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COMPANIES FORM No. 395

009283/10

# 395

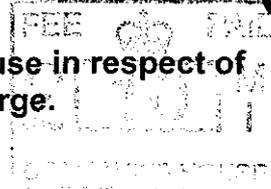
## Particulars of a mortgage or charge

CHFP014

**A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge.**

Please do not write in this binding margin

Pursuant to section 395 of the Companies Act 1985



*Please complete legibly, preferably in black type, or bold block lettering*

To the Registrar of Companies  
(Address overleaf - Note 5)

For official use

Company number

1 0 0 0 0 0 0 0 0 0

04834745

Name of company

\* insert full name of company

✓ \* **Ferro Nickel Marketing Limited, a company organised under the laws of England (the "Chargor")**

Date of creation of the charge

✓ **30 September 2003**

Description of the instrument (if any) creating or evidencing the charge (note 2)

T **A Security Deed, dated 30 September 2003, between Ferro Nickel Marketing Limited and JPMorgan Chase Bank (as "Trustee")**

Amount secured by the mortgage or charge

T 10 **The Secured Liabilities, which means all present and future obligations and liabilities of the Chargor to the Senior Lenders under the Finance Documents.**  
**NB: Capitalised terms are defined in the continuation sheets attached.**

Names and addresses of the mortgagees or persons entitled to the charge

T **JPMorgan Chase Bank (as trustee for the Secured Lenders)**  
**Trinity Tower, 9 Thomas More Street,**  
**London** Postcode **E1W 1YT**

Presenter's name address and reference (if any) :  
**Milbank, Tweed, Hadley & McCloy**  
**Dashwood House, 69 Old Broad Street, London, EC2M 1QS**  
**Ref: JDewar/70081.00900**

Time critical reference

For official Use  
Mortgage Section

Post room



LD5  
COMPANIES HOUSE

WL2JLMP66K

0442  
14/10/03

Short particulars of all the property mortgaged or charged

**I. Assignment**

The Chargor with full title guarantee (subject to Permitted Liens), and as a continuing security for the payment of all the Secured Liabilities, hereby assigns by way of a first ranking security to the Trustee (as trustee for the Senior Lenders) all of the Chargor's right, title and interest, present and future, in, to and under:

- (i) the Office Sales Contracts and all Proceeds relating thereto;
- (ii) the Master Offtake Agreement, the Offtake Agreements and all Proceeds relating thereto;
- (iii) the Master Procurement Agreement;
- (iv) each Off-shore Policy;
- (v) each Permitted Hedging Instrument;
- (vi) Expropriation Compensation; and
- (vii) the Specified Rights,

and any and all sums payable or which become payable thereunder or in relation thereto (including claims resulting from any failure of performance or compliance with any provisions thereof) to the Chargor and any and all proceeds relating to or arising from any of the above and all cash and other property at any time and from time to time receivable or distributable in respect thereof or in exchange therefor;

Please see continuation sheets attached.

N.B. Please see attached continuation sheets

Please do not write in this binding margin

Please complete legibly, preferably in black type, or bold block lettering

ES

Particulars as to commission allowance or discount (Note 3)

Nil

A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge. (See Note 5)

Signed <sup>AK</sup> Melba Tweed Hadley McIlroy  
On behalf of [company] [mortgagee/chargee]†

Date 13 October 2003

**Notes**

† delete as appropriate

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debentures", "Mortgage", or "Legal charge", etc. as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his:
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,
 for any of the debentures included in this return The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-

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Ferro Nickel Marketing Limited

(company no 04834745)

395 Continuation Sheets

Short particulars of all the property mortgaged or charged (continued)

2. Charge

The Chargor, as beneficial owner with full title guarantee (subject to Permitted Liens) charged by way of a first ranking fixed charge, and as a continuing security for the payment of all the Secured Liabilities, to the Trustee (as trustee for the Senior Lenders) all of the Chargor's rights, title and interest, present and future, in, to and under:

- (a) the Permitted Investments and the Balances; and
- (b) (i) all dividends paid or payable after the date of the Security Deed on all or any of the Permitted Investments, (ii) all securities, rights, moneys or property accruing or offered at any time (whether by way of redemption, bonus, preference, option rights or otherwise) to or in respect of any of the Permitted Investments or in substitution or exchange for or otherwise derived from, any of the Permitted Investments and (iii) all dividends, interest or other income in respect of any such asset as is referred to in part (ii) of this paragraph (b),

*provided that*, unless otherwise provided in the Common Security Agreement, the Chargor may withdraw Balances and dispose of Permitted Investments or otherwise deal with Permitted Investments and the other Charged Assets in accordance with the Common Security Agreement.

3. Floating Charge

The Chargor, as beneficial owner with full title guarantee (subject to Permitted Liens), charged absolutely to the Trustee (as trustee for the Senior Lenders) by way of a first ranking floating rate charge, as security for the payment of all the Secured Liabilities, all its assets and undertakings in England and Wales not otherwise effectively mortgaged, charged or assigned under the Security Documents (other than Unrestricted Accounts, insurance policies in respect of third party liability and workers compensation and other property of assets specifically excluded from the Collateral under the terms of the Common Security Agreement).

Defined Terms:

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**“Assigned Project Document”** means each of the following (a) the Offco Sales Contract and all Proceeds relating thereto; (b) the Master Offtake Agreement, the Offtake Agreements and all Proceeds relating thereto; (c) the Master Procurement Agreement; (d) each Offshore Policy; (e) each Permitted Hedging Instrument; (f) Expropriation Compensation; and (g) the Specified Rights.

**“Authorized Depository”** means a banking institution in Venezuela deposits in which are classified in the highest investment category granted by a local affiliate of a recognized credit rating agency.

**“Authorized Investments”** means one or more of the following:

- (a) obligations maturing or capable of redemption by the holder not more than 12 months after the date of acquisition and issued or guaranteed by (i) any entity (other than an entity of or in Venezuela) which has one of the two highest ratings for short-term obligations from a credit rating agency of international standing or (ii) Venezuela, in an amount not to exceed \$10 million at any one time;
- (b) demand deposits, time deposits, certificates of deposit or other obligations (including acceptances) maturing or capable of redemption by the holder not more than 12 months after the date of investment or acquisition which are issued, accepted or guaranteed by (i) the bank that is then serving as Trustee, (ii) a bank having capital funds and reserves of not less than \$1 billion provided that, except for the bank that is then serving as Trustee, deposits in or investments with any one such bank shall not at one time exceed \$100 million, or (iii) an Authorized Depository (provided that deposits in or investments with any one such Authorized Depository in Venezuela shall not at one time exceed \$10 million);
- (c) commercial paper, corporate promissory notes or other obligations maturing or capable of redemption by the holder not more than twelve months after the date of acquisition which (i) have, or are supported by an unconditional guarantee from a corporation similar obligations of which have, one of the two highest ratings from a credit rating agency of international standing, or (ii) are obligations which are supported by an unconditional guarantee or a letter of credit from any bank referred to in clause (b);
- (d) money market funds (including, without limitation, deposits in the VISTA Money Market Funds and any other fund for which the Trustee or any affiliate of the Trustee serves as an administrator, shareholder servicing agent and/or custodian or subcustodian), so long as such funds are rated Aaa or better by Moody's or AAA or better by S&P; and
- (e) such other investments as KfW and IFC may agree.

**“Balance”** means:

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- (a) in relation to an Offco off-shore account or a sub-account of such Offco off-shore account, all monies from time to time standing to the credit of that Offco off-shore account or sub-account (as the case may be); or
  - (b) as the context may require, the aggregate of all monies from time to time standing to the credit of all Offco off-shore accounts and all sub-accounts.

**“Charged Assets”** means all assets, rights and property subject to the mortgages and charges created by the Security Deed.

**“Collateral”** means (a) the rights of the Chargor under the Assigned Project Documents; (b) any Expropriation Compensation; (c) the Specified Rights; (d) the Offco off-shore accounts; and (e) the rights of the Chargor under the Off-shore Policies and Permitted Hedging Instruments.

**“Common Security Agreement”** means the common security agreement among the Borrower, the Shareholder, the Senior Lenders and the Trustee, dated 28 August 1997, as amended, supplemented and varied from time to time, including as supplemented and varied by the consent and waiver letters dated 30 September 2003 from, respectively, IFC and KfW to the Borrower and Anglo American plc.

**“Completion Agreement”** means the Completion Agreement, dated as of 28 August 1997 among the Sponsor and certain Senior Lenders, as the same may be amended from time to time.

**“Co-operation Agreement”** means the co-operation agreement dated 30 September 2003 among the Borrower, the Chargor and KfW.

**“Debt Transfer Agreement”** means the debt transfer agreement dated 30 September 2003 between the Chargor and KfW.

**“Expropriation Compensation”** means all value (whether in the form of money, securities, property or otherwise) paid or payable by Venezuela or its agencies or instrumentalities, in whole or partial settlement of claims, whether or nor resulting from judicial proceedings and whether paid or payable within or without Venezuela, as compensation for or in respect of an Expropriatory Event.

**“Expropriatory Event”** means any action or series of actions (individually, or in the aggregate together with similar prior actions or series of actions) taken, authorized or ratified by Venezuela or any of its agencies or instrumentalities either for the confiscation, expropriation or nationalization (by intervention, condemnation or other form of taking) of (a) all or any part of the shares of Minera Loma de Niquel, C.A. and/or subordinated loans of Minera Loma de Niquel, C.A., if such action or series of actions (individually, or in the aggregate together with similar prior actions or series of actions) result in the confiscation, expropriation or nationalization of more than 25% of the shares of Minera Loma de Niquel, C.A. and/or 25% of such subordinated loans of Minera Loma de Niquel, C.A. outstanding immediately prior to such actions or series of actions; or (b) ownership or control of all or any

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part of the project property of Minera Loma de Niquel, C.A., the taking of which prevents the development of the Project substantially in accordance with the description of the facilities of the Project or operation of the Project substantially as operated, or contemplated to be operated, for the purpose of determining the achievement of completion.

**"Finance Documents"** means the Common Security Agreement, the Debt Transfer Agreement, the IFC Sales Agreement, the Co-operation Agreement and the Offco Guarantee.

**"IFC Sales Agreement"** means the ferro nickel sales agreement dated 30 September 2003 among the Chargor and IFC.

**"IFC"** means International Finance Corporation.

**"KfW"** means Kreditanstalt für Wiederaufbau.

**"Master Offtake Agreement"** means the master offtake agreement dated 30 September 2003 among the Borrower and the Chargor.

**"Master Procurement Agreement"** means the master procurement agreement dated 30 September 2003 among the Borrower and the Chargor under which the Chargor will provide procurement and payment services in respect of imports to the Borrower.

**"Nickel Hedges"** means forward purchases and sales of nickel, nickel futures, put options, synthetic put options, call options, collars or any other arrangements entered into by the Chargor to hedge the Chargor or the Borrower's exposure to movements in nickel prices and not for the purposes of speculation.

**"Offco Guarantee"** means the guarantee dated 30 September 2003 pursuant to which the Chargor guarantees the payment obligations of the Borrower to the Senior Lenders under or pursuant to the Finance Documents.

**"Offco Sales Contract"** means a contract, agreement or other arrangement entered into or to be entered into by the Chargor with a buyer for the sale of project production.

**"Off-shore Insurances"** means any insurance taken by the Chargor with non-Venezuelan insurers (other than insurances in respect of third party liability and workers compensation).

**"Off-shore Policy"** means any insurance policy in respect of Off-shore Insurances.

**"Offtake Agreement"** means each offtake agreement entered into or to be entered into among the Borrower and a division of the Chargor.

**"Permitted Hedging Instruments"** means (i) Nickel Hedges, (ii) such other hedging arrangements into which the Chargor may enter into in the ordinary course of business and not for the purposes of speculation, provided, that, in each case in which the Chargor could have credit exposure to the counterparty under any such hedge instrument, the counterparty shall be a person some obligation of which would then constitute an Authorized Investment under clause (a) of the definition of Authorized Investments or (with respect to permitted hedging

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investments in respect of the Venezuelan Bolivar) an Authorized Depository and (iii) any other hedging instrument permitted under Common Security Agreement or included in the definition of "Permitted Hedging Instruments" in the Common Security Agreement.

**"Permitted Liens"** means (a) liens for taxes not delinquent or being contested in good faith and by appropriate proceedings, (b) deposits or pledges to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance, (c) deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business, (d) mechanics', workmen's, materialmen's or other like liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith, (e) liens with respect to obligations which are not due, which are imposed improperly or without due process of law in each case for so long as the Chargor takes prompt, bona fide action to contest the same and continues diligently to pursue such action, (f) liens created under Security Documents for the benefit of the Senior Lenders and (g) any other liens or security interests permitted under the Common Security Agreement or included in the definition of "Permitted Liens" in the Common Security Agreement.

**"Permitted Investments"** means Authorized Investments made with a Balance in accordance with the terms of the Common Security Agreement.

**"Proceeds"** means all moneys paid and other distributions made in payment of Receivables, including by way of purchase, factoring, settlement or liquidation thereof.

**"Project"** means the commercial development of the Loma de Hierro nickel deposit located some 80 km southwest of Caracas, Venezuela comprising development of a mine, installation of ferro-nickel processing facilities and the construction of associated infrastructure facilities, including access roads, provision of power and gas, water supply and storage facilities.

**"Receivables"** means moneys due or to become due to the Chargor at any time under an Offco Sales Contract (including prepayments due and to become due and amounts payable by third parties, such as guarantors and letters of credit banks, in respect of the buyer's obligations under such Offco Sales Contract) and shall include any moneys due from insurers with respect to Offco Sales Contracts and any damages, arbitration award or other monetary settlement payable to the Chargor in respect of Offco Sales Contracts.

**"Recognized Credit Rating Agency"** means Duff & Phelps, Moody's Investors Service, Inc. or Standard and Poor's Rating Service, or their respective successors, so long as such agency is a nationally recognized statistical rating organization registered with the U.S. Securities and Exchange Commission.

**"Secured Liabilities"** means all present and future obligations and liabilities of the Chargor to the Senior Lenders under the Finance Documents.

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**“Security Documents”** means the Venezuelan security documents, conditional assignments and powers of attorney referred to in the Common Security Agreement, the Option Agreement, each of the Off-shore Security Deeds and any other agreement or document signed or filed or required to be signed or filed by the Borrower, the Sponsor, the Shareholder or any other person in order to create, preserve, continue, perfect or validate any security interest in Collateral in favor of Senior Lenders as security for Senior Debt Obligations.

**“Senior Lenders”** means (i) KfW, as lender under the Senior Loan Agreement, (ii) IFC, as lender under the Senior Loan Agreement, (iii) lenders of, and persons committed to lend, certain replacement senior debt and (iv) their respective successors, transferees and assigns who make the senior debt commitments or become holders of senior debt in transactions permitted under the respective Senior Loan Agreements. Persons that are not parties to a Senior Loan Agreement, such as those that may purchase participations in senior loans or senior debt commitments, shall not be Senior Lenders.

**“Senior Loan Agreements”** means the individual loan agreements entered into by the Borrower and the respective Senior Lenders with respect to the senior debt, as such agreements may be amended and supplemented or replaced from time to time.

**“Shareholder”** means Loma de Niquel Holdings and any of its assignees of the shares of Minera Loma de Niquel, C.A, in each case so long as it holds any of the shares of Minera Loma de Niquel, C.A.

**“Specified Rights”** means all present and future rights which the Chargor may have or acquire as against any clearance system or settlement system including without limitation any rights which the Chargor may have to require delivery by such clearance system or settlement system of any Permitted Investments to, or to the order of, the Chargor.

**“Sponsor”** means any of Anglo American plc, Anglo American Luxembourg S.A., Anglo American International S.A. and AA International Finance S.A., or any of them together, in any such case in their capacity as joint and several obligors under the Completion Agreement, or any successor in interest to any of them under the Completion Agreement.

**“Unrestricted Accounts”** means bank and other accounts of the Chargor that are not subject to the security in favour of the Trustee created by this Deed.

FILE COPY



**CERTIFICATE OF THE REGISTRATION  
OF A MORTGAGE OR CHARGE**

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 04834745

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SECURITY DEED DATED THE 30th SEPTEMBER 2003 AND CREATED BY FERRO NICKEL MARKETING LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE SENIOR LENDERS UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 14th OCTOBER 2003.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 17th OCTOBER 2003.

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THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*  
— for the record —