

REPUBLIC OF SOUTH AFRICA

DIAMONDS SECOND AMENDMENT BILL

*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill
published in Government Gazette No 27929 of 19 August 2005)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 39—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 10
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: 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 is the holder of a permit referred to in section 40(1)(a) or (2)*.
- (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)] 26(e)**.”.

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 26(f) or any person authorized in terms of this Act to sell unpolished diamonds may allow the assistance prohibited in subsection (1).”.

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;
 - (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:

“Export of unpolished diamonds prohibited

24. No person shall export any unpolished diamond from the Republic unless— 5
- (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)]** 26(e).”. 10

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— 15
- (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; 20
 - (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; 25
 - (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;
 - (g) a certificate entitling a person to be in possession of an unpolished diamond obtained in a lawful manner.”. 35

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), **a licence shall be valid until it is suspended or cancelled in terms of this Chapter.]—** 40
- (a) a diamond dealer’s licence contemplated in section 26(a) is valid for a period of three years;
 - (b) a diamond beneficiation licence contemplated in section 26(b) or (c) is valid for a period of five years; 45
 - (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; 50

- (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
- (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. 10
- (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.”. 15

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.”. 20

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: 25

“(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.”. 30

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]**— 35
- (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; 40
- (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 45
- [(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: