THE PRESIDENCY

No. 130 14 February 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

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.

(English text signed by the President.)
(Assested to 10 February 2006.)

ACT

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), 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:
   “‘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:

5

10

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;  
   (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)] 26(h).

   (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

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)]

Insertion of section 20A in Act 56 of 1986

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.

   (2) No holder of a diamond trading house licence referred to in section

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—
   (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

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;
Substitution section 24 of Act 56 of 1986

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

“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;
(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) or 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:

“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;
(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;
(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;
(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;
(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

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) if, a licence shall be valid until it is suspended or cancelled in terms of this Chapter—

(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;
(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 change.
(g) a permit contemplated in section 26(h) is valid for such period as the Regulator may determine.

(2) (a) The Regulator may authorize the issue of a temporary licence for such period, but not exceeding one year, as the Board may determine.

(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 certificate.

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

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

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.

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]—

(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;
(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
(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.”.
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) any 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 (2)(d); or]
(d) any 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 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

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.

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

(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

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.

(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).

(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).

(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).

(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

Sections

CHAPTER I

APPLICATION OF ACT

1. Definitions
2. Provisions of this Act may be applied in respect of other minerals

CHAPTER II

PART 1

SOUTH AFRICAN DIAMOND AND PRECIOUS METALS REGULATOR

3. Establishment of South African Diamond and Precious Metals Regulator
4. Objects of Regulator
5. Functions of Regulator
6. Board of Regulator
7. Persons disqualified from being members of Board
8. Vacating of office by members of Board
9. Terms of office of members of Board
10. Meetings of Board
11. Committees of Board
12. Funds of Regulator
13. Persons in service of Regulator
# PART 2

## STATE DIAMOND TRADER

14. Establishment of State Diamond Trader
15. Objects of State Diamond Trader
16. Functions of State Diamond Trader
17. Board of State Diamond Trader
17A. Persons disqualified from being members of Board
17B. Vacating of office by members of Board
17C. Term of office of members of Board
17D. Meetings of Board
17E. Committees of Board
17F. Funds of State Diamond Trader
17G. Persons in service of State Diamond Trader

## CHAPTER III

### ILLEGAL ACTS

18. Possession of unpolished diamonds prohibited
19. Sale of unpolished diamonds prohibited
20. Purchase of unpolished diamonds prohibited
20A. Assistance by non-licensed persons prohibited
21. Dealing in unpolished diamonds restricted
22. Processing of diamonds prohibited
23. Erection and operation of machinery prohibited
24. Export of unpolished diamonds prohibited
25. Unpolished diamonds found or picked up by chance

## CHAPTER IV

### LICENCES AND PERMITS

26. Kind of licence, and permit and certificate
27. Applications for licences
28. Consideration of applications for licences
29. Issue of licences
30. Conditions of licence
31. Business premises
32. Period of validity and renewal of licence, permit and certificate
33. Transfer of licences by juristic persons prohibited
34. Applications by natural persons for transfer of licences
35. Controlling interest in companies and close corporations
36. Conversions of companies and close corporations
37. Suspension and cancellation of licences
38. Return of licences
39. Appeal to Minister against decisions of Regulator in respect of licences

## CHAPTER V

### DIAMOND TRADE

44. Utilization of unregistered premises as diamond trading house prohibited
45. Applications for registration of diamond exchanges
46. Consideration of applications for registration of diamond exchanges
47. Registration of diamond exchanges
48. Dealings in unpolished diamonds restricted to approved premises
48A. Condition for export of unpolished diamonds
49. Approval of premises
50. Processing of diamonds restricted to approved premises
52. Dealings in unpolished diamonds on behalf of juristic persons restricted to authorized representatives
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>53.</td>
<td>Applications for registration of authorized representatives</td>
</tr>
<tr>
<td>54.</td>
<td>Registration of authorized representatives</td>
</tr>
<tr>
<td>55.</td>
<td>Receipt of unpolished diamonds by licensees</td>
</tr>
<tr>
<td>56.</td>
<td>Notes of receipt or purchase in respect of unpolished diamonds</td>
</tr>
<tr>
<td>56A.</td>
<td>Disclosure that diamond is synthetic diamond</td>
</tr>
<tr>
<td>57.</td>
<td>Registers in respect of unpolished diamonds</td>
</tr>
<tr>
<td>59.</td>
<td>Functions of Regulator in respect of buying and selling of diamonds</td>
</tr>
<tr>
<td>59A.</td>
<td>Functions of State Diamond Trader in respect of buying and selling of diamonds</td>
</tr>
<tr>
<td>59B.</td>
<td>Diamond producers to offer unpolished diamonds to State Diamond Trader</td>
</tr>
</tbody>
</table>

**CHAPTER VI**

**EXPORT OF DIAMONDS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.</td>
<td>Export of unpolished diamonds</td>
</tr>
<tr>
<td>61.</td>
<td>Registration of unpolished diamonds for export</td>
</tr>
<tr>
<td>62.</td>
<td>Levy of export duty on unpolished diamonds</td>
</tr>
<tr>
<td>63.</td>
<td>Exemption from export duty</td>
</tr>
<tr>
<td>64.</td>
<td>Deferment of payment of export duty</td>
</tr>
<tr>
<td>65.</td>
<td>Examination and valuation of unpolished diamonds</td>
</tr>
<tr>
<td>66.</td>
<td>Market value</td>
</tr>
<tr>
<td>67.</td>
<td>Fine in case of difference in values</td>
</tr>
<tr>
<td>68.</td>
<td>Payment of export duty and fine</td>
</tr>
<tr>
<td>69.</td>
<td>Release of unpolished diamond for export</td>
</tr>
<tr>
<td>69A.</td>
<td>Requirements after export of unpolished diamond</td>
</tr>
<tr>
<td>70.</td>
<td>Export of polished diamonds</td>
</tr>
<tr>
<td>71.</td>
<td>Registration of polished diamonds for export</td>
</tr>
<tr>
<td>72.</td>
<td>Examination and retention of polished diamonds</td>
</tr>
<tr>
<td>73.</td>
<td>Release of polished diamonds for export</td>
</tr>
<tr>
<td>74.</td>
<td>Exemption from provisions relating to offering or registration of polished or unpolished diamonds</td>
</tr>
<tr>
<td>75.</td>
<td>Regulator’s decision on unpolished or polished diamonds</td>
</tr>
<tr>
<td>76.</td>
<td>Assessment of value of unpolished and polished diamonds</td>
</tr>
</tbody>
</table>

**CHAPTER VII**

**CONTROL MEASURES**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>77.</td>
<td>Control over production of diamonds</td>
</tr>
<tr>
<td>78.</td>
<td>Furnishing Regulator with information</td>
</tr>
<tr>
<td>79.</td>
<td>Inquiries by Regulator</td>
</tr>
<tr>
<td>80.</td>
<td>Appointment of inspectors</td>
</tr>
<tr>
<td>81.</td>
<td>Functions of inspectors and police officials</td>
</tr>
</tbody>
</table>

**CHAPTER VIII**

**OFFENCES, PENALTIES AND OTHER JUDICIAL MATTERS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>82.</td>
<td>Offences relating to illegal acts</td>
</tr>
<tr>
<td>83.</td>
<td>Offences relating to diamond trade</td>
</tr>
<tr>
<td>84.</td>
<td>Offences relating to export of diamonds</td>
</tr>
<tr>
<td>85.</td>
<td>Offences relating to functions of Regulator, inspectors and police officials</td>
</tr>
<tr>
<td>86.</td>
<td>Offences involving fraudulent conduct</td>
</tr>
<tr>
<td>87.</td>
<td>Penalties</td>
</tr>
<tr>
<td>90.</td>
<td>Liability of employer or principal</td>
</tr>
<tr>
<td>91.</td>
<td>Forfeiture</td>
</tr>
<tr>
<td>92.</td>
<td>Jurisdiction of magistrates’ courts</td>
</tr>
</tbody>
</table>
CHAPTER IX

GENERAL

93. Levies
94. Co-operation with other governments and bodies
95. Regulations
96. Consultation by Regulator
97. Assignment of functions
98. Amendment or repeal of laws, and savings
99. Short title and commencement

SCHEDULE”.

Substitution of long title of Act 56 of 1986

20. 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.”.

Short title

21. 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.