

South Africa

Diamonds Act, 1986

Act 56 of 1986

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Diamonds Act, 1986

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South Africa
Diamonds Act, 1986
Act 56 of 1986

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(English text signed by the State President.)

ACT

To provide for the establishment of a board to be known as the South African Diamond Board; for control over the possession, the purchase and sale, the processing and the export of diamonds; and for matters connected therewith.

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

Chapter I Application of Act

1. Definitions

In this Act, unless the context indicates otherwise—

“**Board**” means the South African Diamond Board established by section 3;

“**business premises**”, in relation to a licensee, means premises of the licensee of which particulars of the location have been endorsed on his licence in terms of section 29(2)(b) or 31(4)(a);

“**controlling interest**”, in relation to—

- (a) a company, means—
 - (i) more than 50 per cent of the issued share capital of the company;
 - (ii) more than half of the voting rights in respect of the issued shares of the company; or
 - (iii) the power, either directly or indirectly, to appoint or remove the majority of the directors of the company without the concurrence of any other person; or
- (b) a close corporation, means more than 50 per cent of the interest in the close corporation;

“**crushed diamond**” means any diamond deriving from a diamond which has been subjected to a process of crushing;

“**cutter**” means the holder of a diamond cutting licence contemplated in section 26(b);

“**dealer**” means the holder of a diamond dealer’s licence contemplated in section 26(a);

“**diamond exchange**” means any premises upon which any person permitted in terms of this Act to sell or purchase an unpolished diamond may sell or purchase the unpolished diamond;

“**diamond powder**” means any powder deriving from a diamond which has been subjected to a process of polishing or crushing;

“**executive officer**” means the executive officer of the Board designated in terms of section [5\(1\)\(a\)](#);

“**exporter**”, in relation to an unpolished diamond, means any person permitted in terms of this Act to export the unpolished diamond;

“**fragment**” means any part of a diamond separated from the diamond in a process of polishing and which is so irregular in shape or so small in size that it is usually unsuitable for polishing;

“**inspector**” means an inspector appointed under section [80\(1\)](#);

“**licence**” means a diamond dealer’s licence, diamond cutting licence, diamond tool-making licence or diamond research licence contemplated in section [26](#);

“**licensee**” means a dealer, cutter, tool-maker or researcher;

“**Minister**” means the Minister of Mineral and Energy Affairs;

“**partly processed diamond**” means a diamond which has been subjected to one or more processes of polishing, but not so many processes that it is in the opinion of the Board a polished diamond, and includes a diamond known as an “acht kant”, but does not include such an “acht kant” which in the opinion of the Board is a polished diamond;

“**police official**” means a police official as defined in section [1\(1\)](#) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#));

“**polished diamond**” means a diamond which has, in accordance with the requisites of its class or form, been subjected to so many processes of polishing that it is in the opinion of the Board a polished diamond;

“**polishing**”, in relation to any unpolished or polished diamond, means the sawing, cutting, cleaving or dividing in any manner, faceting, brilliantteering or altering of that diamond;

“**prescribed**” means prescribed by regulation;

“**producer**” means any person who is in terms of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), entitled to win or recover diamonds;

“**purchase**”, in relation to an unpolished diamond, means to purchase the unpolished diamond, to deal in it or to obtain it by way of barter, pledge or in any like manner;

“**register**” includes a computer print-out;

“**registering officer**” means any person in the service of the Board or any person referred to in section [13\(c\)](#) assisting in the administration of a provision of Chapter VI;

“**regulation**” means a regulation made under section [95\(1\)](#);

“**researcher**” means the holder of a diamond research licence contemplated in section [26\(d\)](#);

“**sell**”, in relation to an unpolished diamond, means to sell the unpolished diamond, to offer or expose it for sale, barter or pledge or for any like purpose or to dispose of or deliver it for the purpose of trade;

“**synthetic diamond**” means a diamond produced by means of any synthetic, mechanical or chemical process;

“**this Act**” includes a regulation;

“**tool-maker**” means the holder of a diamond tool-making licence contemplated in section [26\(c\)](#);

“**unpolished diamond**” means a diamond in its natural state or a synthetic diamond which has after the production thereof not been altered in any manner, and includes diamond powder, a crushed diamond, a fragment and a partly processed diamond.

2. Provisions of this Act may be applied in respect of other precious stones

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 of “precious stones” in section 1 of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)).

Chapter II The South African Diamond Board

3. Establishment of South African Diamond Board

There is hereby established a board to be known as the South African Diamond Board and which shall be a juristic person.

4. Objects of Board

The objects of the Board shall be—

- (a) to ensure that the diamond resources of the Republic are exploited and developed in the best interest of the country; and
- (b) to promote the sound development of diamond undertakings in the Republic.

5. Constitution of Board

- (1) The Board shall consist of—
 - (a) two officers of the Department of Mineral and Energy Affairs, of whom the Minister shall designate one as chairman and the other as executive officer of the Board;
 - (b) one officer of the Department of Finance nominated by the Minister of Finance;
 - (c) one member of the South African Police nominated by the Commissioner of the South African Police;
 - (d) the chairman of the Mining Leases Board referred to in section 5(1) of the Mining Rights Act, 1967 ([Act No. 20 of 1967](#));
 - (e) one member of the management board of the Diamond Producers' Association, other than a member in the service of the State or appointed by it, nominated by such Association;
 - (f) one producer, or a representative of that producer, chosen by the Minister from among producers who are not members of such Association;
 - (g) one person nominated by the Diamond Trading Company (Pty) Ltd;
 - (h) one person nominated by an association or by associations which in the opinion of the Minister represent dealers;
 - (i) one person nominated by an association or by associations which in the opinion of the Minister represent cutters;
 - (j) one person nominated by an association or by associations which in the opinion of the Minister represent employees of cutters;
 - (k) two other persons who in the opinion of the Minister are able to assist the Board in achieving its objects, one of whom shall have been nominated by the Jewellery Council of South Africa.
- (2) Subject to the provisions of section 6, the Minister shall appoint the persons referred to in subsection (1) as members of the Board.

- (3) (a) In order to appoint a person referred to in paragraph (e), (g), (h), (i) or (j) of subsection (1), the Director-General; Mineral and Energy Affairs shall in writing request the body or bodies concerned to submit to him within 30 days after the date of the request the name of a nominated person.
- (b) If such body or bodies fail to submit a name within the period referred to in paragraph (a), the Minister may appoint the person considered by him as suitable, as a member of the Board in the place of the person referred to in the relevant paragraph.
- (4) The Minister shall, having regard to the applicable provisions of this section, appoint for every member of the Board, excluding a member referred to in subsection (1)(a), (d) or (k), an alternate member.
- (5) The member of the Board referred to in subsection (1)(b) shall be the vice-chairman of the Board.
- (6) The vice-chairman may, if the chairman is absent or for any reason unable to act as chairman, perform the functions of the chairman.

6. Persons not qualified to be members of Board

No person shall be appointed as a member or an alternate member of the Board if—

- (a) he is not a South African citizen permanently resident in the Republic;
- (b) he is an unrehabilitated insolvent; or
- (c) he has been convicted of any offence for which he has been sentenced to imprisonment without the option of a fine.

7. Term of office of members of Board and filling of vacancies

- (1) A member or an alternate member of the Board appointed in terms of section 5 shall hold office for such period, but not exceeding five years, as the Minister may determine at the time of his appointment.
- (2) If a member or an alternate member of the Board for any reason ceases to hold office, the Minister may, having regard to the applicable provisions of section 5, appoint a person in his place for the unexpired period of his term of office.
- (3) Any person whose term of office as a member or an alternate member of the Board has expired, shall be eligible for reappointment.

8. Vacating of office by members of Board

- (1) A member or an alternate member of the Board shall vacate his office—
 - (a) if he becomes subject to any disability mentioned in section 6;
 - (b) if he becomes of unsound mind;
 - (c) in the case of a member, if he has been absent from more than two consecutive meetings of the Board without leave of the chairman or, in the case of an alternate member, if he has been so absent during the absence or vacancy in the office of the member for whom he has been appointed as alternate member; or
 - (d) in the case of a member or, where applicable, an alternate member referred to in section 5(1)(a), (b), (c) or (d), if he ceases to hold the qualification by virtue of which he was appointed as a member or an alternate member of the Board.
- (2) The Minister may at any time remove a member or an alternate member of the Board from his office if in the opinion of the Minister sound reasons exist for doing so.

9. Meetings of Board

- (1) The first meeting of the Board shall be held at a time and place determined by the chairman, and thereafter the Board shall meet at such times and places as the Board may from time to time determine.
- (2) The chairman of the Board may at any time convene a special meeting of the Board to be held at such time and place as he may determine.
- (3) Seven members of the Board shall form a quorum for a meeting of the Board.
- (4) If both the chairman and the vice-chairman are absent from a meeting of the Board, the members present shall from among their number elect a person to preside at that meeting.
- (5) The decision of a majority of the members of the Board present at a meeting of the Board shall constitute a decision of the Board, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.
- (6) No decision taken by the Board or act performed under authority of the Board shall be invalid merely by reason of a vacancy on the Board or of the fact that any person not entitled to sit as a member of the Board, sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the Board present at the time and who were entitled to sit as members.
- (7) For the purposes of this section "member" includes an alternate member present at the relevant meeting of the Board during the absence or vacancy in the office of the member for whom he has been appointed as alternate member.

10. Executive committee

- (1) The Board may establish an executive committee of the Board, which may during the periods between meetings of the Board perform such functions of the Board as the Board may from time to time determine, but the executive committee shall not have the power, except in so far as the Board directs otherwise, to set aside or vary any decision of the Board.
- (2) The executive committee shall consist of the chairman, the executive officer and at least two other members of the Board.
- (3) The chairman of the Board shall be the chairman of the executive committee.
- (4) The provisions of section [9\(5\)](#) shall *mutatis mutandis* apply in respect of a meeting of the executive committee.
- (5) The Board may set aside or vary any decision of the executive committee other than a decision in pursuance of which any payment has been made, any licence, permit or certificate has been issued or any other right has been granted to any person.

11. Committees for specific purpose

- (1) The Board may establish one or more committees of the Board, which may, subject to the directions of the Board, perform such functions of the Board as the Board may determine.
- (2) A committee of the Board shall consist of one or more members of the Board or one or more persons considered suitable by the Board, and the Board may at any time dissolve or reconstitute the committee.
- (3) One of the members of a committee of the Board shall be designated by the Board as chairman of the committee.

- (4) The Board shall not be divested of any function performed by a committee of the Board by virtue of the provisions of this section.

12. Remuneration of members of Board and of executive and other committees

A member or an alternate member of the Board or a member of the executive or any other committee of the Board who is not in the full-time employment of the State may be paid out of the funds of the Board such remuneration and allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

13. General functions of Board

In addition to the other functions assigned to the Board by this Act, the Board may—

- (a) hire, buy or otherwise acquire such movable or immovable property as the Board 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 bought or otherwise acquired or sold or otherwise disposed of without the approval of the Minister;
- (b) for the purposes of the performance of its functions, enter into any agreement with any person, including the State, for the performance of any particular act or particular work or the rendering of particular services;
- (c) by means of insurance provide for cover for the Board against any loss, damage, risk or liability which the Board may suffer or incur;
- (d) from time to time make recommendations to the Minister on any matter to which this Act relates, and shall advise the Minister on any such matter referred to it by the Minister;
- (e) in general perform such acts as may be necessary or expedient for the achievement of its objects.

14. Persons in service of Board

- (1) The work incidental to the performance of the functions of the Board shall, subject to the directions of the Board, be performed by—
 - (a) persons appointed by the Board on such conditions and at such remuneration as the Minister may, with the concurrence of the Minister of Finance, determine;
 - (b) officers or employees placed at the disposal of the Board under section 14(3)(a) of the Public Service Act, 1984 ([Act No. 111 of 1984](#)).
- (2) The Board shall compensate the State for every payment made by the State in accordance with a condition of service applicable in respect of an officer or employee referred to in subsection (1)(b).
- (3) For the purposes of this Act, an officer or employee referred to in subsection (1)(b) shall be deemed to be a person in the service of the Board.

15. Executive officer

- (1) In addition to the other functions assigned to the executive officer by this Act, the executive officer shall be responsible for the execution of the Board's decisions and the administration of the Board's affairs.
- (2) The provisions of section [14\(2\)](#) shall not apply in respect of the executive officer.

16. Funds of Board

- (1) The funds of the Board shall consist of—
 - (a) moneys obtained by virtue of the provisions of this Act;

- (b) moneys appropriated by Parliament to enable the Board to perform its functions under this Act; and
 - (c) moneys which may accrue to the Board from any other source.
- (2) The Board shall utilize its funds to defray the expenses incurred by the Board in the performance of its functions under this Act, but shall utilize any money or other property donated or bequeathed to the Board in accordance with the conditions of the donation or bequest concerned.
- (3) The Board shall open an account with an institution registered as a bank in terms of the Banks Act, 1965 ([Act No. 23 of 1965](#)), and shall deposit in that account the moneys received by in terms of subsection (1).
- (4) The Board may invest any money received in terms of subsection (1) and not required for immediate use with the Public Investment Commissioners or such other institution as the Minister may, with the concurrence of the Minister of Finance, determine.

17. Accounting responsibility

- (1) The executive officer shall be the accounting officer of the Board, and as such shall be charged with the responsibility of accounting for moneys received by the Board and payments made by the Board.
- (2) The financial year of the Board shall terminate on 31 March in each year.
- (3) The accounting officer shall—
 - (a) keep records of moneys received or expended by the Board, and of the assets, liabilities and financial transactions of the Board;
 - (b) as soon as possible, but not later than three months after the end of each financial year referred to in subsection (2), prepare annual financial statements showing, with the appropriate particulars, moneys received by the Board and expenditure incurred by the Board during, and its assets and liabilities at the end of, such financial year.
- (4) The records and annual financial statements referred to in subsection (3) shall be audited by the Auditor-General.

Chapter III Illegal acts

Possession of and dealing in unpolished diamonds

18. Possession of unpolished diamonds prohibited

Save as is otherwise provided in this Act, no person shall have any unpolished diamond in his possession unless—

- (a) he is a producer who has won or recovered that diamond from the sea or from land or debris in accordance with any licence, permit, lease or other authority granted to him under the Precious Stones Act, 1964 ([Act No. 73 of 1964](#));
- (b) he has manufactured that diamond, if it is a synthetic diamond;
- (c) he is a licensee;
- (d) he is in respect of that diamond the holder of a permit under this Act;
- (e) he is in possession of that diamond in implementing an agreement entered into by him with a person referred to in paragraph (a), (b), (c) or (d); or

- (f) he has otherwise come into possession of that diamond in a lawful manner.

19. Sale of unpolished diamonds prohibited

- (1) No person shall sell any unpolished diamond unless—
 - (a) he is a producer;
 - (b) he has manufactured that diamond, if it is a synthetic diamond;
 - (c) he 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, dealer or holder of a permit to sell any unpolished diamond which has come into his possession in an unlawful manner.

20. Purchase of unpolished diamonds prohibited

No person shall purchase any unpolished diamond unless—

- (a) he is a licensee; or
- (b) he is the holder of a permit referred to in section [40\(1\)\(b\)](#).

21. Dealing in unpolished diamonds restricted

No person—

- (a) referred to in section [19\(1\)](#) shall sell any unpolished diamond to any person other than a person referred to in section [20](#); and
- (b) referred to in section [20](#) shall purchase any unpolished diamond from any person other than a person referred to in section [19\(1\)](#).

Processing of diamonds

22. Processing of diamonds prohibited

No person shall polish any diamond or crush or set any unpolished diamond in any tool, implement or other article unless—

- (a) he is a cutter, tool-maker or researcher;
- (b) he is an employee acting in the course of his employment with that cutter, tool-maker or researcher; or
- (c) he is authorized thereto in writing by the Board.

23. Erection and operation of machinery prohibited

No person shall erect or operate any machine designed or adapted for the polishing of diamonds unless—

- (a) he is a cutter, tool-maker or researcher;
- (b) he is an employee acting in the course of his employment with that cutter, tool-maker or researcher; or
- (c) he is authorized thereto in writing by the Board.

Export of unpolished diamonds

24. Export of unpolished diamonds prohibited

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

- (a) he is a producer;
- (b) he has manufactured that diamond, if it is a synthetic diamond;
- (c) he is a dealer; or
- (d) he is the holder of a permit referred to in section [40\(1\)\(a\)](#) or [\(c\)](#) or [\(2\)](#).

General

25. Unpolished diamonds found or picked up by chance

- (1) Any person who by chance finds or picks up any unpolished diamond at any place where he or his employer is not permitted to prospect, dig or mine for diamonds in terms of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), shall forthwith take that diamond to the nearest police station and deliver it to the member of the South African Police on duty.
- (2) If the Commissioner of the South African Police or any other member designated by him—
 - (a) is satisfied that a person is the owner of a diamond referred to in subsection [\(1\)](#) or is entitled to be in possession thereof, he shall deliver that diamond to such person; or
 - (b) is not so satisfied, he shall cause a notice to be published in the *Gazette* calling upon any person who may be the owner of that diamond or entitled to be in possession thereof to prove his ownership or right of possession.
- (3) If no person furnishes proof to the satisfaction of such Commissioner or member of his ownership or right of possession within 21 days after the date of publication of a notice referred to in subsection [\(2\)\(b\)](#), such Commissioner or member shall cause the diamond in question to be sold and the proceeds thereof shall, subject to subsection [\(4\)](#), be paid into the State Revenue Fund.
- (4) If such Commissioner or member is satisfied that the diamond in question was found or picked up in the circumstances mentioned in subsection [\(1\)](#), he shall pay to the person who so found or picked up that diamond an amount calculated at one-third of the amount realized at the sale in terms of subsection [\(3\)](#).

Chapter IV

Licences and permits

Licences

26. Kinds of licences

Subject to the provisions of this Chapter, the Board may issue the following licences, 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 licence entitling the holder to polish diamonds for the purpose of business or trade;

- (c) a diamond tool-making licence entitling the holder to set unpolished diamonds in tools, implements or other articles or to crush or to alter those diamonds for the purposes 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.

27. Applications for licences

- (1) Any natural or juristic person may apply to the Board on the prescribed form for a licence.
- (2) An applicant for a licence shall furnish such additional particulars in connection with his application as the Board may require.

28. Consideration of applications for licences

- (1) Before the Board decides on any application for a licence, it may conduct such investigation regarding the application as it may deem fit.
- (2) Subject to the provisions of this Chapter, the Board may at its discretion grant or refuse an application for a licence, but the Board 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 carry on the activities authorized by the licence, or to be involved in such activities;
 - (b) that an interest which any person has in the applicant is undesirable;
 - (c) that the applicant will probably not be able to exercise in a satisfactory manner control over the activities authorized by the licence;
 - (d) that there are already a sufficient number of persons holding the licence in question; or
 - (e) that the issue of the licence will be contrary to the public interest.
- (3) If the Board refuses an application for a licence, the executive officer, shall notify the applicant in writing of the decision of the Board.

29. Issue of licences

- (1) If the Board grants an application for a licence, the executive officer shall against payment of the prescribed fee issue to the applicant the licence on the prescribed form.
- (2) The executive officer shall endorse on such licence—
 - (a) any condition determined by the Board under section 30(1); and
 - (b) particulars of the location of the premises approved by the Board under section 31(1).

30. Conditions of licence

- (1) A licence shall be subject to such conditions as the Board may determine at the time of the granting of the application in question.
- (2) The Board may at any time—
 - (a) cancel or vary any condition to which a licence is subject; or
 - (b) impose any condition or any further condition in respect of a licence.
- (3) The executive officer shall endorse on the licence any cancellation, variation or condition referred to in subsection (2).

- (4) In order to give effect to subsection (3), the executive officer may request a licensee in writing to submit his licence to the executive officer within the period specified in the request.

31. Business premises

- (1) No licence shall be issued unless the premises upon which the activities authorized by the licence will be carried on—
 - (a) comply with the prescribed requirements; and
 - (b) were approved by the Board.
- (2) Any licensee who desires to move or extend his business premises to any other premises shall apply to the Board in writing for its approval of the new or additional premises, as the case may be.
- (3) After such investigation as the Board may deem fit, it may grant, on such conditions as it may determine, or refuse an application referred to in subsection (2), but the Board shall not grant any application if it is of the opinion—
 - (a) in the case of an application in respect of any additional premises, that the granting of the application will not be in the interest of the diamond trade in general; or
 - (b) that the new or additional premises, as the case may be, do not comply with the prescribed requirements.
- (4) If the Board—
 - (a) grants an application referred to in subsection (2), the executive officer shall against payment of the prescribed fee endorse on the licence the particulars of the location of the new or additional premises, as the case may be, and such other alterations as the Board may direct; or
 - (b) refuses the application, the executive officer shall notify the licensee in writing of the decision of the Board.

32. Period of validity of licences

- (1) Subject to the provisions of subsection (2), a licence shall be valid until it is suspended or cancelled in terms of this Chapter.
- (2) The Board may authorize the issue of a temporary licence for such period, but not exceeding one year, as the Board may determine.

33. Transfer of licences by juristic persons prohibited

Unless a licensee is a natural person who has acquired the approval of the Board to transfer his licence in terms of section 34, he shall not in any manner dispose of his licence or allow any other person to acquire any interest therein.

34. Applications by natural persons for transfer of licences

- (1) Any natural person who desires to transfer his licence to a company or close corporation shall apply to the Board in writing for its approval of such transfer.
- (2) A licensee who has applied in terms of subsection (1) for the Board's approval shall furnish such additional particulars in connection with his application as the Board may require.

- (3) The Board shall not grant its approval for the transfer of a licence to a company or close corporation if it is of the opinion—
 - (a) that the licensee concerned does not hold the controlling interest in the company or close corporation;
 - (b) that, in the case of the company, any director thereof or, in the case of the close corporation, any member thereof is not a suitable person to carry on the activities authorized by the licence, or to be involved in such activities; or
 - (c) that an interest which any person has in the company or close corporation is undesirable.
- (4) If the Board—
 - (a) grants its approval for a transfer referred to in subsection (1), the executive officer shall endorse on the licence such alterations as are necessary as a result of the transfer; or
 - (b) refuses its approval for the transfer, the executive officer shall notify the licensee in writing of the decision of the Board.

35. Controlling interest in companies and close corporations

- (1) No person shall without the prior written approval of the Board acquire a controlling interest in any company or close corporation after a licence has been issued or transferred in terms of this Chapter to that company or close corporation.
- (2) The Board shall grant the approval referred to in subsection (1) only if it is of the opinion—
 - (a) that the person concerned or, where that person is a company, any director thereof or, where that person is a close corporation, any member thereof is a suitable person to carry on the activities authorized by the licence in question, or to be involved in such activities; or
 - (b) that the acquisition of a controlling interest by that person will be in the interest of the diamond trade in general.

36. Conversions of companies and close corporations

- (1) A licensee which—
 - (a) is a company and is converted into another type or form of company or into a close corporation; or
 - (b) is a close corporation and is converted into a company,shall within 14 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.
- (2) The executive officer shall endorse on the licence such alterations as are necessary as a result of a conversion referred to in subsection (1).

37. Suspension and cancellation of licences

- (1) If—
 - (a) a licensee has furnished information to the Board in or in connection with his application for a licence which is in a material respect untrue;
 - (b) a controlling interest was acquired without the written approval of the Board in a licensee which is a company or close corporation;
 - (c) any interest, other than an interest referred to in paragraph (b), which in the opinion of the Board is undesirable was acquired in a licensee;

- (d) a licensee has contravened or failed to comply with a condition of the licence;
 - (e) a licensee has contravened or failed to comply with a provision of this Act;
 - (f) a licensee is or was at any time involved in the illegal possession of or trade in unpolished diamonds;
 - (g) a licensee—
 - (i) has at any time been convicted of any offence which in the opinion of the Board renders him unsuitable; or
 - (ii) is for any other reason in the opinion of the Board not a suitable person, to carry on the activities authorized by the licence, or to be involved in such activities; or
 - (h) a licensee has ceased to carry on the activities authorized by the licence,
- the Board may by way of a notice in writing request the licensee to show cause within the period specified in the notice, which period shall not be less than 20 days after the date of the notice, why his licence should not be suspended or cancelled.
- (2) Upon expiry of the period referred to in subsection (1), the Board may—
 - (a) suspend the licence in question for such period as it may determine; or
 - (b) cancel that licence with effect from such date as it may determine.
 - (3) While a licence is suspended under subsection (2)(a), the licensee concerned shall be deemed not to be licensed.
 - (4) The Board shall cancel the licence of a licensee if requested to do so by the licensee.
 - (5) For the purposes of paragraph (d), (e), (f) or (g) of subsection (1) “licensee” includes—
 - (a) where the licensee is a company, any director of the company; or
 - (b) where the licensee is a close corporation, any member of the close corporation.

38. Return of licences

- (1) If the Board suspends or cancels a licence under section 37(2), the executive officer shall notify the licensee in writing of the decision of the Board.
- (2) Any licensee who has ceased to carry on the activities authorized by his licence or whose licence has been suspended or cancelled under section 37(2) shall within 30 days after having ceased to carry on such activities or after becoming aware of such suspension or cancellation return his licence to the Board.

39. Appeal to Minister against decisions of Board in respect of licences

- (1) Any person aggrieved by a decision taken by the Board under a preceding provision of this Chapter may in the prescribed manner and within the prescribed period appeal against the decision to the Minister.
- (2) The Minister shall consider in the prescribed manner an appeal lodged with him 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 in the opinion of the Minister ought to have taken.

Permits

40. Applications for permits

- (1) Any person may apply to the Board in writing for a permit authorizing him, subject to any condition contained in the permit—
 - (a) to deliver or sell an unpolished diamond which he has lawfully in his possession;
 - (b) to receive or purchase an unpolished diamond; or
 - (c) to export an unpolished diamond.
- (2) Any producer may apply to the Board in writing for a permit authorizing a natural person, subject to any condition contained in the permit, to sell unpolished diamonds on behalf of that producer.
- (3) The Board may require that an application referred to in paragraph (a) or (c) of subsection (1) be accompanied by a sworn statement by the applicant in which he sets forth how the diamond in question came into his possession.
- (4) An applicant for a permit under this Act shall furnish such additional particulars in connection with his application as the Board may require.

41. Consideration of applications for permits

The Board may at its discretion grant, on such conditions as it may determine, or refuse an application for a permit under this Act, but the Board shall not grant any application if it is of the opinion that the issue of the permit will be contrary to the public interest.

42. Issue of permits

- (1) If the Board grants an application for a permit under this Act, the executive officer shall against payment of the prescribed fee issue to the applicant the permit on the prescribed form.
- (2) The executive officer shall endorse on such permit any condition determined by the Board in terms of section 41.

43. Cancellation, variation or imposition of conditions

- (1) The Board may at any time—
 - (a) cancel or vary any condition to which a permit under this Act is subject; or
 - (b) impose any condition or any further condition in respect of a permit under this Act.
- (2) The executive officer shall endorse on the permit any cancellation, variation or condition referred to in subsection (1).
- (3) In order to give effect to subsection (2), the executive officer may request the holder of a permit under this Act in writing to submit his permit to the executive officer within the period specified in the request.

Chapter V

The diamond trade

Diamond exchanges

44. Utilization of unregistered premises as diamond exchanges prohibited

No person shall utilize any premises as a diamond exchange unless those premises are registered as a diamond exchange in terms of this Chapter.

45. Applications for registration of diamond exchanges

- (1) Any person who desires to utilize any premises as a diamond exchange shall apply to the Board in writing for the registration of those premises as a diamond exchange.
- (2) An applicant for the registration of premises as a diamond exchange shall furnish such additional particulars in connection with his application as the Board may require.

46. Consideration of applications for registration of diamond exchanges

- (1) Before the Board decides on any application referred to in section [45](#), it may conduct such investigation regarding the application as it may deem fit.
- (2) The Board may at its discretion grant or refuse an application referred to in section [45](#), but the Board 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;
 - (b) that an interest which any person has in the applicant is undesirable;
 - (c) that the premises do not comply with the prescribed requirements;
 - (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 will be contrary to the public interest.

47. Registration of diamond exchanges

- (1) If the Board grants an application referred to in section [45](#), the executive officer shall against payment of the prescribed fee register the premises in question as a diamond exchange and issue to the applicant a certificate of registration as a diamond exchange on the prescribed form.
- (2) The registration of any premises as a diamond exchange in terms of subsection [\(1\)](#) shall be subject to the prescribed conditions.

Premises

48. Dealings in unpolished diamonds restricted to approved premises

- (1) No producer, manufacturer of synthetic diamonds, 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 as a diamond exchange in terms of this Chapter;
 - (c) the premises referred to in subsection (2)(d); or
 - (d) such other premises as the Board may approve under section 49 on application in writing by such producer, manufacturer or holder.
- (2) No licensee or holder of a permit referred to in section 40(1)(b) shall receive or purchase any unpolished diamond elsewhere than on—
- (a) the business premises of a licensee;
 - (b) any premises registered as a diamond exchange in terms of this Chapter;
 - (c) the premises referred to in subsection (1)(d); or
 - (d) such other premises as the Board may approve under section 49 on application in writing by the licensee.

49. Approval of premises

- (1) If an application for the approval of premises is made to the Board in terms of section 48(1)(d) or (2)(d), the Board may conduct such investigation regarding the application as it may deem fit.
- (2) The Board may at its discretion grant, on such conditions as it may determine, or refuse an application for the approval of premises, but the Board shall not grant any application if it is of the opinion—
 - (a) that the granting of the application will not be in the interest of the diamond trade in general; or
 - (b) that the premises do not comply with the prescribed requirements.
- (3) If the Board grants an application for the approval of premises, the executive officer shall against payment of the prescribed fee issue to the applicant concerned a certificate of approval in respect of the premises on the prescribed form.
- (4) The executive officer shall endorse on such certificate any condition determined by the Board under subsection (2).

50. Processing of diamonds restricted to approved premises

- (1) Subject to the provisions of this section, no cutter, tool-maker or researcher shall polish any diamond or crush or set any unpolished diamond in any tool, implement or other article elsewhere than on his business premises.
- (2) A cutter may apply to the Board to polish diamonds on such premises other than his business premises and for such period as the Board may approve.
- (3) The provisions of section 49 shall *mutatis mutandis* apply in respect of an application by a cutter in terms of subsection (2).

51. Licensees to display names and other particulars at business premises

Every licensee shall display his full name and a description indicating that he is a licensed diamond dealer, diamond cutter, diamond tool-maker or diamond researcher, as the case may be, in a conspicuous position and in characters easily legible on the outside of his business premises.

Authorized representatives

52. Dealings in unpolished diamonds on behalf of juristic persons restricted to authorized representatives

No natural person shall sell or purchase any unpolished diamond on behalf of a juristic person unless he is registered as an authorized representative of the juristic person in terms of this Chapter.

53. Applications for registration of authorized representatives

- (1) Any juristic person may apply to the Board on the prescribed form for the registration of a natural person as its authorized representative.
- (2) A juristic person which has applied in terms of subsection (1) for the registration of an authorized representative shall furnish such additional particulars in connection with its application as the Board may require.

54. Registration of authorized representatives

- (1) The Board shall not grant any application referred to in section 53 if it is of the opinion—
 - (a) that the natural person concerned does not comply with the prescribed requirements; or
 - (b) that a sufficient number of authorized representatives have already been registered in respect of the juristic person.
- (2) If the Board grants an application referred to in section 53, the executive officer shall register the natural person concerned as an authorized representative of the juristic person and issue to the juristic person a certificate of registration as an authorized representative of the juristic person on the prescribed form.

Handling of unpolished diamonds

55. Receipt of unpolished diamonds by licensees

No licensee shall receive or purchase any unpolished diamond—

- (a) for any purpose other than the activities authorized by his licence; or
- (b) from any person not lawfully in possession of that diamond.

56. Notes of receipt or purchase in respect of unpolished diamonds

- (1) Whenever a licensee receives or purchases any unpolished diamond he shall forthwith complete in duplicate a note of receipt or purchase on the prescribed form.
- (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 years after the date on which he received or purchased the unpolished diamond.

57. Registers in respect of unpolished diamonds

- (1) Every producer, manufacturer of synthetic diamonds, dealer, cutter or tool-maker shall keep or cause to be kept the prescribed register, in which shall be entered the prescribed particulars in respect of unpolished diamonds.

- (2) Every entry referred to in subsection (1) shall be made, in the case of a producer, within 24 hours and, in the case of any other person, within 7 days after the occurrence of the event recorded.
- (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.

58. Cutters, tool-makers and researchers to obtain permit to sell or export unpolished diamonds

In order to sell or export any unpolished diamond, other than unpolished diamonds mounted in tools or implements, a cutter, tool-maker or researcher shall obtain a permit referred to in section 40(1)(a) or (c), as the case may be.

General

59. Agreements for supply of unpolished diamonds to cutters and tool-makers

- (1) In order to ensure that cutters or tool-makers obtain a regular supply of unpolished diamonds, 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 to each of those cutters or toolmakers.
- (2) An agreement entered into under subsection (1) may provide for—
 - (a) the determination of the class of unpolished diamonds to be allocated or offered to a cutter or tool-maker;
 - (b) the basis on or manner in which those diamonds are to be allocated or offered;
 - (c) the circumstances under which an allocation or offer may be cancelled or suspended;
 - (d) the terms and conditions of sale applicable to an allocation or offer; and
 - (e) the settlement of disputes in connection with an allocation or offer.
- (3) A cutter or tool-maker shall not acquire any right to an allocation or offer made to him by virtue of this section.

Chapter VI Export of diamonds

Unpolished diamonds

60. Export of unpolished diamonds

No exporter shall export any unpolished diamond from the Republic unless that diamond has been registered and released for export in terms of this Chapter.

61. Registration of unpolished diamonds for export

- (1) Any exporter who desires to register any unpolished diamond for export shall at a prescribed export centre furnish the registering officer with a return on the prescribed form in respect of that diamond.
- (2) In the return furnished in terms of subsection (1) the exporter shall specify the value of the unpolished diamond and declare that the value so specified is to the best of his knowledge and belief the fair market value of that diamond.

- (3) A return referred to in subsection (1) shall be accompanied by the unpolished diamond in question and the prescribed documents.
- (4) If the registering officer is satisfied that an exporter has complied with the provisions of this section and, where applicable, section 77, he shall register the unpolished diamond in question for export.

62. Levying of export duty on unpolished diamonds

- (1) Subject to the provisions of sections 63 and 64, the Board shall levy an export duty on every unpolished diamond exported from the Republic.
- (2) The export duty shall amount to 15 per cent of the fair market value of an unpolished diamond in the Republic as at the date on which that diamond is registered for export in terms of this Chapter.

63. Exemption from export duty

- (1) An unpolished diamond shall be exempted from export duty—
 - (a) if the Board is satisfied that—
 - (i) that diamond has been won or recovered in any mine or alluvial digging as defined in section 1 of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), or in any particular portion of any such alluvial digging, which at the date on which that diamond is registered for export in terms of this Chapter has been approved by the Minister, with the concurrence of the Minister of Finance, as any such mine, digging or portion which cannot be profitably worked or developed owing to unfavourable economic or other circumstances, but should in the national interest be worked or developed;
 - (ii) that diamond has been allocated or offered to a cutter or tool-maker in pursuance of an agreement referred to in section 59 or has in the prescribed manner been offered for sale at a diamond exchange registered in terms of this Act, and that it could not be sold at a fair price; or
 - (iii) that diamond has been won or found outside the Republic;
 - (b) if it is a synthetic diamond; or
 - (c) if the Minister, with the concurrence of the Minister of Finance, determines that it is so exempted.
- (2) The registering officer shall in respect of every unpolished diamond exempted from export duty in terms of this section issue to the exporter concerned a certificate of exemption on the prescribed form.

64. Deferment of payment of export duty

- (1) If the Board is satisfied that any unpolished diamond is exported—
 - (a) to be exhibited or displayed;
 - (b) to obtain an expert opinion on it;
 - (c) in the case where that diamond is of unusual size or value, in an endeavour to find a purchaser for it; or
 - (d) in circumstances where that diamond is likely to be returned unsold to the exporter,the Board may defer payment of export duty on that diamond for such period, but not exceeding six months from the date upon which that diamond was registered for export in terms of this Chapter, as the Board may determine.

- (2) If the payment of export duty on an unpolished diamond has been deferred under subsection (1), the registration officer shall in respect of that diamond issue to the exporter concerned a certificate of deferment on the prescribed form.
- (3) Export duty specified in a certificate issued in terms of subsection (2) shall, subject to subsection (4), be payable within 30 days from the date upon which the certificate lapses.
- (4) No export duty shall be payable on any unpolished diamond in respect of which the payment of export duty has been deferred under this section if that diamond is returned to the Republic to the exporter within the period determined by the Board under subsection (1).

65. Examination and valuation of unpolished diamonds

- (1) The registering officer may—
 - (a) examine any unpolished diamond registered for export in terms of this Chapter and verify any particulars furnished in respect thereof; and
 - (b) retain such diamond in order to have the value thereof assessed in the prescribed manner or by any person designated by the Board for that particular valuation or for valuations 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 specifies the value of that diamond and the name of a person who is prepared to purchase that diamond at the value so specified.
- (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 diamond in question at the value specified therein.

66. Market value

For the purposes of levying export duty on any unpolished diamond in terms of this Chapter—

- (a) the value of that diamond as specified in the return referred to in section 61(2); or
 - (b) the value of that diamond as specified in the certificate referred to in section 65(2),
- whichever is the higher value, shall be deemed to be the fair market value of that diamond.

67. Fine in case of difference in values

- (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 shall impose upon the exporter concerned a fine equal to 20 per cent of such difference in value.
- (2) The imposition of a fine in terms of subsection (1) shall not be affected by the decision of the exporter concerned to accept the offer referred to in section 65(3) in respect of the unpolished diamond or not to export it any longer.
- (3) A fine imposed in terms of subsection (1) shall be payable within 30 days from the date upon which it was imposed.

68. Payment of export duty and fine

- (1) Any export duty levied or any fine imposed in terms of this Chapter shall be paid by the exporter concerned to the Board for the benefit of the State Revenue Fund.
- (2) The Board shall issue to the exporter a receipt in respect of any export duty or fine paid by the exporter.

- (3) Any money paid to the Board in terms of this section shall be paid into the State Revenue Fund within seven days after receipt thereof.

69. Release of unpolished diamonds for export

- (1) The registering officer shall not release any unpolished diamond for export unless—
- (a) that diamond was registered for export in terms of this Chapter;
 - (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 diamond in terms of this Chapter;
 - (c) the exporter has paid any fine imposed upon him in terms of section [67](#);
 - (d) the registering officer is satisfied that the provisions of any other law relating to the export of that diamond have been complied with; and
 - (e) that diamond has been made up in a packet in such manner as the registering officer may determine.
- (2) The registering officer shall release an unpolished diamond for export by sealing the packet referred to in subsection [\(1\)\(e\)](#) with the seal of the Board.

Polished diamonds

70. Export of polished diamonds

No person shall export any polished diamond, irrespective of whether it is set in jewellery or not, from the Republic unless that diamond has been registered and released for export in terms of this Chapter.

71. Registration of polished diamonds for export

- (1) Any person who desires to register any polished diamond for export shall at a prescribed export centre furnish the registering officer with a return on the prescribed form in respect of that diamond.
- (2) A return referred to in subsection [\(1\)](#) shall be accompanied by the polished diamond in question and the prescribed documents.
- (3) If the registering officer is satisfied that the provisions of this section have been complied with, he shall register the polished diamond in question for export.

72. Examination and retention of polished diamonds

The registering officer may—

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

73. Release of polished diamonds for export

- (1) The registering officer shall not release any polished diamond for export unless—
 - (a) that diamond was registered for export in terms of this Chapter;
 - (b) the registering officer is satisfied that the provisions of any other law relating to the export of that diamond have been complied with; and
 - (c) that diamond has been made up in a packet in such manner as the registering officer may determine.
- (2) The registering officer shall release a polished diamond for export by sealing the packet referred to in subsection (1)(c) with the seal of the Board.

74. Exemption from provisions relating to registration of polished diamonds

The Minister may by notice in the *Gazette* exempt any person or category of persons from the provisions of section 60 or 70 on such conditions as may be specified in the notice.

General

75. Board's decision on unpolished or polished diamonds

If in connection with the export of diamonds the question arises whether any diamond is an unpolished or a polished diamond the Board's decision thereon shall be final.

76. Assessment of value of unpolished and polished diamonds

For the purposes of this Chapter, the value of any unpolished or polished diamond shall be assessed—

- (a) by assessing jointly the value of all diamonds indicated on the return referred to in section 61(1) or 71(1), as the case may be; and
- (b) on such further basis as may be prescribed.

Chapter VII Control measures

77. Control over production of diamonds

- (1) The Minister may at any time on the recommendation of the Board and by notice in the *Gazette*—
 - (a) determine the maximum quantity in value of unpolished diamonds which may during the period specified in the notice be disposed of or exported by any producer or a producer so specified;
 - (b) direct that the value of all unpolished diamonds, or of a class of unpolished diamonds specified in the notice, won or recovered by any producer or a producer so specified be assessed in the manner specified in the notice, and prohibit any such producer or specified producer to sell such diamonds, or class of diamonds, without the approval of the Minister at a price below the value so assessed;
 - (c) prohibit any producer or a producer specified in the notice to dispose of any unpolished diamond to, or export it through the agency of, any person other than a person specified in the notice;

- (d) declare that—
 - (i) from the date specified in the notice no agreement entered into by any producer or a producer so specified for the disposal of unpolished diamonds shall be valid unless such an agreement is approved by the Minister; and
 - (ii) any agreement entered into prior to the date of the notice by any producer or a producer so specified for the disposal of unpolished diamonds shall be invalid in respect of unpolished diamonds delivered after that date in pursuance of such an agreement unless such an agreement is approved by the Minister.
- (2) The Minister may at any time amend or withdraw a notice referred to in subsection (1) by like notice in the *Gazette*.

78. Furnishing Board with information

- (1) The Board may in writing direct any person—
 - (a) to furnish the Board periodically or otherwise and before the dates or within the period specified in the direction with such information as the Board may consider necessary to perform effectively its functions under this Act and as may be available to any such person; or
 - (b) to submit to the Board within the period specified in the direction any register, book or document in the possession or custody or under the control of any such person which contains or is believed to contain any such information.
- (2) The Board may require that information requested under subsection (1)(a) be furnished in the form of a sworn statement.
- (3) The Board may examine a register, book or document submitted to it in terms of subsection (1)(b) or make an extract therefrom or a copy thereof.

79. Inquiries by Board

- (1) The Board may inquire into any matter to which this Act relates.
- (2) For the purposes of any such inquiry, the Board may—
 - (a) summon any person who in its opinion may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his possession or custody or under his control any register, book, document or thing which may have a bearing on that subject, to appear before the Board;
 - (b) call upon, and administer an oath to, or accept an affirmation from, any person present at the inquiry who was or could have been summoned under paragraph (a);
 - (c) interrogate or require any person who was called upon under paragraph (b) to produce a register, book, document or thing referred to in paragraph (a).
- (3) A summons for the attendance before the Board of any person shall be in the form determined by the executive officer, shall be signed by the executive officer, and shall be served in the same manner as a summons for the attendance of a witness at a civil action in a magistrate's court.
- (4) The law relating to privilege as applicable to a person summoned to give evidence or to produce a document or thing before a court of law shall be applicable in respect of the interrogation of, or the production of a register, book, document or thing by, any person referred to in subsection (2)(c).

80. Appointment of inspectors

- (1) The Board may appoint any person in its service as an inspector.

- (2) An inspector shall be furnished with a certificate of appointment signed by the executive officer and stating that he has been appointed as an inspector under this Act.

81. Functions of inspectors and police officials

- (1) In addition to the other functions assigned to an inspector or a police official by or under any other law, the inspector or police official may—
- (a) at any reasonable time enter any premises or other property or any vessel on which any activity in connection with unpolished diamonds is carried on and perform on any such premises, property or vessel such acts as may be necessary to ascertain whether the provisions of this Act have been or are complied with;
 - (b) if he has reasonable grounds to suspect that an offence under this Act has been committed in respect of any diamond, or has been or is about to be committed in respect of or by means of any machinery, at any time enter and search any premises or other property or any vessel, vehicle or aircraft on or in which such diamond or machinery is suspected to be found;
 - (c) if he has reasonable grounds to suspect that any machinery is used or intended for use in connection with the polishing of diamonds, examine, test or take photographs of such machinery;
 - (d) question any person who in his opinion may be capable of furnishing any information on any matter to which this Act relates, and for that purpose require a vessel or vehicle to be stopped;
 - (e) if he has reasonable grounds to suspect that any person has committed an offence under this Act in respect of any diamond, search or cause to be searched any such person or any article in his possession or custody or under his control: Provided that a woman shall be searched by a woman only;
 - (f) require from any person who has in his possession or custody or under his control any register or document under this Act, to produce to him forthwith, or at such time and place as may be determined by him, any such register or document;
 - (g) examine any such register or document or make an extract therefrom or a copy thereof, and require from any person an explanation of any entry in any such register or document;
 - (h) if he has reasonable grounds to suspect that any packet which is being or has been transmitted through the post contains any diamond, notwithstanding anything to the contrary in any other law contained, stop or cause to be stopped either during transit or otherwise any such packet, and open and examine any such packet in the presence of the person by whom it was dispatched, or any other suitable person;
 - (i) seize any such diamond, machinery, register or document which appears to provide proof of a contravention of a provision of this Act.
- (2) An interpreter or a police official may accompany an inspector when he performs his functions under this Act.
- (3) An inspector shall not perform any function under this Act unless he is at the time of performing that function in possession of a certificate of appointment referred to in section 80(2), which certificate shall be produced at the request of any person affected by the performance of that function.

Chapter VIII

Offences, penalties and other judicial matters

82. Offences relating to illegal acts

Any person who—

- (a) contravenes a provision of section [18](#), [19\(1\)](#), [20](#) or [21](#);
- (b) places any unpolished diamond in the possession or on the premises or in or on the vessel, vehicle or aircraft, of any other person with intent that such other person be charged with an offence under this Act;
- (c) contravenes a provision of section [22,23](#) or [24](#); or
- (d) fails to comply with a provision of section [25 \(1\)](#),

shall be guilty of an offence.

83. Offences relating to diamond trade

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;
- (b) contravenes a provision of section [33](#), [35\(1\)](#), [44](#), [48](#), [50\(1\)](#), [52](#) or [55](#);
- (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](#), [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.

84. Offences relating to export of diamonds

Any person who—

- (a) contravenes a provision of section [60](#);
- (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.

85. Offences relating to functions of Board, inspectors and police officials

Any person who—

- (a) fails to comply with a direction under section [78\(1\)](#);
- (b) has been duly summoned under section [79](#) and who fails, without sufficient cause—
 - (i) to attend at the time and place specified in the summons; or

- (ii) to remain in attendance until excused from further attendance by the person presiding at the inquiry;
 - (c) has been called upon under section [79\(2\)\(b\)](#) and who refuses to be sworn or to make an affirmation as a witness;
 - (d) fails, without sufficient cause—
 - (i) to answer fully and satisfactorily any question lawfully put to him under section [79\(2\)\(c\)](#); or
 - (ii) to produce any register, book, document or thing in his possession or custody or under his control which he has been required to produce under section [79\(2\)\(c\)](#);
 - (e) hinders or obstructs any inspector or police official in the performance of his functions under this Act;
 - (f) refuses or fails to comply to the best of his ability with any requirement or request made by any inspector or police official in the performance of his functions under this Act;
 - (g) refuses or fails to answer to the best of his ability any question which any inspector or police official in the performance of his functions under this Act has put to him;
 - (h) wilfully furnishes to any inspector or police official information which is false or misleading; or
 - (i) except for the purposes of performing his functions under this Act or when required to do so by any court or under any law, discloses to any other person any information acquired by him in the performance of his functions under this Act,
- shall be guilty of an offence.

86. Offences involving fraudulent conduct

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;
- (b) with intent to defraud alters, defaces, destroys or mutilates any register or document under this Act; or
- (c) falsely gives himself out—
 - (i) to be the holder of a licence or permit under this Act;
 - (ii) to be registered as an authorized representative, of any juristic person; or
 - (iii) to be an inspector,

shall be guilty of an offence.

87. Penalties

Any person who is convicted of an offence under this Act shall be liable—

- (a) in the case of an offence referred to in section [82\(a\)](#) or [\(b\)](#), to a fine not exceeding R50 000, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment;
- (b) in the case of an offence referred to in section [82\(c\)](#), [83\(a\)](#) or [84\(a\)](#), to a fine not exceeding R20 000, or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;
- (c) in the case of an offence referred to in section [83\(b\)](#) or [84\(b\)](#), to a fine not exceeding R10 000, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; and

- (d) in the case of an offence referred to in section [82\(d\)](#), [83\(c\)](#), [\(d\)](#) or [\(e\)](#), [84\(c\)](#) or [\(d\)](#), [85](#) or [86](#), to a fine not exceeding R5 000, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

88. Documentary evidence

In any prosecution for an offence under this Act a document which purports to be a licence, permit, certificate or other authority issued or obtained in terms of this Act, or a copy of such a licence, permit, certificate or authority certified as a true copy by a person who purports to be a person in the service of the Board, shall on its production in the court be admissible in evidence and be *prima facie* proof of the particulars contained therein.

89. Presumption

If it is alleged in any prosecution for an offence under this Act that a diamond in respect of which the offence allegedly was committed is an unpolished diamond, it shall be presumed, until the contrary is proved, that the diamond is an unpolished diamond.

90. Liability of employer or principal

- (1) An act or omission of an employee or agent which constitutes an offence under this Act shall be deemed to be the act or omission of his employer or principal, and that employer or principal may be convicted and sentenced in respect of it unless he proves—
 - (a) that he did not permit or connive at such act or omission; and
 - (b) that he took all reasonable steps to prevent an act or omission of the kind in question; and
 - (c) that an act or omission, whether legal or illegal, of the character of the act or omission charged did not under any condition or in any circumstance fall within the course of the employment or the scope of the authority of the employee or agent concerned.
- (2) For the purposes of subsection [\(1\)\(b\)](#) the fact that an employer or principal forbade an act or omission of the kind in question shall not by itself be regarded as sufficient proof that he took all reasonable steps to prevent such an act or omission.
- (3) The provisions of subsection [\(1\)](#) shall not relieve the employee or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

91. Forfeiture

- (1) Notwithstanding anything to the contrary in any other law contained, any money or property which a person has paid or delivered to an inspector or a member or agent of the South African Police in pursuance of an agreement for the delivery or acquisition of unpolished diamonds, shall upon the conviction of that person of an offence under this Act in connection with such an agreement be forfeited to the State.
- (2)
 - (a) A forfeiture in terms of subsection [\(1\)](#) shall not affect any right which any person other than the convicted person may have to the property forfeited if he satisfies the court concerned—
 - (i) that he did not know that such property was being used or would be used for the purpose of or in connection with the commission of the offence in question; or
 - (ii) that he could not prevent such use.
 - (b) Paragraph [\(a\)](#) shall not apply to any money so forfeited.

- (3) The provisions of section 35 (4) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), shall *mutatis mutandis* apply in respect of a right referred to in subsection (2), and for the purposes of such application—
- (a) a reference in the said section to the court shall be construed as a reference to the court which has convicted the person referred to in subsection (1); and
 - (b) a reference in the said section to a declaration of forfeiture shall be construed as a forfeiture, in terms of subsection (1).

92. Jurisdiction of magistrates' courts

Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any penalty provided for in this Act.

Chapter IX General

93. Levies

- (1) In order to defray the expenses incurred by the Board in the performance of its functions under this Act, the Minister may annually on the recommendation of the Board and by notice in the *Gazette* impose a levy on producers or licensees or on any association or organization of producers, dealers or cutters.
- (2) A levy imposed under subsection (1) shall be payable to the Board on or before such day and by such persons-as may be determined in the relevant notice.
- (3) Different levies may be determined under subsection (1) in respect of different categories of producers or licensees, and the Minister may exempt any category of producers or licensees from the levy.

94. Co-operation with other governments and bodies

For the purposes of implementing an agreement entered into by the Government of the Republic and the government of any other country or territory with a view to the promotion or regulation of the production, processing or marketing of diamonds, the Board may in the Republic or in any such country or territory and on behalf of that government or any body in any such country or territory perform the functions set out in the agreement in question or determined thereunder.

95. Regulations

- (1) The Minister may after consultation with the Board make regulations as to—
 - (a) the manner in which meetings of the executive or any other committee of the Board shall be convened, the procedure and quorum at those meetings and the manner in which minutes of those meetings shall be kept;
 - (b) the prevention of illegal acts relating to diamonds;
 - (c) the registration of persons in the service, or involved in the activities, of a licensee and the keeping of a register of persons so registered;
 - (d) control over and the searching of those persons;
 - (e) the imposition of a restriction on or prohibition of any particular interest in the activities carried on by a producer or licensee;

- (f) the cancellation of any registration under this Act or of any permit, certificate or other authority issued or obtained in terms of this Act;
 - (g) the payment of witness fees to persons summoned to appear before the Board;
 - (h) the imposition of a fine by the Board on the failure of any person to pay any export duty or levy within the period determined by or under this Act, irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against any such person in respect of the failure;
 - (i) the fees payable to the Board for services rendered by it;
 - (j) the performance of the Board's functions in implementing an agreement referred to in section 94;
 - (k) any matter required or permitted to be prescribed by regulation under this Act; and
 - (l) in general, any matter which the Minister may consider necessary or expedient to prescribe or regulate in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs.
- (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

96. Consultation by Board

The Board shall consult the Minister in the exercise of such powers of the Board as the Minister may from time to time determine.

97. Assignment of functions

- (1) The Minister may delegate to any officer of the Department of Mineral and Energy Affairs any power conferred upon the Minister by this Act, excluding the power referred to in section 95(1).
- (2) The Board may—
 - (a) delegate to the chairman, executive officer, registration officer or any person in the service of the Board any power conferred upon the Board by this Act on such conditions as the Board may determine; or
 - (b) authorize any such chairman, officer or person to perform any duty assigned to the Board by this Act.
- (3) The executive officer may—
 - (a) delegate to any person in the service of the Board any power conferred upon the executive officer by this Act, excluding a power delegated to the executive officer under subsection (2)(a); or
 - (b) authorize any such person to perform any duty assigned to the executive officer by this Act.
- (4) Any delegation under subsection (1), (2)(a) or (3)(a) shall not prevent the exercise of the relevant power by the Minister himself, Board itself or executive officer himself, as the case may be.

98. Amendment or repeal of laws, and savings

- (1) Subject to the provisions of this section, the laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

- (2) Anything done by virtue of a provision repealed by subsection (1) and which is permitted or required to be done in terms of a provision of this Act, shall be deemed to have been done in terms of the latter provision.
- (3) Any licence deemed to have been issued in terms of a provision of this Act, excluding a temporary licence issued for a particular period, shall remain in force until it is suspended or cancelled in terms of Chapter IV.
- (4)
 - (a) Any person who immediately prior to the commencement of this Act was appointed by the Diamond Cutting Board or seconded to its service under section 7 of the Diamond Cutting Act, 1979 ([Act No. 89 of 1979](#)), shall upon such commencement be deemed to be appointed by the Board or placed at its disposal under section [14](#) of this Act, respectively.
 - (b) At the commencement of this Act the assets, liabilities, rights and obligations of the said Diamond Cutting Board shall vest in the Board.
- (5) Notwithstanding anything to the contrary in this section contained, any approval granted under the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), in respect of an accredited agent as defined in section 1 of the said Act shall lapse at the commencement of this Act.

99. Short title and commencement

This Act shall be called the Diamonds Act, 1986, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule (Section 98)
Laws amended or repealed

| No. and year of law | Short title | Extent of amendment or repeal |
|-------------------------------------|---|---|
| Act No. 39 of 1925 | Diamond Control Act, 1925 | The repeal of the whole. |
| Act No. 16 of 1957 | Diamond Export Duty Act, 1957 | The repeal of the whole. |
| Act No. 47 of 1961 | Diamond Export Duty Amendment Act, 1961 | The repeal of the whole. |
| Act No. 77 of 1962 | Finance Act, 1962. | The repeal of section 20. |
| Act No. 56 of 1966 | Revenue Laws Amendment Act, 1966 | The repeal of section 4. |
| Act No. 103 of 1969 | Revenue Laws Amendment Act, 1969 | The repeal of sections 10, 11 and 12. |
| Act No. 92 of 1971 | Revenue Laws Amendment Act, 1971 | The repeal of section 10. |
| Act No. 29 of 1974 | General Law Amendment Act, 1974 | The repeal of section 13. |
| Act No. 106 of 1980 | Revenue Laws Amendment Act, 1980 | The repeal of section 15. |
| Act No. 99 of 1981 | Revenue Laws Amendment Act, 1981 | The repeal of section 6. |
| Act No. 92 of 1983 | Revenue Laws Amendment Act, 1983 | The repeal of section 4. |
| Act No. 73 of 1964 | Precious Stones Act, 1964 | <ol style="list-style-type: none"> 1. The amendment of section 1— <ol style="list-style-type: none"> (a) by the deletion of the definitions of “accredited agent”, “banker” and “licensed dealer”; and |

- (b) by the substitution for the definition of “rough or uncut diamond” of the following definition:

“rough or uncut diamond’ means any unpolished diamond as defined in the Diamonds Act, 1986;”

2. The amendment of section 28 by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) is unable personally to keep the registers which he is required to keep under **[Chapter IX of this Act]** the Diamonds Act, 1986; or”.

3. The repeal of sections 84, 85, 86 and 88.
4. The substitution for section 90 of the following section:

“90. False statement by applicant

**for
permit**

- (1) Any person who in connection with any application for a **[licence or]** permit under this Chapter makes or causes to be made a statement which is false in any material particular, knowing the same to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding five

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|--|-----|--|--|
| | | | thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment. |
| | | (2) | Any such [licence or] permit issued to a person convicted under the provisions of subsection (1) shall be null and void.”. |
| | 5. | The repeal of sections 91 to 110. | |
| | 6. | The amendment of section 117— | |
| | (a) | by the deletion in subsection (1) of the words “a licensed dealer or”; and | |
| | (b) | by the substitution in subsection (3) for the words “this Act” of the words “a law”. | |

7. The repeal of sections 118 and 119.
8. The insertion of the following section after section 124:

**“124A Power
of
Minister
upon
conviction
of
producers
and
holders
of
washing
permits
of
certain
offences**

If a
producer
or the
holder
of a
washing
permit
is
convicted
of an
offence
referred
to in
section
83(a)
of the
Diamonds
Act,
1986,
the
Minister
may,
notwithstanding
anything
to the
contrary
in this
Act
contained,
cancel
the
licence,

| | | |
|------------------------------------|---------------------------|---|
| | | <u>permit,</u> <u>lease</u> <u>or</u> <u>other</u> <u>authority</u> <u>granted</u> <u>to him</u> <u>under</u> <u>this</u> <u>Act.</u> ”. |
| Act No. 89 of 1979 | Diamond Cutting Act, 1979 | The repeal of the whole. |