

REPUBLIC OF SOUTH AFRICA

DIAMONDS SECOND AMENDMENT BILL

(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF MINERALS AND ENERGY)

[B 39B—2005]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Diamonds Act, 1986, so as to define certain expressions; to prohibit assistance to licensees by non-licensed persons at any place where unpolished diamonds are offered for sale; to provide anew for the kinds of licences that may be issued by the South African Diamond and Precious Metals Regulator; to provide for the issue of temporary diamond buyers' permits and certificates which entitle holders thereof to be in possession of unpolished diamonds under certain circumstances; to make fresh provision for the premises on which unpolished diamonds may be dealt in; to require that unpolished diamonds intended for export purposes must first be offered at a diamond exchange and export centre; to extend the powers of the Regulator and of the State Diamond Trader; to require diamond producers to offer a percentage of all diamonds produced in a production cycle to the State Diamond Trader; to require a licensee to retain a register in respect of unpolished diamonds for five years and not only two years; and to repeal certain obsolete provisions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 56 of 1986, as amended by section 1 of Act 28 of 1988, section 1 of Act 22 of 1989 and section 1 of Act 10 of 1991

1. Section 1 of the Diamonds Act, 1986 (hereinafter referred to as the principal Act), 5
is hereby amended—

(a) by the insertion after the definition of “dealer” of the following definition:
“**‘diamond beneficiator’** means a person who holds a licence
contemplated in section 26(b) or (c);”; and

(b) by the insertion before the definition of “diamond powder” of the following
definition: 10

“**‘diamond exchange and export centre’** means a diamond exchange
and export centre contemplated in section 59(b);”.

Substitution of section 19 of Act 56 of 1986

2. The following section is hereby substituted for section 19 of the principal Act: 15

“Sale of unpolished diamonds prohibited

- 19.** (1) No person shall sell any unpolished diamond unless—
- (a) he or she is a producer;
 - (b) he or she has manufactured that diamond, if it is a synthetic diamond;
or
 - (c) he or she is a dealer; or
 - (d) he or she is the holder of a permit referred to in section [40(1)(a) or (2)] 26h.
- (2) The provisions of subsection (1) shall not be construed so as to authorize such producer[,] or dealer or holder of a permit to sell any unpolished diamond which has come into his or her possession in an unlawful manner.”

Substitution of section 20 of Act 56 of 1986

3. The following section is hereby substituted for section 20 of the principal Act:

“Purchase of unpolished diamonds prohibited 15

- 20.** No person shall purchase any unpolished diamond unless—
- (a) he or she is a licensee; or
 - (b) he or she is the holder of a permit referred to in section [40(1)(b)] 26(e).”

Insertion of section 20A in Act 56 of 1986 20

4. The following section is hereby inserted in the principal Act after section 20:

“Assistance by non-licensed persons prohibited

- 20A.** (1) No licensee may be assisted by a non- licensee or holder of a permit referred to in section 26(e) during the viewing, purchasing or selling of unpolished diamonds at any place where unpolished diamonds are offered for sale in terms of this Act, except at a diamond exchange and export centre. 25
- (2) No holder of a diamond trading house licence referred to in section 26(f) or any person authorized in terms of this Act to sell unpolished diamonds may allow the assistance prohibited in subsection (1).” 30

Substitution of section 22 of Act 56 of 1986

5. The following section is hereby substituted for section 22 of the principal Act:

“Processing of diamonds prohibited

- 22.** No person shall polish any diamond or crush or set any unpolished diamond in any tool, implement or other article unless— 35
- (a) he or she is a [cutter, tool-maker] diamond beneficiator or researcher;
 - (b) he or she is an employee acting in the course of his or her employment with that [cutter, tool-maker] diamond beneficiator or researcher; or
 - (c) he or she is authorized thereto in writing by the [Board] Regulator.”

Substitution of section 23 of Act 56 of 1986 40

6. The following section is hereby substituted for section 23 of the principal Act:

“Erection and operation of machinery prohibited

- 23.** No person shall erect or operate any machine designed or adapted for the polishing of diamonds unless—
- (a) he or she is a [cutter, tool-maker] diamond beneficiator or researcher; 45

- (b) he or she is an employee acting in the course of his or her employment with that **[cutter, tool-maker]** diamond beneficiator or researcher; or
- (c) he or she is authorized thereto in writing by the **[Board]** Regulator.”.

Substitution section 24 of Act 56 of 1986

7. The following section is hereby substituted for section 24 of the principal Act: 5

“Export of unpolished diamonds prohibited

24. No person shall export any unpolished diamond from the Republic unless—

- (a) he or she is a producer;
- (b) he or she has manufactured that diamond, if it is a synthetic diamond; 10
- (c) he or she is a dealer; or
- (d) he or she is the holder of a permit referred to in section **[40(1)(a) or (c) or (2)]** 26(e) or (h).”.

Substitution of section 26 of Act 56 of 1986

8. The following section is hereby substituted for section 26 of the principal Act: 15

“Kind of licence, and permit and certificate

26. Subject to **[the provisions of]** this Chapter, the **[Board]** Regulator may issue the following licences, permits or certificates, namely—

- (a) a diamond dealer’s licence entitling the holder to carry on business as a buyer, seller, importer or exporter of unpolished diamonds; 20
- (b) a diamond **[cutting]** beneficiation licence entitling the holder to polish diamonds for the purpose of business or trade;
- (c) a diamond **[tool-making]** beneficiation licence entitling the holder to set unpolished diamonds in tools, implements or other articles or to crush or to alter those diamonds for the purpose of such setting or for the purpose of trade; 25
- (d) a diamond research licence entitling the holder to do applied research and tests in connection with diamonds, but not to polish diamonds for the purpose of business or trade;
- (e) a temporary diamond buyer’s permit entitling a person who does not hold a licence in terms of this section to buy an unpolished diamond from a diamond exchange and export centre; 30
- (f) a diamond trading house licence entitling the holder thereof to facilitate the buying and selling of unpolished diamonds locally on premises registered in terms of section 47; 35
- (g) a certificate entitling a person to be in possession of an unpolished diamond obtained in a lawful manner.”.
- (h) a permit entitling a person to sell, export or import an unpolished diamond on prescribed conditions.

Substitution of section 32 of Act 56 of 1986

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9. The following section is hereby substituted for section 32 of the principal Act:

“Period of validity [of licences] and renewal of licence, permit and certificate

32. (1) Subject to **[the provisions of]** subsection (2)[, a licence shall be valid until it is suspended or cancelled in terms of this Chapter.]— 45

- (a) a diamond dealer’s licence contemplated in section 26(a) is valid for a period of five years;
- (b) a diamond beneficiation licence contemplated in section 26(b) or (c) is valid for a period of five years;
- (c) a diamond research licence contemplated in section 26(d) is valid until it is suspended or cancelled in terms of this Chapter; 50

- (d) a temporary diamond buyer's permit contemplated in section 26(e) is valid for a period of one month;
- (e) a diamond trading house licence contemplated in section 26(f) is valid for a period of five years;
- (f) a certificate contemplated in section 26(g) is valid for a renewable period of 10 years unless the holder of an unpolished diamond disposes of the unpolished diamond, in which case the certificate shall be transferred to the new holder of that unpolished diamond and shall be endorsed by the Regulator to reflect the changes. 5
- (g) a permit contemplated in section 26(h) is valid for such period as the Regulator may determine. 10
- (2) (a) The [Board] Regulator may [authorize the issue of a temporary licence for such period, but not exceeding one year, as the Board may determine] renew any licence, permit or certificate referred to in section 26. 15
- (b) This Chapter applies with the necessary changes in respect of an application for the renewal of a licence, permit or certificate.
- (c) In the event of the death of the holder of a certificate contemplated in section 26(g), his or her lawful successor must apply to the Regulator for the certificate to be endorsed to reflect the change in the holder of that unpolished diamond." 20

Substitution of section 44 of Act 56 of 1986

10. The following section is hereby substituted for section 44 of the principal Act:

Utilization of unregistered premises as [diamond exchanges] diamond trading house prohibited 25

44. No person shall utilize any premises as a [diamond exchange] diamond trading house unless he or she holds a diamond trading house licence and those premises are registered as a [diamond exchange] diamond trading house in terms of this [Chapter] Act."

Amendment of section 45 of Act 56 of 1986 30

11. Section 45 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person who desires to [utilize] register any premises as a [diamond exchange] diamond trading house shall apply to the [Board] Regulator in writing for the registration of those premises as a [diamond exchange] diamond trading house."

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Amendment of section 46 of Act 56 of 1986

12. Section 46 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The [Board] Regulator may at its discretion grant or refuse an application referred to in section 45, but the [Board] Regulator shall not grant any application if [it is of the opinion]— 40

(a) [that] the applicant [or, where the applicant is a company, any director thereof or, where the applicant is a close corporation, any member thereof is not a suitable person to utilize the premises as a diamond exchange, or to be involved in such utilization] is not the holder of a diamond trading house licence; 45

(b) [that an interest which] any person has an interest in the applicant that is undesirable;

(c) [that] the premises do not comply with the prescribed requirements; or 50

[(d) that the applicant will probably not be able to exercise in a satisfactory manner control over the utilization of the premises as a diamond exchange; or]

(e) [that] the registration of the premises as a [diamond exchange] diamond trading house will be contrary to the public interest." 55

Substitution of section 48 of Act 56 of 1986

13. The following section is hereby substituted for section 48 of the principal Act:

“Dealings in unpolished diamonds restricted to approved premises

48. (1) No producer, manufacturer of synthetic diamonds[,] or dealer [or holder of a permit referred to in section 40(1)(a) or (2)] shall sell any unpolished diamond elsewhere than on—

- (a) the business premises of a licensee;
- (b) any premises [registered] licensed as a [diamond exchange] diamond trading house in terms of this [Chapter] Act;
- (bA) the premises of any diamond exchange and export centre established by the Regulator in terms of this Act;
- (bB) the premises of the State Diamond Trader; or
- [(c) **the premises referred to in subsection (2)(d); or**]
- (d) such other premises as the [Board] Regulator may approve under section 49 on application in writing by such producer, manufacturer or holder.

(2) No licensee shall receive or purchase any unpolished diamond elsewhere than on—

- (a) the business premises of a licensee;
- (b) any premises [registered] licensed as a [diamond exchange] diamond trading house in terms of this [Chapter] Act;
- (bA) the premises of any diamond exchange and export centre established by the Regulator in terms of this Act;
- (bB) the premises of the State Diamond Trader; or
- [(c) **the premises referred to in subsection (1)(d); or**]
- (d) such other premises as the [Board] Regulator may approve under section 49 on application in writing by the licensee.”.

Insertion of section 48A in Act 56 of 1986

14. The following section is hereby inserted in the principal Act after section 48:

“Condition for export of unpolished diamonds

48A. All unpolished diamonds intended for export purposes must first in the prescribed manner be offered at a diamond exchange and export centre.”.

Substitution of section 50 of Act 56 of 1986

15. The following section is hereby substituted for section 50 of the principal Act:

“Processing of diamonds restricted to approved premises

50. (1) Subject to [the provisions of] this section, no [cutter, tool-maker] diamond beneficiator or researcher shall polish any diamond or crush or set any unpolished diamond in any tool, implement or other article elsewhere than on his or her business premises.

(2) A [cutter] diamond beneficiator may apply to the [Board] Regulator to polish diamonds on such premises other than his or her business premises and for such period as the [Board] Regulator may approve.

(3) [The provisions of section] Section 49 shall *mutatis mutandis* apply in respect of an application by a [cutter] diamond beneficiator in terms of subsection (2).”.

Amendment of section 57 of Act 56 of 1986

16. Section 57 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Every producer, manufacturer of synthetic diamonds, dealer[, **cutter or tool-maker**] or diamond beneficiator shall keep or cause to be kept the prescribed register, in which shall be entered the prescribed particulars in respect of unpolished diamonds and polished synthetic diamonds.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) Every person required to keep a register in terms of subsection (1) shall retain the register for a period of at least [**two**] five years after the date on which the last entry was recorded therein.”.

Substitution of section 59 of Act 56 of 1986

17. The following sections are hereby substituted for section 59 of the principal Act:

“Functions of Regulator in respect of buying and selling of diamonds 15

59. The Regulator shall—

- (a) implement, administer and control all matters relating to the purchase, sale, beneficiation, import and export of diamonds; and
 (b) establish diamond exchange and export centres, which shall facilitate the buying, selling, export and import of diamonds and matters connected therewith. 20

Functions of State Diamond Trader in respect of buying and selling of diamonds

59A. The State Diamond Trader shall—

- (a) acquire and supply unpolished diamonds to local diamond beneficiators; and 25
 (b) promote the diamond industry through the necessary research, support and development as deemed necessary from time to time.

Diamond producers to offer unpolished diamonds to State Diamond Trader 30

59B. (1) (a) The Minister shall from time to time by notice in the *Gazette* determine such percentage of diamonds produced in a production cycle as may be required for local beneficiation and that the State Diamond Trader may buy.

(b) The percentage contemplated in paragraph (a) may be based on carats and value, and shall be a representative sample of a production cycle of any diamond producer. 35

(2) At the end of every production cycle a diamond producer shall offer all the unpolished diamonds produced by him or her in that production cycle to the State Diamond Trader and specify the fair market value of those diamonds, to enable the State Diamond Trader to inspect such diamonds for the purpose of selecting diamonds for purchase as contemplated in subsection (1). 40

(3) The State Diamond Trader has one week after the verification contemplated in subsection (5) or the fixing of the price in terms of subsection (7) to buy diamonds up to the percentage contemplated in subsection (1). 45

(4) If the State Diamond Trader fails to buy the diamonds within the period contemplated in subsection (3) the producer may withdraw all his or her diamonds offered in terms of subsection (2). 50

(5) The government diamond valuator shall verify the prices specified in terms of subsection (2).

(6) If the producer and the government diamond valuator cannot agree on the prices, the Regulator shall appoint an independent valuator acceptable to the producer.

(7) The independent valuator shall fix the price of the unpolished diamonds within five working days after appointment, which price shall be regarded as the fair market price of the unpolished diamond in question.

(8) The cost of such independent valuation shall be borne equally by the State Diamond Trader and the producer concerned.

(9) For the purposes of this section 'production cycle' means a period mutually agreed upon between the producer concerned and the State Diamond Trader before the commencement of a producer's operations or before the commencement of a new production cycle, as the case may be."

Substitution of section 74 of Act 56 of 1986

18. The following section is hereby substituted for section 74 of the principal Act:

“Exemption from provisions relating to offering or registration of polished or unpolished diamonds”

74. The Minister may by notice in the Gazette exempt any person or category of persons from the provision of section 48A, 60 or 70 on such conditions as may be specified in the notice.”

Substitution of Arrangement of Sections of Act 56 of 1986

19. The following Arrangement of Sections is hereby substituted for the Arrangement of Sections in the principal Act:

“ARRANGEMENT OF SECTIONS

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SCHEDULE. 10**Substitution of long title of Act 56 of 1986**

19. The following long title is hereby substituted for the long title of the principal Act:
“To provide for the establishment of the South African Diamond and Precious Metals Regulator and for the establishment of the State Diamond Trader; for control over the possession, the purchase and sale, the processing, the local beneficiation and the export of diamonds; and for matters connected therewith.” 15

Short title

20. This Act is called the Diamonds Second Amendment Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 20

MEMORANDUM ON THE OBJECTS OF THE DIAMONDS SECOND AMENDMENT BILL, 2005

1. BACKGROUND INFORMATION

The Announcements, Tablings and Committee Reports, dated Wednesday, 26 October 2005 reported that “On 25 October 2005 the Acting Speaker and the Chairperson, after consultation, referred the Diamonds Amendment Bill [B27-2005], introduced in the National Assembly as a section 75 Bill on 30 August 2005, back to the Minister of Minerals and Energy, as it contains both section 75 and section 76 provisions.”

The Diamonds Amendment Bill [B27-2005 (Reintroduced)] dealing with the section 75 provisions was reintroduced and referred to the Portfolio Committee on Minerals and Energy, as well as the Joint Tagging Mechanism for classification in terms of Joint Rule 160, on 26 October 2005.

The present Bill, the Diamonds Second Amendment Bill (“the Bill”) now seeks to deal with the section 76 provisions.

2. OBJECTS

The objects of the Bill are—

- (a) to empower the Regulator to—
 - (i) implement, administer and control all matters relating to the purchase, sale, beneficiation, import and export of diamonds;
 - (ii) establish diamond exchange and export centres which shall facilitate the buying, selling, export and import of diamonds and matters connected therewith.
- (b) to empower the State Diamond Trader to—
 - (i) acquire and supply unpolished diamonds to local diamond beneficiators; and
 - (ii) promote the industry through the necessary research, support and development;
- (c) to provide for any local beneficiator to purchase unpolished diamonds at the diamond export and exchange centre;
- (d) to provide that the State Diamond Trader will purchase a portion of rough diamonds from local producers based on the requirements of local beneficiators and sell those to local beneficiators at a fair market price. It is envisaged that the beneficiation industry should expand once the supply of rough diamonds to the State Diamond Trader is maintained;
- (e) to repeal section 59 of the Diamonds Act, 1986 (Act No. 56 of 1986). Local producers will have to offer their production to the State Diamond Trader as the first step in any further dealings by the producers;
- (f) to license local trading houses and the holder of such a licence will be entitled to facilitate the buying and selling of unpolished diamonds locally on his or her business premises.

3. CONSULTATION

- South African Diamond Board;
- Mintek;
- National Treasury;
- South African Reserve Bank;
- SARS
- Department of Trade and Industry; and
- South African Police Services.

4. FINANCIAL IMPLICATIONS FOR STATE

The Regulator will be funded by money appropriated by Parliament.

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 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Trade”.

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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