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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 874

23 July 1999

LABOUR RELATIONS ACT, 1995

DIAMOND CUTTING INDUSTRY OF SOUTH AFRICA: EXTENSION OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Diamond Cutting Industry of South Africa and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employees in that Industry, with effect from 2 August 1999 and for the period ending 30 June 2001.

M. M. S. MDLADLANA
Minister of Labour

No. R. 874

23 Julie 1999

WET OP ARBEIDSVERHOUDINGE, 1995

**DIAMANTSLYPNYWERHEID VAN SUID-AFRIKA: UITBREIDING
VAN KOLLEKTIEWE HOOFOOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Engelse Bylae hiervan verskyn en wat in die Bedingingsraad vir die Diamantslypnywerheid van Suid-Afrika aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie nywerheid, met ingang van 2 Augustus 1999, en vir die tydperk wat op 30 Junie 2001 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

Nota: 'n Afrikaanse vertaling van die ooreenkoms by die Engelse kennisgewing is beskikbaar by die Raad.

SCHEDULE**BARGAINING COUNCIL FOR THE DIAMOND CUTTING INDUSTRY OF SOUTH AFRICA****MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered by and between the

Master Diamond Cutters' Association of South Africa

(hereinafter referred to as the "employer" or the "employers' organisation"), of the one part and the

South African Diamond Workers' Union

(hereinafter referred to as the "employees" or "trade union"), of the other part,
being parties to the Bargaining Council for the Diamond Cutting Industry of South Africa.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed—
 - (a) throughout the Republic of South Africa as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);
 - (b) by all employers and by all the employees who are employed in the Diamond Cutting Industry.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—
 - (a) only apply to employees for whom wages are prescribed in this Agreement and to the employers of such employees; and
 - (b) apply in respect of apprentices only in so far as such application is not inconsistent with the provisions of the Manpower Training Act, 1981, or any regulation thereunder or any contract entered into in terms thereof;
 - (c) not apply in respect of cleaving.
- (3) Notwithstanding the provisions of subclause (2) (a), the provisions of this Agreement shall apply to foremen where applicable in terms thereof.
- (4) In this Agreement, clauses 1 (1) (b), 2 (2), 4 (1) (b), 26, 28, 30 and 31, shall not apply to non parties.

2. PERIOD OF OPERATION OF AGREEMENT

- (1) The provisions of this Agreement shall come into operation on such date as may be determined by the Minister of Labour in terms of section 32 of the Act, and shall remain in operation until 30 June 2001.
- (2) For the parties to this Agreement the provisions shall come into force from 1 August 1998.

3. DEFINITIONS

- (1) Any terms used in this Agreement, which are defined in the Act, shall have the same meaning as in the Act. Any reference to any Act shall include any amendments thereto and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context—

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"apprentice" means an employee who—

- (a) is a probational apprentice; or
- (b) is serving an apprenticeship in terms of the Manpower Training Act, 1981 (Act No. 56 of 1981);
- (c) has been duly exempted from the Manpower Training Act, 1981: Provided that such employee is the son, son-in-law, daughter or daughter-in-law of the proprietors, partners, shareholder or directors of the employer;

"average daily rate" means the total remuneration due to an employee for actual days worked during a calendar year, or part thereof, with an employer, divided by the total number of days actually worked by the employee;

"cleaving" means the dividing of a diamond by means of splitting;

"cleaver" or **"diamond cleaver"** means an employee who is engaged in the cleaving of diamonds;

"clerical employee" means an employee who is engaged in writing, typing or any other form of clerical work and includes a telephone operator;

"council" means the Bargaining Council for the Diamond Cutting Industry of South Africa, registered in terms of section 29 of the Act, read with Schedule 7;

"desertion" means where an employee leaves the services of the employer without giving notice as specified in this agreement or is absent for a period of three days or more without advising his employer and without good cause;

"designated trade" means one of the trades designated for the Industry in terms of section 16 (1) of the Manpower Training Act, 1981;

"diamond cutter" means an employee who is engaged in the cutting and/or recutting of diamonds;

"Diamond Cutting Industry" or **"Industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and employees are associated for the purpose of converting uncut gem diamonds into cut polished gem diamonds and further includes the cutting and/or recutting and/or repolishing of gem diamonds and all operations incidental to or consequent upon the process of polishing, cutting and polishing gem diamonds.

"diamond cutting licence" means a licence issued in terms of the Diamonds Act, 1986 (Act No. 56 of 1986), entitling the holder to polish diamonds for the purposes of business or trade;

"diamond polisher" means an employee who is engaged in the polishing of diamonds;

"diamond sawyer" means an employee who is engaged in the sawing of diamonds;

"earnings" or **"total earnings"** means the total income earned weekly, monthly or from time to time by an employee in the Industry, which shall for the purposes of determining contributions to the Holiday Bonus Fund exclude the amount paid to an employee in respect of holiday bonus;

"establishment" means any premises in or in connection with which one or more employees are employed in the Industry;

"foreman" means an employee who is in charge of the employees in an establishment or in a department of an establishment, who exercises disciplinary control over such employees and who is responsible to the management for the efficient performance by them of their duties;

"Grade I employee" means an employee who is a journeyman, who is appointed to a position of journeyman and who is engaged in cutting and/or polishing and/or sawing diamonds, and is engaged in any operation or process that contributes to the processing of diamonds in the industry;

"Grade IB employee" means an employee engaged in any operation or process that contributes to the processing of diamonds in the Industry and who is not a journeyman or apprentice;

"Grade IIA employee" means a mechanic who is a skilled artisan, other than a Grad I employee, and who is engaged in work normally performed by a skilled artisan, and for the purpose of this definition the expression "skilled artisan" means a person who has served his apprenticeship in a trade designated or deemed to have been designated under the Manpower Training Act, 1981, or is employed on work falling within such designation, or who holds a certificate of proficiency issued to him by the Registrar of Apprenticeship in terms of section 6 of the Training of Artisans Act, 1951, or a certificate issued to him by the said Registrar in terms of either section 2 (7) or section 7 (3) of the said Act;

"Grade IIB employee" means an employee who is engaged on scouring wheels;

"Grade IIC employee" means an employee who is engaged in one or more of the following duties or operations:

- (a) Cleaning premises, utensils, machinery, implements, tools, utensils or other articles;
- (b) carrying, moving or stacking goods, machinery, implements, tools, utensils or other articles;
- (c) making or maintaining fires or removing refuse or ashes;
- (d) delivering or conveying letters, messages, parcels or other articles on foot or by bicycle, tricycle or manually-propelled vehicles, including a mechanically-propelled bicycle or tricycle of under 55 cc engine capacity;
- (e) oiling or greasing machinery;
- (f) making tea or similar beverages; or
- (g) duties not specifically otherwise mentioned in clause 3 (1);

"gratuity" means a payment of money by an employer to his employee, in the sole and absolute discretion of the employer, to which the employee is not entitled in terms of his conditions of employment;

"journeyman" means an employee who—

- (a) has served an apprenticeship in the Industry in accordance with the relevant provisions contained in the Manpower Training Act, 1981, or in respect of whom an exemption has been granted in accordance with paragraph (c) of the definition of "apprentice";
- (b) being an employee not falling within the terms of paragraph (a) hereof, has, prior to 27 April 1970, been employed in the Industry as a journeyman, and been specifically accepted by the Council as a journeyman;
- (c) being an employee not falling within the terms of paragraphs (a) and (b) hereof, has satisfied the Council that he has had sufficient previous experience or training (i.e. three years) in a trade as designated in the Diamond Cutting Industry, to undergo a trade test as stipulated by the Council and has passed such trade test;
- (d) is in possession of a certificate of proficiency issued before 1 July 1990 in terms of the Manpower Training Act, 1981;

"performance-related remuneration" means the payment that an employee shall be paid by his employer in terms of clause 11 of this Agreement, but shall exclude all gratuities given to an employee;

"piecework" means any method of remuneration whereby an employee's entire wage depends solely upon his individual production without any guaranteed minimum wage other than that prescribed by law, i.e. the minimum prescribed wage in the Diamond Cutting Industry;

"polishing" means the polishing of diamonds;

"probational apprentice" means an employee in respect of whom an apprenticeship contract is intended and is required to be entered into and who, pending the formal entering into of such contract, is permitted to be employed in the Industry;

"remuneration" means the amount of money that an employee shall be paid by his employer from time to time arising in any manner whatsoever out of his employment, and "remunerate" shall have a corresponding meaning;

"Secretary" means the Secretary of the Bargaining Council for the Diamond Cutting Industry of South Africa;

"short time" means the temporary suspension of work or the curtailment of the working hours of a journeyman, apprentice or other employee as is permissible in terms of this Agreement;

"wage" means the payment that an employee shall be paid by his employer from time to time in terms of clause 4 of this Agreement;

"watchman" means an employee who is engaged in guarding premises, buildings, gates, doors, vehicles or other property.

(2) In classifying an employee for the purposes of this Agreement, he shall be deemed to be in that class in which he is wholly or mainly engaged.

4. WAGES

(1) (a) No employer shall pay and no employee shall accept wages lower than the following other than where a written agreement is concluded in terms of clause 11 (8):

	Per week R	Per month R
Clerical employee	207,70	900,00
Grade 1 employee	448,65	2 100,00
grade 1B employee—		
during first three months of experience	132,70	575,00
during second three months of experience	199,05	862,50
thereafter	265,41	1 150,00
Grade 11A-employee	448,65	2 100,00
Grade 11B-employee	184,63	800,00
Grade 11C-employee	173,09	750,00
Watchman	196,17	850,00

(b) Clause 4 (1) (a) shall be effective from 1 August 1998 for the parties to this Agreement.

Note: The above rates of pay have been arrived at after allowing for the cost of pay and the following benefits: Pension, holiday bonus, sick pay fund, unemployment benefit fund, UIF, Council fees and medical aid, so that the gross cost of a Grade 1B operator is approximately R1,500 per month.

(2) **Performance-related remuneration:** The basic wage of an employee who is employed on performance-related remuneration as provided in clause 11, shall be calculated at 50% of the employee's earnings in respect of the previous three months.

(3) **Basis of contract:** For the purposes of this clause, the basis of the contract of employment of an employee shall be weekly or monthly and, save as provided in subclause (5), clause 5 (4), clause 10 and clause 15 (1), an employee shall be paid in respect of a week not less than the full weekly wage as set out in subclause (1) for an employee of his class or such higher wage as may be agreed upon between an employer and an employee, whether or not he has in that week worked the maximum number of ordinary hours as set out in clause 6, subject to clause 6 (1) (c).

(4) Calculation of wages: For the purposes of calculating an employee's wage—

- (a) the hourly wage of an employee shall be his weekly wage divided by the number of ordinary hours worked by such employee per week;
- (b) the daily wage of an employee shall be his weekly wage divided by five;
- (c) the monthly wage of an employee shall be four and a third times his weekly wage;
- (d) the weekly wage of an employee shall be his monthly wage divided by four and a third.

For the purpose of calculating monthly wages due to an employee where a complete month is not worked as a result of engagement or termination of employment or in respect of non-working periods in terms of clause 5 (4) (b) or (d) occurring during the month, the amount due shall be for the number of days worked in the month and the amount for each such day shall be calculated by dividing the monthly wage by the number of working days, including paid public holidays, in the said month.

(5) Differential wage: An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either in addition to his own duties or in substitution therefor, work of another class for which a higher wage than that of his own class is prescribed in subclause (1) shall pay to such employee for that day a wage equal to the higher weekly wage divided by five: Provided that where the sole difference between the classes is in terms of subclause (1) based on experience, the provisions of this subclause shall not apply.

(6) Interchange of employees: An employee shall perform any work connected with the Industry assigned to him by his employer: Provided that he shall not suffer any financial loss by so doing.

5. PAYMENT OF REMUNERATION

(1) (a) Save as provided in clause 7, any amount due to an employee shall be paid weekly or monthly, in cash, or, if the employer and employee have agreed thereto, by cheque or electronic transfer, during the hours of work on the usual pay day of the establishment for such employee or on termination of employment if this takes place before the usual pay day, and such amount shall be contained in a sealed envelope or container, on which shall be recorded or which shall be accompanied by a statement showing—

- (i) the employer's name;
- (ii) the employee's name or payroll number, if any, and his class of employment;
- (iii) the number of overtime hours worked by the employee;
- (iv) the employee's wage;
- (v) details of any other remuneration arising out of the employee's employment;
- (vi) the details of any deductions made;
- (vii) the actual amount paid to the employee; and
- (viii) the period in respect of which payment is made;

such envelope or container on which these particulars is recorded or such statement shall become the property of the employee.

(b) Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, a notice specifying the time and place of payment of remuneration, and the day on which payment is made weekly, and the date each month on which payment is made monthly.

(2) Purchase of goods: An employer shall not require his employees to purchase any goods from him or from any shop or person nominated by him.

(3) Board and lodging: Subject to any law, an employer shall not require his employee to board or lodge, or board and lodge, with him or with any person or at any place nominated by him.

(4) Fines and deductions: An employer shall not levy any fines against his employee nor shall he make any deductions from his employee's remuneration other than the following:

- (a) Trade union subscription fees, entrance fees or arrears in accordance with a duly completed stop order signed by the employee, contributions to the Council in terms of clause 22, deductions for a sick benefit, pension or unemployment fund in terms of any other agreement entered into between the parties hereto and/or declared binding in terms of section 32 of the Act;
- (b) except where otherwise provided for in this Agreement, whenever an employee is not at work, other than on the instruction or at the request of his employer, a deduction proportionate to the period of his absence calculated on the basis of the wage that such employee was receiving in respect of his ordinary hours of work at the time thereof;
- (c) a deduction of any amount that an employer is legally required or permitted to make, or in accordance with a written authorisation given and accepted by such employee and accepted by the employer;
- (d) whenever an employee is not at work owing to short-time operation in terms of this Agreement, he shall be entitled to be remunerated for such non-working time as provided for in this Agreement;
- (e) a deduction for any money lent by an employer to his employee;

- (f) a deduction for any money owed by his employee to any other employer in the industry in respect of money lent to such employee when in the employ of such former employer: Provided that the recovery of such money and transmission to the former employer shall be subject to approval by and under the control of the Council and the consent of the parties concerned; application for approval shall be made by the employer concerned by forwarding a statement to the Council.

6. HOURS OF WORK: ORDINARY AND OVERTIME PAYMENT FOR OVERTIME

(1) **Ordinary hours of work:**

- (a) The ordinary hours of work of an employee, excluding a watchman, shall not exceed—
- (i) 40 in any week from Monday to Friday, inclusive;
 - (ii) eight on any particular day.
- (b) The ordinary hours of work of a watchman shall not exceed—
- (i) 60 in any week for the period of this Agreement until 31 December 1997;
 - (ii) 55 in any week from 1 January 1998 to 31 December 1998;
 - (iii) 50 in any week from 1 January 1999 to 31 December 1999;
 - (iv) 45 in any week from 1 January 2000.
- (c) The employer may elect to increase the ordinary working hours in his establishment to a maximum of nine hours per day and 45 hours per week, subject to the approval of the majority of the Grade 1 and Grade 1 (b) employees employed in the establishment. Where such increase in ordinary hours of work occurs, the earnings of all employees shall be increased in on a pro rata basis in accordance with the provisions of clause (4) in respect of the increased hours of work.

(2) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one half hour during which interval no work shall be performed by the employee and such interval shall not be deemed to be part of the ordinary hours of work of overtime: Provided that—

- (a) if such interval is longer than one half hour, any period in excess of three quarters of an hour shall be deemed to be hours worked;
- (b) periods of work interrupted by an interval of not less than one half of an hour shall be deemed to be continuous.

(3) **Rest intervals:** An employer shall grant to each of his employees, other than a sawyer a rest interval of not less than 10 minutes as nearly as practicable in the middle of each morning and afternoon work period during which interval an employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work.

(4) (a) **Set time for meal and rest intervals:** There shall be a set time in each establishment for the intervals referred to in subclauses (2) and (3) and every employer shall—

- (i) publish these times in a conspicuous place readily accessible to his employees, and this notice shall include starting and finishing times of work;
- (ii) notify the Council within one month of the publication of this Agreement of such set times in his establishment; and
- (iii) notify the Council within one week of any change in connection with subparagraph (ii).

(b) Notwithstanding anything to the contrary contained in subclause (2) hereof, a sawyer may be required to work during the meal interval: Provided that the time so worked shall be correspondingly offset against the ordinary hours of work before closing time on each day.

(5) **Prohibition of work:** Notwithstanding the provisions of subclause (1) an employer whose conditions of employment effective on or before 8 August 1986 allowed for ordinary hours of work in excess of 40 hours in any week in respect of certain employees shall be granted an exemption in terms of clause 17 of this Agreement in respect of such certain employees to continue to work such hours, and to have them considered as their ordinary hours of work.

(6) **Hours of work to be consecutive:** Save as provided in subclauses (2) and (3), all hours of work shall be consecutive.

(7) **Overtime:** Subject to the provisions of subclause (5) all hours worked in excess of the maximum number of ordinary hours of work specified in subclause (1) shall be deemed to be overtime.

(8) Overtime shall be voluntary and an employer shall not require or permit his employee to work overtime for more than—

- (a) 10 hours in any week;
- (b) two hours on any day;
- (c) 10 hours on a Saturday;

Provided that any party may apply for exemption in terms of clause 17 for a further period.

(9) **Payment for overtime:** An employee who works overtime shall, in respect of each hour or part of an hour so worked, be paid not less, than the amounts stipulated in the Basic Conditions of Employment Act, 1983.

- (10) Payment for work on a public holiday shall be in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994).
- (11) **Payment in respect of work on Sundays:** Whenever an employee works on Sunday, his employer shall either—
- pay the employee at double the hourly rate of pay for actual hours work; or
 - grant paid time off the the equivalent value of the difference between the actual pay for the day and the entitlement in subclause (a).

7. ANNUAL LEAVE

The following shall apply to employees and apprentices;

- Employees and apprentices shall be entitled to 17 working days' leave per annum commencing in December of each year (hereinafter referred to as the "annual leave period"), subject to the provisions of this clause.
 - The annual leave period may be divided into three periods of consecutive days: Provided that one of the said periods shall be for a period of not less than 10 consecutive working days, to comence in December on a date to be determined by the Council each year, which date shall be decided by the Council by not later than 30 November of the previous year. The Council shall advise the Industry by circular of such date. In the event that an employer elects to divide the leave period into two or three periods of consecutive days, the employer shall furnish his employees with not less than three months' written notice of the commencement dates of such periods.
 - Notwithstanding the above, in the event that a simple majority of the total number of employees in an establishment vote in favour of a reduction in the annual leave period from 17 working days to 15 working days, the annual leave period shall thereafter be 15 working days in such establishment. In the event that the annual leave period is so reduced, the employer shall compensate the employees in his employ at the date on which the decision to reduce the annual leave period is taken, by increasing the remuneration of all employees by an amount equivalent to two days' pay.
- Every employer shall grant to each and every one of his employees and apprentices leave of absence from work during the said leave period.
- An employee or apprentice in the Industry shall not undertake employment in the Industry during the said leave period and an employer shall not employ and employee or apprentice during the said period.
- Subject to the provisions of subclause (9), every employer shall pay to each and every one of his employees and apprentices who have completed one year's employment with him at the commencement of the said leave period 17 working days' pay at his average daily rate in respect of the said period.
- Every employer shall pay to each and every one of his employees and apprentices who have not completed one year's employment with him at the commencement of the said leave period, 1,42 of a day's full pay (or in the event that leave is reduced to fifteen days in accordance with clause (1), one and one third) at his average daily rate in respect of each completed calendar month or part thereof being not less than two weeks of employment with the same employer.
- For the purpose of calculating the average daily rate of an employee or an apprentice who does not participate in any scheme in terms of clause 11, the rate shall be whatever is the greater amount when calculating—
 - the average daily rate; or
 - the daily rate based on the remuneration being recieved by such employee at the commencement of the leave period:

Provided that this shall not apply to an employee who did not participate in any scheme in terms of clause 11 at any time during his employment with the employer during the year to which the leave relates.
- An employee or apprentice whose contract of employment terminates befor the commencement of the said leave period shall be entitled to *pro rata* leave pay calculated on the basis of 1,33 days' full pay at his average daily rate in respect of each completed calendar month or part thereof being not less than two weeks of employment with the same employer.
- All *pro rata* leave pay shall be paid by his employer to an employee on termination of employment.
- The remuneration in respect of the leave period specified in subclause (1) shall be paid not later than the last working day immediately before the date of commencement of leave: Provided that in the case of monthly paid employees, the remuneration in respect of the annual leave period referred to in subclause (1) shall be paid up to 31 December and payment of the portion of the leave falling in January shall be paid, together with any other monies due for January, when making payment for such on the usual payday of the establishment for such employee, or on termination of employment where termination occurs before such usual pay day.
- For the purposes of this clause the expression "employment" shall be deemed to include any period or periods during which an employee is—

- (a) absent on leave in terms of this clause;
- (b) absent from work on the instructions or at the request of his employer;
- (c) absent from work on short time in terms of this Agreement;
- (d) absent on sick leave in terms of clause 8 (1); or
- (e) absent on sick leave in terms of the Sick Pay Fund referred to in clause 8 (4);

8. SICK LEAVE

(1) An employer shall grant to his employee who is absent from work through incapacity, 36 working days' sick leave in the aggregate on full pay during each period of 36 consecutive months for which the employee is employed by him (hereinafter referred to as a sick leave cycle): Provided that during the first 12 consecutive months of employment, an employee shall not be entitled to sick leave on full pay at a rate of more than one working day in respect of each completed period of five weeks' employment.

(2) An employer shall not be required in terms of subclause (1) to pay an employee if the employee has been absent from work for more than two consecutive days, or more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

(3) Where an employer pays fees for hospital or medical treatment in respect of an employee, the employer may set off the amount so paid against any payment that he has to pay in terms of subclause (1) to the employee in respect of sick leave.

(4) The provisions of subclause (1) shall not apply in respect of an employee who is a member of the Sick Pay Fund, a casual employee or a person receiving benefits in terms of section 22 of the Basic Conditions of Employment Act, 1997.

(5) For the purposes of this clause—

(a) any period during which an employee—

- (i) is on leave by virtue of membership of the Sick Pay Fund;
- (ii) is on sick leave by virtue of subclause (1); or
- (iii) is absent from work on the instruction or at the request of his employer;

in the aggregate of 30 weeks in any sick leave cycle shall be deemed to be employment with his employer;

(b) any continuous employment that an employee has had with the same employer at the commencement of this Agreement shall be taken into account, and any sick leave on full pay granted by the employer to the employee during that period of continuous employment shall be deemed to have been granted under this clause.

8A PARENTAL RIGHTS

Sections 25, 26 and 27 of the Basic Conditions of Employment Act, 1997, shall apply in respect of maternity leave, protection of employees before and after birth of a child and family responsibility leave.

9. PUBLIC HOLIDAYS AND SUNDAYS

An employee shall be entitled to leave on full pay on a public holiday as defined in the Public Holidays Act, 1994.

10. SHORT TIME

(1) Short time may be worked only in the circumstances provided for in this clause.

(2) Whenever an employee is placed on short time for whatever reason he shall be paid a minimum of 65% of his daily rate or average daily rate of pay, whichever is the higher, calculated on a daily basis per day for each day or part of a day he is on short time: Provided that no reduction of wages in respect of non-working time shall be made unless the employer has given his employee written notice that short time is to operate, not later than the day preceding the commencement of the said short time: Provided further that the reduction in terms of this clause shall be limited in respect of non-working time to a period not exceeding 40 working days in the aggregate in any one calendar year.

(3) During any period of short time worked in any establishment, the employer concerned may be permitted to give out work on commission only if the work given out could not have been performed by those employees or class of employees on short time.

(4) Not less than 24 hours' notice of short time in terms of this subclause shall be given to employees. At the time of giving such notice, the employer shall simultaneously make application in terms of the Manpower Training Act, 1981, to place on short time those apprentices who are engaged on the same work as such employees.

11. PERFORMANCE-RELATED REMUNERATION**A. Tariff workers**

- (1) An employer may require some or all of his employees to participate in a performance-related remuneration scheme. He shall negotiate a tariff or rate or basis for such performance-related remuneration according to the category of work of such employees. The object of such scheme is to achieve value added cost of processing diamonds in line with internationally competitive rates. Details of such applicable agreements shall be supplied to such of his employees who participate in any such scheme. Details of such agreements shall be submitted to the Council in writing within one week of being requested by the Council to do so.
- (2) Where a tariff is applicable to an employee there shall be a minimum level of output required in relation to his remunerations, based on a combination of basic and tariff. This amount shall be determined by the agreed-upon tariff.
- (3) For any level of earnings applicable to such employee, there shall be a minimum level of output expected in respect of the basic portion of his remuneration. This will be referred to as his "standard" or basic as contemplated in clause 4.2 of this Agreement.
- (4) The standard shall be determined by that level of output that an employee would have to produce on the applicable tariff to earn such basic remuneration.
- (5) Where an employee on a combination of basic and tariff falls below the standard, but within ten per cent of the standard, the employee shall be given written notice of the unsatisfactory performance, and if the standard of output is not reached the following month, then the level of pay shall be reduced to the minimum applicable to that class of employee, and subject to the application of the appropriate tariff.
- (6) Where an employee on a combination of basic and tariff falls below the standard, but by more than ten per cent of the standard, the employee shall be given written notice of the unsatisfactory performance, and shall immediately be placed on the minimum basic applicable to that class of employee, and subject to the application of the appropriate tariff.
- (7) Where an employee is already on the minimum basic pay as contemplated in clause 11A (6) and the standard is not met, then written notice of the unsatisfactory performance shall be given and if the standard of output is not reached the following month the employee shall be given intention of notice of termination in terms of the provisions of the Act.
- (8) Notwithstanding the minimum basic pay, where an employee is unable to meet his performance standards, the employee and the employer may enter into a written agreement to be paid a lower basic subject to a standard commensurate with such lower basic pay. Such agreement shall receive appropriate approval by retrospective ratification in terms of clause 17. Where approval is not granted, the agreement shall become void seven days after notice to this effect is issued.
- (9) Where such an agreement is entered into and the standard is still not met, then notice of termination may be given subject to the provision of clause 17 hereof.
- (10) In all cases referred to above, the employer shall have established that there was no good cause or impediment to the achievement of the standard and an employee shall have the right to present a case, with the right of representation by the trade union, to the employer as to why his standard could not be achieved. Where shortage of work occurs and short time is applied, then the performance shall be assessed on the days on which the employee did work.
- (11) Implementation of basic pay of the employee for performance-related remuneration shall be based on the levels of output of the employee in the three months immediately prior to the implementation date.
- (12) Alteration of a tariff agreement shall require a minimum of one month's written notice.

B. Straight wage worker

- (1) Where an employee is paid a straight wage, then the employer and the employee shall agree on the minimum level of output required for such wage. This shall be referred to as his "standard".
- (2) Where an employee on a straight wage falls below the standard, the employer may give written notice to the employee of his unsatisfactory performance and deal with the poor performance in terms of the requirements of the Act.
- (3) Where an employee is unable to meet his standard, the employer and employee may enter into an agreement to adjust the level of straight wage and the corresponding level of output required, or to apply performance-related remuneration.
- (4) Notwithstanding the minimum basic pay, where an employee is unable to meet his performance standard, the employee and the employer may enter into a written agreement to be paid a lower basic subject to a standard commensurate with such lower basic pay. Such agreement shall receive appropriate approval by retrospective ratification in terms of clause 17. Where approval is not granted, the agreement shall become void seven days after notice to this effect is issued.

- (5) Where such an agreement is entered into and the new standard is still not met, then notice of termination may be given, subject to the provisions of clause 17 hereof.
- (6) In all cases referred to in this clause, the employer shall have established that there was no good cause or impediment to the achievement of the standard and an employee shall have the right to present a case, with the right of representation by the trade union, to the employer as to why the standard could not be achieved. Where shortage of work occurs and short time is applied, then the performance shall be assessed on the days on which the employee did work.

12. PROTECTIVE CLOTHING

(1) Every employer shall provide each of his employees and apprentices with at least two dust coats per year, which garments shall remain the property of the employer. These garments shall be issued no later than two weeks after engagement of such employee.

(2) When an employee leaves the service of the employer the current issue of protective clothing shall be returned to the employer. Should the employee fail to do so, the employer shall be entitled to deduct a sum equivalent to the value of such clothing, reduced pro rata by each month from the date of issue, from any amounts due to the employee.

13. PROHIBITION OF EMPLOYMENT OF ANY PERSON UNDER THE AGE OF 15 YEARS

An employer shall not employ any person under the age of 15 years.

14. CERTIFICATE OF SERVICE

(1) An employer shall, on termination of the contract of employment of an employee, furnish him with a certificate of service showing the full names of the employer and his employee, the nature of employment, the dates of commencement and termination of the contract and the rates of remuneration at the date of such termination.

(2) The provisions of subclause (1) shall not apply in respect of a contract of employment that is terminated on the grounds of the employee's desertion.

15. TERMINATION OF CONTRACT OF EMPLOYMENT

- (1) Whenever an employer or an employee intends terminating a contract of employment he shall give the other party—
 - (a) during the first four weeks of employment, one working day's notice of termination of such contract;
 - (b) at any time after the first four weeks of employment, if the employee is a weekly paid employee, one week's notice, and if the employee is a monthly paid employee, two weeks' notice of termination of such contract;
 - (c) notice as specified in a written contract, where this is for a greater period than specified in (a) or (b) above.
- (2) Notice in terms of subclause (1) shall, except when given by an illiterate employee, be given in writing—
 - (a) in the case of a weekly employee, on or before the usual pay day of the employee concerned and shall run from the day after such pay day;
 - (b) in the case of a monthly employee, on or before the 1st or the 15th day of a month and shall run from such 1st or 15th day, as the case may be;
 - (c) in the case of notice in terms of subclause (1) (a), on any working day.

(3) Notice shall not run concurrently, with, nor shall it be given during, an employee's absence on leave granted in terms of the Agreement, nor during a period of short time.

(4) Where notice of termination of a contract of employment is given in terms of subclause (1), the employer shall pay to the employee, as his remuneration in respect of the period of notice, an amount calculated at his daily or average daily rate (whichever is the higher) for the period of notice. This amount shall not be less than an amount equal to the remuneration that the employee was receiving immediately before such notice was given—

- (a) in the case of a period of notice of one day, on the day before;
- (b) in the case of a period of one or more weeks, on the week before, multiplied by the number of weeks in such period;
- (c) in the case of a period of one or more months, on the month before, multiplied by the number of months in such period.

(5) Notwithstanding the provisions of subclause (1) the employer or employee may terminate a contract of employment without requiring notice to be worked, provided that the party giving notice pays to the other the amount that would have been required to be paid to the employee in terms of subclause (4) had the contract been terminated with notice.

(6) The provisions of this clause shall not apply in respect of a casual employee and shall not affect—

- (a) the right of an employee or an employer to terminate a contract of employment without notice for any cause recognised by law as sufficient;
- (b) the operation of any forfeiture or penalty that by law may be applicable in respect of an employee who deserts.

(7) For the purposes of this clause an employee shall be deemed to be—

- (a) a weekly employee if his wage is paid weekly;
- (b) a monthly employee if he is paid otherwise than weekly.

(8) Where an employee, not acting within his legal rights, owes payment in lieu of notice to an employer, the employer may deduct such amount from any monies due to the employee, provided that such deduction has received the approval of the Council.

(9) In cases where the notice of termination of a contract of employment is cancelled or where there is no break in an employee's service with an employer, the contract shall be regarded as continuous.

16. EXHIBITION OF AGREEMENT

Every employer shall—

- (a) keep a copy of this Collective Agreement available in the workplace at all times;
- (b) make that copy available for inspection by any employee; and
- (c) give a copy of this Collective Agreement—
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

17. EXEMPTIONS

(1) The Council may grant exemption from any of the provisions of this Agreement to or in respect of any person for any good and sufficient reason.

(2) The Council shall fix, in respect of any person granted exemptions under the provisions of subclause (1) of this clause, the conditions subject to which such exemption shall operate: Provided that the Council may, if it deems fit, after 30 days' notice in writing has been given to the person concerned, withdraw an exemption, whether or not the period for which the exemption was granted has expired.

(3) (a) The Council hereby appoints an appeal board to consider and dispose of appeals by non-parties for exemptions not approved by the Council or a withdrawal of an exemption by the Council. the Appeal Board may, having regard to the individual merits of each application, the recommendation of the Council, the views expressed by the employer(s) and the workforce, grant, withdraw or reject an application for an exemption to an employer or an employee from this agreement if—

- (i) it is fair to both the employer, its employees and other employers and employees in the sector;
- (ii) it does not undermine the Agreement;
- (iii) it will make a material difference to the viability of an applicant's business;
- (iv) it will assist to overcome economic hardship occurring during the currency of the Agreement and will save unnecessary job losses.

(b) Wage and wage-related exemptions shall apply only for the duration of the Agreement.

(4) the Secretary of the Council shall issue to every person granted exemption in accordance with the provisions of this clause a consecutively numbered licence of exemption signed by him, setting out—

- (a) the full name(s) of the person(s) concerned;
- (b) the provisions of the Agreement from which exemption has been granted;
- (c) the conditions fixed in accordance with the provisions of subclause (2) of this clause subject to which such exemption is granted; and
- (d) the period during which the exemption shall operate.

(5) Every employer and employee shall observe the provisions of any licence of exemption in terms of this clause.

(6) Exemptions shall be dealt with by the Council in accordance with the provisions of its Constitution.

18. PREMIUMS

No premiums shall be charged or accepted by an employer for the training of an employee.

19. EXISTING CONTRACTS

Any contract of service in operation at the date of the commencement of this Agreement or concluded subsequent to such date shall be varied by and subject to the provisions of this Agreement.

20. AGENTS

The Council may apply for one or more specified persons to be appointed as designated agents in terms of section 33 of the Act to assist it in giving effect to the provisions of this Agreement. It shall be the duty of every employer and employee to permit such agents to institute or make such enquiries and to examine such books and/or documents and to interrogate such persons as may be necessary for this purpose. Any such agent shall have the powers conferred on him in terms of sections 33 and 142 of the Act and Chapter 10 of the Basic Conditions of Employment Act, 1997.

21. ADMINISTRATION OF AGREEMENT

(1) The Council shall be the body responsible for the administration of the Agreement and may issue expressions of opinion not inconsistent with the provisions thereof for the guidance of employers and employees.

(2) Any dispute that may arise regarding the interpretation of any of the provisions of this Agreement shall be referred to the Council, and if unresolved referred to resolution in terms of clause 32.

22. COUNCIL FUNDS

The funds of the Council shall be vested in and administered by the Council, and shall be provided in the following manner:

- (a) On the first pay day after this Agreement comes into operation and on each pay day thereafter, the amount of R6,00 shall be deducted by the employer from the wages of each of his employees for whom minimum rates of pay are set out in this Agreement: Provided that where an employee is paid weekly, the amount applicable shall be deducted on a monthly basis from the wages of each of his employees for whom minimum rates of pay are prescribed in this Agreement: Provided further that this shall not be affected by the annual leave period specified in clause 7 (1) for which period the applicable deductions shall be made.
- (b) The total amount so deducted, together with an equal amount that shall be contributed by the employer shall be forwarded by the employer to the Secretary of the Council at the registered address of the Council, to be received by the Council not later than the 7th day of the month following that to which the deductions refer, together with a statement as in Annexure A.
- (c) In the event of an employer failing to pay the amount referred to above, the employer shall pay interest on such outstanding amount at a rate of interest to be determined by the Council from time to time, subject to the provisions of the Usury Act, and calculated as from 30 days from the date on which payment became due until the day upon which payment is actually received by the Council: Provided that the Council shall be entitled in its absolute discretion to waive payment of such interest or part thereof.

23. FACILITIES TO TRADE UNION DELEGATES — COUNCIL MEETINGS

Delegates on the Council representing the trade union shall be given due facilities by their employers to attend any Council meetings and employees shall be reimbursed the wages for time spent in pursuance of the duties of the Council from the funds of the Council.

24. TRAINING OF APPRENTICES

The training of apprentices shall form part of the duties of a Grade 1 employee.

25. REGISTRATION OF EMPLOYERS AND EMPLOYEES

(1) Every employer in the Industry who is engaged in the sawing and/or cutting and/or polishing, or rough or sawn diamonds, who has not already done so in terms of a previous agreement of the Council, shall register with the Council within one month of the publication of this Agreement and every new employer within one month of commencing work in the Industry.

(2) Every employer referred to in subclause (1) hereof shall at the time of applying for registration furnish the following particulars:

- (a) Full name(s) of owner(s) or partner(s) or director(s);
- (b) address where work is being carried on;
- (c) full names and classification of employees engaged at the time of application.

(3) Every such employer shall notify the Council within two weeks of any changes in connection with (a), (b) and (c) of subclause (2).

26. TRADE UNION LABOUR

(1) No employer who is a member of the employers' organisation shall engage or employ a member of the trade union who cannot produce a recognised employment card issued by the trade union to its members. Such cards shall be completed and signed by the employee and the employer and shall be returned to the trade union by the employee within 48 hours of engagement.

(2) The amount reflected in the said card shall be the employee's total weekly or monthly earnings; and where an employee is engaged on performance-related remuneration the amount reflected shall represent his basic pay as set out in clause 4 (2).

(3) This clause shall not apply to a foreman designated in terms of clause 27 of this Agreement.

(4) No employer who is a member of the Master Diamond Cutters' Association of South Africa shall deduct a collection fee from any fees, subscriptions, dues or deductions that he is required to deduct from his employees' remuneration if such employees are members of the South African Diamond Workers' Union.

27. DESIGNATED FOREMAN

(1) Whenever an employer employs a foreman or foremen in any establishment the employer shall, in writing, to the Council designate such employees as the designated foreman/foremen in such establishment.

(2) The employer shall be limited to one designated foreman: Provided that in any establishment employing more than 20 Grade 1 and Grade 1B employees, such establishment may employ one designated foreman for every 20 such employees or part thereof.

(3) The Council shall issue to an employer a certificate confirming the employee's designation as foreman.

28. TRADE UNION ANNUAL GENERAL MEETING

Employers who are members of the employers' organisation shall grant employees who are members of the trade union time off to attend the annual general meeting of their respective branch of the trade union. No deduction shall be made from the remuneration of any employee who is absent from work owing to his attendance at such meeting: Provided that such meeting shall be held on a morning of any day of the week where such day does not precede or follow a weekend or public holiday: Provided further that only employees who return to work after the conclusion of the meeting shall be entitled to remuneration for the period for which they were at the meeting.

29. SECURITY CLAUSE

Whenever an employer operates a security system for the control and issue and custody of diamonds that complies with the standard approved by the Council, then—

- (a) such procedures shall be exhibited on the notice board of the establishment;
- (b) such procedures shall be lodged with the Council;
- (c) where non-compliance with the procedures is established by a duly established disciplinary enquiry, such non-compliance shall constitute grounds for dismissal;
- (d) where non-compliance is so established through a fair procedure and diamond(s) are lost in the employee's possession, then gross negligence shall have occurred, constituting grounds for summary dismissal and/or entitling the employer to deduct monies from the employee's remuneration and entitlements for the value of the diamonds lost, in accordance with section 34 (2) of the Basic Conditions of Employment Act, 1997.

30. HOLIDAY BONUS

(1) The Holiday Bonus Fund for the Diamond Cutting Industry of South Africa, established by the parties to the Council in terms of the previous Agreement (Government Notice R. 1648 dated 12 June 1992) is being wound down and is hereby replaced by the balance of this clause 30.

(2) **Eligibility for holiday bonus:**

- (a) Employees who are members of the union and who are employed by members of the employers' organisation shall be eligible for holiday bonus provided that they have not been dismissed for misconduct or poor work performance.
- (b) Notwithstanding the provisions of paragraph (a), the terms of this clause shall not apply in respect of an employee during his initial period of employment in the Industry: Provided that such period shall not exceed three months in total.

(3) **Entitlement:**

- (a) Each employer shall accumulate 6,666% of the employee's weekly or monthly earnings, including earnings payable in respect of annual leave, on behalf of each eligible employee employed by him.
- (b) In the event of the retrenchment of an employee the employer shall pay to the employee the accumulated holiday bonus to which such employee is entitled in terms of this clause.
- (c) Notwithstanding anything to the contrary herein contained, the entitlement in terms of this clause shall accrue to an employee only on the employee having completed a continuous period of six months of employment with the employer(s) concerned.

(4) **Payment of holiday bonuses to employees:** The payment of holiday bonuses to employees entitled thereto shall be effected by the employees' current employer in the week preceding the commencement of the annual leave period.

Such employer shall be responsible for paying the accumulated bonus entitlement due to such employee for the period ending 30 November of that year, notwithstanding that the employee was not employed by such employer for the whole year.

(5) **Forfeiture of benefits:** Notwithstanding anything to the contrary contained in this Agreement, respective payments to an employee in terms of subclause (4) hereof shall be forfeited/refunded to the employer or employers who had effected such payments if during any period preceding each annual leave period—

- (a) such employee takes up employment with an employer who is not a member of the employers' organisation at any stage during the currency of this Agreement;
- (b) such employee is unemployed for the reason that no suitable employment is procurable with a member of the employers' organisation, and with approval of the Council consequently takes up employment with an employer who is not a member of the employers' organisation and fails to return to employment with a member of the employers' organisation within two months of commencing employment with an employer who is not a member of the employers' organisation and such return not being later than 31 October;

[For the purpose of this subclause, "suitable employment" means work that is accepted by a member or is work that—

- (i) is of a similar designation to the work that was performed by the member immediately preceding his unemployment; and
- (ii) is at a rate of remuneration that is not less than the average monthly remuneration earned by the member from his previous employer during the period immediately preceding his unemployment or the last three months of such period if it is in excess of three months];

- (c) an employee leaves the Industry and he returns to the Industry during the currency of this Agreement, but does not take up employment with an employer who is a member of the employers' organisation.

(6) **Cessation of accumulations:** Notwithstanding anything to the contrary contained in this Agreement—

- (a) in the event of a stoppage of work or production retardation at the instance of the members of the trade union or some of its members, but excluding a work stoppage or production or retardation by a single trade union member only, the employers' organisation shall afford the trade union an opportunity to have its members refrain from pursuing their action by way of written request to the trade union to its official address to such effect, and in the event of the trade union declining or failing to bring about a cessation of the work stoppage or production retardation in issue within four working days of the date of the submission of the said request, the employers' organisation shall have the right to declare the provisions of this clause to be terminated and in the event of such declaration having been duly given to the trade union in writing to its official address, the provisions of this clause shall be deemed to be duly terminated;
- (b) the right to implement the termination of the provision of this clause as provided for in (a) hereof shall be deemed to constitute an express term of contract and condition of employment obtaining between the members of the employers' organisation on the one hand and the members of the trade union on the other.

(7) **Savings:** Nothing contained in this Agreement shall be deemed to prevent an individual employee from negotiating privately with his employer in regard to an adjustment of his earnings.

31. PROCEDURES

The Council shall publish procedures from time to time governing such matters as disciplinary, grievance and retrenchment procedures. Such procedures shall become applicable to the parties to this Agreement on publication. An employer and his employees may apply to the Council for an exemption from any such procedures should they wish to replace those published by the Council with their own procedure.

32. DISPUTE RESOLUTION

(1) Any dispute arising from the interpretation, application or enforcement of this Agreement, or between any employer and one or more of his employees, shall be referred to the Council for resolution.

(2) In a general meeting the Council may appoint a panel of conciliators and a panel of arbitrators for the purpose of conciliating or determining disputes, respectively.

(3) The Council shall have the power to add or remove such panellists by a simple majority in a general meeting.

(4) Unless the parties to the dispute have agreed upon a member of the relevant panel to conciliate or determine their dispute, the Secretary of the Council shall appoint a member of the relevant panel to preside over the dispute. Where requested the panellist may be assisted by one official of the union and one of the employers' organisation.

(5) Any party referring a dispute to the Council shall do so in writing and shall satisfy the Secretary that a copy of the referral has been served on the other parties to the dispute. Where the Secretary is satisfied that this clause has been complied with, then the dispute shall be referred to the panellist so appointed by the Secretary. Such panellist shall deal with the dispute in accordance with the provisions of the Act.

(6) Where a dispute has been referred to conciliation and has not been resolved in the time periods stipulated in the Act, and any party to the dispute has requested that it be resolved through arbitration, in terms of the Act, then such dispute shall be so referred for arbitration by the Secretary.

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