value.* Minerals extracted by a project are valued for all purposes at fair market value as determined in an arm's length transaction f.o.b. Liberia without reduction for claims, counterclaims, discounts, commissions, or any other asserted offset or deduction.
- (b) *Gold.* The fair market value of gold f.o.b. Liberia is the London afternoon gold price fixing ("London PM fix") for the day that gold is shipped from Liberia.
- (c) *Advance Pricing Agreement.* The Government of Liberia and a producer may agree, by a clause in an mineral development agreement or by a separate contract, to prices established in an advance pricing agreement (as defined in Section 700)..

Section 704. Royalties and Surface Rent

- (a) *Royalties.* A royalty is due and payable to the Government of Liberia at the time of each shipment and in the amount of the stated percent of the value of commercially shipped mineral, regardless of whether the shipment is a sale or other disposition:

- (1) *Iron ore.* 4.5 percent.
- (2) *Gold and other base metals.* 3 percent.
- (3) *Commercial diamonds.* 5 percent.

- (b) *Surface Rent.* A producer who has entered into a mineral development agreement shall pay an annual surface rent.

- (1) The surface rent is:

- (A) *Land within a mining exploration contract area.* US\$0.20 (Twenty United States Cents) per acre.
- (B) *Land within a mining license contract area.*

- (i) Contract Year 1-10 US\$5.00 per acre.
- (ii) Contract Year 11-25 US\$10.00 per acre.

- (2) Annual payments are due on or before the effective date of the agreement and on the agreement anniversary date thereafter.
- (3) Surface rent amounts stated in this section shall be subject to inflationary adjustment in accordance with the GDP Implicit Price Deflator as published and revised from time to time by the U.S. Department of Commerce, Bureau of Economic Analysis (“the deflator”). The inflation-adjusted rent shall be effective January 1 of each calendar year based on the ratio of the value of the revised deflator for the second quarter of the immediately preceding calendar year to the value of the revised deflator for the second quarter of 2008.

Section 705. Determination of Taxable Income of Mining Projects

(a) *Gross Income.* The gross income of a mining project includes—

- (1) All revenues resulting from production and other operations carried out under the project’s mining license;
- (2) Any other income that the project receives from business activity or investment accruing in, derived from, brought into or received in Liberia, including currency gains when realized (but not gains from hedging transactions), less the deductions set forth in subsection (b).

(b) *Deductions Allowed from Gross Income.* In accordance with the rules of Chapter 2, all expenditures incurred during the tax period wholly, exclusively and necessarily in connection with project operations (including non-capital operating costs but excluding capital costs except to the extent of the annual allowance for depreciation), are allowed as deductions, including but not limited to the following items:

- (1) Royalties and surface rent (as specified in Section 704); and fees and rent paid for the privilege of a Class A mining license in accordance with the Mining Law.
- (2) An allowance for depreciation of mining plant and equipment in accordance with the depreciation rules of Chapter 2, subject to the special rule of Section 706.
- (3) A carryforward of net operating loss from a prior year to the extent permitted under Section 203(e) as modified by Section 707.
- (4) Interest on any indebtedness of the project, and other financing costs incurred in connection with operations and paid to an affiliate or to a third party, for the tax period incurred, subject to the special rule of Section 708.
- (5) Exploration expenditures as specified in Section 709.
- (6) Payments to a Government-approved trust fund for mining reclamation, subject to the specific limitations set out in Section 710.
- (7) Any taxation amount determined under Section 730 and paid during the tax period.
- (8) Subject to the provisions of Chapter 2, management fees paid, whether to an affiliate or to a third party, but not the amount in excess of 2 percent of other operating expenses incurred for the tax period.
- (9) Subject to the provisions of Section 203(c), the amount of bad debt incurred, so long as that amount was subject to income taxation in a prior tax period.

(10) Charitable contributions made in Liberia to a qualifying organization within the meaning of section 205 for educational or community development projects, social welfare, or medical purposes or for the provision of other social services.

(11) Expenses related directly to the project's "other income" under subsection (a)(2), to the extent otherwise allowable as a deduction under Chapter 2 and this Chapter.

(c) *Deductions Not Allowed.* The following expenses are not allowed as a deduction from gross income:

(1) A payment to an expatriate employee as reimbursement for taxes and duties paid by the employee to the Government.

(2) A loss from a hedging transaction.

(3) An incentive deduction allowed by Section 204(d).

(4) An amount otherwise allowable as a special tax incentive deduction by Section 16.

Section 706. Special Rule for Depreciation

(a) *Commencement of Period.* For property placed in service before the start of commercial production, the period for depreciation of property described in Section 204(b) shall begin in the first tax period in which commercial production begins.

(b) *Tangible Moveable Property.* The cost of tangible moveable property shall be recovered over the period and by the method described in Section 204(b)(1).

(c) *Five-Year Cost Recovery Period.*

(1) In place of the 15-year period set out in Section 204(b) for recovering the cost of tangible fixed property, a mining project is allowed to recover the cost of a mining production asset on an asset-by-asset basis using the straight-line method over a five-year period at the rate of 20 percent per year.

(2) The term *mining production asset* means tangible fixed property used **directly** in the mining and quarrying of metallic and nonmetallic minerals and the milling, beneficiation, and other primary preparation of minerals, but not equipment used to smelt, reduce, refine, or process minerals or mineral ores.

(d) *15-Year Cost Recovery Period.* A project's other tangible fixed property shall be depreciated on an asset-by-asset basis over a 15-year period or the expected period of commercial production (whichever is shorter) using the straight-line method.

(e) If a project is terminated before the end of the cost recovery period, the remaining unrecovered cost is treated as an expense deduction in determining taxable income for the tax period in which the project is terminated.

Section 707. Special Rule for Net Operating Loss Carryforward

For the purposes of determining taxable income of a mining, the Section 203(e) period for carryforward of net operating loss shall begin with the first tax period in which commercial production begins and shall be seven years.

Section 708. Special Rule for Interest Deduction

- (a) Interest incurred in a tax period and subject to the limitation of Section 203(d) may be carried forward to the next tax period.
- (b) The amount of the carryforward is treated as interest incurred in the subsequent period, and is deductible to the extent permitted under Section 203(d).
- (c) The interest carryforward allowed by this section does not expire.

Section 709. Special Rule for Exploration Costs

Exploration costs attributable to a project under the rules of Section 700 are deductible in the first tax period in which commercial production begins.

Section 710. Special Rule for Decommissioning Expenses

- (a) *Qualification.* A mining project's payment for decommissioning expenses is deductible from gross income under Section 705(b) only in the amount paid during the tax period—
 - (1) To defray reclamation or decommissioning expenses upon cessation of commercial production, and remedying damage caused to land used by the project or environmental damage the project may have caused (including damage that extends beyond the contract area), but not if drawn from a trust fund described in paragraph (2).
 - (2) To a trust fund established to defray future expenses of the type specified in paragraph (1), but only if the fund has been approved by the Minister in regulations and subject to any limitations or requirements provided in regulations.
- (b) *Recapture.* An amount taken as a deduction under subsection (a) but not used for the specified purpose—
 - (1) If remaining after the tax period in which commercial production ends, shall be included in income for the following tax period; or
 - (2) If used for another purpose, shall be included in income in the tax period within which the amount is so used.

Section 711. Treatment of Property Transfers

- (a) *General Rule.* Unless an exception applies under this Chapter, a project's gain or loss on the transfer of depreciable property used by the project is treated in accordance with section 204. Transfer of non-depreciable property used in the business, or transfer of property other than property connected with mining or petroleum, is determined in accordance with the property transfer rules of Section 207.
- (b) *Special Cases.*

- (1) *Hedging*. Hedging transactions by a mining project are taxable as a separate business activity, and hedging gains and losses incurred are not includible or deductible in determining taxable income of the project or for the purposes of Section 730.
- (2) *Investment Gain*. Gain on property the project holds for investment is determined under Section 207 and is includible in income of a project, except to the extent reduced by investment loss under the rule of Section 203(b)(2).

Section 712. Successor Agreement; Transfer of Interest in Project

(a) *Successor Agreement*. If the development agreement for a project (the “original agreement”) is terminated and a new agreement (the “successor agreement”) is entered into with the same producer for the same contract area (the “successor project”), the project’s loss carryforward existing at the termination date of the development agreement is deductible in the first tax period of the successor project under the successor agreement, provided:

- (1) The whole of the geographic area covered by the contract area of the successor agreement is within the contract area of the original agreement; and
- (2) The successor agreement entered into force within one month following the termination of the original agreement.

(b) *Transfer of Interest*. If the holder of an interest in a project transfers that interest—

- (1) The taxable income of the project shall continue to be determined using the tax cost and other tax attributes applicable at the date of the interest transfer; and
- (2) The transferer of the interest shall determine gain or loss under Section 207, which also applies to determine the transferee’s tax cost in the interest.

Section 713. Transactions Between Related Persons

(a) *General Rule*. A project’s gain, loss, and other tax consequences in transactions with related persons are subject to Section 10(aa) (in Part I, General Provisions) and Section 208, Related Persons (in this Part).

(b) *Transfer Pricing*. A transaction with respect to production between a producer and a related person shall be on the basis of competitive international prices and such other terms and conditions as would be fair and reasonable had the transaction taken place between unrelated parties dealing at arms’ length.

(c) *Disclosure*. A producer must—

- (1) Disclose related-party transactions and contemporaneously document the manner in which prices are set in transfers to related persons.
 - (2) Notarize an agreement governing a related-party transaction in accordance with the law of the related person’s country of residence.
- (d) *Advance Pricing Agreement*. The Government of Liberia and a producer may enter into an advance pricing agreement (as defined in Section 700) to establish the method by which prices will be determined in a related-party transaction.

Section 714. Partnerships and Joint Ventures

- (a) *Pass-Through of Tax Attributes.* If a producer is organized as a partnership or similar form of unincorporated joint venture, the project's income, expenses, loss, credits, and character of income or loss shall be attributed to the partners in accordance with their interests (including the items specified in Section 705), for the purpose of determining taxable income, loss, credits, and tax liability separately for each partner.
- (b) *Application of Other Rules.* If subsection (a) applies—
 - (1) The provisions of this Chapter shall apply separately to each partner;
 - (2) Each partner shall be considered a taxpayer for purposes of this Part (Part II, Income Tax) and a producer for purposes of this Chapter, and shall be liable for income tax as determined under this Chapter.

Sections 715-729 Reserved.

Section 730. Surtax on Income from High-Yield Projects

- (a) *Purpose.* This section applies to determine whether a project licensed under the Mining Law is sufficiently high-yield to be subject to surtax and, if so, the amount of tax.
- (b) *Definition of High-Yield.* A project is considered high-yield and thus subject to surtax when the project's pre-tax rate of return on total investment is greater than 22.5 percent, the threshold rate of return for application of this Section.
- (b) *Method to Calculate Yield.* A project's *accumulated negative net cash flow* shall be determined by applying an annual accumulation factor of 1.225 to *negative net cash flow* carried forward from a prior tax period. At the close of each tax period, accumulated negative net cash flow carried forward from the prior period shall be increased by current negative net cash flow or offset by current positive net cash flow. A project is not high-yield and subject to surtax unless its accumulated net cash flow at the close of a period is positive.
- (c) *Surtax Rate.* Positive net accumulated cash flow at the close of a tax period is taxable at a rate of 20 percent, and the amount of this liability is deductible from gross income for the tax period.
- (d) *Re-Set Accumulation to Zero.* Following a tax period for which tax is due under this section, a project's accumulated negative cash flow is re-set to zero and the method of subsection (d) is re-applied using zero as the starting point for the succeeding tax period.
- (e) *Steps to Calculate Yield.* Beginning with the first tax period in which a project has a class A mining license and has begun construction, the following steps are used to calculate yield in accordance with subsection (d).
 - (1) *Cost.* State the expenditures, as specified in Section 731, for the tax period. This is the project's *cost* through the close of the period. Go to Step 2.
 - (2) *Revenues.* State the project's revenues, as specified in Section 732, for the tax period, including revenues, if any, from the exploration period as defined in Section 700. This amount is the project's *revenues* through the close of the period. Go to Step 3.

(3) *Test Net Cash Flow.*

- (A) **Determine net cash flow.** Subtract from *revenues* the amount of *cost* to arrive at net cash flow ($R - C = \text{NCF}$).
- (B) **Net cash flow zero or negative.** If net cash flow is zero or negative, the project is not yet a high-yield project and the surtax does not apply. Multiply the negative net cash flow by 1.225 to arrive at the project's *accumulated negative net cash flow* to be carried to the next tax period. Go to Step 4.
- (C) **Net is positive.** If net cash flow is positive, tax is determined under subsection (e), and this amount is deductible in determining taxable income under Section 703. Accumulated negative net cash flow is re-set to zero in accordance with subsection (f). Go to Step 4.

(4) *Reprise.* Re-apply steps (1) through (3) for each succeeding tax period, beginning with the period after the one tested under Step 3—

- (A) Add costs incurred in the succeeding period to any accumulated negative net cash flow carried from the prior period (zero if re-set) as under Step 1. Go to (B).
- (B) State revenues for the succeeding period as under Step 2. Go to (C).
- (C) Test net cash flow as under Step 3.

Section 731. Determination of Expenditures for Section 730 Purposes

(a) *Expenditures Counted.* For the purposes of determining *cost* under Section 730(g)(1), a project's *expenditures* for a tax period is the sum of the following amounts incurred during the period, and does not include the amount of any income tax paid:

- (1) Expenses deductible in computing taxable income, but not the allowance for depreciation or interest and finance charges;
- (2) Capital expenditures to acquire or construct a tangible or intangible asset for use in mining operations; and
- (3) Exploration, development, and capital goods expenditures as defined in Section 700. For a project's first tax period, include expenditures for prior exploration, development, and capital goods attributable to the project under Section 700.

(a) *Transfer of Interest.* Consideration paid for transfer of an interest in the project is disregarded in determining the project's total expenditures.

(b) *Only Production Expenditures.* If an amount referred to in subsection (a) is attributable to commercial production and some other non-production activity of the project, only the amount attributable to commercial production is included in determining the project's total expenditures.

Section 732. Determination of Total Revenues

(a) *Revenues Counted.* For purposes of Section 730, a project's total revenues for a tax period is the sum of the following amounts:

- (1) The project's gross income for income tax purposes for the tax period, including amounts from hiring or leasing-out property or the granting of rights to use property (but not including interest income);
- (2) The project's consideration received for the tax period for the disposal, destruction, or loss of any property (including materials, equipment, plant, facilities, and intellectual property or rights) used in mining operations if the expenditure incurred in acquiring the property was deducted in computing the project's net cash flow for any tax period;
- (3) Any amount received for the tax period for provision of information or data obtained from any survey, appraisal, or study relating to mining operations, if the expenditure incurred in undertaking the survey, appraisal, or study was previously deducted in computing the project's net cash flow for any tax period;
- (4) Any other amount received for the tax period that is a reimbursement, refund, or other recoupment of an amount previously deducted in computing the net cash flow of the project for any tax period; and
- (5) If property used in mining operations has been destroyed or lost, any compensation, indemnity, or damages the project received in respect of the property under an insurance policy, indemnity agreement, settlement, condemnation action, or judicial decision.

(b) *Transfer of Interest.* Consideration received for transfer of an interest in the project is not included in a project's total revenues.

(c) *Only Production Revenues.* If an amount referred to in subsection (a) is attributable to commercial production and some other non-production activity of the project, only the amount attributable to commercial production is included in determining the project's total revenues

Section 806. Withholding of Tax on Payments to Nonresidents

(f) *Special Rule for Payments by Mining and Petroleum Projects.* A mining or petroleum producer subject to Chapter 7 shall withhold tax on payments made to nonresidents at the following rates—

- (1) Dividends, 5 percent.
- (2) Interest, 5 percent.
- (3) Payments for services, 10 percent⁹.

⁹

By agreement this rate has usually been reduced to 6 percent. JB