

WESTERN AUSTRALIA

IRON ORE (MOUNT BRUCE) AGREEMENT AMENDMENT ACT

No. 26 of 1987

AN ACT to amend the *Iron Ore (Mount Bruce) Agreement Act 1972*.

[Assented to 29 June 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Iron Ore (Mount Bruce) Agreement Amendment Act 1987*.

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 Bruce) Agreement Act 1972** is referred to as the principal Act.

[*Act No. 37 of 1972 as amended by Act No. 94 of 1976.]

Section 2 amended

4. Section 2 of the principal Act is amended—

(a) in the definition of “the Agreement”, by inserting before “Variation” the following—

“ 1976 Variation Agreement and the 1987 ”;

(b) in the definition of “the Variation Agreement”—

(i) by inserting before “Variation” the following—

“ 1976 ”; and

(ii) by deleting the full stop and substituting a semicolon; and

(c) by inserting at the end of the section the following definition—

“ “the 1987 Variation Agreement” means the agreement a copy of which is set forth in the Third Schedule to this Act. ”.

Section 3A amended

5. Section 3A of the principal Act is amended by inserting before “Variation” the following—

“ 1976 ”.

Section 3B inserted

6. After section 3A of the principal Act the following section is inserted—

1987 Variation Agreement

“ 3B. (1) The 1987 Variation Agreement is ratified and its implementation is authorized.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the 1987 Variation Agreement shall operate and take effect notwithstanding any other Act or law. ”.

Third Schedule added

7. After the Second Schedule to the principal Act the following Schedule is added—

“ THIRD SCHEDULE

THIS AGREEMENT is made the 28th day of May 1987 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., 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 MOUNT BRUCE MINING PTY. LIMITED a company incorporated in Western Australia and having its registered office at 191 St. George’s Terrace, Perth (hereinafter called “the Company” which expression shall include the successors and assigns of the Company) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 10th day of March, 1972 which agreement was ratified by and is scheduled to the Iron Ore (Mount Bruce) Agreement Act 1972, as varied by the agreement dated the 5th day of October, 1976 ratified by the Iron Ore (Mount Bruce) Agreement Act Amendment Act 1976 (which agreement as so varied is referred to in this Agreement as “the Principal Agreement”);
- (b) the obligations of the Company under clauses 8 and 10 of the Principal Agreement have been satisfied pursuant to the provisions of paragraph (a) of clause 10A of the Principal Agreement by the construction by Hamersley Iron Pty. Limited of the plant for the production of iron ore concentrates referred to in that clause;
- (c) the Principal Agreement contains other provisions with regard to the secondary and further processing of iron ore intended, where feasible, to further the economic development of the State; and
- (d) the parties, consistent with the above intention but in the light of changed world circumstances with respect to the secondary and further processing of iron ore, have agreed to vary certain of the provisions of the Principal Agreement in relation thereto and to broaden the scope for substitution of alternative investments.

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 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.
3. The subsequent clauses of this Agreement shall not operate unless and until—
 - (a) the Bill to ratify this Agreement referred to in clause 2 hereof; and
 - (b) a Bill to ratify the Agreement referred to in the Schedule heretoare passed as Acts before the 30th day of June, 1987 or such later date if any as the parties may agree.
4. The Principal Agreement is hereby varied as follows—
 - (1) Clause 1—
 - (a) by inserting, before the definition of “approve”, the following definition—

“ “alternative investments” means investments in the said State which are within the ability and competence of the Company or of corporations which are related to the Company for the purposes of the Companies (Western Australia) Code and which are approved by the Minister from time to time as alternative investments for the purpose of this Agreement (which approval shall not be unreasonably withheld in the case of an investment which would add value or facilitate the addition of value, beyond mining, to the mineral resources of the said State);”;
 - (b) 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”;
 - (c) by deleting the definitions of “Hamersley Amending Agreement” and “metallised agglomerate production commencement date”.
 - (2) Clause 7 subclause (1)—

by deleting in the proviso “payable by them” and substituting the following—

“payable by it”.
 - (3) By deleting clauses 8, 10 and 10A.
 - (4) Clause 21—

by deleting “(other than any default under any of clauses 8, 10, 32, 33, 34 and 35 hereof)” and substituting the following—

“(other than any default under clause 41A or clause 41B hereof)”
 - (5) By deleting clauses 31 to 41 inclusive.

(6) By inserting before clause 42 the following clauses—

“41A. (1) (a) The Company shall subject to sub-clause (5) of this clause and to clause 41B of this Agreement on or before the 31st day of December, 1991 submit to the Minister detailed proposals for the establishment within the said State of plant for the production of steel containing provision that such plant will by the 31st day of December, 1994 have the capacity to produce not less than five hundred thousand (500,000) tons of steel annually and will by the 31st day of December, 1999 have the capacity to produce not less than one million (1,000,000) tons of steel annually.

(b) If the Company reasonably requires an additional period for the purpose of submitting adequate proposals under this sub-clause or making a contract for the sale of steel products then the Company may apply to the Minister before the 31st day of December, 1991 for an extension of time beyond that date in order to complete the preparation of its proposals and the Minister will grant such extension of time (being not less than twelve months) as he considers warranted in the circumstances.

(2) The provisions of clause 51 hereof shall not apply to sub-clause (1) of this clause.

(3) The Minister shall within two (2) months of receipt of such proposals give to the Company notice of his approval of those proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in clause 53 of this Agreement any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.

(4) The Company shall (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in sub-clause (1) of this clause complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this clause.

(5) (a) The Company may at any time before the time for submission of proposals pursuant to sub-clause (1) of this clause apply to the Minister for approval that the carrying out by the Company of alternative investments be accepted by the State in lieu of all or some part of the Company's obligations in respect of the establishment of plant for the production of steel pursuant to this clause.

(b) Where the Minister approves a request under paragraph (a) of this sub-clause the Company shall implement the investments in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of sub-clause (1) of this clause or that part of those provisions which pursuant to the said approval are to be satisfied by those investments shall cease to apply.

- 41B. (1) If the Company at any time considers that the establishment of plant for the production of steel or, as the case may be, the expansion of the productive capacity of such plant as required to be proposed or as required pursuant to any proposals finally approved or determined pursuant to clause 41A hereof (hereinafter called "the steel operation") is for any technical, economic or other reason not feasible, whether in whole or in part, then the Company may submit to the Minister the reasons why it considers the steel operation is not feasible, together with supporting data and such other relevant information as the Minister may require.
- (2) Within two (2) months after receipt of a submission from the Company under sub-clause (1) of this clause the Minister shall notify the Company whether or not he agrees with its submission.
- (3) (a) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt by the Company of the notification from the Minister, the Minister will refer the matter to arbitration pursuant to clause 53 hereof to decide whether or not the steel operation is feasible.
- (b) If the Company does not request a reference to arbitration under paragraph (a) of this sub-clause or if on a reference to arbitration it is decided that the steel operation is feasible the Company shall comply with its obligations under clause 41A hereof provided that the period from the time that the Company made its submission under sub-clause (1) of this clause to the time when the Minister notified the Company that he did not agree with its submission or the time when it was decided by arbitration that the steel operation was feasible as the case may be shall be added to the respective times by which the Company is required to comply with those obligations.
- (4) If the Minister notifies the Company that he agrees with its submission or if on reference to arbitration it is decided that all or part of the steel operation is not feasible, then—
- (a) the Company shall not have any obligation or further obligation to submit proposals in respect of so much of the steel operation as has been found not to be feasible or to carry out the relevant part of any proposals in respect thereof that may have been finally approved or determined pursuant to clause 41A hereof; and
- (b) the Company shall thenceforth be obliged to identify and investigate potential alternative investments which would (either alone or in the aggregate with other alternative investments) represent economic development within the said State approximately equivalent to the steel operation (or relevant part thereof).
- (5) In carrying out its obligations under sub-clause (4) (b) of this clause the Company shall take account of and investigate, to the extent reasonable under the circumstances having regard, inter alia, to the expertise of the Company and related corporations, any potential alternative investments which are prim facia feasible and which are formally referred to the Company by the Minister from time to time.

- (6) The Company shall submit to the Minister in detail its programme for the identification and investigation of potential alternative investments pursuant to paragraph (b) of sub-clause (4) and sub-clause (5) of this clause not later than two (2) months after receiving the notice from the Minister or the decision on arbitration as the case may be referred to in sub-clause (4) of this clause which programme shall specify the potential alternative investments it is investigating and any potential alternative investments it intends to investigate and shall set forth the Company's proposed timetable for its investigations of those investments and the feasibility thereof.
- (7) (a) Within two (2) months after receipt of a programme from the Company under sub-clause (6) of this clause the Minister shall notify the Company of any investments referred to in the programme which he would be prepared to approve as alternative investments and forthwith after such a notice the Company and the Minister shall meet to agree upon a programme (including timing) for studies by the Company into the feasibility of those investments.
- (b) The Company shall duly investigate the feasibility of any potential alternative investments referred to in paragraph (a) of this sub-clause and report to the Minister thereon in accordance with the programme agreed pursuant thereto or determined by arbitration hereunder.
- (c) Where any such potential alternative investment is accepted by the Minister as an alternative investment and agreed by the Company and the Minister or found on arbitration to be feasible the Company and the Minister shall forthwith meet to agree on a date by which the Company shall submit detailed proposals for that alternative investment.
- (d) The Company shall report to the Minister on its progress in performing its obligations under paragraphs (b) and (c) of this sub-clause at such intervals as the Minister may require but not more frequently, in respect of any such matter, than once in every three (3) months for summary reports and once in every twelve (12) months for detailed written reports.
- (8) (a) The Company shall submit its detailed proposals for any alternative investment referred to in sub-clause (7) (c) of this clause not later than the date agreed pursuant to that sub-clause.
- (b) The provisions of sub-clause (3) of clause 41A hereof shall apply mutatis mutandis to the approval or determination of proposals made under this sub-clause. The Company shall implement proposals so approved or determined in accordance with the terms thereof.
- (9) (a) The obligations of the Company under sub-clause 4 (b) of this clause shall continue until the parties agree or it is found on arbitration that alternative investments representing economic development within the said State approximately equivalent to the steel operation (or relevant part thereof) as provided for in that sub-clause have become the subject of proposals approved or determined in accordance with sub-clause (8) of this clause.

- (b) So long as the Company has continuing obligations under sub-clause (4) (b) of this clause the Company shall as and when it identifies any potential alternative investment forthwith submit to the Minister a programme for the investigation of that investment and the feasibility thereof by the Company including its proposed timetable for the investigations.
- (c) The provisions of sub-clauses (7) and (8) of this clause shall *mutatis mutandis* apply to a programme submitted under paragraph (b) of this sub-clause as if it were a programme under sub-clause (6) of this clause.

(10) The Company may invoke the foregoing provisions of this clause at any time and from time to time in respect of all or any of its obligations arising under or pursuant to clause 41A hereof and the references to the steel operation in those provisions shall as the case may require be read and construed as referring to the one or more of those obligations in respect of which those provisions are invoked by the Company.”.

(7) Clause 51—

by deleting “inability (common in the iron ore concentrates export industry) to profitably sell iron ore concentrates or inability to profitably sell metallised agglomerates” and substituting the following—

“inability to profitably sell steel or the product of any production facility required to be established pursuant to this Agreement”.

(8) Clause 53—

- (a) by inserting after the clause designation 53 the sub-clause designation (1);
- (b) by deleting “the arbitration of two arbitrators one to be appointed by each party, the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1895 PROVIDED THAT” and substituting the following—

“and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 Provided That—

- (a) notwithstanding sections 6 and 7 of that Act the matter, unless the parties agree on the appointment of a specific single arbitrator, shall be referred to and settled by arbitration under that Act by a tribunal of three (3) arbitrators of whom the State shall appoint one, the Company shall appoint one and those two arbitrators shall appoint the third; and
- (b) notwithstanding section 20 (1) of that Act each party may be represented by a duly qualified legal practitioner or other representative and PROVIDED FURTHER THAT”;

(c) by inserting the following sub-clauses—

“(2) The arbitrator or arbitrators as the case may be determining any submission to arbitration under this Agreement shall have power upon application by either party to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both of the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

(3) In deciding issues of economic feasibility the arbitrator or arbitrators as the case may be shall have regard to any submissions made by the Minister and by the Company and also (inter alia) to the amount of capital required for the investment, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the investment being able to generate sufficient cash flow for a sufficient period to justify the same having regard to the amount and rate of return of total capital that would be involved in or in connection with the investment and the weighted average cost of capital to the Company.”.

(9) Clause 54—

by deleting “in writing” and substituting the following—

“or writing”.

THE SCHEDULE

The Agreement of even date with this Agreement between THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for an on behalf of the said State and its instrumentalities and HAMERSLEY IRON PTY. LIMITED.

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

SIGNED by the said
THE HONOURABLE BRIAN
THOMAS BURKE, M.L.A.
in the presence of:

BRIAN BURKE

D. PARKER
MINISTER FOR MINERALS
AND ENERGY

THE COMMON SEAL of
MOUNT BRUCE MINING
PTY. LIMITED was
hereunto affixed by
authority of the Directors
in the presence of:

[C.S.]

Director T. BARLOW

Secretary G. B. BABON

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