

**THE OFFICIAL GAZETTE 19TH JUNE, 1992  
LEGAL SUPPLEMENT - B**

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GUYANA

No. 19 of 1992

**ORDER**

Made Under

**THE PUBLIC CORPORATIONS ACT 1988**

(No. 21 of 1988)

WHEREAS the Bauxite industry is of great importance to the welfare of the people of Guyana;

AND WHEREAS, due to existing operating problems and current obligations owed to creditors, the Linden bauxite mines of the Guyana Mining Enterprise Limited (hereinafter referred to as "Guymine") are no longer able to operate in an efficient and profitable manner;

AND WHEREAS, as part of the implementation of the policy of divestment of public undertakings by the Government of the Co-operative Republic of Guyana (hereinafter referred to as "the Government"), the Government proposes to divest the Linden operations of Guymine;

AND WHEREAS for that purpose it is necessary to carry out a programme for the rehabilitation of the Linden operations of Guymine under a programme called the Initial Restructuring Programme (hereinafter referred to as "IRP") for which funds are proposed to be provided by multilateral financial institutions;

AND WHEREAS in pursuance of the above it is necessary to separate the Berbice and Linden operations of Guymine and to reorganise the Linden operations;

AND WHEREAS, in addition to the liabilities incurred by Guymine in relation to its operations, the Bauxite Industry Development Company Limited (hereinafter referred to "Bidco"), which holds all the shares in Guymine as the nominee of the Government, has in the past borrowed sums of money and incurred liabilities for the purposes and benefit of both the Berbice and Linden operations of Guymine;

AND WHEREAS it is necessary for completing the above exercises to make provision for the payment of the debts of Guymine, and the debts incurred by Bidco in relation to the operations of Guymine in the past;

AND WHEREAS in this connection the Government already has —

- (1) written off all government related debts amounting to approximately ten million United States dollars;
- (2) assumed part of the existing commercial debts of the Government owned bauxite operations to the extent of twenty-two million three hundred thousand United States dollars;
- (3) agreed to waive, on an exceptional and temporary basis, all taxes, duties and other charges normally payable by the Linden operations of Guymine during the period of IRP;
- (4) made provision for contribution, by the Government, of capital in an initial amount of two million three hundred thousand United States dollars; and
- (5) agreed to provide contingent support in an additional sum of two million seven hundred thousand United States dollars;

AND WHEREAS the creditors have requested in negotiations that the assets and liabilities of the Berbice and Linden operations of Guymine be treated separately and such separation is necessary to implement the IRP;

AND WHEREAS the assets of the Linden operations of Guymine are not sufficient to meet the liabilities of those operations and creditors of a company with fully paid up shares would not by law have access to additional assets, other than that of the debtor company, for the discharge of their claims;

AND WHEREAS it is considered appropriate that the interests of the existing creditors of Guymine, and of Bidco in relation to the operations of Guymine, be effectively protected by providing them with payment in full with interest, consistent with international law and the bankruptcy law principles of the creditors' home countries:



NOW, THEREFORE, IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTIONS 6 (1) 8, 9, AND 11 OF THE PUBLIC CORPORATIONS ACT 1988 (No 21 of 1988) AS APPLIED TO THE GUYANA MINING ENTERPRISE LIMITED BY NOTIFICATION UNDER SECTION 66 OF THAT ACT, I HEREBY MAKE THE FOLLOWING ORDER :—

1. This Order may be cited as the Guyana Mining Enterprise Limited (Restructuring and Transfer of Assets and Liabilities) Order 1992 and shall come into operation on 19th June, 1992. Citation and commencement.
  
2. In this Order — Definitions.
  - (a) “appointed day” means the date on which this Order comes into operation;
  
  - (b) “Bermine” means the Berbice Mining Enterprise Limited, being a company registered under the Companies Act; Cap. 89:01
  
  - (c) “Bidco” means the Bauxite Industry Development Company Limited, being a company registered under the Companies Act;
  
  - (d) “Guymine”, means the Guyana Mining Enterprise Limited, being a company registered under the Companies Act;
  
  - (e) “Linmine” means the Linden Mining Enterprise Limited, being a company registered under the Companies Act;
  
3. Guymine shall stand dissolved on the expiry of thirty days from the appointed day. Dissolution of Guymine.
  
4. (1) The property of Guymine referred to in Schedule I shall stand transferred to Bermine as from the appointed day. Transfer of property of Guymine. Schedule I
  - (2) The right to prospect or mine for bauxite ore under the mining leases or licences referred to in Schedule II shall be transferred by Guymine to Bermine before the expiry of thirty days from the appointed day in accordance with the provisions of those leases or licences and the Mining Act 1989. Schedule II  
No. 20 of 1989
  
  - (3) The property of Guymine referred to in Schedule III shall stand transferred to Linmine as from the appointed day. Schedule III
  
  - (4) The right to prospect or mine for bauxite ore under the mining leases or licences referred to in Schedule IV shall be transferred by Guymine to Linmine before the expiry of thirty days from the appointed day in accordance with Schedule IV

the provisions of those leases or licences and the Mining Act 1989.

Adjudication of liabilities of Guymine and certain liabilities of Bidco.

Schedule V and VI

5. (1) The Minister shall, within one week from the appointed day, appoint a person (hereinafter referred to as the "adjudicating authority") who is or has been a judge of the High Court to determine in accordance with the provisions of this Order, the sums of money due from Guymine to its creditors, and from Bidco to its creditors referred to in Schedules V and VI and also to determine any priorities for payment to the creditors.
- (2) Every person to whom any sum of money is due from Guymine and every person referred to in Schedules V and VI to whom any sum of money is due from Bidco shall within three months from the appointed day submit to the adjudicating authority the particulars of his or its claim and thereupon the adjudicating authority shall proceed to determine, as expeditiously as possible, the amount due to that person from Guymine or Bidco, as the case may be, as on the appointed day and whether it is a liability transferred to Bermine or Linmine or whether it is a liability to be discharged by the Government in accordance with this Order.
- (3) In the matter of the adjudication of any claim under this clause and in determining the priorities for the payment of the liabilities to which this clause applies, the provisions of the Insolvency Act shall apply.
- (4) The provisions of this clause and clause 6 shall not apply to amounts due to any employee of Guymine under his contract of employment with Guymine.

Cap. 12:21

Arrangements for discharge of liabilities of Guymine and certain liabilities of Bidco. Schedule V

6. (1) The amounts lawfully due from Guymine or Bidco to the persons mentioned in Schedule V as on the appointed day in relation to the operations of Guymine in the County of Berbice, Guyana, and the Guyana dollar liabilities of Guymine in relation to such operations and subsisting on that day, shall be paid and discharged by Bermine and the said liabilities are hereby transferred to Bermine.
- (2) Out of the remaining liabilities of Guymine subsisting on the appointed day, the Guyana dollar liabilities are hereby transferred to Linmine and shall be paid and discharged by Linmine and the other liabilities of Guymine, and the amounts lawfully due from Bidco to the persons mentioned in Schedule VI as on the appointed day in

Schedule VI



relation to the operations of Guymine in Guyana, other than in the County of Berbice, are hereby transferred to the Government and shall be paid and discharged by the Government through the issuance of bonds or in any other manner provided in this Order.

- (3) The rights in all respects of each of the creditors of Guymine or Bidco, in respect of the liabilities transferred by this Order to Bermine, Linmine or the Government shall be determined on the basis that Guymine or Bidco, as the case may be, had not, before the appointed day, made any default in the payment of any sum to any such creditor, when it became due and payable.
- (4) The liabilities transferred under paragraphs (1) and (2) shall include any sum of money that has become due and payable, or any other liability incurred, by Guymine or by Bidco to any of the persons mentioned in Schedule V or VI, before the appointed day, on account of the performance in whole or in part of any contract or agreement to which Guymine or Bidco is a party.
- (5) In respect of the liabilities transferred to the Government by paragraph (2), the Government shall issue a bond to each of the creditors for the full amount due to him or it from Guymine, or Bidco, as the case may be, on the appointed day, as determined by the adjudicating authority.
- (6) A bond issued under paragraph (5) shall mature twelve years and one day from the date of issuance but may be discharged by the Government in part or wholly at any time after the expiry of four years from the date of its issuance and prior to its maturity, if and to the extent to which it is not prepaid, and shall bear simple interest at the rate of five per cent per annum, which interest shall be payable annually in arrears.
- (7) The Minister shall establish a Special Fund into which shall be paid —
  - (i) the proceeds received from the divestment of Linmine after deducting therefrom the amount required to discharge the liabilities incurred by it on or after the appointed day; and
  - (ii) the royalty payable, after the expiration of two years from the appointed day, being the period re-

quired for the rehabilitation of Linmine operations, by Linmine or the company or other person to which or whom its assets are divested.

- (8) The amount in the aforesaid Special Fund shall be utilized —
- (i) in so far as the amount relates to proceeds referred to in paragraph (7) (i), as soon as possible after the divestment of Linmine; and
  - (ii) in so far as the amount relates to royalty referred to in paragraph 7 (ii), as soon as possible after the expiry of the year in which the royalty was paid,

to prepay the whole or part (having regard to the adequacy of the amounts available for payment) of the sums due under the bonds issued under paragraph (5) in accordance with the directions of the adjudicating authority, notwithstanding that the period of four years referred to in paragraph (6) has not expired.

- (9) The Minister may, with the consent of Linmine and notwithstanding anything contained in any other provision of this Order, exchange any property of Linmine in consideration of the discharge of the whole or part of any debt transferred to the Government under paragraph (2), where the creditor in relation to the debt has agreed to such exchange, and thereupon such debt shall be deemed to be discharged in whole or in part, as the case may be.

Provided that where any asset of Linmine is exchanged as provided in this paragraph, Linmine shall not be deemed to become entitled to receive from the Government any sum of money on account of the exchange.

7. (1) The chairman of the Board of Directors of Bidco shall decide who among the employees of Guymine shall be continued in of employment after the appointed day and shall allocate them with effect from the appointed day to offices in Bermine and Linmine in which they shall be continued in employment with effect from the appointed day on terms and conditions of employment which taken as a whole are not less favourable than those that governed their employment with Guymine immediately before the appointed day, and they shall be informed of the same:

Provided that where any such employee is unwilling to be employed in such office, he shall inform the aforesaid chairman as soon as possible whereupon his employment

Provisions  
regarding  
employees  
Guymine.



shall be terminated with effect from such date as may be determined by the said chairman.

- (2) The appointment of all the employees of Guymine, who are not continued in employment under paragraph (1) and whose employment is not terminated under the proviso thereto, shall stand terminated with effect from the day immediately preceding the appointed day.
- (3) Nothing in paragraph (1) shall be deemed to affect the right of Bermine or Linmine to dismiss or discharge from employment any person, continued in the employment of Bermine or Linmine under that paragraph, for cause or, after an evaluation of the needs of Bermine or Linmine, to re-deploy or terminate the employment of any such person who is found redundant.
- (4) Bermine or Linmine shall be liable to pay the severance pay due to any employee transferred to it, under paragraph (1), in relation to his service with Guymine before the appointed day, when his employment is finally terminated by Bermine or Linmine, as the case may be, or when he retires from such service on superannuation.
- (5) Linmine shall be liable to pay the severance pay payable to any employee of Guymine whose employment is terminated under the proviso to paragraph (1) or under paragraph (2).
- (6) The liability —
  - (a) for payment of pension benefits to each of the employees of Guymine, allocated to Bermine or Linmine under paragraph (1), in respect of his service with Guymine;
  - (b) for sums payable to any such employee in respect of accrued rights relating to any outstanding leave or leave salary, vacation passage and other similar matters,

is hereby transferred to Bermine or Linmine, as the case may be, to which the employee is allocated under paragraph (1).

- (7) In respect of employees of Guymine, allocated to Bermine or Linmine under paragraph (1), Bermine or Linmine, as the case may be, shall assume the rights and obligations under the contributory pension scheme to which Guymine

and such employees have been contributing, including rights and benefits in respect of contributions already made by Guymine and such employees.

Residuary provision.

8. All the property of Guymine not included in Schedules I, 11, III and IV shall stand transferred to Linmine as from the appointed day.

Pending litigation and contracts.

9. (1) Subject to the provisions of paragraph (2), all actions and other proceedings commenced before the appointed day in any court or before any authority by or against Guymine and relating to or arising from the operations of Guymine in the County of Berbice, Guyana, and pending on that day may be continued by or against Bermine, and all other actions and proceedings commenced before the appointed day in any court or before any authority by or against Guymine and pending on that day may be continued by or against Linmine, and such actions or other proceedings may be amended accordingly.

(2) Where any action or other proceeding, commenced by or against Guymine before the appointed day, relates to any liability transferred to the Government by this Order, it shall not be continued by or against Bermine or Linmine but may be continued by or against the Attorney General on behalf of the Government and such action or other proceeding may be amended accordingly.

(3) Subject to the other provisions of this Order and the exclusive remedies provided herein for liabilities accruing prior to the appointed day, contracts or agreements entered into by Guymine and referred to in Schedule VII shall continue to have effect, in respect of that part of the contract or agreement which has not been performed before the appointed day, as if Bermine were a party to it instead of Guymine.

Schedule VII

(4) Subject to the other provisions of this Order and the exclusive remedies provided herein for liabilities accruing prior to the appointed day, all contracts or agreements entered into by Guymine and subsisting on the appointed day, other than contracts and agreements referred to in Schedule VII, shall continue to have effect, in respect of that part of the contract or agreement which has not been performed before the appointed day, as if Linmine were a party to it instead of Guymine.

(5) Where Bermine or Linmine is of the opinion that the terms of any contract or agreement referred to in para-



graph (3) or (4) are unreasonable, unfair or otherwise unjustified, or void or voidable for any other reason, Bermine or Linmine, as the case may be, may, within ninety days from the appointed day, apply to the adjudicating authority for modifying or annulling the contract or agreement and the adjudicating authority may, after giving the parties concerned a reasonable opportunity of being heard, suitably modify or annul the contract or agreement.

- (6) Subject to the other provisions of this Order, all deeds, instruments or other documents which were subsisting immediately before the appointed day, and relating to any property of Guymine, shall be of full force and effect against or in favour of —
- (i) Bermine, where it relates to any property of Guymine transferred to it; and
  - (ii) Linmine, where it relates to any property of Guymine transferred to it,

as if instead of Guymine, Bermine or Linmine, as the case may be, had been named therein or had been a party thereto.

- (7) All instructions given or agreements entered into by Bidco or Guymine before the appointed day in regard to the maintenance of accounts in any bank or other financial institution and payment into or from them sums of money receivable or payable under any agreement or contract referred to in paragraph (3) or (4) may be modified or cancelled by Bermine or Linmine, as the case may be, within sixty days from the appointed day and any such modification or cancellation shall be binding on such bank or other financial institution.
10. Any person aggrieved by any decision of the adjudicating authority under clause 5 or 9 may, within thirty days from the date of the decision, appeal to the full court of the High Court and that court shall hear and decide the appeal, and in relation thereto shall have all the powers as if it were an appeal from the Judgement or order of a single Judge of that court.
11. Nothing in this Order shall be deemed to prevent the Government from discharging, or restrict the power of the Government to discharge, any obligation it has

Appeal.

Saving.

incurred under any contract, agreement or other arrangement.

Resolution  
of dispute  
between  
Bermine  
and Linmine

12. Any dispute between Bermine and Linmine in regard to any matter dealt with herein shall be submitted to the chairman of the Board of Directors of Bidco whose decision thereon shall be binding on Bermine and Linmine.

SCHEDULE I

cl. 4(1)

PROPERTY OF GUYMINE TRANSFERRED TO BERMINE

All the property of Guymine in the County of Berbice, Guyana, which will include —

- (i) all lands and buildings;
- (ii) all plant, machinery and equipment, spares and tools, raw materials, goods and other articles and things on and in the above land and buildings;
- (iii) motor vehicles owned by Guymine immediately before the appointed day, which are allocated to Bermine with effect from the appointed day by the chairman of the Board of Directors of Bidco;
- (iv) the right vested in Guymine under any prospecting or mining lease, licence or other arrangement to prospect or mine for bauxite ore in any lands in the County of Berbice, Guyana.

SCHEDULE II

cl. 4 (2)

MINING LEASES AND LICENCES OF GUYMINE  
TRANSFERRED TO BERMINE

All mining leases and licences authorising Guymine to prospect or mine for bauxite ore in any land in the County of Berbice, Guyana.

SCHEDULE III

cl. 4(3)

PROPERTY OF GUYMINE TRANSFERRED TO LINMINE

All the property of Guymine other than those referred to in Schedules I and II, but including the right vested in Guymine under any mining lease, licence or other arrangement to prospect or mine for bauxite ore in the lands in any part of Guyana, other than in the County of Berbice.



SCHEDULE IV cl. 4(4)

MINING LEASES AND LICENCES OF GUYMINE  
TRANSFERRED TO LINMINE

All mining leases and licences authorising Guymine to prospect or mine for bauxite ore in the lands in any part of Guyana, other than in the County of Berbice.

SCHEDULE V cl. 6 (1)

FOREIGN CURRENCY CREDITORS OF GUYMINE OR BIDCO  
RELATING TO BERBICE OPERATIONS OF GUYMINE.

1. Boskalis Int'l B.V.
2. Bucyrus-Erie Company
3. G. I. S. Trading Company
4. Guybulk Shipping Limited
5. Hillandale Sales Corporation
6. Minco Sales Corporation
7. Nissho Iwai American Corporation
8. Sea Group Inc.
9. Caterpillar Americas Company

SCHEDULE VI cl. 6(2)

CREDITORS OF BIDCO RELATING TO LINDEN  
OPERATIONS OF GUYMINE

1. Nissho Iwai American Corporation
2. Hudig & Veder
3. Boskalis Int'l B.V.
4. Berliner Handels Und Frankfurter Bank
5. Sea Group Inc.
6. Guybulk Shipping Limited.

SCHEDULE VII cl. 9(3)

CONTRACTS AND AGREEMENTS ENTERED INTO BY GUYMINE AND  
TRANSFERRED TO BERMINE

All contracts and agreements entered into by Guymine in relation to its operations in the County of Berbice, Guyana, or for the benefit of such operations, including contracts or agreements for the supply of machinery or equipment or services, and subsisting on the appointed day.

Made this 19th day of June 1992.

*W. Murray,*  
Deputy Prime Minister  
Trade, Tourism and Industry