

REPUBLIC OF SOUTH AFRICA

DIAMONDS 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 27B—2005 (Reintroduced)]

ISBN 0 621 35859 2

No. of copies printed 1 800

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 words and expressions and to amend and delete certain definitions; to establish the South African Diamond and Precious Metals Regulator; to provide for its objectives and functions; to provide for the constitution of its Board and the management of the Regulator by the Board; to provide for the chief executive officer and other staff of the Regulator; to provide for the finances of the Regulator; to establish the State Diamond Trader; to provide for its objectives and functions; to provide for the constitution of its Board and the management of the Trader by its Board; to provide for the chief executive officer and other staff of the Trader; to provide for the finances of the Trader; to require diamond producers to offer a percentage of all diamonds produced in a production cycle to the State Diamond Trader; to do away with the requirement that licensees have to display their names and other particulars at their business premises; to require a licensee to retain a note of receipt of purchase in respect of unpolished diamonds for five years and not only two years; to provide that only synthetic diamonds are exempted from export duty; to repeal the provision providing for the deferment of payment of export duty; to make it obligatory that the registering officer examine unpolished diamonds registered for export and verify particulars furnished in respect thereof; to adjust the amount of the fine payable if the value of an unpolished diamond as assessed on behalf of the Regulator exceeds the value of the diamond as specified by the exporter; to provide anew for the release of unpolished diamonds for export; to require an exporter to, within three months from the date on which an unpolished diamond has been released for export, submit proof that the proceeds of the transaction have been repatriated to the Republic; to make it obligatory that the registering officer examine polished diamonds registered for export and verify particulars furnished in respect thereof; to make it an offence to sell synthetic or enhanced diamonds without disclosing that they are synthetic or enhanced diamonds; to replace certain obsolete provisions and to delete others; and to empower the Minister to make regulations regarding guidelines for, and the implementation of, broad-based socio-economic empowerment; 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 deletion of the definition of “Board”;
- (b) by the insertion before the definition of “business premises” of the following definition:
 - “**beneficiation**’ means the polishing of a diamond or the setting of a diamond in a tool, in an article or in jewellery;”;
- (c) by the deletion of the definition of “cutter”;
- (d) by the deletion of the definition of “diamond exchange”;
- (e) by the insertion before the definition of “diamond powder” of the following definitions:
 - “**diamond industry**’ includes any person involved in the buying of, selling of, dealing in, importation of, export of or production of diamonds, or beneficiation involving diamonds;
 - “**diamond trading house**’ means the premises at which the holder of a diamond trading house licence may facilitate local buying and selling of unpolished diamonds;”;
- (f) by the insertion after the definition of “diamond powder” of the following definition:
 - “**enhanced diamond**’ means a natural diamond that has been altered, treated or improved by any artificial means, except by polishing;”;
- (g) by the deletion of the definition of “executive officer”;
- (h) by the insertion after the definition of ‘inspector’ of the following definitions:
 - “**Kimberley Process**’ means the international understanding among participants that was recognised by Resolution 55/56 adopted by the General Assembly of the United Nations on 1 December 2000;
 - “**Kimberley Process Certification Scheme**’ means the international certification scheme for the international trade in unpolished diamonds negotiated in the Kimberley Process;”;
- (i) by the deletion of the definition of “licence”;
- (j) by the substitution of the definition of “licensee” of the following definition:
 - “**licensee**’ means a dealer, **[cutter, tool-maker]** diamond beneficiator, holder of a diamond trading house licence or researcher;”;
- (k) by the insertion before the definition of “Minister” of the following definition:
 - “**Mineral and Petroleum Resources Development Act**’ means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;
- (l) by the substitution for the definition of “Minister” of the following definition:
 - “**Minister**’ means the Minister of **[Mineral] Minerals and Energy [Affairs and Public Enterprises]**;”;
- (m) by the substitution for the definition of “producer” of the following definition:
 - “**producer**’ means any person entitled to win or recover diamonds in terms of sections 19, 25 and 27 of the Mineral and Petroleum Resources Development Act;”;
- (n) by the substitution for the definition of “registering officer” of the following definition:
 - “**registering officer**’ means any person in the service of the **[Board] Regulator** or any person **[referred to in section 5(2)] contemplated in section 5(1)(c)** assisting in the administration of **[a provision of Chapter VI]** this Act;”;

- (o) by the insertion after the definition of “regulation” of the following definition:
 “**Regulator** means the South African Diamond and Precious Metals
 Regulator established by section 3(1);”;
- (p) by the insertion after the definition of “sell” of the following definition:
 “**State Diamond Trader** means the State Diamond Trader established
 by section 14;”;
- (q) by the substitution for the definition of “synthetic diamond” of the following
 definition:
 “**synthetic diamond** means a diamond manufactured by any artificial
 means;”;
- (r) by the deletion of the definition of “tool-maker”.

Substitution of section 2 of Act 56 of 1986, as substituted by section 2 of Act 10 of 1991

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

“Provisions of this Act may be applied in respect of other minerals 15

2. The Minister may by notice in the *Gazette* declare that a provision of this Act shall apply in respect of any other substance referred to in the definition “mineral” in section 1 of the [**Minerals Act, 1991**] Mineral and Petroleum Resources Development Act.”.

Substitution of Chapter II of Act 56 of 1986 20

3. The following Chapter is hereby substituted for Chapter II of the principal Act:

“CHAPTER II

PART 1

**SOUTH AFRICAN DIAMOND AND PRECIOUS METALS
 REGULATOR** 25

Establishment of South African Diamond and Precious Metals Regulator

3. (1) There is hereby established a juristic person to be known as the South African Diamond and Precious Metals Regulator.
(2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Regulator. 30

Objects of Regulator

4. The objects of the Regulator are to—

(a) ensure that the diamond resources of the Republic are exploited and developed in the best interests of the people of South Africa;

(b) promote equitable access to and local beneficiation of the Republic’s diamonds; and

(c) ensure compliance with the Kimberley Process Certification Scheme. 35

Functions of Regulator

5. (1) The Regulator shall— 40

(a) when considering an application for any of the licences or permits provided for in this Act, have regard to the promotion of equitable access to and local beneficiation of the Republic’s diamonds;

(b) provide insurance cover for itself against any loss, damage, risk or liability it may suffer or incur;

(c) appoint a person who has expertise in market prices in respect of diamonds as a government diamond valuator; and 45

- (d) advise the Minister on any matter to which this Act relates referred to it by the Minister.
- (2) The Regulator may—
- (a) when considering an application for any of the licences or permits provided for in this Act, have regard to the broad-based socio-economic empowerment Charter contemplated in section 100 of the Mineral and Petroleum Resources Development Act; 5
- (b) enter into an agreement with any person, including the State, for the performance of any particular act or particular work or the rendering of any particular services; 10
- (c) hire, buy or otherwise acquire such movable or immovable property as the Regulator may consider necessary for the performance of its functions and let, sell or otherwise dispose of property so acquired: Provided that immovable property shall not be acquired or disposed of without the approval of the Minister; and 15
- (d) from time to time make recommendations to the Minister on any matter to which this Act relates.

Board of Regulator

6. (1) The Board shall ensure that the functions of the Regulator are performed and that in so doing the objects of the Regulator are achieved. 20
- (2) The Board shall consist of not less than 14 and not more than 17 members appointed by the Minister.
- (3) The Board consists of the following members:
- (a) A chairperson;
- (b) two persons from the diamond industry; 25
- (c) two persons from the precious metals industries;
- (d) two persons from organised labour;
- (e) one officer of the Department of Minerals and Energy;
- (f) one member of the South African Police Service nominated by the Minister of Safety and Security; 30
- (g) one officer of the National Treasury nominated by the Minister of Finance;
- (h) one officer of the South African Reserve Bank nominated by the Governor of the South African Reserve Bank;
- (i) at least three other persons with appropriate experience, expertise or skills to enhance the Board's capability of performing its functions more effectively and; 35
- (j) the chief executive officer of the Regulator, appointed in terms of section 13, by virtue of holding that office.
- (4) (a) Before the Minister appoints the members of the Board contemplated in subsection (3)(a), (b), (c), (d) and (i), the Minister shall appoint an independent selection panel consisting of five persons with knowledge and understanding of the diamond industry and the precious metals industries. 40
- (b) The panel shall compile and submit to the Minister a shortlist of not more than 20 candidates after having followed a transparent and competitive nomination process. 45

Persons disqualified from being members of Board

7. No person shall be appointed as a member of the Board in terms of section 6(2) if he or she— 50
- (a) has been declared by a court to be mentally ill or disordered;
- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a presidential pardon before the date of his or her appointment; or 55
- (d) is not a South African citizen and is not permanently resident within the Republic.

Vacating of office by members of Board

- 8.** (1) A member of the Board appointed in terms of section 6(3)(a), (b) or (g) shall vacate office if—
- (a) he or she resigns by notice in writing to the Minister;
 - (b) he or she becomes subject to a disqualification contemplated in section 7;
 - (c) he or she has been absent more than two consecutive meetings of the Board without leave of the chairperson; or
 - (d) the Minister has removed the member from office—
 - (i) on account of misconduct or inability to perform any function of his or her office properly; or
 - (ii) for being engaged in any activity that may undermine the integrity of the Board, which may include—
 - (aa) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
 - (bb) making private use of or profiting from any confidential information obtained as a result of performing his or her function as a member of the Board; or
 - (cc) divulging any confidential information obtained by virtue of his or her office to any third party except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (2) The Minister may on good cause shown dissolve the Board and appoint a new Board in accordance with section 9(2).

Terms of office of members of Board

- 9.** (1) A member of the Board appointed in terms of section 6(3)(a), (b) or (g) holds office for such period, not exceeding five years, as the Minister may determine at the time of his or her appointment.
- (2) If a member of the Board dies or vacates office the Minister may appoint any person in his or her place for the unexpired period of his or her term of office.
- (3) A person whose term of office as a member of the Board has expired shall be eligible for re-appointment for not more than two terms.
- (4) A member of the Board who is not in the full-time employment of the State shall be paid such remuneration and allowances in respect of any expenses incurred in the performance of the functions of the Board as may be determined by the Minister in consultation with the Minister of Finance.

Meetings of Board

- 10.** (1) The chairperson of the Board or, in his or her absence from a meeting, a member of the Board elected by the members present shall preside at a meeting of the Board.
- (2) The Board meets at the times and places determined by itself, but the first meeting of the Board shall be held at a time and a place determined by the chairperson.
- (3) The chairperson may at any time or shall at the request of a two thirds majority of the members in office at the time convene a special meeting of the Board, and he or she must determine the time and place of the meeting.
- (4) The quorum for a meeting of the Board is the majority of its total members.
- (5) A decision of the Board shall be taken by resolution of the majority of the members present at any meeting of the Board and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

Committees of Board

11. (1) The Board may establish such number of committees as it deems necessary to assist it in the performance of its functions, and any such committee may include persons who are not members of the Board.

(2) If a committee consists of more than one member, the Board shall designate one member of such committee as chairperson thereof.

(3) A committee so established shall be accountable to the Board.

(4) The assistance contemplated in subsection (1) does not absolve the Board from its responsibility under this Act.

(5) A person appointed to a committee in terms of subsection (1) who is not in the full-time employment of the State shall be paid such remuneration and allowances in respect of any expenses incurred in the performance of the functions of the committee as the Minister may determine.

Funds of Regulator

12. (1) The funds of the Regulator consist of—

(a) moneys appropriated by Parliament;

(b) moneys received by way of grant, contribution, donation or inheritance from any source inside or outside the Republic; and

(c) moneys that may accrue from any other source.

(2) The Regulator shall utilize its funds to defray the expenses incurred by the Regulator in the performance of its functions under this Act.

(3) Moneys received by way of grant, contribution, donation or inheritance shall be utilized in accordance with any conditions imposed by the grantor, contributor, donor or testator concerned.

Persons in service of Regulator

13. (1) The Minister shall appoint a chief executive officer after consultation with the Board on such conditions of service and at such remuneration as the Minister, in consultation with the Minister of Finance, may determine.

(2) The chief executive officer is responsible for the administration and the general management and control of the day-to-day functioning of the Regulator, subject to the directions and instructions issued by the Board.

(3) The chief executive officer shall be assisted in the performance of his or her functions by—

(a) persons appointed by the Regulator on such conditions of service and at such remuneration as the Regulator, after having obtained such professional advice as it may deem fit and with the concurrence of the Minister, in consultation with the Minister of Finance, may determine; and

(b) officers or employees placed at the disposal of the Regulator under section 15(3)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(4) For the purposes of this Act, an officer or employee referred to in subsection (3)(b) shall be deemed to be a person in the service of the Regulator.

(5) Whenever the chief executive officer is for any reason unable to perform his or her functions the Minister may designate a person to act as chief executive officer until the chief executive officer is able to resume his or her functions.

PART 2

STATE DIAMOND TRADER

Establishment of State Diamond Trader

14. (1) There is hereby established a juristic person to be known as the State Diamond Trader.

(2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the State Diamond Trader.

Objects of State Diamond Trader

15. The objects of the State Diamond Trader are to promote equitable access to and local beneficiation of the Republic's diamonds.

Functions of State Diamond Trader

16. (1) The State Diamond Trader shall—

- (a) comply with the requirements of the Kimberley Process Certification Scheme in respect of any unpolished diamond it handles;
- (b) provide insurance cover for itself against any loss, damage, risk or liability it may suffer or incur; and
- (c) establish, maintain and expand a client base of local diamond beneficiators.

(2) The State Diamond Trader may—

- (a) acquire diamonds from other diamond producing countries; and
- (b) enter into agreements with any person, including the State, for the performance of any function or the rendering of a particular service.

Board of State Diamond Trader

17. (1) The Board shall ensure that the functions of the State Diamond Trader are performed and that in so doing the objects of the State Diamond Trader are achieved.

(2) The Board shall consist of not more than 15 members appointed by the Minister.

(3) The Board consists of the following members:

- (a) A chairperson;
- (b) three persons from the industry, representing producers, diamond beneficiators and jewellery manufacturers;
- (c) one officer of the Department of Minerals and Energy;
- (d) one member of the South African Police Service nominated by the Minister of Safety and Security;
- (e) one officer of the National Treasury nominated by the Minister of Finance;
- (f) at least three persons representing investors or lenders of capital contemplated in section 17F(1)(a);
- (g) three persons nominated by an association or associations which represent employees of diamond beneficiators; and
- (h) the chief executive officers of the State Diamond Trader and the Regulator, by virtue of holding those offices.

(4) (a) Before the Minister appoints the members of the Board contemplated in subsection (3)(b) and (f), the Minister shall appoint an independent selection panel, consisting of five persons with knowledge and understanding of issues concerning the diamond industry.

(b) The panel must compile a shortlist of not more than 20 candidates after following a transparent and competitive nomination process.

Persons disqualified from being members of Board

17A. No person contemplated in section 17(3)(a) and (b) shall be appointed as a member of the Board if he or she—

- (a) has been declared by a court to be mentally ill or disordered;

- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a presidential pardon before the date of his or her appointment; or
- (d) is not a South African citizen and is not permanently resident within the Republic.

Vacating of office by members of Board

- 17B.** (1) A member of the Board contemplated in section 17(3)(a) or (b) shall vacate office if he or she—
- (a) resigns by notice in writing to the Minister;
 - (b) becomes subject to a disqualification contemplated in section 17A;
 - (c) has been absent from more than two consecutive meetings of the Board without leave of the chairperson; or
 - (d) has been removed as a member of the Board by the Minister—
 - (i) on account of misconduct or inability to perform the function of his or her office properly; or
 - (ii) for being engaged in any activity that may undermine the integrity of the Board, which may include—
 - (aa) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
 - (bb) making private use of or profiting from any confidential information obtained as a result of performing his or her function as a member of the Board; or
 - (cc) divulging any confidential information obtained by virtue of his or her office to any third party except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (2) The Minister may on good cause shown dissolve the Board and appoint a new Board in accordance with section 17C(2).

Term of office of members of Board

- 17C.** (1) A member of the Board appointed in terms of section 17(3)(a), (b) or (f) holds office for such period, not exceeding five years, as the Minister may determine at the time of his or her appointment.
- (2) If a member of the Board for any reason ceases to hold office the Minister may appoint any person in his or her place for the unexpired period of his or her term of office.
- (3) Any person whose term of office as a member of the Board has expired shall be eligible for re-appointment for not more than two terms.
- (4) A member of the Board who is not in the full-time employment of the State shall be paid such remuneration and allowances in respect of any expenses incurred in the performance of the functions of the Board as the Minister may determine.

Meetings of Board

- 17D.** (1) The chairperson or, in his or her absence, a member of the Board elected by the members present shall preside at a meeting of the Board.
- (2) The Board meets at the times and places determined by itself, but the first meeting of the Board shall be held at a time and a place determined by the chairperson.
- (3) The chairperson may at any time or shall at the request of a two thirds majority of the members in office at the time convene a special meeting of the Board, and he or she must determine the time and place of the meeting.
- (4) The quorum for a meeting of the Board is the majority of its total members.

(5) A decision of the Board shall be taken by resolution of the majority of the members present at any meeting of the Board and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

Committees of Board

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17E. (1) The Board may establish such committees as it deems necessary to assist in the performance of its functions, and any such committee may include persons who are not members of the Board.

(2) If a committee consists of more than one member, the Board shall designate one member of such committee as chairperson thereof.

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(3) A committee so established shall be accountable to the Board.

(4) The assistance contemplated in subsection (1) does not absolve the Board from its responsibility under this Act.

(5) A person appointed to a committee in terms of subsection (1) who is not in the full-time employment of the State shall be paid such remuneration and allowances in respect of any expenses incurred in the performance of the functions of the committee as the Minister may determine.

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Funds of State Diamond Trader

17F. (1) The funds of the State Diamond Trader consist of—

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- (a) capital invested in or lent to the State Diamond Trader;
- (b) loans raised by the State Diamond Trader;
- (c) the proceeds of any sale of assets;
- (d) interest earned by the State Diamond Trader on money invested by it;
- (e) moneys received by way of grant, contribution, donation or inheritance from any source inside or outside the Republic; and
- (f) moneys that may accrue from any other source.

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(2) The State Diamond Trader shall utilize its funds to defray the expenses incurred by the State Diamond Trader in the performance of its functions under this Act.

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(3) Moneys received by way of grant, contribution, donation or inheritance shall be utilized in accordance with any conditions imposed by the grantor, contributor, donor or testator concerned.

Persons in service of State Diamond Trader

17G. (1) The Minister shall appoint a chief executive officer in concurrence with the Board on such conditions of service and at such remuneration as the Minister, in consultation with the Minister of Finance, may determine.

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(2) The chief executive officer is responsible for the administration and the general management and control of the day-to-day functioning of the State Diamond Trader, subject to the directions and instructions issued by the Board.

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(3) The chief executive officer shall be assisted in the performance of his or her functions by—

- (a) persons appointed by the State Diamond Trader on such conditions of service and at such remuneration as the State Diamond Trader, after having obtained such professional advice as it may deem fit and with the concurrence of the Minister, in consultation with the Minister of Finance, may determine; and
- (b) officers or employees placed at the disposal of the State Diamond Trader under section 15(3)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

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(4) For the purposes of this Act, an officer or employee referred to in subsection (3)(b) shall be deemed to be a person in the service of the State Diamond Trader.

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(5) Whenever the chief executive officer is for any reason unable to perform his or her functions the Minister may designate a person to act as chief executive officer until the chief executive officer is able to resume his or her functions.”

Amendment of section 18 of Act 56 of 1986, as amended by section 7 of Act 10 of 1991 5

4. Section 18 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) he or she is a producer who has won or recovered that diamond from a mine as defined in section 1 of the [**Minerals Act, 1991,**] Mineral and Petroleum Resources Development Act in accordance with any [**licence**], permit, [**lease**] right or other [**authority**] authorization granted to him or her under the [**Minerals Act, 1991,**] Mineral and Petroleum Resources Development Act or which remains in force under [**section 47**] Schedule 2 of the said Act; 10 15

(b) he or she has manufactured that diamond, if it is a synthetic diamond;” and

(b) by the substitution for paragraph (e) of the following paragraph:

“(e) he or she is in possession of that diamond in implementing [**an**] a written agreement entered into by him or her with a person referred to in paragraph (a), (b), (c) or (d); or” 20

Amendment of section 25 of Act 56 of 1986

5. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) Any person who by chance finds or picks up any unpolished diamond at any place where he or she or his or her employer is not permitted to prospect, dig or mine for diamonds in terms of the [**Minerals Act, 1991**] Mineral and Petroleum Resources Development Act shall forthwith take that unpolished diamond to the nearest police station and deliver it to [**the**] a member of the South African Police Service on duty who holds a rank of at least sergeant.” 30

Repeal of section 25A of Act 56 of 1986

6. Section 25A of the principal Act is hereby repealed.

Amendment of section 36 of Act 56 of 1986

7. Section 36 of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph (b) of the following words: 35

“shall within [**14**] 30 days after such conversion submit its licence and the amended or new certificate of incorporation or the new founding statement, or a certified copy thereof, to the [**executive officer**] chief executive officer of the Regulator.” 40

Substitution of section 39 of Act 56 of 1986

8. The following section is hereby substituted for section 39 of the principal Act:

“Appeal to Minister against decisions of [Board] Regulator in respect of licences

39. (1) Any person aggrieved by a decision taken by the Regulator under [**a preceding provision of this Chapter**] this Act may in the prescribed manner and within the prescribed period appeal against the decision to the Minister. 45

(2) The Minister shall consider in the prescribed manner an appeal lodged with him or her in accordance with subsection (1), and may confirm, set aside or vary the decision appealed against or substitute for that decision any other decision which the **[Board] Regulator** in the opinion of the Minister ought to have taken.”.

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Repeal of sections 40, 41, 42 and 43 of Act 56 of 1986

9. Sections 40, 41, 42 and 43 of the principal Act are hereby repealed.

Repeal of section 51 of Act 56 of 1986

10. Section 51 of the principal Act is hereby repealed.

Amendment of section 56 of Act 56 of 1986

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11. Section 56 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The original of every note of receipt or purchase completed in terms of subsection (1) shall be handed over to the person who delivered or sold the unpolished diamond, and the copy thereof shall be retained by the licensee for a period of at least **[two] five** years after the date on which he or she received or purchased the unpolished diamond.”.

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Insertion of section 56A in Act 56 of 1986

12. The following section is hereby inserted in the principal Act after section 56:

“Disclosure that diamond is synthetic diamond or enhanced diamond 20

56A. (1) (a) Notwithstanding the provisions of section 56, the person who delivers or sells a synthetic diamond or an enhanced diamond, whether unpolished or polished, shall forthwith complete in duplicate a disclosure in the prescribed form that such diamond is a synthetic diamond or an enhanced diamond, as the case may be.

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(b) A copy of the disclosure must be handed to the licensee, in respect of an unpolished diamond, or to the person who receives or purchases the synthetic diamond or an enhanced diamond, in respect of a polished synthetic diamond or an enhanced diamond, as the case may be.

(2) The original and the copy of every disclosure contemplated in subsection (1) must be retained for a period of at least five years.”.

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Repeal of section 58 of Act 56 of 1986

13. Section 58 of the principal Act is hereby repealed.

Amendment of section 61 of Act 56 of 1986

14. Section 61 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 35

“(1) Subject to sections 48A and 59, any **[Any]** exporter who desires to register any unpolished diamond for export shall at **[a prescribed export centre]** any diamond exchange and export centre furnish the registering officer with a return on the prescribed form in respect of that unpolished diamond.

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(2) In the return furnished in terms of subsection (1) the exporter shall specify the value of the unpolished diamond that was offered by such person at the diamond exchange and export centre and declare that the value so specified is to the best of his or her knowledge and belief the fair market value of that unpolished diamond.”.

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Substitution of section 65 of Act 56 of 1986

15. The following section is hereby substituted for section 65 of the principal Act:

“Examination and valuation of unpolished diamond

65. (1) The registering officer **[may]**—

- (a) shall examine any unpolished diamond registered for export in terms of this **[Chapter] Act** and verify any particulars furnished in respect thereof; and 5
- (b) may retain such diamond in order to have the value thereof assessed in the prescribed manner or by any person designated by the **[Board] Regulator** for that particular valuation or for valuation in general.

(2) The person who has assessed the value of an unpolished diamond referred to in subsection (1)(b), shall furnish the registering officer with a certificate in which he or she specifies the value of that unpolished diamond and the name of a person who is prepared to purchase that unpolished diamond at the value so specified. 10

(3) A certificate furnished in terms of subsection (2) shall be deemed to be an offer to the exporter by the person specified therein to purchase the unpolished diamond in question at the value specified therein.”. 15

Amendment of section 66 of Act 56 of 1986

16. Section 66 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“For the purposes of levying export duty on any unpolished diamond in terms of this **[Chapter] Act**—”. 20

Amendment of section 67 of Act 56 of 1986

17. Section 67 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the value of an unpolished diamond as specified in the certificate referred to in section 65(2) exceeds the value of that diamond as specified in the return referred to in section 61(2) by 20 per cent or more, the **[Board] Regulator** shall impose upon the exporter concerned a fine equal to 20 per cent of **[such difference in] the market value of that unpolished diamond.**” 25

Amendment of section 68 of Act 56 of 1986

18. Section 68 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any export duty levied or any fine imposed in terms of this **[Chapter] Act** shall be paid by the exporter concerned to the **[Board] Regulator** for the benefit of the State Revenue Fund.”. 30 35

Substitution of section 69 of Act 56 of 1986

19. The following section is hereby substituted for section 69 of the principal Act:

“Release of unpolished diamonds for export

69. (1) The registering officer shall not release any unpolished diamond for export unless— 40

- (a) that unpolished diamond was registered for export in terms of this **[Chapter] Act**;
- (b) **[either] a certificate of exemption[, a certificate of deferment or a receipt for the payment of export duty]** has been issued to the exporter in respect of that unpolished diamond in terms of this **[Chapter] Act**; 45
- (c) the exporter has paid any fine imposed upon him or her in terms of section 67;
- (d) **[the registering officer is satisfied that]** the provisions of any other law relating to the export of that unpolished diamond have been 50 complied with; **[and]**

- (e) that unpolished diamond has been made up in a **[packet]** parcel in such manner as the registering officer may determine; and
- (f) the prescribed certificate, which certifies that the unpolished diamond for export has been handled in a manner that meets the minimum requirements of the Kimberley Process Certification Scheme, accompanies the parcel contemplated in paragraph (e). 5

(2) The registering officer shall release an unpolished diamond for export by sealing the **[packet referred to]** parcel contemplated in subsection (1)(e) with the seal of the **[Board]** Regulator.”.

Insertion of section 69A in Act 56 of 1986 10

20. The following section is hereby inserted in the principal Act after section 69:

“Requirements after export of unpolished diamond

69A. Within three months from the date on which any unpolished diamond has been released for export in terms of section 69, the exporter concerned shall submit to the Regulator certified documentation from the South African Reserve Bank as proof that the proceeds of the relevant transaction have been repatriated to the Republic.” 15

Substitution of section 72 of Act 56 of 1986

21. The following section is hereby substituted for section 72 of the principal Act:

“Examination and retention of polished diamonds 20

72. The registering officer **[may]**—

- (a) shall examine any polished diamond registered for export in terms of this **[Chapter]** Act and verify any particulars furnished in respect thereof; and
- (b) may retain such diamond in order to— 25
- (i) have the value thereof assessed in the prescribed manner or by any person designated by the **[Board]** Regulator for that particular valuation or for valuations in general; or
 - (ii) determine whether it is in fact a polished diamond.”.

Amendment of section 73 of Act 56 of 1986 30

22. Section 73 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 35
- “(c) that diamond has been made up in a **[packet]** parcel in such manner as the registering officer may determine.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) The registering officer shall release a polished diamond for export by sealing the **[packet]** parcel referred to in subsection (1)(c) with the seal of the **[Board]** Regulator.”.

Substitution of section 83 of Act 56 of 1986 40

23. The following section is hereby substituted for section 83 of the principal Act:

“Offences relating to diamond trade

83. Any person who—

- (a) contravenes a determination, direction or prohibition under section 77(1), or delivers any unpolished diamond in pursuance of an agreement which is invalid by virtue of **[the provisions of]** the said section; 45
- (b) contravenes **[a provision of]** section 33, 35(1), 44, 48, 50(1) or 52;

- (c) contravenes or fails to comply with a condition of a licence, permit or certificate under this Act;
- (d) fails to comply with [a provision of] section 36(1), 38(2), [51,] 48, 56 or 57; or
- (e) fails to comply with a request or notice under section 30(4)[, 43(3)] or 93(1), shall be guilty of an offence.”

Substitution of section 84 of Act 56 of 1986

24. The following section is hereby substituted for section 84 of the principal Act:

“Offences relating to export of diamonds” 10

84. Any person who—

- (a) contravenes [a provision of] section 60 or 69A;
- (b) contravenes [a provision of] section 70;
- (c) in connection with the registration of any unpolished or polished diamond for export wilfully furnishes information or makes a statement which is false or misleading; or
- (d) fails to comply with [a provision of] section [64(3) or] 67(3), shall be guilty of an offence.”

Substitution of section 86 of Act 56 of 1986

25. The following section is hereby substituted for section 86 of the principal Act: 20

“Offences involving fraudulent conduct”

86. Any person who—

- (a) in or in connection with an application in terms of this Act wilfully furnishes information or makes a statement which is false or misleading; 25
- (b) with intent to defraud, alters, defaces, destroys or mutilates any register or document under this Act; [or]
- (bA) with intent to defraud, sells any synthetic diamond or enhanced diamond without disclosing that it is a synthetic diamond or an enhanced diamond, as the case may be or falsely declares an unpolished diamond as a synthetic diamond or an enhanced diamond when it is not a synthetic diamond or an enhanced diamond, as the case may be; 30
- (c) falsely gives himself or herself out—
 - (i) to be the holder of a licence or permit under this Act; 35
 - (ii) to be registered as an authorized representative of any juristic person; or
 - (iii) to be an inspector,
 shall be guilty of an offence.”

Repeal of sections 88 and 89 of Act 56 of 1986 40

26. Sections 88 and 89 of the principal Act are hereby repealed.

Amendment of section 90 of Act 56 of 1986

27. Section 90 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceeding paragraph (a) of the following words:

“An act or omission of an employee or agent, acting within the course and scope of his or her employment, which constitutes an offence under this Act shall be deemed to be the act or omission of his or her employer or principal, and that employer or principal may be convicted and sentenced in respect of it unless he or she proves—” 45

Amendment of section 95 of Act 56 of 1986

- 28.** Section 95 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (j) of the following paragraph:
 - “(j) the performance of the [Board’s] Regulator’s functions in implementing an agreement referred to in section 94;”;
 - (b) by the insertion in subsection (1) of the following paragraph after paragraph (j):
 - “(jA) guidelines for and implementation of broad-based socio-economic empowerment in terms of section 100 of the Minerals and Petroleum Resources Development Act;”;
 - (c) by the substitution for subsection (2) of the following subsection:
 - “(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith [**not exceeding a fine of R2 500 or imprisonment for a period of six months**].”.

Amendment of section 98 of Act 56 of 1986

29. Section 98 of the principal Act is hereby amended by the deletion of subsections (4) and (5).

Substitution of certain words in Act 56 of 1986

- 30.** The principal Act is hereby amended—
- (a) by the substitution for the expression “executive officer”, wherever it occurs, of the expression “chief executive officer of the Regulator”;
 - (b) by the substitution for the word “Board”, wherever it occurs in the Act, of the word “Regulator”;
 - (c) by the substitution for the expression “diamond exchange”, wherever it occurs, of the expression “diamond trading house”; and
 - (d) by the substitution for the word “Chapter”, wherever it occurs in sections 70, 72, 73 and 76, of the word “Act”.

Transitional provisions and savings

31. (1) (a) Every person appointed under section 14 of the principal Act who is in the service of the South African Diamond Board established by section 3 of the principal Act immediately before section 4 of this Act takes effect is, as from that date, transferred to the service of the Regulator established by section 3 of the principal Act as amended by this Act.

(b) Every person so transferred must be regarded as having been appointed in terms of section 13 of the principal Act as amended by this Act.

(2) The remuneration and other terms and conditions of service of any person contemplated in subsection (1) may not be less favourable than the remuneration and other terms and conditions of service applicable to that person immediately before section 4 of this Act takes effect and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including, where applicable—

- (a) membership of a pension fund;
- (b) membership of a medical aid scheme;
- (c) employer contributions in connection with the memberships contemplated in paragraphs (a) and (b);
- (d) accrued pensionable service;
- (e) accrued leave benefits; and
- (f) retirement at a specific age.

(3) Any person transferred to the service of the Regulator in terms of subsection (1), who immediately before such transfer was a member of a pension fund, remains a member of that pension fund upon such transfer notwithstanding any provision to the contrary in any law or in the rules of that pension fund and the Regulator shall contribute to the pension fund in respect of that person to the same extent as an employer is required in terms of the laws and rules regulating that pension fund to contribute in respect of an employee who is a member of that fund.

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be regarded as having taken place when a person is transferred to the service of the Regulator in terms of subsection (1) and the position of those persons in respect of the phasing-in of tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in the Seventh Schedule to the Income Tax Act, 1962, shall be regarded as remaining unchanged. 5

(5) All assets, rights, liabilities and obligations which, on the date when section 4 of this Act takes effect, vest in the Board referred to in subsection (1) pass to the Regulator referred to in that subsection on that date.

(6) The registrar of deeds shall make the necessary entries or endorsements for the transfer of any property in terms of subsection (5), and no transfer fee, office fee or other charge is payable in respect of that entry or endorsement. 10

(7) Any application for a diamond dealer's licence, diamond cutting licence, diamond tool-making licence or diamond research licence in terms of 26 of the principal Act or an application for a permit lodged in terms of section 40 of that Act but not finalized on the date on which section 4 of this Act takes effect must be regarded as having been lodged after that date. 15

(8) Any application for the registration of any premises as a diamond exchange lodged in terms of section 45 of the principal Act but not finalised on the date on which section 4 of this Act takes effect must be regarded as having been lodged after that date. 20

(9) Any certificate, permit, licence, exemption or any other form of authorization issued before the date on which section 4 of this Act takes effect continues in force for a period not exceeding one year as from that date, subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.

(10) Any person who wishes to continue any activity in relation to which a certificate, permit, licence or any other form of authorization issued under the principal Act has lapsed in accordance with subsection (9) must apply for the issue of the relevant certificate, permit or licence or authorization in terms of the principal Act as amended by this Act within the period referred in subsection (9). 25

(11) If an application in terms of subsection (10) for the issue of a certificate, permit or licence or for an authorization has been lodged within the period referred to in subsection (9), the certificate, permit, licence or authorization remains valid until the application is decided. 30

(12) Any premises registered as a diamond exchange before the date on which section 4 of this Act takes effect remain registered for a period not exceeding one year. 35

(13) Any person who wishes to utilize any premises contemplated in subsection (12) as a diamond trading house after the expiry of the period referred to in that subsection must, before the expiry of that period, in the manner required by the principal Act as amended by this Act lodge an application for the—

- (a) issue of a diamond trading house licence contemplated in section 26(f) of the principal Act as amended by this Act; and
- (b) registration of the premises in question in terms of section 47 of the principal Act as amended by this Act. 40

(14) Any agreement entered into between the Board referred to in subsection (1) and any producer, dealer or any association or organization of producers or dealers in order to ensure a regular supply of unpolished diamonds to cutters or tool-makers, and which is in force on the date on which section 4 of this Act takes effect, remains in force for a period not exceeding one year as from that date or until it lapses, whichever occurs first. 45

(15) Anything done before the commencement of this Act under or in terms of a provision amended by this Act must be regarded, unless clearly inappropriate, to have been done under or in terms of the corresponding provision of the principal Act as amended by this Act. 50

Short title and commencement

32. This Act is called the Diamonds Amendment Act, 2005, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*. 55

MEMORANDUM ON THE OBJECTS OF THE DIAMONDS AMENDMENT BILL

1. PURPOSE OF BILL AND BACKGROUND INFORMATION

1.1 At present, the Diamonds Act, 1986 (Act No. 56 of 1986) (“the Act”), does not drive the beneficiation of the diamond resources in the Republic even though South Africa is one of the largest producers of diamonds in the world. In addition, the Board of Directors of the South African Diamonds Board (“the Board”) is dominated by the industry and the Board, as an institution, is funded through levies, thereby further strengthening industry control. Government initiatives and policies are not always in the best interest of the Board, resulting in decisions not being implemented or being delayed indefinitely.

1.2 The Act does not provide for the local supply of rough diamonds to the local diamond cutting and polishing industry. However, in terms of section 59 of the Act the Board may enter into an agreement with “any producer, dealer or any association or organization of producers or dealers in pursuance of which any such producer, dealer, association or organization allocates or offers unpolished diamonds . . . cutters or tool-makers” in order to ensure that cutters and tool-makers obtain a regular supply of unpolished diamonds. There is no obligation on producers to offer a portion of their unpolished diamonds to the local market. Local beneficiation (value addition) is hampered by these “section 59 agreements” with producers in that the majority of producers choose to export rough diamonds for beneficiation elsewhere in the world, creating wealth and jobs in those countries.

2. OBJECTS OF DIAMONDS AMENDMENT BILL

The objects of the Bill are—

- (a) to establish the South African Diamonds and Precious Metals Regulator (“the Regulator”) to, *inter alia*, implement, administer and control all matters relating to the sale, purchase, local beneficiation, import and export of diamonds;
- (b) to provide that the Board of Directors of the Regulator will be well represented by government, ensuring that government policies and initiatives with regard to diamonds will be implemented and regulated accordingly;
- (c) to stipulate that the Regulator will be funded by money appropriated by Parliament as well as money accrued from any other sources, i.e. donations or bequests;
- (d) to provide for the establishment of diamond exchange and export centres as “one-stop-shops” where temporary permit holders (*foreigners*) may purchase and export rough diamonds as well as pay the 15% export duty retained from the present legislation. Any producer who exports unpolished diamonds will export from this centre and pay the relevant export duty;
- (e) to provide for any local beneficiator to purchase unpolished diamonds at the diamond exchange and export centres;
- (f) to establish a State Diamond Trader (“the Trader”) for the purposes of promoting equitable access to and local beneficiation of South Africa’s rough diamond resources as well as rough diamonds acquired from other sources. The 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 Trader is maintained;
- (g) to provide for the Trader to have its own Board of Directors;
- (h) to license local trading houses and the holder of such licence will be entitled to facilitate the buying and selling of unpolished diamonds locally on his or her business premises;
- (i) to retain the present rate of 15% export duty on rough diamonds which will be mandatory on the export of rough diamonds from South Africa; and
- (j) to provide for the conversion of licences and permits presently held by cutters, polishers, dealers and trading houses in terms of the transitional provisions within one year from the promulgation of this Bill.

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 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.

Printed by Creda Communications

ISBN 0 621 35859 2