

NEW GUINEA TIMBER AGREEMENT.

No. 40 of 1952.

An Act to approve the Agreement made between the Commonwealth and Bulolo Gold Dredging Limited with respect to the formation of a Company to be known as Commonwealth-New Guinea Timbers Limited, and for purposes connected therewith.

[Assented to 17th June, 1952.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *New Guinea Timber Agreement Act 1952*. Short title.

- Commencement.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Definition.** 3. In this Act, "the Agreement" means the agreement a copy of which is set out in the Schedule to this Act.
- Approval of Agreement.** 4. The Agreement is approved.
- Appropriation.** 5. There is payable out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purpose of meeting the liabilities of the Commonwealth arising under or out of the Agreement, the sum of Five hundred thousand and one pounds.

THE SCHEDULE.

Section 3.

AGREEMENT made this twentieth day of May, One thousand nine hundred and fifty-two, BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called "the Commonwealth") of the one part and BULOLO GOLD DREDGING LIMITED a company incorporated in Canada and registered under Part VI. of the Companies Act, 1936 of New South Wales, whose registered office in that State is situate at Room 401, Fourth Floor, "Shell House", Carrington Street, Sydney (in this Agreement called "the Company") of the other part WHEREBY IT IS AGREED as follows:—

1. This Agreement shall have no force or effect and shall not be binding on either party unless and until it is approved by the Parliament of the Commonwealth.
2. This Agreement shall commence and come into full force and effect upon the date upon which it is so approved.
3. The Company shall forthwith take all necessary steps to incorporate and register in, and in accordance with the laws of, the Territory of New Guinea a company (in this Agreement called "the Timber Company") under the name of "Commonwealth - New Guinea Timbers Limited" with limited liability.
- 4.—(1.) The Memorandum of Association and Articles of Association of the Timber Company, and any alteration of them, shall be subject to the approval of the Commonwealth, and they shall provide (*inter alia*)—
 - (a) that the objects of the Timber Company shall include—
 - (i) the acquisition of timber rights in the Territory of Papua and the Territory of New Guinea (in this Agreement together called "the Territory"); and
 - (ii) the harvesting of logs, the sawing and milling of timber, the peeling of veneer and the manufacture of plywood in the Territory, the supply of battery separator material, the utilization of timber waste, and the marketing of timber and timber products;
 - (b) that the nominal capital shall be Two million pounds (£2,000,000) in shares of One pound (£1) each;
 - (c) that the initial issue of shares shall be five hundred thousand (500,000) shares and that they shall be allotted as follows:—
 - (i) two hundred and forty-nine thousand nine hundred and ninety-seven (249,997) shares to the Commonwealth;
 - (ii) four (4) shares to nominees of the Commonwealth;
 - (iii) two hundred and forty-nine thousand nine hundred and ninety-six (249,996) shares to the Company; and
 - (iv) three (3) shares to nominees of the Company;
 - (d) that the first five hundred thousand (500,000) shares issued shall be paid for in cash;
 - (e) that the shares subscribed for by and allotted to the Company in any issue after the first five hundred thousand (500,000) shares may be paid for by the transfer of assets in accordance with clause 6 of this Agreement to the amount of the value of those assets;

THE SCHEDULE—*continued.*

- (f) that, subject to this clause, on any issue of capital, the Commonwealth and the Company shall be entitled to subscribe for equally and shall be allotted equally all new shares in the Timber Company ;
- (g) that either the Commonwealth or the Company as members of the Timber Company may demand a poll on any question submitted to a General Meeting and that upon a poll the Commonwealth and the Company shall each be entitled to one (1) vote in respect of each share held by them, but the nominees of the Commonwealth and the Company appointed for the purpose of paragraph (c) of this sub-clause shall not be entitled to vote in respect of the shares held by them ;
- (h) that there shall be a Board of four Directors ;
- (i) that, of the total number of Directors, two shall be nominated by and represent the Commonwealth, and two shall be nominated by and represent the Company ;
- (j) that the Board of Directors shall control the general policy, including the marketing policy, of the Timber Company, and that the technical and commercial management, including employment of labour, planning and marketing, shall be carried out by the management appointed by the Board of Directors in accordance with the general policy, including the marketing policy, of the Board of Directors ;
- (k) that, in the event of disagreement between the Directors representing the Commonwealth on the one hand and the Directors representing the Company on the other hand on any question, the Directors shall notify the Commonwealth and the Company of the disagreement, and that, in that event, the Commonwealth and the Company will endeavour to agree on the point of disagreement, but that, if they are unable to agree, the Board of Directors shall decide the question as directed by the Commonwealth ;
- (l) that the Board of Directors shall, subject to this clause, elect one of their number, whether a Director representing the Commonwealth or one representing the Company, to be Chairman (in this Agreement called the "Chairman") who shall have a deliberative but not a casting vote ;
- (m) that one of the first Directors nominated by and representing the Company shall be John Worrocker Austin Esquire, a Director of the Company, who shall be the first Chairman, but shall cease to be Chairman if he ceases to be a Director representing the Company ;
- (n) that, subject to this clause, the term of office of the first Chairman shall be such period not exceeding five (5) years as the Board decides, and that each succeeding Chairman shall be appointed for such term not exceeding three (3) years as the Board decides ;
- (o) that a Chairman shall be eligible for re-election ;
- (p) that, in the event of the first Chairman not completing a full term of five (5) years as Chairman, the Chairman for the balance of that term shall be a Director nominated by the Company and approved by the Commonwealth ; and
- (q) that the Timber Company shall not dispose of any of its major assets without the joint approval of the Commonwealth and the Company.

(2.) The Commonwealth, nominees of the Commonwealth, the Company and nominees of the Company will apply for, take up and pay for the number of shares of the initial issue of shares of the Timber Company which it is provided in paragraph (c) of sub-clause (1.) of this clause will be allotted to them respectively.

5. The assurance of the supply to the Australian market of plywood and other products similar to those of the Timber Company is fundamental to this Agreement.

6. The Company will, as part of its capital contribution as set out in paragraph (e) of sub-clause (1.) of clause 4 of this Agreement, transfer to the Timber Company, at their fair value at the time of transfer, the whole or such portion as the Timber Company requests of the assets used by the Company in its logging and milling operations in the Bulolo Valley.

THE SCHEDULE—*continued.*

7.—(1.) Until suitable alternative arrangements have been made by the Timber Company, the Company will, at reasonable charges, provide the Timber Company with the stores, services (including work-shop and transport), telephone facilities and electric power required by the Timber Company for carrying out its operations, and will provide the Timber Company's employees with accommodation, medical services, and hospital and recreational facilities.

(2.) The Company will not withdraw the provision of those stores, services, facilities or power, or any part of them, without first giving the Timber Company the option of purchasing those stores, services, facilities or power, or that part of them, or the means of providing them, as the case may be, at their fair value.

8. In carrying out its operations, the Timber Company may employ such labour as may be conveniently and practicably employed having regard to local conditions and the availability of the different types of labour.

9.—(1.) The Commonwealth will continue to improve the road between Bulolo and Lae until it is brought to a reasonably trafficable condition, and thereafter will continue to maintain the road in that condition.

(2.) The Commonwealth will use its best endeavours to complete the building of the Markham and Mumeng Bridges before the Timber Company commences the production of plywood.

10. Subject to the legislation in force in and relating to the Territory of New Guinea, the Commonwealth will take all necessary steps and do all in its power to ensure the grant to the Timber Company of a permit under the *Forestry Ordinance* 1936-1951 and the Forestry Regulations of the Territory of New Guinea—

(a) conferring upon the Timber Company the exclusive right to cut and remove over a period of ten (10) years one hundred million (100,000,000) super feet of Hoop and Klinkii pine and a smaller quantity, to be determined by the Administrator of the Territory (in this Agreement called "the Administrator"), of cedar and secondary species of timbers from within an area or areas totalling fifteen thousand (15,000) acres of land owned by the Administration of the Territory and situated in the Bulolo Valley in the District of Morobe in the Territory of New Guinea; and

(b) containing and subject to conditions substantially to the effect that—

(i) if the Timber Company is or becomes unable or unwilling to utilise all forest products, including timber waste in the forest and at its manufacturing plant, it shall make available access and reasonable facilities to persons or bodies authorised by the Administrator for the purpose of removing and utilising those materials if such access will not prejudicially affect the rights and operations of the Timber Company;

(ii) the Timber Company must cut the following minimum quantities of logs of Hoop and Klinkii pines, namely:—

(A) two hundred thousand (200,000) super feet per month after six (6) months from the date of commencement of production;

(B) seven million (7,000,000) super feet per annum after two (2) years from the date of commencement of production;

(iii) the Timber Company must not cut more than the following maximum quantities of logs of Hoop and Klinkii pines, namely:—

(A) twelve million (12,000,000) super feet in any one year;

(B) one hundred million (100,000,000) super feet during the currency of the permit;

(iv) the minimum and maximum quantities of logs of cedar and secondary timbers to be cut by the Timber Company shall be as determined by the Administrator;

(v) the Timber Company shall pay to the Administration of the Territory royalties at the rates prescribed in the Forestry Regulations of the Territory of New Guinea together with such additional royalties as, subject to sub-clauses (vi) and (vii) of this paragraph, may be determined by the Administrator in accordance with the Regulations after consultation with the Timber Company;

THE SCHEDULE—continued.

- (vi) the additional royalties payable by the Timber Company during the first five (5) years of the permit shall be as follow :—

Species of Timber.	Rate of Additional Royalty for each 100 super feet.
	<i>s. d.</i>
<i>Araucaria cunninghamii</i> and <i>A. Klinkii</i> —	
Logs	4 0
Tops	Nil
Other conifers	Nil
<i>Cedrela toona</i>	3 6
<i>Flindersia pimenteliana</i> (New Guinea silkwood)	2 0
Other hardwoods	Nil

- (vii) the additional royalties payable by the Timber Company shall be subject to review annually after the expiration of the first five (5) years of the permit ;
- (viii) all log timber harvested shall be measured on full volume scale, and the method of scaling shall be as agreed between the Timber Company and the Director of Forests of the Territory or, in the event of disagreement, as fixed by the Director of Forests ; and
- (ix) the conditions as to replanting shall be as determined by the Administrator, subject to the *Forestry Ordinance* 1936-1951 and the Forestry Regulations of the Territory of New Guinea, after consultation with the Timber Company.

11. The ownership of the replanted forest will not be transferred to the Timber Company, but the Commonwealth will look favourably upon any proposals to enable the Timber Company to get greater assurance of continuity of operation and of the use of the yield of the replanted forest.

12. On the expiration of the permit referred to in clause 10 of this Agreement, the Commonwealth will, subject to the legislation in force in and relating to the Territory of New Guinea, take all necessary steps and do all in its power to ensure the grant to the Timber Company of a renewal of the permit for a further period of ten (10) years conferring on the Timber Company the exclusive right, subject to such terms and conditions as the Administrator thinks fit, to cut and remove during that further period from the area or areas referred to in clause 10 of this Agreement a quantity of one hundred million (100,000,000) super feet of Hoop and Klinkii pines and such quantities of cedar and secondary species of timber as may be determined by the Administrator.

13. The Commonwealth does not enter into any commitment with the Company regarding the pine timber, estimated at three hundred million (300,000,000) super feet, remaining in the existing forests in the Bulolo Valley, but will consider any proposal of the Company for that timber to be harvested by the Timber Company under a further permit, to operate from the expiration of the renewed permit referred to in clause 12 of this Agreement, if the Commonwealth is satisfied that this Agreement has operated satisfactorily. The Commonwealth is not aware of any reason why that timber should not be harvested by the Timber Company under an extension of the original permit.

14. If customs duty is paid upon the importation into Australia of the plywood, veneers, logs and other products of the Timber Company, and is not remitted, the Commonwealth will pay to the Timber Company a subsidy upon the exportation of those products from the Territory for entry into Australia of an amount or at a rate determined by the Commonwealth from time to time, but the amount of subsidy paid shall not exceed the amount of customs duty paid and not remitted.

15.—(1.) Subject to this clause, neither party to this Agreement will sell or transfer its holding of shares in the Timber Company or any part of it without the previous consent in writing of the other, or, without prior notice to the other, mortgage, pledge or charge its holding or any part of it.

(2.) Either party may, without the consent of the other, transfer shares held by it in the Timber Company to a nominee to hold in trust for the transferring party, and such nominee shall be entitled to vote on a poll held in accordance with paragraph (g) of sub-clause (1.) of clause 4 of this Agreement.

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THE SCHEDULE—continued.

(3.) If the Company's interests are damaged by reason of a divergence of the Timber Company from those of its objects set out in paragraph (a) of sub-clause (1.) of clause 4 of this Agreement, the Company will have the right to sell to the Commonwealth, and the Commonwealth will purchase, the share holding of the Company in the Timber Company at the fair value of that holding at the date of the sale.

(4.) If one party consents to the other party selling its holding in the Timber Company, the consenting party shall have the option, to be exercised within three (3) months after the date of the consent, of purchasing the other party's holding in the Timber Company at its fair value at the time of the sale, and, in the event of dispute, the fair value of a party's holding in the Timber Company shall be determined by arbitration.

16. In the event of the Timber Company not being incorporated within the period of twelve (12) months from the date of this Agreement, either the Commonwealth or the Company shall be at liberty by notice in writing to the other to terminate this Agreement.

17. Any delay or disability in the carrying out of this Agreement arising directly from the act of God, war, restraints of Princes, strikes or lock-outs of workmen or other industrial disturbances, shall not entitle any party to damages or to a cancellation of this Agreement, but this Agreement shall, to the extent of the delay or disability, be deemed to be suspended and shall forthwith come into full force and effect when the delay or disability shall have ceased.

18. In the event of any dispute arising between the Commonwealth and the Company, or between the Company and the Timber Company, as to the construction of this Agreement, or as to the rights or obligations of either of the parties to this Agreement under or arising from this Agreement, the dispute shall be settled by arbitration in accordance with the laws relating to arbitration in force in the Territory of New Guinea.

19. Any notice, communication, opinion, agreement, approval or other matter or thing to be given, made, expressed or done by the Commonwealth under this Agreement shall be deemed to have been duly given, made, expressed or done if given, made, expressed or done in writing signed on behalf of the Commonwealth by or on behalf of the Prime Minister of the Commonwealth, and delivered at or sent by prepaid post to the registered office of the Company in New South Wales.

20. Any notice, communication, agreement, approval or other matter or thing to be given, made, expressed or done by the Company under this Agreement shall be deemed to have been duly given, made, expressed or done if given, made, expressed or done in writing signed on behalf of the Company by any Director or Attorney of the Company in Australia, and delivered or sent by prepaid post to the Secretary of the Department of Territories of the Commonwealth at the Central Office of that Department in Australia.

21. This Agreement shall be interpreted in accordance with the laws of the Territory of New Guinea.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first above written.

SIGNED SEALED AND DELIVERED by the Right Honourable SIR ARTHUR WILLIAM FADDEN, the Acting Prime Minister of the Commonwealth of Australia, for and on behalf of the Commonwealth, in the presence of— J. R. Kelly.	}	A. W. Fadden (L.S.)
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The Official Seal of the Company in Australia was hereunto affixed by authority of the Company under its Common Seal by me Frederick William Ross Godden a Director at Sydney in the State of New South Wales on the seventeenth day of May, 1952.	}	(L.S.)
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F. W. R. Godden,
Director.