

Western Australia

**Diamond (Argyle Diamond Mines Joint
Venture) Agreement Amendment Act 2001**

As at 07 Jan 2002

No. 39 of 2001

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Western Australia

Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2001

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Western Australia

Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2001

No. 39 of 2001

An Act to amend the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981*.

[Assented to 7 January 2002]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2001*.

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2. Commencement

This Act comes into operation on the 28th day after the day on which it receives the Royal Assent.

3. The Act amended

The amendments in this Act are to the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981**.

[* *Act No. 108 of 1981.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 118.]

4. Section 2 amended

Section 2 is amended as follows:

- (a) by deleting the definitions of “Schedule”, “section” and “subsection”;
- (b) by inserting after the definition of “the Company” the following definition —

“

“**the first supplementary agreement**” means the agreement a copy of which is set out in Schedule 3;

”;

- (c) by deleting the definition of “the Supplementary Agreement” and inserting the following definition instead —

“

“**the second supplementary agreement**” means the agreement a copy of which is set out in Schedule 4.

”.

5. Part II heading amended

The heading to Part II is amended by inserting after
“AGREEMENT” —

“ **AND SUPPLEMENTARY AGREEMENTS** ”.

6. Section 3A replaced and section 3B inserted

Section 3A is repealed and the following sections are inserted
instead —

“

3A. First supplementary agreement

The first supplementary agreement is approved and
ratified.

3B. Second supplementary agreement

The second supplementary agreement is approved and
ratified.

”.

7. Schedule 4 inserted

After Schedule 3 the following Schedule is inserted —

“

Schedule 4

[s. 2]

THIS AGREEMENT is made the 15th day of October 2001

BETWEEN

**THE HONOURABLE GEOFFREY IAN GALLOP BEc, MA,
MPhil, DPhil, MLA, Premier of the State of Western Australia,**
acting for and on behalf of the said State and its instrumentalities from
time to time (hereinafter called “**the State**”) of the one part

AND

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**CAPRICORN DIAMONDS LIMITED ACN 009 102 621,
ASHTON ARGYLE HOLDINGS PTY LIMITED
ACN 083 175 991 and AML NOMINEES LIMITED
ACN 006 378 329** each of 2 Kings Park Road, West Perth, Western
Australia (hereinafter called “**the Joint Venturers**”) of the other
part

WHEREAS:

- (a) the State and the Joint Venturers are now the parties to the agreement ratified by the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 which agreement has been varied by the agreement ratified by the Diamond (Ashton Joint Venture) Agreement Amendment Act 1983 and which (as so varied) is hereinafter called “**the Principal Agreement**”;
- (b) pursuant to Clause 18 of the Principal Agreement Mining Lease No. 275SA (hereinafter called “**the Ellendale Mining Lease**”) has been granted in respect of the area defined in the Principal Agreement as the Ellendale mining area; and
- (c) the Joint Venturers desire to sell the Ellendale Mining Lease and for such purpose the parties hereto desire to further vary the Principal Agreement and the Ellendale Mining Lease as provided herein.

NOW THIS AGREEMENT WITNESSES —

- 1. Subject to the context words and phrases used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 30 June 2002 or such later date as the parties hereto may agree.
- 3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not commence to operate until the Bill referred to in Clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act.

- (2) If before 30 June 2002 or such later date as may be agreed pursuant to Clause 2 the said Bill has not come into operation as an Act then unless the parties hereto otherwise agree this Agreement shall cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.
 - (3) On the said Bill coming into operation as an Act all provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. In clauses 5 and 6 of this Agreement, “**Sale Date**” means the date on which the Ellendale Mining Lease is transferred by the Joint Venturers to -
 - (a) Kimberley Diamond Company NL (ACN 061 899 634) pursuant to the Asset Sale Agreement dated 5 September 2001 and made between Argyle Diamond Mines Pty Limited (ACN 008 912 418) as manager for the Argyle Diamond Mines Joint Venture, the Joint Venturers and the said Kimberley Diamond Company NL;
 - (b) any other party that the Minister responsible for the administration of the Principal Agreement shall consent to.
5. Subject to Clause 6 of this Agreement, the Principal Agreement and the Ellendale Mining Lease are respectively varied with effect on and from the Sale Date as follows —
 - (A) The Principal Agreement:
 - (1) Clause 1 —
 - (a) by deleting the definition of “Ellendale mining area”;
 - (b) in the definition of “mining leases” —
 - (i) by amending the definition to be a definition of “mining lease”;

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- (ii) by deleting “or mining leases”; and
 - (iii) by deleting “Clauses 15 and 18” and substituting the following —
 - “Clause 15”;
- (c) in the definition of “ore”, by deleting “leases” and substituting the following —
 - “lease”;
- (d) in the definition of “relevant town” —
 - (i) by deleting “and the Ellendale mining area respectively”; and
 - (ii) by deleting “in either case”.
- (2) by deleting Clause 9.
- (3) by deleting Clause 18.
- (4) by deleting Clause 19.
- (5) Clause 20 —
 - by deleting “or the Ellendale mining area”.
- (6) Clause 21 —
 - (i) by deleting subclause (2);
 - (ii) in subclause (3), by deleting “subclauses (1) and (2)” and substituting the following —
 - “subclause (1)”.
- (7) by deleting Clause 23.
- (8) Clause 24A —
 - (i) by deleting “and the Ellendale mining area respectively”; and
 - (ii) by deleting “relevant” in both cases where it occurs in paragraph (a).

- (9) Clause 32 —
by deleting “leases” and substituting the
following —
“lease”.
- (10) Clause 37(1)(a) —
by deleting “leases” and substituting the
following —
“lease”.
- (11) Clause 37(2) —
by deleting “leases” and substituting the
following —
“lease”.
- (12) Clause 37(3)(a)
by deleting “leases” and substituting the
following —
“lease”.
- (13) Clause 41(1)(a)(i) —
by deleting “leases” and substituting the
following —
“lease”.
- (14) Clause 42 —
in subclauses (1)(a) and (2), by deleting “leases”
and substituting the following —
“lease”.

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- (B) The Ellendale Mining Lease:
- (1) in the heading, by deleting the following —

“Diamond (Ashton Joint Venture) Agreement
Act 1981”.
 - (2) in the body of the lease —
 - (i) by deleting “(except as otherwise provided by the Agreement described in the Second Schedule to this lease)”.
 - (ii) by deleting “subject to the Agreement”.
 - (iii) by deleting “except as otherwise provided by the Agreement”.
 - (iv) by deleting “for the time being and from time to time” and substituting the following —

“and royalties for the time being and from time to time respectively”.
 - (v) by deleting “and the royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.”.
 - (3) by deleting the Second Schedule.

- (4) by inserting at the end of the Third Schedule the following —

“The boundary of the land being identical to the external boundaries of the following former contiguous surveyed mineral claims:

04/2230	04/2277	04/2308	04/2731	04/10420	04/10439
04/2231	04/2278	04/2309	04/2732	04/10421	04/10440
04/2232	04/2279	04/2310	04/2733	04/10422	04/10441
04/2233	04/2283	04/2311	04/2736	04/10423	04/10442
04/2234	04/2284	04/2419	04/5270	04/10424	04/10443
04/2235	04/2285	04/2420	04/9016	04/10425	04/10444
04/2236	04/2286	04/2421	04/9022	04/10426	04/10445
04/2238	04/2287	04/2470	04/9023	04/10427	04/10446
04/2239	04/2289	04/2471	04/9024	04/10428	04/10447
04/2240	04/2290	04/2472	04/9025	04/10429	04/10448
04/2241	04/2291	04/2474	049028	04/10430	04/10449
04/2242	04/2292	04/2475	04/9029	04/10431	04/10450
04/2243	04/2293	04/2476	04/9030	04/10432	04/10451
04/2244	04/2302	04/2477	04/9031	04/10433	04/10452
04/2246	04/2303	04/2480	04/10415	04/10434	04/10456
04/2247	04/2304	04/2481	04/10416	04/10435	04/10457
04/2249	04/2305	04/2582	04/10417	04/10436	04/10458
04/2250	04/2306	04/2583	04/10418	04/10437	04/10735
04/2269	04/2307	04/2584	04/10419	04/10438	04/10736.”.

- (5) by deleting Conditions 8 and 9 of the Schedule of Conditions attached to the lease.

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6. From and including the Sale Date the Ellendale Mining Lease (as amended by this Agreement) shall continue in force and effect under and subject to the Mining Act 1978 (notwithstanding the provisions of section 73 of that Act restricting the area of land in respect of which a mining lease may be granted) and the provisions of the Principal Agreement shall no longer apply to the Ellendale Mining Lease which shall thenceforth be assigned to the West Kimberley Mineral Field and be designated Mining Lease 04/372 on the tenement register maintained under the Mining Act 1978 in lieu of the designation Mining Lease No. 275SA.
7. If the transfer of the Ellendale Mining Lease referred to in Clause 4 of this Agreement is not effected by 31 December 2002 or such later date as the parties hereto may agree, this Agreement shall on that date cease and thenceforth have no effect.

IN WITNESS WHEREOF this Agreement has been executed by the parties as a Deed.

SIGNED by **THE HONOURABLE**)
GEOFFREY IAN GALLOP in the) Geoff Gallop
presence of:)

C M Brown

Minister for State Development

THE COMMON SEAL of)
CAPRICORN DIAMONDS LIMITED) C.S.
is affixed to this document in the presence of:)

Director T J Appleby

Secretary/~~Director~~ Francis T Hoare

THE COMMON SEAL of)
ASHTON ARGYLE HOLDINGS PTY) C.S.
LIMITED is affixed to this document:)
in the presence of:)

Director T J Appleby

Secretary/~~Director~~ Francis T Hoare

THE COMMON SEAL of)
AML NOMINEES LIMITED) C.S.
is affixed to this document:)
in the presence of:)

Director E W J Tyler

Secretary/~~Director~~ T J Appleby

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