

IRON ORE (MOUNT NEWMAN) AGREEMENT AMENDMENT ACT

No. 51 of 1990

AN ACT to amend the *Iron Ore (Mount Newman) Agreement Act 1964*.

[Assented to 4 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Iron Ore (Mount Newman) Agreement Amendment Act 1990*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Iron Ore (Mount Newman) Agreement Act 1964** is referred to as the principal Act.

[*Reprinted as approved 10 August 1971 and amended by Act No. 12 of 1979.]

Section 2 amended

4. Section 2 of the principal Act is amended by deleting the full stop after the definition of "the Second Variation Agreement" and substituting the following—

" ;

"the Third Variation Agreement" means the agreement a copy of which is set out in the Fourth Schedule to this Act. "

Section 3C inserted

5. After section 3B of the principal Act the following section is inserted—

Third Variation Agreement

" 3C. (1) The Third Variation Agreement is ratified and its implementation is authorized.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Third Variation Agreement shall operate and take effect notwithstanding any other Act or law. "

Fourth Schedule added

6. After the Third Schedule to the principal Act the following schedule is added—

“

FOURTH SCHEDULE

THIS AGREEMENT is made the 12th day of July 1990 BETWEEN: THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND PILBARA IRON LIMITED a company incorporated in the State of Western Australia, BHP MINERALS LIMITED a company incorporated in the State of Western Australia, MITSUI-C. ITOH IRON PTY. LTD. a company incorporated in the State of Western Australia and CI MINERALS AUSTRALIA PTY. LTD. a company incorporated in the State of Western Australia of the other part.

WHEREAS:

- (a) the State and the other parties hereto (pursuant to certain assignments and Deeds of Covenant and the release of Mt. Newman Iron Ore Company Limited pursuant to clause 19(2) of the Principal Agreement as hereinafter defined) are now the parties to the agreement dated the 26th day of August 1964 (hereinafter called “the 1964 Agreement”) which agreement was approved by and is scheduled to the Iron Ore (Mount Newman) Agreement Act 1964 and has been varied by—
 - (i) the agreement dated the 16th day of November 1967 approved by the Iron Ore (Mount Newman) Agreement Act Amendment Act;
 - (ii) the agreement dated the 9th day of May 1979 approved by the Iron Ore (Mount Newman) Agreement Act Amendment Act 1979;
 - (iii) agreements dated respectively the 11th day of December 1985 and the 27th day of January 1987 entered into pursuant to clause 20(1) of the 1964 Agreement;
- (b) the 1964 Agreement as so varied is hereinafter referred to as “the Principal Agreement”;
- (c) the parties desire to amend the Principal Agreement pursuant to clause 20(1) thereof.

NOW THIS AGREEMENT WITNESSETH—

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the State of Western Australia and comes into operation as an Act.

3. The Principal Agreement is hereby varied as follows—

(1) Clause 1—

(a) by deleting the definitions of “direct shipping ore”, “fine ore”, “fines” and “f.o.b. revenue”;

(b) by inserting, in the appropriate alphabetical positions, the following definitions—

“ “agreed or determined” means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister and in agreeing or determining a fair and reasonable market value of such iron ore assessed at an arm’s length basis the Company and/or the Minister as the case may be shall have regard to prevailing markets and prices for that type of iron ore both outside and within the Commonwealth and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

“beneficiated ore” means iron ore which has been concentrated or upgraded otherwise than by washing drying crushing or screening or a combination thereof;

“deemed f.o.b. point” means on ship at the Company’s wharf;

“deemed f.o.b. value” means an agreed or determined value of the iron ore at the time the iron ore becomes liable to royalty established on the basis that the iron ore was sold f.o.b. at the deemed f.o.b. point;

“fine ore” means iron ore (not being beneficiated ore) which is sized minus six millimetres;

“f.o.b. value” means—

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or an associated company or, where the Minister is not satisfied that the price payable in respect of the iron ore represents a fair and reasonable market value for that type of iron ore assessed at an arm’s length basis, such amount as is agreed or determined, less all export duties and export taxes payable to the Commonwealth

on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the Company's wharf to the time the same is delivered and accepted by the purchaser including—A

- (1) ocean freight;
 - (2) marine insurance;
 - (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the Company's wharf;
 - (7) all import taxes by the country of the port of discharge; and
 - (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in all other cases, the deemed f.o.b. value. For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm's length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore and in this circumstance where the Minister in his discretion is satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be satisfied that such entire consideration represents the fair and reasonable market value;

"iron ore" includes beneficiated ore;

"lump ore" means iron ore (not being beneficiated ore) which is sized plus six millimetres minus thirty millimetres;

"washing" means a process of separation by water using only size as a criterion; ";

- (c) in the definition of "associated company", by deleting "section 6 of the Companies Act, 1961" and substituting the following—

"section 7 of the Companies (Western Australia) Code";

- (d) in the definition of mineral lease, by inserting after "thereof" the following—

"and any areas included therein pursuant to clause 9A hereof".

(2) Clause 8 (1) (b)—

- (a) in the first proviso, by deleting "and iron ore concentrates which become" and substituting the following—

"which becomes";

- (b) in the second proviso, by deleting "sub-section (5) of Section 6 of the Companies Act 1961 of the State" and substituting the following—

"section 7 of the Companies (Western Australia) Code".

(3) Clause 9 (2) (e)—

by deleting "sub-section (5) of section 6 of the Companies Act 1961 of the State" and substituting the following—

"section 7 of the Companies (Western Australia) Code".

(4) Clause 9 (2) (j)—

by deleting paragraph (j) of clause 9 (2) and substituting the following paragraph—

"(j) pay to the State royalty on all iron ore from the mineral lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows—

- (i) on lump ore and on fine ore where such fine ore is not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value except that the rate of royalty in respect of lump ore used within the Commonwealth by B.H.P. or A.I.S. or any company or companies related to B.H.P. or A.I.S. within the meaning of section 7 of the Companies (Western Australia) Code for manufacture into iron or steel and becoming liable for royalty during the period from and including 1st July 1989 to and including 31st December 1990 shall be—

(A) during the period 1st July 1989 to 31st December 1989, 5% of the f.o.b. value; and

(B) during the calendar year 1990, 6.25% of the f.o.b. value;

- (ii) on fine ore sold or shipped separately as such at the rate of 3.75% of the f.o.b. value;
- (iii) on beneficiated ore at the rate of 3.25% of the f.o.b. value;
- (iv) on all other iron ore of whatever kind at the rate of 7.5% of the f.o.b. value;”.

(5) Clause 9 (2) (k)—

- (a) by deleting “all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced” and substituting the following—

“all beneficiated ore produced and all other iron ore the subject of royalty hereunder and shipped sold transferred or otherwise disposed of or used”;

- (b) by deleting “of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold” and substituting the following—

“thereof or if the f.o.b. value is not then finally calculated, agreed or determined”;

- (c) by inserting after “of such iron ore” the following—

“or on the basis of estimates as agreed or determined”;

- (d) by deleting “f.o.b. revenue realised in respect of the shipments shall have been ascertained” and substituting the following—

“f.o.b. value shall have been finally calculated, agreed or determined”.

(6) Clause 9 (2) (n)—

- (a) by inserting after “the Company” where it first occurs the following—

“including contracts”;

- (b) deleting “f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps” and substituting the following—

“f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore outside and within

the Commonwealth and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii)";

- (c) by deleting "hereunder; and" and substituting the following—

"hereunder."

- (7) By deleting clause 9 (2) (a).

- (8) By inserting after clause 9 the following clause—

Additional areas

"9A. (1) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 the Company may on or before the 1st day of October, 1990 (or such later date as the parties may agree) apply to the Minister for Mines for inclusion in the mineral lease of such of the land coloured red on the plan marked 'B' (initialled by or on behalf of the parties hereto for the purpose of identification) as the Company at the time of such application holds under exploration licences granted under the Mining Act 1978 and the Minister for Mines shall, subject to the Company surrendering from the mineral lease the land coloured red on the plan marked 'C' (initialled by or on behalf of the parties hereto for the purpose of identification) and the lands so applied for out of the exploration licences, include the land so applied for (herein after called "the additional areas") in the mineral lease by endorsement on the mineral lease subject to such of the conditions of the surrendered exploration licences as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of the additional areas has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Company shall not mine the additional areas except in accordance with proposals with respect thereto approved or determined pursuant to subclauses (3) to (10) of this clause.

- (3) If and whenever the Company desires to mine the additional areas it shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister)

with respect to the mining of iron ore from the additional areas and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely—

- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities;
 - (b) roads;
 - (c) housing and accommodation for the persons engaged in the development and/or mining of the additional areas and associated activities including the provision of utilities, services and associated facilities;
 - (d) water supply;
 - (e) power supply;
 - (f) iron ore transportation;
 - (g) airstrip and other airport facilities and services;
 - (h) any other works, services or facilities desired by the Company;
 - (i) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company its agents and contractors;
 - (j) any leases licences or other tenures of land required from the State; and
 - (k) an environmental management programme as to measures to be taken, in respect of the Company's activities at additional areas, for rehabilitation and the protection and management of the environment.
- (4) The proposals pursuant to subclause (3) of this clause may with the approval of the Minister be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.

- (5) On receipt of the said proposals the Minister shall subject to the Environmental Protection Act 1986—
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (3) of this clause not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use of other parties as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the Environmental Protection Act 1986 subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (6) The Minister shall within two months after receipt of the said proposals or, if applicable, within two months of service on him of an authority under section 45(7) of the Environmental Protection Act 1986 give notice to the Company of his decision in respect of the same.
- (7) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (5) of this clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect of some particular matter.
- (8) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (5) of this clause and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (6) of this clause may elect to refer

to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (5) of this clause shall not be referable to arbitration hereunder.

- (9) The Company may withdraw its proposals submitted pursuant to subclause (3) of this clause at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the proposed mining of the additional areas.
- (10) The Company shall implement the proposals as approved by the Minister or an award made on arbitration (where the proposals are not withdrawn) as the case may be in accordance with the terms thereof and in such implementation shall comply with all requirements in connection with the protection of the environment that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.
- (11) (a) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities at the additional areas beyond those specified in any proposals approved or determined under this clause it shall give notice of such desire to the Minister and if required by the Minister within two months of the giving of such notice shall submit to the Minister within such period as the Minister may reasonably allow (but in any event not less than two months) detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (3) of this clause as the Minister may require. The provisions of subclauses (4) to (9) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof and the provisions of subclause (10) of this clause.
- (b) If the Minister does not require the Company to submit proposals under paragraph (a) of this subclause the Company may, subject to compliance with all applicable laws, proceed with the modification expansion or variation of its activities the subject of the notice to the Minister under that paragraph.

- (12) (a) The Company shall, in respect of the matters referred to in paragraph (k) of subclause (3) of this clause and which are the subject of proposals approved or determined under this clause carry out with effect from such date of approval or determination a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time (but not more frequently than once in every twelve months) submit to the Minister a detailed report thereon.
- (b) Whenever as a result of its monitoring under paragraph (a) of this subclause or otherwise reliable information becomes available to the Company which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any proposals approved or determined under this clause or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (c) The Minister may within two (2) months of the receipt of a detailed report pursuant to paragraphs (a) or (b) of this subclause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.
- (d) The Company shall within two months of the receipt of a notice given pursuant to paragraph (c) of this subclause submit to the Minister additional detailed proposals as required and the provisions of subclauses (5), (6), (7), (8), (10) and (11) of this clause and this subclause shall *mutatis mutandis* apply in respect of such proposals.
- (13) The Company shall, in respect of its activities at the additional areas in lieu of the provisions of clause 9(2)(i) of this Agreement—
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

- (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
- (c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors;
- (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation;
- (f) except as otherwise agreed by the Minister in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies require as a condition thereof that such third party shall undertake the same obligations as are referred to in paragraphs (a) - (e) of this subclause and shall report to the Company concerning such third party's implementation of that condition;

- (g) submit a report to the Minister at monthly intervals or such longer period as the Minister determines concerning its implementation of the provisions of this subclause together with a copy of any report received by the Company pursuant to paragraph (f) of this subclause during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine; and
 - (h) keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.
- (14) The Company shall be responsible for the provision at no cost to the State of suitable accommodation for its employees and the dependants of its employees and for other persons (and dependants of those persons) engaged in the development and/or mining of the additional areas and associated activities.
- (15) The Company shall except as otherwise agreed by the Minister pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services in Newman to the extent to which those additional works and services are made necessary by reason of the persons (and their dependants) engaged in the development and/or mining of the additional areas and associated activities residing therein or by reason of the Company's activities in relation to the additional areas or such proportion of any such cost as may be agreed by the Minister taking into account the permanent or temporary nature of the services or facilities. The additional services, works and associated equipment referred to in this subclause shall be provided by the State (or the State shall cause the same to be provided) to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.

- (16) The Company shall confer with the Minister and the relevant local authority with a view to assisting in the cost of providing at Newman appropriate community recreation, civic, social and commercial amenities if required by reason of the development and/or mining of the additional areas and associated activities.”.

(9) Clause 24—

by deleting “Arbitration Act, 1895” and substituting the following—

“Commercial Arbitration Act 1985 and notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative”.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said
THE HONOURABLE CARMEN
MARY LAWRENCE, B.Psych.,
Ph.D., M.L.A. in the
presence of:

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CARMEN LAWRENCE

J. M. BERINSON
Minister for Resources

THE COMMON SEAL of
PILBARA IRON LIMITED
was hereunto affixed by
authority of the Board of
Directors:

}

[C.S.]

Director
D. F. COLLINS
Secretary
ADA LIAN DAVIES

THE COMMON SEAL of
BHP MINERALS LIMITED
was hereunto affixed by
authority of the Board of
Directors:

}

[C.S.]

Director
D. J. WOOD
Secretary
G. J. HEATH

THE COMMON SEAL of
MITSUI-C. ITOH IRON PTY.
LTD. was hereunto affixed
by authority of the Board
of Directors in the presence
of: }

[C.S.]

Director
T. SUZUKI
Secretary
J. MacKENZIE

THE COMMON SEAL of
CI MINERALS AUSTRALIA
PTY. LTD. was hereunto
affixed by authority of
the Board of Directors in
the presence of: }

[C.S.]

Director
M. YAMAMOTO
Secretary
M. L. APPLEBEE

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