

**DIAMOND (ARGYLE DIAMOND MINES JOINT VENTURE) AGREEMENT
AMENDMENT BILL 2008**

EXPLANATORY MEMORANDUM

Section 1

Contains the short title of the Bill.

Section 2

- a) Provides for sections 1 and 2 of the Act to come into operation on the day it receives the Royal Assent.
- b) Provides for the remainder of the Act to come into operation on the day after sections 1 and 2 receive the Royal Assent.

Section 3

Specifies that the amendments in the Act are to the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 ("Act").

Section 4

Amends section 2 (Interpretation) of the State Agreement Act by slightly varying the definition of "the Agreement" and incorporating minor administrative changes to make it clear that, except in section 3, (1) the Agreement includes all amendments made by the three (3) Variation Agreements that have been negotiated since the Agreement (Principal Agreement), set out in Schedule 2 to the Act, was ratified.

Section 5

Specifies that the Variation Agreement (or Third Supplementary Agreement) is ratified.

Section 6

Inserts a copy of the Variation Agreement now called the third Supplementary agreement for consistency with previous Variation Agreements (which are called the first supplementary agreement and the second supplementary agreement respectively) in the Act as Schedule 5.

Variation Agreement

The Variation Agreement was made on 21 May 2008 between the State, Argyle Diamonds Limited ("Argyle") and Rio Tinto Diamonds Limited ("RTDL") to vary the Diamond (Argyle Diamond Mines Joint Venture) Agreement 1981 as varied (Principal Agreement).

Clause 1

Specifies that subject to the context the words and expressions used in the Variation Agreement have the same respective meanings as they have in the Principal Agreement.

RATIFICATION AND OPERATION

Clause 2

Provides that the State will introduce a Bill into Parliament to ratify the Variation Agreement and will endeavour to secure its passage as an Act prior to 31 December 2008 or such later date as the parties agree.

Clause 3(1)

States that Clause 4 of the Variation Agreement will not come into operation until the Bill is passed by Parliament and comes into operation as an Act.

Clause 3(2)

Provides that if the Bill has not come into operation as an Act by 31 December 2008 or such later date as agreed pursuant to Clause 2 then unless the parties otherwise agree the Variation Agreement shall cease and determine with no party having liability or claim against the other.

Clause 3(3)

Specifies that all the provisions of the Variation Agreement will take effect when the Bill comes into operation as an Act ("variation date") despite any enactment or other law.

VARIATIONS

Clause 4(1) (a) to (d)

Varies Clause 1 of the Principal Agreement by inserting new definitions in their appropriate alphabetical positions, amending some existing definitions by referring to the "State and the Joint Venturers" instead of "parties" or "parties hereto" and making administrative amendments to the definition of "sorting".

Clause 4(2)

Amends Clause 4 of the Principal Agreement by inserting a new subclause (4) making RTDL a party to the Principal Agreement with the State and the Joint Venturers from and including the variation date.

Clause 4(3)

Amends Clause 6 of the Principal Agreement by inserting new subclauses (7) (a), (b) and (8) which set out the basis on which Argyle may sell transfer and dispose of to RTDL unsorted diamonds for sorting and marketing by RTDL as well as sorted diamonds for marketing by RTDL. They provide for RTDL's marketing arrangements to be first approved of by the State Agreement Minister.

Clause 4(4) to (7)

Makes minor administrative changes and substitutes "State and Joint Venturers) for "parties" in various clauses to the Principal Agreement. Such changes are consequent upon RTDL becoming a party to the State Agreement.

Clause 4(8)

This clause amends clause 29 (1) (a) of the Principal Agreement that refers to Royalties - Diamonds by inserting various new definitions in their appropriate alphabetical positions and by making various administrative amendments to existing definitions required to accommodate the expected role of RTDL in the sale of sorted rough diamonds produced under the Principal Agreement. In particular the definition of "sales value" is amended to cover the sale transfer or disposal by RTDL of sorted rough diamonds produced under the Principal Agreement.

Clause 4(9)

This clause inserts GST and currency conversion provisions in clause 29 (1) of the Principal Agreement which are relevant in calculating royalty under the Principal Agreement.

Clause 4(10)

This clause makes the operation of the 22.5% of above zero profit/7.5% of f.o.b. revenue royalty provisions of clause 29 (2) of the Principal Agreement subject to the proposed new 5% of f.o.b. revenue/bank guarantee regime to be included in the Principal Agreement as clauses 29(2a), (2b) and (2c).

Clause 4(11)

This Clause inserts new sub clauses (2a) to (2e) in clause 29 of the Principal Agreement. They provide for a reduction in the annual royalty payable under the Principal Agreement by Argyle on sorted rough diamonds to 5% of f.o.b. revenue (retrospectively from 1 January 2006 if underground mining operations commence by the agreed date) and will involve a cessation of the current 22.5% of above zero profit/7.5% of f.o.b. revenue royalty regime currently contained in clause 29(2) of the Principal Agreement. The variations also include provisions dealing with determining whether or not the milestone event has occurred.

Underground mining operations are required to commence by 30 June 2009 (or such later date as the State Agreement Minister may before then approve) in order for the reduction to take effect. This is called the milestone deadline.

In the meantime Argyle will remain liable to pay royalties at the rate currently applicable under clause 29(2) of the Principal Agreement.

The new provisions recognise that in respect of the 2006 calendar year Argyle paid royalty at the 5% of f.o.b. revenue rate and provided a bank guarantee ("Banker's Undertaking 2007") for possible additional royalty liability under the Principal Agreement's current provisions.

Upon the proposed variations becoming effective and pending the reduction in royalty becoming effective (i.e. the milestone event occurring by the milestone deadline) Argyle must revert to paying a 5% of f.o.b revenue royalty and provide a bank guarantee ("bank undertaking") for possible additional royalty liability since 1 January 2006 under the Principal Agreement's current provisions. The bank guarantee already provided by Argyle will be replaced by the new bank undertaking covering possible additional royalty liability from 1 January 2006 and royalties paid by Argyle from the beginning of 2007 over and above the 5% of f.o.b. revenue rate are to be refunded to it.

In the event the milestone event is achieved by the milestone deadline the new annual royalty rate of 5% of f.o.b. revenue will from the commencement of the following calendar year take effect (retrospectively) from 1 January 2006) and the State is to release all bank guarantees held by it.

If the milestone event is not achieved by the milestone deadline the current royalty provisions are to continue to apply and Argyle must revert to paying full royalties. In addition it will be required to pay all outstanding royalties owed since 1 January 2006. The State may enforce the bank guarantees held by it if the outstanding royalties are not paid.

The variations also include provisions dealing with determining whether or not the milestone even has occurred.

Clause 4(12)

This Clause inserts new paragraphs in clause 29 (3) of the Principal Agreement which suspend the operation of the royalty offset arrangements set out in that clause while the 5% of f.o.b revenue/bank guarantee arrangements apply and provide for the offset arrangements to cease to apply if underground mining operations commence by the agreed date and in which event the provisions for a permanent reduction in the royalty rate to 5% of f.o.b revenue will apply.

Clause 4(13)

This Clause makes administrative changes to clause 29(4) of the Principal Agreement and inserts a new paragraph which suspends the royalty review provisions of that clause while the 5% of f.o.b revenue/bank guarantee arrangements referred to in clause 29(2a) apply.

Clause 4(14)

This Clause amends clause 29(5) of the Principal Agreement that refers to Quarterly and Annual royalty returns to accommodate the role of the RTDL in the sale of sorted rough diamonds produced under the State Agreement while recognising the continuing liability of Argyle to pay royalties on all such diamonds and to lodge quarterly and annual returns. The amendments provide for additional information to be provided in relation to sales, transfers or disposals of sorted rough diamonds by RTDL.

Clause 4(15)

This Clause amends clause 29(7) of the Principal Agreement to impose on RTDL the same obligation as currently imposed on Argyle to permit inspections by the Minister for Mines or his nominee as set out in that clause.

Clause 4(16)

This clause amends clause 29(10) of the Principal Agreement to impose on RTDL the same obligation as currently imposed on Argyle to take all reasonable steps to satisfy the Minister for Mines as to the adequacy of its valuation and auditing procedures.

Clause 4(17)

Deletes clause 30 of the Principal Agreement and its heading "Further processing" and inserts a new clause 30 dealing with Argyle's processing obligations under the Principal Agreement. Argyle will still be required to undertake or cause to be undertaken the sorting, before sale, of all rough diamonds produced under the Principal Agreement other than those sold to RTDL for sorting and marketing by that company.

Argyle will also be required, subject to the Principal Agreement, to undertake increased primary cleaning and sizing of its rough diamonds at the Argyle Diamond Mine and to continue to have cut and polished in Western Australia its high colour, low inclusion pink diamonds having an expected polished weight greater than 0.25 carats.

RTDL will be obliged to undertake the sorting before sale of all rough diamonds sold transferred or disposed of to it by Argyle for sorting and marketing by RTDL.

Both Argyle and RTDL will be required to keep the State Agreement Minister and the Minister for Mines fully informed with respect to their sorting arrangements and to ensure that such sorting is carried out in accordance with sorting and auditing procedures approved by the Minister for Mines. They must also ensure that the nature and extent of such sorting will be to a standard and level necessary to maximise the value of its diamonds before sale transfer or disposal as the case may be as approved by the State Agreement Minister.

If sorting is to be undertaken outside of Western Australia Argyle or Argyle and RTDL as the case may be must also comply or ensure compliance with such procedures and provide such information as the Minister for Mines may from time to time require to track the rough diamonds produced under the Principal Agreement from Argyle's mining lease through to the place or places at which sorting is being or is to be undertaken.

Clause 4(18)

This Clause amends the provisions of clause 37 of the Principal Agreement relating to assignments, mortgages subletting and disposal of rights and interests in and under the State Agreement to refer to RTDL in addition to Argyle.

Clause 4(19)

This clause varies clause 38(1) of the Principal Agreement to provide that after the variation date RTDL's agreement will also be required to add to substitute for cancel or vary all of any of the provisions of the Principal Agreement.

Clause 4(20)

This clause amends clause 40 (Power to extend periods) of the Principal Agreement to prevent it from being used to extend the milestone deadline as defined in clause 29(1) otherwise than as contemplated by that definition.

Clause 4(21)

This clause amends subclause (1) of clause 41 (Determination of the Agreement) of the Principal Agreement to reflect the inclusion of RTDL as a party to the Principal Agreement and to set out the events and circumstances relating to RTDL and in reliance on which the State may act to determine the Principal Agreement.

Clause 4(22)

This clause makes administrative amendments to subclause (2) of clause 41 (Determination of the Agreement) to reflect the inclusion of RTDL as a party to the Principal Agreement.

Clause 4(23)

Administrative amendments to clause 41(3)

Clause 4(24)

Administrative amendments to clause 42(1)

Clause 4(25)

Administrative amendment to clauses 42(3) and 43(2)

Clause 4(26)

Administrative amendment to clause 47

Clause 4(27) (a)

Amends clause 49 of the Principal Agreement concerning Arbitration by deleting subclause (1) and inserting a new subclause that specifically refers to the State, Joint Venturers and RTDL with respect to arbitration arrangements for any dispute or difference.

Clause 4(27) (b)

Administrative amendment to subclause 3 of clause 49 of the Principal Agreement.

Clause 4(28)

Administrative amendments to clause 50

Clause 4(29)

Amends clause 51 that refers to Notices to address the giving of notices under the Principal Agreement by RTDL.

Clause 4(30)

Amends clause 53 (Applicable law) by adding a sentence providing for the parties to submit to the non exclusive jurisdiction of Western Australian courts and all courts competent to hear appeals therefrom.

Clause 4(31) and (32)

Administrative amendments to include as Schedule 2 to the Principal Agreement a form of bank undertaking to be provided by Argyle to the State in accordance with the proposed new provisions of clause 29(2a) and (2d) of the Principal Agreement.