

REPUBLIC OF SOUTH AFRICA

PRECIOUS METALS BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 27929 of 19 August 2005)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

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BILL

To provide for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**authorised dealer**” means a person authorised by the National Treasury to deal in gold; 5
 - “**jeweller’s permit**” means a permit contemplated in section 7(1);
 - “**Minister**” means the Minister of Minerals and Energy;
 - “**minted bar**” means a minted bar contemplated in section 21(1)(e);
 - “**precious metal**” means— 10
 - (a) the metal gold, any metal of the platinum group and the ores of such metals; and
 - (b) any other metal that the Minister has declared by notice in the *Gazette* to be a precious metal for the purposes of this Act, and the ores of any such metal;
 - “**precious metal beneficiation licence**” means a licence contemplated in section 6(1); 15
 - “**prescribed**” means prescribed by regulation made in terms of section 21;
 - “**producer**” means any person who holds a permit or right to prospect for or mine precious metals in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); 20
 - “**refining licence**” means a licence contemplated in section 5(1);
 - “**Regulator**” means the South African Diamond and Precious Metals Regulator established by section 3(1) of the Diamonds Act, 1986 (Act No. 56 of 1986);
 - “**semi-fabricated precious metal**” means precious metal or a precious metal alloy that— 25
 - (a) has been refined to or beyond 99,95% purity, in the case of gold, and to or beyond 99,90% purity, in the case of metals of the platinum group; and
 - (b) is in the form of sheet, tube, wire, grain, plate, strip or rod, or such other form as the Regulator may approve;
 - “**this Act**” includes any regulation made in terms of section 21; 30
 - “**unwrought precious metal**” means—
 - (a) precious metal that—
 - (i) is unrefined; or
 - (ii) is gold that has been refined to a purity of up to but not including 99,95% or is a metal of the platinum group that has been refined to a purity of up to but not including 99,90% and has not undergone any manufacturing process other than being refined or formed into a bar (but not a minted bar), an ingot, a button, wire, plate, sponge, granules, concentrate, matte, solution or any similar form; or 35

- (b) any article or substance containing or consisting of precious metal contemplated in paragraph (a),
but does not include any article that is of archaeological interest or that has been processed or manufactured for one or more specific industrial, professional or artistic uses.

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Prohibitions relating to acquisition, possession or disposal of unwrought precious metal

2. (1) Save as is otherwise provided in this Act, no person may acquire, possess or dispose of, either as principal or as agent, any unwrought precious metal, unless—
- (a) he or she is the holder of a refining licence and acts in accordance with the terms and conditions of his or her licence; 10
- (b) he or she is an authorised dealer;
- (c) he or she is a producer who has won or recovered such unwrought precious metal;
- (d) he or she has obtained a certificate from the Regulator authorising him or her to acquire or to dispose of such unwrought precious metal; or 15
- (e) such unwrought precious metal does not exceed a prescribed mass and is acquired in accordance with a special permit issued by the Regulator for scientific or beneficiation purposes or to make jewellery.
- (2) The Regulator may only issue a certificate contemplated in subsection (1)(d) to a person in consultation with the National Treasury, in the case of gold, and the National Commissioner of the South African Police Service or a person designated by that Commissioner. 20
- (3) No person may have in his or her possession any unwrought precious metal unless he or she is— 25
- (a) a person contemplated in subsection (1); or
- (b) in possession of such precious metal in fulfilment of a contract of employment with any person contemplated in subsection (1).
- (4) No person may deliver unwrought precious metal in payment of any debt owed by him or her or any other person or in consideration of any service rendered or to be rendered to him or her or any other person. 30
- (5) Only a person contemplated in subsection (1)(a), (c) or (e) may make up, smelt or change the form of any unwrought precious metal in his or her possession in terms of that subsection.

Prohibitions relating to acquisition, possession or disposal of semi-fabricated precious metal 35

3. (1) Save as is otherwise provided for in this Act, no person may acquire, possess or dispose of, either as principal or as agent, any semi-fabricated precious metal, unless—
- (a) he or she is the holder of a refining licence and acts in accordance with the terms and conditions of his or her licence; 40
- (b) he or she is an authorised dealer;
- (c) he or she is a producer who has won or recovered the unwrought precious metal which has been refined and made into such semi-fabricated precious metal;
- (d) he or she has obtained a certificate from the Regulator authorising him or her to acquire or to dispose of such semi-fabricated precious metal; 45
- (e) such semi-fabricated precious metal does not exceed a prescribed mass and is acquired in accordance with a special permit issued by the Regulator for scientific purposes;
- (f) he or she holds a precious metals beneficiation licence; or 50
- (g) he or she holds a jeweller's permit.
- (2) No person may have in his or her possession any semi-fabricated precious metal unless he or she is—
- (a) a person contemplated in subsection (1); or
- (b) in possession of such precious metal in fulfilment of a contract of employment with any person contemplated in subsection (1). 55
- (3) No person may deliver semi-fabricated precious metal in payment of any debt owed by him or her or any other person or in consideration of any service rendered or to be rendered to him or her or any other person.

Consideration of applications and principles of administrative justice

- 4.(1) In considering an application for any licence, permit or certificate the Regulator—
- (a) must have regard to the promotion of equitable access to and the orderly local beneficiation of precious metal; and 5
 - (b) may have regard to the requirements of the broad-based socio-economic empowerment Charter developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).
- (2) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act. 10

Issue and renewal of refining licences

5. (1) The Regulator may, after consultation with the National Treasury, in the case of gold, and the National Commissioner of the South African Police Service or any person designated by that Commissioner, issue to any person, in the prescribed form and for a period not exceeding 25 years, a refining licence entitling the holder to do such of the following, as may be specified in the licence, namely— 15
- (a) to buy or receive unwrought precious metal in any form from the South African Mint or any person contemplated in section 2(1);
 - (b) to refine or change the form of unwrought precious metal in his or her lawful possession and thereafter to dispose of such precious metal— 20
 - (i) in accordance with the terms and conditions of his or her licence and the provisions of this Act to the South African Mint or any authorised dealer; or
 - (ii) in semi-fabricated form to the holder of a precious metal beneficiation licence or the holder of a jeweller's permit; 25
 - (c) to extract precious metal from any material, substance or solution in his or her lawful possession and to dispose of such precious metal in accordance with the terms and conditions of his or her licence and the provisions of this Act; or
 - (d) to buy or receive from the holder of a refining licence, an authorised dealer or a producer any material, substance or solution in the lawful possession of that holder, authorised dealer or producer containing precious metal and to extract from such material, substance or solution unwrought precious metal and to dispose of the unwrought precious metal in accordance with this Act. 30
- (2) Any person who is refused a refining licence may, within 30 days after having been notified by the Regulator of the refusal, appeal in the prescribed manner to the Minister who may— 35
- (a) dismiss the appeal;
 - (b) direct the Regulator to issue such a licence to that person, subject to the succeeding provisions of this section; or 40
 - (c) make any other order he or she deems fit.
- (3) Before the Regulator issues a refining licence the applicant for the licence must pay the prescribed fee.
- (4) A refining licence terminates in accordance with the terms and conditions under which it was issued. 45
- (5) The holder of a refining licence may not carry on any activity authorised by the licence elsewhere than on the premises or at the place described on the licence or described in any endorsement of that licence in terms of subsection (6), and the holder may not be in possession of unwrought precious metal at any place elsewhere than on the premises or at the place so described unless he or she is transporting such unwrought precious metal in accordance with section 11. 50
- (6) (a) If at any time it becomes necessary for the holder of a refining licence to transfer or extend the activities contemplated in subsection (5) to any premises or place not described on his or her licence the Regulator, after consultation contemplated in subsection (1), may endorse on the licence the situation of such new or additional premises or place and must forthwith in writing notify the National Treasury and the National Commissioner of the South African Police Service, as the case may be, of the endorsement. 55

(b) An endorsement contemplated in paragraph (a) does not allow the holder of the refining licence to conduct business from the additional premises or place under a name that differs from the name used on the existing premises or place.

(c) If the holder of the refining licence wishes to conduct business from any other premises or place under a name that differs from the name used on the existing premises or place, he or she must apply for a new licence in respect of the additional premises or place. 5

(7) (a) The Regulator, after consultation contemplated in subsection (1), may renew a refining licence for further periods of up to 25 years each upon payment of the prescribed fee if an application for such renewal is made at least 30 days before the expiration of the licence. 10

(b) Subsection (2) applies with the necessary changes in connection with the refusal by the Regulator of any application in terms of paragraph (a).

(8) Whenever—

(a) any application under subsection (7) for the renewal of a refining licence is refused by the Regulator and no review of or appeal against such refusal is lodged or any review or appeal so lodged is dismissed; 15

(b) any refining licence has expired and no application for its renewal has been made by the holder thereof;

(c) any refining licence has been cancelled under this Act; or 20

(d) the activities authorised by such licence are discontinued permanently, the person who held the licence must forthwith submit to the Regulator a solemn declaration of the mass of any unwrought precious metal in his or her possession at the date such licence expired or was refused or cancelled or such activities were discontinued, and must dispose of such unwrought precious metal in accordance with this Act within 30 days after the date of such declaration or within such longer period as the Regulator may allow. 25

Issue and renewal of precious metal beneficiation licence

6. (1) The Regulator may issue to any person, in the prescribed form and for a period not exceeding 10 years, a precious metal beneficiation licence entitling the holder to do such of the following, as may be specified in the licence, namely— 30

(a) to buy or receive semi-fabricated precious metal in any form from any person authorised under this Act to sell, deal in or dispose of such semi-fabricated precious metal; and

(b) to change the form or add value in any manner to any semi-fabricated precious metal in his or her lawful possession. 35

(2) Any person who is refused a precious metal beneficiation licence may, within 30 days after having been notified by the Regulator of the refusal, appeal in the prescribed manner to the Minister who may—

(a) dismiss the appeal; 40

(b) direct the Regulator to issue such a licence to that person, subject to the succeeding provisions of this section; or

(c) make any other order he or she deems fit.

(3) Before the Regulator issues a precious metal beneficiation licence the applicant for the licence must pay the prescribed fee. 45

(4) A precious metal beneficiation licence does not entitle the holder thereof to acquire unwrought precious metal except under the authority of a special permit contemplated in section 2(1)(e).

(5) The holder of a precious metal beneficiation licence must keep proper books of account in accordance with generally accepted accounting practice and must submit such information as may be prescribed to the Regulator annually by not later than 90 days after the end of his or her business' financial year. 50

(6) A precious metal beneficiation licence terminates in accordance with the terms and conditions under which it was issued.

(7) The holder of a precious metal beneficiation licence may not carry on any activity authorised by the licence elsewhere than on the premises or at the place described on the licence or described in any endorsement of that licence in terms of subsection (8), and the holder may not be in possession of semi-fabricated precious metal at any place elsewhere than on the premises or at the place so described unless he or she is transporting such semi-fabricated precious metal in accordance with section 11. 55 60

(8) (a) If at any time it becomes necessary for the holder of a precious metal beneficiation licence to transfer or extend the activities referred to in subsection (7) to any premises or place not described on his or her licence the Regulator may endorse on the licence the situation of such new or additional premises or place and must forthwith in writing notify the National Commissioner of the South African Police Service of the endorsement. 5

(b) An endorsement contemplated in paragraph (a) does not allow the holder of the precious metal beneficiation licence to conduct business from the additional premises or place under a name that differs from the name used on the existing premises or place.

(c) If the holder of the precious metal beneficiation licence wishes to conduct business from any other premises or place under a name that differs from the name used on the existing premises or place, he or she must apply for a new licence in respect of the additional premises or place. 10

(9) (a) The Regulator may renew a precious metal beneficiation licence for further periods not exceeding 10 years each upon payment of the prescribed fee if an application for such renewal is made at least 30 days before the expiration of the licence. 15

(b) Subsection (2) applies with the necessary changes in connection with the refusal by the Regulator of any application in terms of paragraph (a).

Issue and renewal of jewellers' permits

7. (1) The Regulator may issue to any person, in the prescribed form and for a period not exceeding five years, a jeweller's permit entitling the holder to do such of the following, as may be specified in the permit, namely— 20

(a) to buy or receive semi-fabricated precious metal in any form from any person authorised under this Act to sell, deal in or dispose of semi-fabricated precious metals; and 25

(b) to change the form of, or in any other manner add value to, semi-fabricated precious metal in his or her lawful possession.

(2) Any person who is refused a jeweller's permit may, within 30 days after having been notified by the Regulator of the refusal, appeal in the prescribed manner to the Minister who may— 30

(a) dismiss the appeal;

(b) direct the Regulator to issue such a permit to that person, subject to the succeeding provisions of this section; or

(c) make any other order he or she deems fit.

(3) Before the Regulator issues a jeweller's permit the applicant for the permit must pay the prescribed fee. 35

(4) A jeweller's permit terminates in accordance with the terms and conditions under which it was issued.

(5) A jeweller's permit does not entitle the holder thereof to acquire unwrought precious metal except under the authority of a special permit contemplated in section 2(1)(e). 40

(6) (a) The Regulator may renew a jeweller's permit for further periods not exceeding five years each upon payment of the prescribed fee if an application for such renewal is made at least 30 days before the expiration of the permit.

(b) Subsection (2) applies with the necessary changes in connection with the refusal by the Regulator of any application in terms of paragraph (a). 45

(7) Whenever—

(a) any application under subsection (6) for the renewal of a jeweller's permit is refused by the Regulator and no review or appeal against such refusal is lodged or any review or appeal so lodged is dismissed; 50

(b) any jeweller's permit has expired and no application for its renewal has been made by the holder thereof;

(c) any jeweller's permit has been cancelled under this Act; or

(d) the activities authorised by such permit are discontinued permanently, the person who held the permit must forthwith submit to the Regulator a solemn declaration of the mass of any semi-fabricated precious metal in his or her possession at the date such licence expired or was refused or cancelled or such activities were discontinued, and must dispose of such semi-fabricated precious metal in accordance with this Act within 30 days after the date of such declaration or within such longer period as the Regulator may allow. 55 60

(8) The holder of a jeweller's permit must keep proper books of account in accordance with generally accepted accounting practice and must submit such information as may be prescribed to the Regulator annually by not later than 90 days after the end of the financial year of the holder's business.

(9) The holder of a jeweller's permit may not carry on any activity authorised by the permit elsewhere than on the premises or at the place described on the permit or described in any endorsement of that permit in terms of subsection (10), and the holder may not be in possession of semi-fabricated precious metal at any place elsewhere than on the premises or at the place so described unless he or she is transporting such semi-fabricated precious metal in accordance with section 11. 5 10

(10) (a) If at any time it becomes necessary for the holder of a jeweller's permit to transfer or extend the activities referred to in subsection (9) to any premises or place not described on his or her permit the Regulator may endorse on the permit the situation of such new or additional premises or place and must forthwith in writing notify the National Commissioner of the South African Police Service of the endorsement. 15

(b) An endorsement contemplated in paragraph (a) does not allow the holder of the jeweller's permit to conduct business from the additional premises or place under a name that differs from the name used on the existing premises or place.

(c) If the holder of the jeweller's permit wishes to conduct business from any other premises or place under a name that differs from the name used on the existing premises or place, he or she must apply for a new licence in respect of the additional premises or place. 20

Permit to import precious metals

8. (1) Subject to subsection (2), no person may import any unwrought or semi-fabricated precious metal into the Republic. 25

(2) (a) The Regulator may, subject to such conditions as may be prescribed and after consultation with the National Treasury, issue to an authorised dealer or the holder of a refining licence in the prescribed form a permit entitling such refiner or authorised dealer to import any unwrought or semi-fabricated precious metal into the Republic.

(b) The authorised dealer or holder contemplated in paragraph (a) must declare, and must submit documentary proof of, the origin of such precious metal to the Regulator in the application for the permit. 30

(3) The Regulator or any member of the South African Police Service may at any time inspect any precious metal contemplated in subsection (2) and take such sample as may be reasonable to establish or confirm the origin and content of such precious metal. 35

(4) The permit issued in terms of subsection (2) must state the origin of the precious metal in question, the purpose of the import and such other particulars as may be prescribed.

Cancellation of licences, permits and certificates

9. The Regulator may cancel a licence, permit or certificate if the holder of such licence, permit or certificate, as the case may be— 40

(a) has furnished false or incomplete information in the application for that licence, permit or certificate, or has submitted any other information required in terms of this Act that is false or incomplete;

(b) contravenes or fails to comply with a condition imposed in the licence, permit or certificate; 45

(c) contravenes or fails to comply with a provision of this Act; or

(d) is convicted of an offence in terms of this Act.

Export of precious metals

10. (1) No person may export any unwrought or semi-fabricated gold except with the approval of the National Treasury in terms of the Exchange Control Regulations made under the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), granted with the concurrence of the Minister. 50

(2) No person may export any unwrought or semi-fabricated metals of the platinum group except with the written approval of the Minister granted after consultation with the Governor of the Reserve Bank. 55

Transportation and conveyance of precious metals

11. A person may not transport or in any manner convey any semi-fabricated or unwrought precious metal outside the boundaries of any mine, works or other property or place where such metal is mined, refined or worked with, unless he or she is in possession of— 5

- (a) the prescribed certification of appointment issued by a person contemplated in section 2(1) or 3(1), as the case may be; and
- (b) a certified copy of the licence, permit or certificate, as the case may be, belonging to the person who appointed him or her.

Authorised dealer entitled to buy precious metal in any form 10

12. (1) An authorised dealer may buy precious metal in any form from any person authorised to dispose of semi-fabricated or unwrought precious metal in terms of this Act after such person has shown the dealer a licence, permit or certificate authorising that person to dispose of such precious metal.

(2) Where a transaction takes place between an authorised dealer and the holder of a certificate referred to in section 2(1)(d) or 3(1)(d) or a special permit referred to in section 2(1)(e) or 3(1)(e) such certificate or permit must be handed to and retained by the authorised dealer for such period as may be prescribed. 15

Register of transactions to be kept by certain persons dealing in precious metal

13. (1) (a) Every holder of a refining licence, authorised dealer or producer who deposits for safe-keeping, receives, despatches or otherwise disposes of semi-fabricated or unwrought precious metal must keep a true and correct register in the prescribed form and for the prescribed period of all such precious metal deposited, received, despatched or otherwise disposed of by him or her. 20

(b) The person contemplated in paragraph (a) must enter in such register immediately after the conclusion of each such transaction— 25

- (i) the date of the transaction;
- (ii) the names and addresses of the parties to the transaction;
- (iii) the nature and mass of the material or the mass of the precious metal which is the subject of the transaction; 30
- (iv) the price, if any, received or paid.

(2) Every holder, authorised dealer or producer contemplated in subsection (1) must—

(a) on a quarterly basis submit to the Regulator a true copy in duplicate of such register for the last preceding quarter, together with an affirmation or a solemn declaration of the correctness thereof; and 35

(b) produce and exhibit such register whenever requested to do so by any member of the South African Police Service holding a rank of or above the rank of sergeant.

(3) (a) Subsections (1) and (2) apply with the necessary changes and subject to paragraph (b) to the holder of a special permit contemplated in section 2(1)(e). 40

(b) The Minister may exempt any holder contemplated in paragraph (a) or any class of such holders from the application of subsections (1) and (2).

Powers of police to inspect, search and seize

14. (1) A member of the South African Police Service may at any reasonable time, without prior notice and on the authority of a warrant issued in terms of subsection (5) and subject to section 15, enter and search any premises that have a bearing on an investigation and are specified in the warrant, including a private dwelling, and may— 45

- (a) seal, mark or otherwise secure any package or container found in or on such premises; 50
- (b) take an account of all precious metal found in or on such premises and, if necessary, take such precious metal into custody;
- (c) search any person on those premises if there are reasonable grounds for believing that the person has an article, a document or a record in his or her possession that has a bearing on the investigation; 55

- (d) take extracts from, or make copies of any book, document or record on the premises and that has a bearing on the investigation;
 - (e) demand the production of and inspect any licence, permit, certificate or document that is relevant to the inspection; and
 - (f) take samples of any substance that is relevant to the inspection. 5
- (2) A member of the South African Police Service who removes anything from the premises being searched must—
- (a) issue a receipt for it to the owner or person in control of the premises; and
 - (b) unless it is an item that such owner or person is not allowed to possess in terms of this Act, return it as soon as practicable after it has served the purpose for which it was removed. 10
- (3) Upon the request of a member of the South African Police Service acting under a warrant issued in terms of subsection (5), the occupant and any other person present on the premises must—
- (a) make available or accessible or deliver to the member any document, record, object or material which pertains to an investigation contemplated in subsection (1) and which is in the possession or under the control of the occupant or other person; 15
 - (b) furnish such information as he or she has with regard to the matter under investigation; and 20
 - (c) render such reasonable assistance as the member may require to be able to perform his or her functions in terms of this Act efficiently.
- (4) Before questioning any person at the premises in question, the member of the South African Police Service must advise that person of his or her right to be assisted at the time by an advocate or attorney, and allow that person to exercise that right. 25
- (5) A warrant contemplated in subsection (1) may be issued by a judge or a magistrate—
- (a) in relation to premises on or from which there is reason to believe that a contravention of this Act has been or is being committed; and
 - (b) if it appears from information on oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act. 30
- (6) The warrant may impose restrictions on the powers of the member of the South African Police Service.
- (7) A warrant issued in terms of this section— 35
- (a) remains in force until—
 - (i) it is executed;
 - (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
 - (iii) the expiry of one month from the date of its issue; or 40
 - (iv) the purpose for which the warrant was issued has lapsed, whichever occurs first; and
 - (b) must be executed by day unless the person who issues the warrant authorises the execution thereof by night.
- (8) For the purposes of this section “premises” means any building, structure or tent together with the land on which it is situated and the adjoining land used in connection with it and includes any land without any building, structure or tent and any vehicle, aircraft, ship or any other means of conveyance. 45

Identification prior to entry, and resistance against entry

- 15.** (1) A member of the South African Police Service who has obtained a warrant in terms of section 14(5) must immediately before entering the premises in question— 50
- (a) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and
 - (b) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search. 55
- (2) The member of the South African Police Service must—
- (a) hand to the person in control of the premises a copy of the warrant or, if no such person is present, affix such a copy to a prominent place on the premises; and 60

(b) on request of the person in charge of such premises show his or her certificate of appointment to that person.

(3) A member of the South African Police Service may overcome resistance to the entry and search by using such force as is reasonably required, including the breaking of a door or window of the premises.

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Entry and search of premises without warrant

16. A member of the South African Police Service may without a warrant exercise any power referred to in section 14(1) if—

(a) a person who is competent to do so consents to such exercise; or

(b) there are reasonable grounds to believe that a warrant would be issued in terms of section 14(5) and that the delay in obtaining the warrant would defeat the object of the warrant.

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Disposal of items seized by member of South African Police Service

17. A member of the South African Police Service must deal with and dispose of any seized item in the manner provided for in Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

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Offences and penalties

18. (1) Any person who—

(a) contravenes section 2(1) or (3), 3(1) or (2), 5(5) or (6), 6(7) or (8), 7(5), (9) or (10) or 10(1) or (2);

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(b) buys unwrought precious metal without having satisfied himself or herself that the vendor thereof is lawfully entitled to sell or dispose of such metal; or

(c) maliciously places any unwrought precious metal in the possession or on the premises of any other person with intent that such other person may be convicted under this Act,

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is guilty of an offence and liable on conviction to a fine not exceeding one million rand or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

(2) Any person who—

(a) contravenes section 2(4), 3(3), 5(8), 6(4) or (5), 7(5), (7) or (8), 8(1), 11(1) or 13(1) or (2);

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(b) being an authorised dealer contemplated in section 12(1), buys unwrought precious metal from any person who has not produced a licence, permit or certificate as provided in that section;

(c) being an authorised dealer contemplated in section 12(2), fails to obtain and retain the certificate or permit contemplated in that section; or

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(d) fails to comply with any lawful request to produce and exhibit the register or proper books of account required to be kept by him or her in terms of this Act,

is guilty of an offence and liable on conviction to a fine not exceeding five hundred thousand rand or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

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(3) If any person convicted in terms of subsection (1) or (2) is at the time of his or her conviction the holder of a licence, permit or certificate contemplated in this Act, he or she shall forfeit such licence, permit or certificate and any right of renewal thereof for such period as the court convicting him or her may direct.

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Disposal of precious metal

19. (1) (a) On the conviction of any person of a crime or offence involving precious metal a court, in passing sentence, may order that any semi-fabricated or unwrought precious metal in respect of which the person has been convicted be delivered to the owner thereof, if the court is satisfied as to the ownership.

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(b) If the court is not so satisfied such precious metal must be forfeited to the State.

(2) If the owner of any mine can satisfy the court or police official concerned on a balance of probabilities that any unwrought precious metal that has been or would otherwise be forfeited to the State in terms of this section, the Criminal Procedure Act,

1977 (Act No. 51 of 1977), or any other law was mined in that mine, and has not been disposed of by the mine owner, such precious metal must be returned to that owner.

(3) Before returning any precious metal to any owner of a mine in terms of subsection (2) the court or police official concerned may require from that owner to indemnify the State against any claims to such precious metal or to provide such guarantees in that regard as the court or police official concerned may reasonably require. 5

(4) A forfeiture in terms of subsection (1) does not affect the right which the owner of the precious metals or any person other than the convicted person may have to the property forfeited, if he or she satisfies the court concerned that he or she did not know that such property was being used or would be used for the purpose of or in connection with the commission of the offence in question or that he or she could not prevent such use. 10

Database for precious metals

20. (1) Any producer or any person who imports precious metal must submit to the Forensic Science Laboratory of the South African Police Service such specimens of any precious metals produced or imported by him or her as may be prescribed. 15

(2) The Head of the Forensic Science Laboratory or a person designated by him or her must create and maintain a database containing such information in respect of the precious metals contemplated in subsection (1) as may be prescribed.

Regulations 20

- 21.** (1) The Minister may by notice in the *Gazette* make regulations regarding—
- (a) the granting of any certificate, permit, licence or other authorisation issued or granted in terms of this Act;
 - (b) the cancellation of any certificate, permit, licence or other authorisation issued or granted in terms of this Act; 25
 - (c) the prevention of illegal acts pertaining to precious metals;
 - (d) the requirements for broad-based socio-economic empowerment;
 - (e) the details relating to precious metal bars that will be regarded as minted bars for the purposes of this Act, which details may include— 30
 - (i) precious metal content;
 - (ii) dimensions and sizes;
 - (iii) mass;
 - (iv) approved manufacturers and quantities;
 - (v) required identifying marks;
 - (vi) registration numbers; 35
 - (vii) tamper-resistant seals and certificates; and
 - (viii) general appearance and finish;
 - (f) the circumstances under which minted bars may be held and traded and the documentation relating thereto;
 - (g) the quantity of minted bars that may be produced in the country; 40
 - (h) the manner and form in which a specimen contemplated in section 20 must be submitted for inclusion in the database, when such specimens must be submitted, the documentation that must accompany such specimens and the information that must be provided in respect of each such specimen;
 - (i) anything which may or must be prescribed in terms of this Act; and 45
 - (j) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Any regulation contemplated in subsection (1)(e), (f) and (g), in relation to gold, may only be made with the concurrence of the Minister of Finance. 50

Repeal of law, transitional provisions and savings

22. (1) The Mining Rights Act, 1967 (Act No. 20 of 1967), is hereby repealed.

(2) Any application for a certificate or permit referred to in section 143 of the Mining Rights Act, 1967 for a recovery works licence in terms of section 144 of that Act or for a jeweller's permit in terms of section 145 of that Act that had not been finalised before this section took effect, must be finalised as if it had been lodged in terms of the corresponding provision of this Act. 55

(3) Any certificate, permit or licence issued in terms of the Mining Rights Act, 1967, and still valid immediately before the date of commencement of this section continues in force for the period it was issued or for two years after such date of commencement, whichever is the shorter.

(4) Any person who wishes to continue with any activity in terms of a certificate, permit or licence contemplated in subsection (3) after its expiry in terms of that subsection must apply for the relevant certificate, permit or licence in terms of this Act before its expiry. 5

(5) If a person has lodged an application in terms of subsection (4) the relevant certificate, permit or licence in respect of which the application has been lodged remains valid until such time as the application has been dealt with in terms of this Act. 10

(6) Except as provided otherwise in this section, anything done under any provision repealed by this Act must be regarded as having been done under the corresponding provision of this Act.

Short title and commencement

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23. This Act is called the Precious Metals Act, 2005, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PRECIOUS METALS BILL, 2005

1. BACKGROUND

1.1 The Mining Rights Act, 1967 (Act No. 20 of 1967), was repealed by section 68 of the Minerals Act, 1991 (Act No. 50 of 1991), except for the definitions of “precious metals” and “unwrought precious metal” in section 1, and Chapter XVI (dealing in unwrought precious metals). The Minerals Act, 1991, was repealed by section 110 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), with the exception of the same provisions of the Mining Rights Act, 1967, set out above. Section 26 of the Mineral and Petroleum Resources Development Act, 2002, empowers the Minister to promote the beneficiation of any particular mineral if such mineral can be beneficiated economically in the Republic.

1.2 The provisions of the Minerals Act, 1991, burden possessors of unwrought precious metal with cumbersome administrative procedures and restrict dealing in and possession of unwrought precious metal unnecessarily. The precious metal industry is also over-regulated as a result of the involvement of various Government departments and institutions, namely the South African Revenue Services, the Reserve Bank, the South African Police Service, National Treasury and the Department of Minerals and Energy. The beneficiating of precious metal in the Republic is hampered by the fact that the export of precious metal is not discouraged by the Mining Rights Act, 1991.

2. OBJECTS OF BILL

The Bill seeks to repeal the remaining provisions of the Mining Rights Act, 1991, and to provide for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals. The Bill changes the current position as follows:

- (a) A new definition of “unwrought precious metal” is proposed. In terms of the proposed definition, “unwrought precious metal” means gold that has been refined to a purity of up to but not including 99,95% and platinum group metals that has been refined to a purity of up to but not including 99,90%. Minted bars are excluded from the definition of unwrought precious metal and it is proposed in the Bill that the Minister of Minerals and Energy, with the concurrence of the Minister of Finance, may make regulations regarding the production, quality and quantity of minted bars.
- (b) A definition of “semi-fabricated precious metal” is introduced. In terms of the proposed definition, “semi-fabricated precious metal” means gold that has been refined to or beyond 99,95% purity and platinum group metals that has been refined to or beyond 99,90% purity. It is proposed that semi-fabricated precious metal be regulated to a much lesser extent than unwrought precious metal. It would be uneconomical to melt semi-fabricated gold back into bullion as a percentage of the gold (up to 10%) could be lost in the melting process.
- (c) It is proposed that the administrative functions provided for in the Bill be entrusted to the South African Diamond and Precious Metals Regulator established by section 3(1) of the Diamonds Act, 1986 (Act No. 56 of 1986). The centralising of those administrative functions within the Regulator will put an end to the over-regulation of the precious metals industry alluded to in paragraph 1.2.
- (d) The Bill seeks to introduce a new type of licence, namely a precious metal beneficiation licence. This licence will be available to any sector of the manufacturing industry such as the IT industry, the avionics industry or the automobile industry that uses wrought precious metals in the manufacturing of consumer products. A precious metal beneficiation licence may be issued for a period of up to ten years and is renewable each time for further periods of up to ten years each. The holders of this type of licence will only be allowed to possess semi-fabricated precious metal and do not have to keep registers. They will, however, have to compile statements reflecting all precious metal received and sold by them. The Bill also seeks to change the name of a recovery works licence to a refining licence.
- (e) As far as transporting of precious metal is concerned, the Bill merely requires the person transporting such precious metal to be in possession of a certificate

of appointment by the sender of the precious metal and of a certified copy of the sender's licence, permit or certificate.

3. CONSULTATION

Consultations were held with the following Departments and institutions:

- The National Treasury;
- the Department of Trade and Industry;
- the South African Reserve Bank;
- the South African Revenue Service;
- the South African Police Service;
- the Chamber of Mines; and
- Mintek.

4. FINANCIAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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