



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA

Vol. 426 Pretoria, 18 December 2000/18 Desember 2000  
No. 21840



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

---

---

**CONTENTS***No.**Page  
No.* *Gazette  
No.***GENERAL NOTICE****Minerals and Energy, Department of***General Notice*

---

4577 Mineral Development Draft Bill, 2000: For public comment ..... 3 21840

---



---

## GENERAL NOTICE

---

### NOTICE 4577 OF 2000

## DEPARTMENT OF MINERAL AND ENERGY

### MINERAL DEVELOPMENT DRAFT BILL

The Mineral Development Draft Bill, 2000, is hereby published for public comment. Comments should be submitted in writing to:

The Director-General  
Attention: Mr. Jacinto Rocha  
Department of Minerals and Energy  
Private Bag X 59  
PRETORIA

Written comments may also be faxed to (012) 322-8955 or sent by e-mail to [seczul@mepta.pwv.gov.za](mailto:seczul@mepta.pwv.gov.za).

Copies of the draft Bill can be obtained from :

- Government Printers (Pretoria);
- Regional offices of the Department of Minerals and Energy;
- Communications Chief Directorate at the Head Office of the Department; and
- Department's Home page ([www.dme.gov.za](http://www.dme.gov.za))

Written comments must be received not later than 31 March 2001.

## **EXPLANATORY NOTES TO THE MINERAL DEVELOPMENT BILL**

### **Introduction**

The preamble of the Bill, delineates the point of departure of the Bill.

The fundamental principles which underpins this Bill are -

- a) mineral resources is the common heritage of all South Africans and belongs collectively to all the peoples of South Africa;
- b) it is a universally recognised right of a State to exercise full and permanent sovereignty over all its natural resources;
- c) public trusteeship of South Africa's mineral resources;
- d) to redress the results of past racial discrimination and ensure the historically disadvantaged persons participate in the minerals and mining industry and benefit from the exploitation of the nation's mineral resources;
- e) security of tenure for prospecting and mining operations;
- f) environmental protection and sustainable development; and
- g) promotion of local and rural economic development and social upliftment of communities affected by mining.

The minerals and mining law dispensation proposed in the draft Bill is based on the universally accepted principle that mineral resources are part of South Africa's national patrimony and that the State is the custodian of the nation's mineral resources. It is from the aforementioned principles that the State derives its entitlements to control, administer, manage access to South Africa's mineral resources, to grant prospecting rights and mining rights and issue retention permits.

Therefore, on commencement of the new legislation, prospecting rights, mining rights, retention permits and permission to remove minerals will only be granted by the State.

As far as possible the Bill reduces ministerial discretion by ensuring that discretionary powers are exercised based on prescribed criteria.

### **Chapter 1 – Definition**

Defines certain terms and words in the Bill.

### **Chapter 2**

This Chapter, amongst others, sets out the objectives of the Bill. The application, implementation and interpretation of this Bill, will be guided by it.

It further gives effect to the principle that mineral resources are a part of the national patrimony and the State is the custodian of the nation's mineral resources.

### **Chapter 3 – Administration**

This Chapter deals with the administration of the Bill and empowers the Minister to divide the country into regions and to appoint the Director: Mineral Development.

### **Chapter 4 – Minerals Resources Management**

Under the new dispensation, the State will play a pro-active role in the promotion of the development of the nation's mineral wealth and the regulation of the minerals and mining industry.

It provides measures to enable the State, as custodian of the nation's mineral resources, to manage the development of such resources.

It makes provision for specific measures to be taken by the Minister to-

- (a) promote rural and local economic development;
- (b) promote the participation of historically disadvantaged persons who wish to participate in the minerals and mining industry; and
- (c) promote beneficiation and value adding to the nation's mineral resources.

It further deals with the submission of and access to exploration information.

It ensures that potential or actual retrenchments in the mining industry take place in terms of the provisions of the Bill to minimize social disruption.

### **Chapter 5: Mineral Regulation**

Sets out the application procedure, consultation process and the criteria for granting or refusing prospecting rights or mining rights and issuing or refusing retention permits.

It also requires each mine to have a social plan which provides for the remediation of negative socio-economic impact of mines. Furthermore, it provides extensively for environmental management and control.

Generally it attempts to remove as much discretion as possible on matters relating to the granting and refusing of prospecting rights, mining rights and issuing of retention permits and guarantee automatic progression from prospecting into mining.

### **CHAPTER 6: MINERAL AND MINING DEVELOPMENT BOARD**

The proposed Mineral and Mining Development Board will be established to serve the Minister in an advisory capacity.

### **CHAPTER 7: TRANSITIONAL ARRANGEMENTS**

This Chapter ensures that active prospecting and mining operations continue to operate uninterrupted.

It provides for the replacement of all old order rights with either prospecting rights or mining rights granted in terms of the provisions of the Bill. Furthermore, opportunity is given to all holders of old order rights to comply with the provisions of the Bill.



However, should the holder of an old order right not comply with the provisions of this Chapter, the old order right will, nevertheless, lapse at the end of a pre-determined period.

The various transition periods to allow holders of old order rights to change over to the new dispensation are as follows:

- (a) Five years in respect of old order rights held in connection with any active mining operation;
- (b) Two years in connection with old order rights held in connection with any active prospecting operations; and
- (c) One year in respect of old order rights not held in connection with any active prospecting or mining operations. These holders are given an opportunity to present to the Minister plans on how such holders intend develop the mineral resources related to such rights. Failure to do so entitles the Minister to grant prospecting or mining rights to other applicants.

Subject to the provision contained in this Chapter, approved environmental management programmes, surface rights permits held in connection with mining operations and permissions to remove and dispose of any mineral will continue to be in force.

## **CHAPTER 8: TRADE IN DIAMONDS**

This Chapter repeals the Diamond Act, 1975 and transfers all the functions of the Diamond Board to the Director-General: Minerals and Energy or the Commissioner of the South African Revenue Services.

## **CHAPTER 9: PETROLEUM EXPLORATION AND PRODUCTION**

Certain aspects of the upstream petroleum industry (exploration and production), are specifically provided for in this Chapter. It stipulates the functions of the South African Agency for the Promotion of Petroleum Exploration and Exploitation, a subsidiary of the Central Energy Fund ('CEF') and sets out the regulatory framework for the upstream petroleum industry.

**CHAPTER 10: GENERAL AND MISCELLANEOUS**

Deals with matters of general and varied nature, which will assist, in the administration, implementation and enforcement of the provisions of this Bill.

# **DRAFT**

## **MINERAL DEVELOPMENT BILL**

**To give effect to the principle that mineral resources are the common heritage of all South Africans, provide for the recognition of the State as the custodian of the nation's mineral resources; provide for a legislative framework within which the nation's mineral wealth can be developed to its fullest potential; to promote economic growth through the development of mineral resources within a framework of sustainable development, co-operative governance and national environmental policy; to regulate orderly prospecting for and mining of mineral resources, to regulate the possession, trade in and processing of diamonds, to provide for the exploration and production of petroleum and to provide for matters connected therewith.**

### **PREAMBLE**

**Recognising that mineral resources are a non-renewable national asset;**

**Acknowledging that South Africa's mineral resources belong to the nation;**

**Bearing in mind that the State is the custodian of the nation's mineral resources;**

**Affirming the State's obligation to protect the environment for the benefit of present and future generations and to ensure ecologically sustainable mineral development to promote economic and social development;**

**Desiring to promote local and rural economic development and social upliftment of communities affected by mining;**

**Reaffirming the State's commitment to bring about equitable access to all South Africa's mineral resources;**

**Considering the State's obligation under the Constitution to take legislative measures to redress the results of past racial discrimination;**

**Reaffirming the State's commitment to guarantee security of tenure in respect of prospecting and mining operations; and**

**Emphasising the need to create an internationally competitive and efficient administrative and regulatory regime.**



BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

## **ARRANGEMENT OF ACT**

### **CHAPTER 1: INTRODUCTION**

1. Definitions

### **CHAPTER 2: FUNDAMENTAL PRINCIPLES**

2. Objects of the Act
3. Public trusteeship of the nation's mineral resources
4. Interpretation of the Act
5. Entitlement to prospect, to mine and to dispose of minerals

### **CHAPTER 3: ADMINISTRATION**

6. Administration of the Act
7. Division of the Republic, territorial waters and continental shelf into regions
8. Appointment and functions of officials

### **CHAPTER 4: MINERAL RESOURCES MANAGEMENT**

9. Powers of the Minister in case of prospecting or mining operations being conducted contrary to the objects of this Act
10. Powers of the Minister to suspend or cancel a prospecting right or mining right
11. Powers of the Minister to cause a special investigation to establish the occurrence, nature and extent of mineral resources in respect of land
12. Directions by the Minister in relation to mining of minerals or group of minerals by holder of mining right
13. Powers of the Minister in case of exercising surface rights contrary to the objects of the Act
14. Powers of the Minister to prohibit or restrict prospecting or mining
15. Powers of the Minister to expropriate any property for the purpose of prospecting or mining
16. Assistance to persons from historically disadvantaged groups

17. Assistance to contribute to rural and local economic development
18. Powers of the Minister to direct the submission of information or data
19. Information and data in respect of exploration
20. Information and data in respect of boreholes and excavations
21. Disclosure of information and data in respect of exploration
22. Information and data in respect of mining, processing and marketing of minerals
23. Notice of profitability and curtailment of mining operations affecting employment
24. Promotion of mineral beneficiation within the Republic
- 24B Regulation of relationship between the landowner and the holder of prospecting right or mining right

## **CHAPTER 5: MINERAL REGULATION**

### **Part I: Regulatory control in respect of a prospecting right, mining right and a retention permit**

25. Prohibitions or restrictions on prospecting and mining on certain land or for certain minerals
26. Application for a prospecting right
27. Objections to the granting of a prospecting right
28. Convening of a meeting to hear objections
29. Processing of an application for a prospecting right
30. Approval to grant a prospecting right
31. Criteria to refuse the granting of a prospecting right
32. Granting of a prospecting right
33. Duration and renewal of a prospecting right
34. Application for the renewal of a prospecting right
35. Refusal of an application for the renewal a prospecting right
36. Obligations of a holder of a prospecting right
37. Ancillary rights of a holder of a prospecting right
38. Application for a mining right
39. Objections to the granting of a mining right
40. Convening of a meeting to hear objections
41. Processing of an application for a mining right
42. Approval to grant a mining right
43. Criteria to refuse the granting of a mining right
44. Granting of a mining right
45. Duration and renewal of a mining right
46. Application for the renewal of a mining right
47. Refusal of an application for the renewal of a mining right
48. Obligations of a holder of a mining right
49. Application for a retention permit

50. Processing of an application for a retention permit
51. Criteria for issuing a retention permit
52. Criteria to refuse the issuing of a retention permit
53. Issuing of a retention permit
54. Duration and renewal of a retention permit
55. Application for the renewal of a retention permit
56. Obligations of a holder of a retention permit
57. Effect of issuing of a retention permit
58. Direction by Minister to a holder of retention permit to apply for a mining right
59. Retention permit not to be transferred or encumbered
60. Notice of commencement of prospecting or mining operations
61. Transfer of prospecting right or mining right
62. Exemption from certain provision of this Act
63. Abandonment of prospecting right or mining right or retention permit

## **Part II: Regulatory control in respect of environmental management and remediation of environmental damage**

64. Principles
65. Duty of care, responsibility for environmental management and for remediation of environmental damage
66. Integrated Environmental Management and the requirements for an Environmental Impact Assessment
67. Environmental Management Programme
68. Financial guarantees for remediation of environmental damage
69. Monitoring and environmental management programme performance assessments
70. Prevention of environmental damage or degradation
71. Management of mine residue deposits
72. Removal of buildings, structures and objects
73. Continuation of liability until exoneration certificate is issued
74. Preferential claim in case of liquidation or sequestration
75. Control of emergency incidents

## **CHAPTER 6: MINERALS AND MINING DEVELOPMENT BOARD**

76. Establishment of the Minerals and Mining Development Board
77. Functions of the Board
78. Constitution of the Board
79. Persons not qualified to be members of the Board
80. Vacating of office by a member of the Board

81. Term of office of members of the Board and filling of vacancies
82. Meetings of the Board
83. Committees established by the Board
84. Funding of the activities of the Board
85. Remuneration of members of the Board and committees
86. Report of the Board
87. Administration

## **CHAPTER 7: TRANSITIONAL ARRANGEMENTS**

88. Definitions
89. Objects of this Chapter
90. Continuation of pending prospecting and mining applications
91. Continuation of prospector's right
92. Continuation of permission to remove and dispose of minerals during prospecting
93. Continuation of miner's right
94. Notification to holders of old order rights
95. Power of Minister to grant prospecting or mining right to another party
96. Power of Minister if reasons are acceptable
97. Continuation of reservations, permission and certain rights
98. Registration of mineral rights
99. Lease of State interest in a mine
100. Consideration payable
101. Continuation of approved environmental management programme

## **CHAPTER 8: CONTROL OVER THE POSSESSION, THE TRADE IN, THE PROCESSING AND THE EXPORT OR IMPORT OF DIAMONDS AND MATTERS INCIDENTAL THERETO.**

102. Definitions

### **Part I: Illegal Acts**

103. Prohibition to possess unpolished diamonds
104. Prohibition on the sale of unpolished diamonds
105. Prohibition on the purchase unpolished diamonds
106. Restriction to deal in unpolished diamonds
107. Prohibition to process diamonds
108. Prohibition to erect and operate machinery
109. Prohibition to export or import unpolished diamonds
110. Unpolished diamonds found or picked up



**Part II: Licences and Permits**

- 111. Types of licences
- 112. Application for a licence
- 113. Consideration of an application for a licences
- 114. Issue or refusal of a licence
- 115. Powers of the Director-General to cancel, vary or to impose conditions in respect of a licence
- 116. Business premises
- 117. Period of validity of licences
- 118. Prohibition on the transfer, disposal of or acquisition of any interest in a licence
- 119. Application by licensee to transfer a licence
- 120. Controlling interest in companies and close corporations
- 121. Conversions of companies and close corporation
- 122. Suspension and cancellation of licences
- 123. Return of licence
- 124. Application for a permit
- 125. Granting or refusal of permit
- 126. Issue of permit
- 127. Powers of the Director-General to cancel, vary or to impose conditions in respect of a licence

**Part III: The Diamond Trade**

- 128. Prohibition to utilise unregistered premises as a diamond exchange
- 129. Application for registration of a diamond exchange
- 130. Consideration of application for registration of a diamond exchange
- 131. Registration of diamond exchanges
- 132. Dealing in unpolished diamonds restricted to approved premises
- 133. Approval of premises
- 134. Processing of diamonds restricted to approved premises
- 135. Licensees to display names and other particulars at business premises
- 136. Dealing in unpolished diamond on behalf of juristic persons restricted to an authorised representative
- 137. Application for registration of authorised representative
- 138. Registration of authorised representative
- 139. Receipt of unpolished diamonds by licensee
- 140. Notes of receipt or purchase in respect of unpolished diamonds
- 141. Register in respect of unpolished diamonds
- 142. Cutter, tool-maker and researcher to obtain permit to sell, export or import unpolished diamonds
- 143. Supply of unpolished diamonds to the diamond processing industry

**Part IV: Export or import of diamonds**

144. Export of unpolished diamond
145. Registration of unpolished diamond for export
146. Levying of export duty on unpolished diamond
147. Exemption from export duty
148. Deferment of payment of export duty
149. Examination and valuation of unpolished diamond
150. Market value
151. Fine in case of difference in value
152. Payment of export duty and fine
153. Release of unpolished diamond for export
154. Import of polished diamond
155. Export of unpolished diamond
156. Registration of polished diamond for export
157. Examination and retention of polished diamond
158. Release of polished diamond for export
159. Exemptions from provisions relating to registration of polished diamond
160. Commissioner's decision on unpolished and polished diamond
161. Assessment of value of polished and unpolished diamond
162. Right of appeal
163. Agreements between the Commissioner and any person

**Part V: Control measures**

164. Furnishing Director-General with information
165. Inquiries by Director-General
166. Appointment of diamond inspectors
167. Functions of diamond inspectors and police officials

**Part VI: Offences, penalties and other judicial matters**

168. Offences relating to illegal acts
169. Offences relating to diamond trade
170. Offences relating to export and import of diamonds
171. Offences relating to functions of the Director-General, diamond inspectors and police officials
172. Offences involving fraudulent conduct
173. Penalties
174. Documentary evidence
175. Presumption
176. Liability of employer or principal

177. Forfeiture

**Part VII: General**

178. Regulations  
179. Savings

**Part VIII: Abolition of the South African Diamond Board**

180. Abolition of the Diamond Board  
181. Vesting and transfer of assets, liabilities, rights, duties and obligations of the Diamond Board  
182. Transfer, retrenchment and remuneration of staff  
183. Accounting responsibility  
184. Administration of laws  
185. Interpretation of certain expressions  
186. Termination of agreements between the Board and any person

**CHAPTER 9: PETROLEUM EXPLORATION AND PRODUCTION**

187. Application of this Chapter  
188. Definitions  
189. Administration of this Chapter  
190. Functions of the Petroleum Agency  
191. Invitation for applications  
192. Obligations of a holder of exploration rights  
193. Obligations of a holder of production rights  
194. Petroleum agreements  
195. Relinquishment of land by holder of exploration right  
196. Application for a reconnaissance licence  
197. Rights of holder of reconnaissance licence  
198. Duration of reconnaissance licence  
199. Application for renewal for reconnaissance licence  
200. Issue and renewal of reconnaissance licence  
201. Transfer of reconnaissance licence  
202. Work programmes of reconnaissance licence  
203. Discovery of petroleum  
204. Information to be furnished in respect of discovery of petroleum  
205. Discovery which is not of commercial interest  
206. Declaration of a petroleum field  
207. Right to apply for production rights  
208. Unitization of production areas

**CHAPTER 10: GENERAL AND MISCELLANEOUS PROVISIONS**

- 209. Powers to enter land or place to perform any act
- 210. Producing of documents at request of the Director: Mineral Development
- 211. Limitations of State's liability
- 212. Serving of documents
- 213. Right of appeal
- 214. Prohibitions on obstruction of officer or person
- 215. Prohibition of victimisation
- 216. Offences
- 217. Penalties
- 218. Delegations of powers
- 219. Regulations
- 220. Proof of facts
- 221. Orders, suspensions and instructions
- 222. Inquiries
- 223. Attendance and examination of witnesses at inquiries
- 224. Obstruction of inquiry or investigating officer or failure to render assistance
- 225. Act binds State
- 226. Repeal and amendment of laws
- 227. Short title
- 228. Commencement



## CHAPTER 1

### INTRODUCTION

#### 1. Definitions

(1) In this Act, unless the context shows that another meaning is intended—

- (i) **“applicant”** means the person who has applied for a prospecting right, mining right or retention permit;
- (ii) **“associated mineral”** means any mineral which occurs in mineralogical association with, and in the same ore deposit as the primary mineral being mined, where it is physically impossible to mine the primary mineral without also mining the mineral associated therewith;
- (iii) **“Board”** means the Minerals and Mining Development Board established in terms of section 76;
- (iv) **“Chief Inspector”** means the Chief Inspector appointed in terms of section 48 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- (v) **“community”** means any group historically disadvantaged persons who share common heritage and is under the jurisdiction of a traditional leader;
- (vi) **“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (vii) **“Committee for Environmental Co-ordination”** means the committee referred to in section 7 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (viii) **“the department”** means the Department of Minerals and Energy;
- (ix) **“Director: Mineral Development”** means any senior officer appointed in terms of section (8)(1) of this Act;

- (x) **"Director-General"** means the Director-General of the Department of Minerals and Energy;
- (xi) **"environment"** means the surroundings within which humans exist and that are made up of -
  - (a) the land, natural resources and the atmosphere of the earth;
  - (b) micro-organisms, plant and animal life;
  - (c) any part or combination of (a) and (b) and the relationships among and between them; and
  - (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;
- (xii) **"environmental management programme"** means the approved environmental management programme referred to in section 67(3)(b) in which the impacts on the environment generated by the prospecting or mining operations are recorded and it is demonstrated when and how such impacts will be managed by the holder through the satisfactory prevention or remediation of such impacts and includes any amendments thereto made in accordance with the requirements of this Act;
- (xiii) **"employee"** means -
  - (a) any person, excluding an independent contractor, who works for the holder of a prospecting right or mining right or retention permit and who receives, or is entitled to receive, any remuneration; and
  - (b) any other person who in any manner assists in carrying on or conducting the business of the holder;
- (xiv) **"exclusionary act"** means any act or practice that impedes or prevents any person from entering into, or expanding within the mineral and mining industry or a market;
- (xv) **"exploration"** means any operation, including but not limited to prospecting undertaken to collect information or data with the main purpose to ultimately search for any mineral, and includes -
  - (a) geological, geophysical, geochemical, palaeontological, aerial, magnetic, gravity or seismic surveys and the appraisal of such surveys and drilling for appraisal purposes;
  - (b) the study of the feasibility of any prospecting or mining operation to be carried out in such prospecting area or mining area;
- (xvi) **"financial guarantee"** means the surety that applicants for or holders of prospecting right or mining right must provide to the Department, guaranteeing the availability of sufficient funds to rehabilitate

prospecting or mining areas in the event that the responsible person or company fails to undertake such rehabilitation;

(xvii) **“historically disadvantaged”** means a person who

(a) is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993, came into operation, were disadvantageded by unfair discrimination on the basis of race;

(b) is an association, a majority of whose members are individuals referred to in paragraph (a);

(c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued capital or member's interest and are able to control a majority of its votes; or

(d) is a juristic person or association, and persons referred to in paragraphs (a), (b) or (c) own and control a majority of its issued share capital or members interest and are able to control a majority of its votes.

(xviii) **“holder”** means, in relation to -

(a) a prospecting right or mining right or retention permit, the person to whom such right or permit has been granted or issued;

(b) an old order right, the registered holder of such right or the person to whom such right was granted; or

(c) a mine, the owner of a mine

(xix) **“mine”** means, when

(a) used as a noun -

(aa) any excavation in the earth, including the portion under the sea or under any other water or in mine residue deposit whether being worked or not, made for the purpose of winning a mineral; or

(bb) any other place where a mineral deposit is being exploited, including the mining area and all buildings, structures, machinery, mine residue deposit access roads or objects situated on such area and which are or intended to be used in connection with the winning, treating or preparing minerals or obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores, but excluding a mine in respect of which an exoneration

certificate has been issued in terms of section 73 of this Act;  
and

(b) used as a verb, the making of any excavation referred to in paragraph (a)(aa), or the exploitation of any mineral deposit in any other manner, for the purpose of winning a mineral, including any ongoing prospecting in connection with the winning of such a mineral;

(xx) **“mineral”** means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, in or under water or in mine residue deposits and having been formed by or subjected to a geological process including sand, stone, rock, gravel and clay, as well as soil but excludes water, natural oil, petroleum, topsoil and peat;

(xxi) **“mine residue”** means any waste material, or mineral discard, whether in solid, liquid or gaseous form derived from a mining operation or a prospecting operation or processing of any mineral or ash produced from energy generation;

(xxii) **“mine residue deposit”** means a dam, dump, heap, pile, layer, accumulation or filling consisting of “mine residue”;

(xxiii) **“mining area”** means the area which comprises the subject of a mining right;

(xxiv) **“mining right”** means a right to mine granted in terms of section 44(1);

(xxv) **“Minister”** means the Minister of Mineral and Energy;

(xxvi) **“officer”** means any person who has been appointed in terms of the Public Service Act, 1994 (Proclamation No.103 of 1994);

(xxvii) **“offshore installation”** means an offshore- rig, production platform, sub-sea pipelines or any offshore structure or vessel used at sea in connection with exploration or prospecting for minerals or hydrocarbons, or mining of minerals or productions of hydrocarbons;

(xxviii) **“owner”** means, in relation to -

(a) land -

(aa) the person in whose name the land is registered; or

(bb) if it is state owned land, the state together with the occupant thereof;

(b) a mine -

- (aa) the holder of the prospecting right or mining right or retention permit concerned; or
  - (bb) if such prospecting right or mining right or retention permit does not exist, the last person who worked the mine or his successor in title;
- (xxix) **“person”** means, where appropriate a natural or juristic person;
- (xxx) **“prescribed”** means, prescribed by this Act and any regulation promulgated in terms thereof;
- (xxxi) **“processing”** means, in relation to any mineral, the recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gassification thereof; and processed will have a corresponding meaning;
- (xxxii) **“prospecting”** means intentionally searching for any mineral by any method which disturbs the surface or sub-surface of the earth, including the portion under the sea or under other water or of any mine residue deposit necessary for the purpose of determining the extent and economic value of the mineral resource, and excludes mine when used as a verb;
- (xxxiii) **“prospecting area”** means the area of land which comprises the subject of any prospecting right;
- (xxxiv) **“prospecting right”**, means the right to prospect granted in terms of section 32(1);
- (xxxv) **“prospecting work programme”** means the approved prospecting work programme indicating the prospecting activities to be conducted on the prospecting area during the validity of the prospecting right, including the details regarding the prospecting activities, phases, equipment to be used and estimated expenditures for the different prospecting activities and phases to cover the period required for the prospecting right and any amendment thereto made in accordance with the provisions of this Act;
- (xxxvi) **“record”** means any book of account or any recorded information regardless of form or medium, and includes -
  - (a) information contained in any computer storage medium or record which is or can be produced by means of computer equipment, which is used for the purpose of recording information; and
  - (b) a part of a record or computer printout;

- (xxxvii) **“rehabilitation”** means , the restoration to the satisfaction of the Director: Mineral Development, of the prospecting or mining area in accordance with the environmental management programme to, as far as is practicable, its natural state or to a safe, stable, predetermined condition and end use which is compatible with a healthy environment and with the principle of sustainable development;
- (xxxviii) **“Republic”**, means the Republic of South Africa;
- (xxxix) **“retention area”** means the area of land which comprises the subject of a retention permit;
- (xl) **“retention permit”** means the permit issued in terms of section 53(1);
- (xli) **“Scoping report”** means the document resulting from a preliminary assessment undertaken prior to the conducting of a comprehensive environmental impact assessment and the compilation of an environmental management programme to -
- (a) assimilate information concerning the status of the environment prior to prospecting or mining;
  - (b) identify the extent of the anticipated impacts and their consequences on the environment taking into consideration any sensitivity or limitations that may exist on or in respect of the area;
  - (c) identify alternatives and to propose the most appropriate approach and procedure to plan and develop the proposed prospecting or mining project and its environmental management requirements;
  - (d) record the initial views and concerns of relevant authorities, affected an other parties; and
  - (e) identify the extent of further investigation required;
- (xlii) **“sustainable development”** means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations;
- (xliii) **“this Act”** includes the regulations and any condition to which any permit, right, consent, exemption, approval, notice, exonerating certificate, environmental management programme or guidelines thereanent, or directive issued, given, granted or approved in terms of this Act;
- (xliv) **“topsoil”** means that layer of soil covering the earth and which provides a suitable environment for the germination of seed allows the



penetration of water, is a source of micro-organisms, plant nutrients and in some cases seed, and a depth of 0.5 metre or any other depth as may be determined by the Director: Mineral Development for each prospecting or mining area;

(xlv) **“township or urban area”** means a township as defined in section 102 (1) of the Deeds Registries Act, 1937 (Act No.47 of 1937);

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, a corresponding meaning.



## **CHAPTER 2**

### **FUNDAMENTAL PRINCIPLES**

#### **2. Objects of the Act**

The objects of this Act are to -

- (a) control and manage access to the nation's mineral resources in order to-
  - (i) facilitate the entry of prospective investors in the industry; and
  - (ii) give effect to sections 9(2) and 25(8) of the Constitution;
- (b) give effect to the principle of State custodianship of the nation's mineral resources;
- (c) promote economic growth and development of the nation's mineral resources;
- (d) promote employment and advance the social and economic welfare of all South Africans;
- (e) expand opportunities for historically disadvantaged persons to enter the mining and minerals industry or benefit from the exploitation of the nation's mineral resources;
- (f) provide for security of tenure in respect of prospecting and mining operations;

- (g) ensure that the nation's mineral resources are developed in an orderly and sustainable manner within a framework of national environmental policy, norms and standards to the benefit of all South Africans;
- (h) ensure that holders of mining rights contribute towards the socio-economic development of the areas they are operating in;
- (i) give effect to the universally accepted right of the State to exercise full permanent sovereignty over all mineral resources; and
- (j) change the common law to the extent that it applies to mineral rights and ownership of a mineral.

### **3. Public trusteeship of the nation's mineral resources**

(1) Mineral resources are the common heritage of all the peoples of South Africa and the State is the custodian thereof for the benefit of all South Africans.

(2) As the custodian of the nation's mineral resources, the State, acting through the Minister, has the right to -

(a) grant, control, administer and manage access to mineral resources;

(b) grant prospecting rights, mining rights, retention permits and permission to remove and dispose of any minerals;

(c) determine the fees and consideration payable in terms of this Act;

(d) exercise full permanent sovereignty over all the nation's mineral resources; and

- (e) do all other things as the Act or any other law may empower or require the Minister to do.
- (3) The Minister must ensure the sustainable development of South Africa's mineral resources within a framework of national environmental policy, norms and standards.
- (4) Subject to the provisions of this Act, when considering the granting of a prospecting or mining right, preference must be given to historically disadvantaged persons.

#### **4. Interpretation of the Act**

- (1) Any interpretation of this Act must give effect to its objects.
- (2) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the object of this Act as stated in section (1) and international law, must be preferred over any alternative interpretation which is inconsistent with that object and international law.
- (3) In so far as the common law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

#### **5. Entitlement to prospect, to mine and to dispose of minerals**

- (1) Subject to the provisions of this Act any holder of a prospecting right or a mining right is entitled to-
  - (i) enter the land to which such right relates;
  - (ii) prospect or mine for its own account on that land for the mineral or group of minerals for which such right has been granted; and
  - (iii) remove and dispose of any mineral or group of minerals found during the course of prospecting or mining.

(2) No person shall prospect or mine for any mineral or group of minerals without -

- (i) an approved environmental management programme; and
- (ii) a prospecting right or mining right granted to that person in terms of this Act.

(3) Subject to the provisions of this Act, the holder of a prospecting right is entitled to be granted a mining right in respect of the land and mineral concerned.

### **CHAPTER 3**

#### **ADMINISTRATION**

#### **6. Administration of the Act**

- (1) This Act shall be administered under the control of the Minister by the Director-General. The Director: Mineral Development must perform those functions assigned to the Director: Mineral Development in terms of this Act in accordance with and subject to the instructions and directives of the Director-General.
- (2) The Director-General may exercise any power and perform any duty or function conferred upon or assigned to the Director: Mineral Development by or in terms of this Act or any other law.

#### **7. Division of the Republic, territorial waters and continental shelf into regions**

For the purpose of this Act the Minister must, by notice in the *Gazette*, divide the Republic, the sea as defined in section 1 of the Sea-shore Act, 1935 (Act No.21 of 1935), and the continental shelf referred to in section 7 of the Territorial Waters Act, 1963 (Act No.87 of 1963), into regions, and the Minister may, from time to time, so amend the boundaries of such regions.

#### **8. Appointment and functions of officer**

- (1) The Minister must, subject to the laws governing the public service, in respect of each region referred to in section 7, appoint an officer in the service of the Department with the appropriate qualifications and experience as Director: Mineral Development to exercise the powers and perform the duties conferred upon or assigned to the Director: Mineral

Development by or in terms of this Act, or any other law, and to carry out or comply with the instructions and directives which the Director-General may issue.

- (2) The Director-General may designate senior managers in the service of the Department to assist the Director-General in exercising his or her powers or perform his or her functions in terms of this Act.

## CHAPTER 4

### MINERAL RESOURCE MANAGEMENT

#### 9. Powers of the Minister in case of prospecting or mining operations being conducted contrary to the objects of this Act

- (1) If the holder of a prospecting right or mining right, conducts prospecting or mining operations in a manner which, in the opinion of the Minister, may detrimentally affect the objects of this Act, the Minister may-
  - (a) cause an investigation to be made into the matter; and
  - (b) after consideration of the findings of the investigation contemplated in paragraph (a), issue a written directive, ordering such holder to take such rectifying steps within a specified period as may be required by the Minister.
- (2) Failure by the holder to comply with the directives referred to in subsection (1)(b) within the specified period, shall entitle the Minister to suspend or cancel such prospecting right or mining right.
- (3) Before the Minister suspends or cancels the prospecting or mining right concerned, the Minister must request the holder for written reasons why he or she is conducting prospecting or mining activities contrary to the objects of this Act.
- (4) In the event of the cancellation of a prospecting right or mining right, the Minister may by notice in the Government Gazette, call for applications for a prospecting or mining right in respect of the land and mineral concerned.



# **10. Powers of the Minister to suspend or cancel a prospecting right or mining right**

- (1) Subject to the provisions of this Act, the Minister may suspend or cancel any prospecting or mining right, if the holder thereof fails to-
  - (a) commence and continue with prospecting or mining operations within the period stated in the said prospecting right or mining right;
  - (b) provide the necessary finances for conducting such prospecting or mining operation;
  - (c) adhere to the terms and conditions of the prospecting right or mining right;
  - (d) conduct prospecting or mining operations in accordance with the provisions of this Act; or
  - (e) comply with the provisions of section 36 or 48.
- (2) Before such prospecting right or mining right is suspended or cancelled by the Minister in terms of subsection (1), due notice of the intention to suspend or cancel must be given to the holder thereof and the holder will be-
  - (a) required to give reasons in writing why the holder has failed to comply with the provisions of subsection (1); and
  - (b) allowed a maximum of ninety (90) days to remedy any action referred to in such notice.

(3) Should the holder fail to remedy such contravention or provide reasons acceptable to the Minister within the specified period, the prospecting right or mining right will be deemed to have been suspended or cancelled by the Minister with immediate effect.

(4) In the event of the cancellation of a prospecting right or mining right, the Minister may by notice in the *Government Gazette*, call for applications for a prospecting right or mining right in respect of the land and mineral concerned.

**11. Powers of Minister to cause a special investigation to establish the occurrence, nature and extent of mineral resources in respect of land**

(1) Notwithstanding anything to the contrary contained in this Act in relation to the granting of a prospecting right, the Minister may, if in his or her opinion it is necessary in the national interest, cause any investigation to be conducted on any land to establish if any mineral or geological formation occurs in or on such land, and if so, to establish the nature and extent thereof.

(2) Compensation in respect of any damage caused during the investigation referred to in subsection (1) may be agreed upon between the Minister and the owner of the land concerned or in the absence of such agreement, determined by arbitration in accordance with the Arbitration Act, 1965 (Act 42 of 1965), or by a competent court if the person concerned prefers the last-mentioned procedure, shall be payable by the Minister to any person in respect of any proven damage to the property of such person as a result of any investigation contemplated in subsection (1).

(3) No investigation will take place under this section prior to the expiry of a period of 30 days after publication in the *Government Gazette* of a notice of the intention to conduct such investigation.

(4) No entering upon land shall take place under this section before the owner or occupier or person in control of such land has been notified of the intention so to enter upon such land to conduct the investigation referred to in subsection (1).

## **12. Directions by Minister in relation to mining of minerals or group of minerals by holder of mining right**

(1) Subject to the provisions of subsection (2), the Minister may -

(a) if any mineral or group of minerals to which a mining right relates is not won or mined and the Minister is satisfied that such mineral or group of minerals can be won or mined on a profitable basis; or

(b) having regard to, the technical and financial resources of the holder of such mining right and the prevailing marketability of any such mineral or group of minerals, if he or she is satisfied that such mineral or group of minerals, is not being won or mined at an optimal rate or in a manner calculated to effect such optimal rate, by notice in writing addressed to the holder of such mining right, direct such holder -

(i) to take, within such period as may be specified in such notice, such steps as may be necessary and practicable to mine any such specified mineral or group of minerals;

(ii) to mine such specified mineral or group of minerals, within such period as may be mentioned in the notice, at a specified rate,

not exceeding, in the case of an increase, the capacity of the mining facilities of the holder of the mining right, as the Minister may specify in such notice; or

- (iii) to abandon, such mining right in accordance with the provisions of section 63.

(2) Before giving the direction under subsection (1) the Minister must –

(a) in writing inform such holder of his or her intention to give a direction contemplated in subsection (1) –

- (i) setting out the reasons for such intention;

(ii) requiring such holder to make within such period as may be specified in such notice representations to the Minister in relation to such reasons; and

(b) take into consideration any representations made by such holder.

### **13. Powers of the Minister in case of exercising surface rights contrary to the objects of this Act**

(1) If any person in any manner uses or causes to be used or intends to use or to cause to be used the surface of any land or includes or cause it to be included or intends to include or to cause it to be included into any town planning scheme which may, in the opinion of the Minister, detrimentally affect the object of this Act, the Minister may

(a) Cause an investigation to be made;

(b) After consideration of the comments contemplated in subsection (2), if any, and the results of the investigation contemplated in paragraph (a), issue a directive ordering such person to take such rectifying steps within a period specified in the directive as may be required by the Minister.

(2) Before any directive referred to in subsection 1(b) is issued, the Director: Mineral Development must serve written notices on the person referred to in that subsection, whereby it is notified of the steps being considered by the Minister and whereby it is given the opportunity to comment on the intention of the Minister regarding such steps within a period specified in the notice, which shall not be less than 30 days.

#### **14. Power of Minister to prohibit or restrict prospecting or mining**

The Minister may from time to time by notice in the *Government Gazette* having regard to the national or public interest, prohibit or restrict any prospecting or mining on any land identified by the Minister, excluding land which is the subject of a prospecting right or mining right or retention permit or any application therefor.

#### **15. Power of Minister to expropriate any property for the purpose of prospecting or mining**

(1) To achieve the objects of this Act, the Minister may expropriate any property or any right therein for public purposes or in the public interest: Provided that in determining the compensation amount, section 12 of the Expropriation Act, 1975 (Act 63 of 1975) read together with section 25(3) of the Constitution, shall *mutatis mutandis* apply as if an expropriation of property or the taking of a right has taken place in terms of the last-mentioned Acts.

- (2) Any property or right therein expropriated under subsection (1), shall vest in the person at whose request it has been expropriated or if no person applied for such expropriation, it shall vest in the State.

**16. Assistance to persons from historically disadvantaged groups**

- (1) The Minister may with the concurrence of the Minister of Finance out of moneys appropriated for that purpose by Parliament, give financial or any other assistance to persons or association of persons from historically disadvantaged groups to conduct prospecting or mining activities.

- (2) The assistance referred to in subsection (1) will be on cost recovery basis.

**17. Assistance to contribute to rural and local economic development**

- (1) Subject to the provisions of section 13 of the Public Finance Management Act, 1999 (Act 29 of 1999), the Minister may with the concurrence of the Minister of Finance and after consultation with the Minister of Provincial Affairs and Local Government, out of the royalties payable in terms of section 48(g) determine that consideration be paid for the benefit of any community or local government affected by mining, for the purpose of rural and local economic development and social upliftment.

- (2) The consideration referred to in subsection (1) must be paid into a Local Economic Development Fund established for that purpose and administered by the Minister of Provincial Affairs and Local Government.

**18. Powers of Minister to direct the submission of information or data**

- (1) The Minister may, in order to achieve the objects of this Act, direct in writing that information or data be submitted by -

- (a) an applicant for a prospecting right or mining right;
- (b) any holder of a prospecting right or mining right or retention permit granted or issued in terms of this Act; or
- (c) any holder of a surface right in respect of land forming the subject of prospecting or mining operations or land in respect of which an application was lodged to obtain a prospecting or mining right.

#### **19. Information and data in respect of exploration**

Notwithstanding the provisions of this Act or any other law, any person who conducts exploration must in the prescribed manner in respect of such exploration operations -

- (a) keep, at an address in South Africa, proper records of all activities and expenditure; and
- (b) submit to the Director: Mineral Development concerned reports and financial records of expenditure.

#### **20. Information and data in respect of boreholes and excavations**

- (1) Any person who proposes to drill a borehole or make any excavation for the purposes of prospecting from the surface of the land or to resume the drilling of such borehole or making such excavation, must –
  - (a) give written notice to the Director: Mineral Development of his or her intention to drill such borehole or to resume such drilling or to make such excavation; and



- (b) within six months after the completion of such borehole or excavation or discontinuation thereof, submit a full and correct borehole or excavation information report to the Director: Mineral Development.
- (2) The information report must contain –
  - (a) the exact location of the excavation or borehole
  - (b) the date of completion thereof;
  - (c) the depth thereof;
  - (d) the lithology and depth of the geological formation excavated or drilled through;
  - (e) the results of any test or analyses done on the minerals obtained from the excavation or borehole; and
  - (f) all other information gathered by the prospector in relation to the mineral or group of minerals, excavation or borehole.
- (3) The Director: Mineral Development must submit the information referred to in subsection (1) to the Council for Geoscience established in terms of section 5 of the Geoscience Act, 1993 (Act No.100 of 1993).
- (4) No core log or any information or data relating to any borehole referred to in subsection (1) may be disposed of without the prior written permission of the Minister.

## **21. Disclosure of information and data in respect of exploration**

- (1) Subject to the provisions of this Act, all information and data submitted in terms of this Act or any provision of prior legislation in relation to, exploration may be disclosed to the public: Provided that no such information or data may be disclosed -

- (a) prior to the expiration of ninety (90) days after –
  - (i) the expiry, abandonment or cancellation of the prospecting right or mining right concerned unless the holder of the right concerned declared in writing that the information and data may be disclosed sooner; or
  - (ii) the submission of any non-prospecting exploration information or data unless the supplier of the information and data declared in writing that the information and data may be disclosed sooner;
- (b) if the holder of the prospecting right has applied for a mining right; or
- (c) if the supplier of exploration information and data has applied for a prospecting right; or
- (d) if the holder of a prospecting right or a mining right concerned has applied for a retention permit.

(2) No compensation is payable or can be claimed by any person who submitted information and data which are made available or disclosed in terms of this section.

## **22. Information and data in respect of mining, processing and marketing of minerals**

- (1) Any person who conducts mining must in the prescribed manner keep at an address in the Republic, proper records of all mining activities and financial records in relation thereto.

- (2) The records referred to in subsection (1) must be available for inspection by the Director-General or any officer in the service of the Department authorised by the Director-General.
- (3) Upon expiry, abandonment or cancellation of a mining right, the holder of such right must submit to the Director-General all records kept in terms of subsection (1) and records so submitted may be disclosed to the public.
- (4) The holder of a mining right or manager of a mine or any processing plant operating separately from a mine or any person that markets any mineral or process a mineral must in the prescribed manner –
  - (a) submit monthly returns with accurate information and data; and
  - (b) submit an audited annual financial report or financial statement reflecting a balance sheet and profit and loss account.

### **23. Notice of profitability and curtailment of mining operations affecting employment**

- (1) The holder of a mining right must notify the Director-General in writing –
  - (a) where prevailing economic conditions have the effect that the profit to revenue ratio of the mine which is the subject of such right, is on average, less than 6 percent for a continuous period of twelve months; and
  - (b) if any mining operation is planned to be scaled down on a temporary or permanent basis or cessation of mining operations is imminent and will have the effect that more than five hundred employees or ten percent, whichever is the greater, of the labour force cumulatively in any twelve month period will be retrenched.

- (2) The Minister may in respect of any notice given in terms of subsection (1)(b) and after consultation with the Minister of Labour, direct the holder of the mining right in writing to take remedial actions, subject to such terms and conditions the Minister may deem necessary to achieve the objects of this Act.

#### **24. A. Promotion of mineral beneficiation within the Republic**

- (1) When considering the approval for granting a mining right, the Minister must consider whether the mineral or group of minerals for which the applicant intends to mine is capable of being beneficiated within the Republic or not.
- (2) If, the Minister is of the opinion that such mineral can be beneficiated within the country, the Minister may give preference to the person who intends to beneficiate or intends to have such mineral beneficiated in the Republic.
- (3) The Minister may, in order to promote the beneficiation of minerals in the Republic, on such conditions as he or she may determine, and after consultation with the Minister of Finance, decide that –
- (a) no royalties be paid by a holder of a mining right in terms of section 48(g);
  - (b) any royalties payable under section 48(g) be utilised for research in connection with the beneficiation of any mineral in the Republic; or
  - (c) any other incentive be created as the Minister, the Minister of Finance and the Minister of Trade and Industry may agree upon to encourage such beneficiation.

- (4) If the Minister is of the opinion that any particular mineral commodity can economically be beneficiated further locally, he or she may instruct that such a mineral be further beneficiated according to the terms and conditions as may be determined by the Minister.

**24. B. Regulation of the relationship between the landowner and holder of mining right.**

(The essence of section 42 of the Minerals Act, 1991, will be incorporated)

## CHAPTER 5

### MINERAL REGULATION

#### **Part I: Regulatory control in respect of prospecting rights, mining rights and retention permits**

#### **25. Prohibitions or restrictions on prospecting and mining on certain land or for certain minerals**

Subject to section 20 of the National Parks Act, 1976 (Act No. 57 of 1976), no person shall be granted a prospecting right or mining right -

- (a) on land comprising a township or an urban area;
- (b) in respect of a public road, a railway or a cemetery;
- (c) on any land being used for public or government purposes or reserved in terms of any other law;
- (d) on any land encumbered by a prospecting right or mining right or retention permit; and
- (e) on those areas identified by the Minister from time to time by notice in the Government Gazette in terms of section 14,

unless the Minister is satisfied that -

- (i) it is desirable, with regard to the sustainable development of the mineral resources involved and in the national interest;
- (ii) the development of the mineral resources will take place within the framework of the national environmental management policies, norms and standards; and

- (iii) the granting of such prospecting right or mining right will not detrimentally affect the interests of any holder of a prospecting right or mining right.

## **26. Application for a prospecting right**

- (1) Subject to the provisions of this Act, the Minister must approve the granting of a prospecting right on such terms and conditions as he or she may determine.

- (2) An application for a prospecting right must be lodged on the prescribed form together with the payment of a non refundable prescribed application fee at the office of the Director: Mineral Development and must contain -

(a) full particulars of the applicant;

(b) a plan indicating the co-ordinates and boundaries of the area applied for;

(c) an indication of the mineral, associated minerals or group of minerals for which the right is required;

(d) the period for which the right is required;

(e) a detailed prospecting work programme;

(f) details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how it will be provided for, to enable the applicant to carry out the prospecting activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily;



- (g) details of any mineral or group of minerals and the quantity thereof, which the applicant intends to remove and dispose of during prospecting operations ;
  - (h) a scoping report reflecting the expected environmental impacts;
  - (i) identification of interested and affected parties;
  - (j) details of consultation with affected and interested parties and the results thereof; and
  - (k) any other information, data or documentation that the Minister and the Director: Mineral Development may require in connection with the information required under paragraphs (a) to (k).
- (3) Subject to the provisions of section 62(1) and (2), the Director: Mineral Development shall not consider any application for a prospecting right if -
- (a) such application does not comply with the provisions of subsection (2);
  - (b) another person holds a prospecting or mining right or retention permit for the same mineral or group of minerals and area;
  - (c) an application for a prospecting right or mining right for the same mineral and area has already been approved in terms of sections 30 and 42; or
  - (d) in the opinion of the Chief Inspector, the applicant does not have the ability or cannot make the necessary provision to prospect in a healthy and safe manner.

- (4) The opinion contemplated in subsection 3(d) must be provided to the Director: Mineral Development within 7 days from the date on which the request for such an opinion has been received by the Chief Inspector.
- (5) If an application is not accepted or considered for the reasons referred to in subsection (3), the Director: Mineral Development must inform the applicant accordingly in writing.

## **27. Objections to the granting of a prospecting right**

- (1) After accepting of an application for a prospecting right and with due regard to section 26(3) the Director: Mineral Development must cause to be displayed at the office of the said Director: Mineral Development and in a public building in the district in which the land concerned is situated, a notice in the prescribed manner -
  - (a) making it known that an application for prospecting right was lodged in respect of the land concerned; and
  - (b) calling upon any person who wishes to object, to furnish his or her objections and the grounds thereof, supported by a sworn or solemnly affirmed declaration in writing and such documents as he or she may be able to submit, to the said Director: Mineral Development within a period of fourteen (14) days after the expiry of the period referred to in the said notice.
- (2) Any objection lodged in terms of subsection 1(b) must be in writing and must set out clearly and concisely the facts upon which the objection is based.

(3) If, the Director: Mineral Development, with due regard to the information submitted in terms of section 26(2), is of the opinion that any further notice will be necessary to ensure that interested and affected parties will receive adequate notice, he or she must give such further notice as may be appropriate in the circumstance, and which may include -

(a) a notice in the *Provincial Gazette*;

(b) a notice in a newspaper or any other news medium covering the district in which the land concerned is situated; or

(c) the sending of a copy of the notice referred to in subsection (1) to any specific interested and affected party.

(4) Upon receipt of an objection, lodged as a result of any notice given in terms of this section, the Director: Mineral Development must convene a hearing in terms of section 28.

## **28. Convening of a meeting to hear objections**

(1) If the Director: Mineral Development has decided to convene a hearing in terms of section 27(4), he or she must constitute a forum where such objection is to be heard in order to -

(a) hear the objection; and

(b) address the issues raised.

(2) The Director: Mineral Development must determine the place, date, time and duration of the hearing contemplated in subsection (1).

**29. Processing of an application for a prospecting right**

- (1) The Director: Mineral Development must after considering an application for prospecting rights, forward to the Director-General for his or her consideration a submission containing the outcome of any hearing, if any, held in terms of section 28 and the Director: Mineral Development's recommendation for approval or refusal of the prospecting right.
- (2) The Director-General must after considering a submission in terms of subsection (1) forward to the Minister his or her recommendation for the approval or refusal of the prospecting right.
- (3) Subject to subsection (4), any recommendation for approval in terms of subsection (1) and (2) must contain the particulars of the terms and conditions under which the prospecting right is to be granted in terms of section 32(1).
- (4) The approval by the Minister in terms of subsection (3) must be subject to the approval of the relevant environmental management programme in terms of section 67(3)(b).
- (5) Should any environmental management programme not be approved, such a decision together with the reasons therefor must be conveyed to the Minister to enable him or her to withdraw the approval of the prospecting right.

**30. Approval to grant a prospecting right**

The Minister must, subject to the provisions of this Act, approve the granting of a prospecting right provided that he or she is satisfied -

(a) with the prospecting method in which the applicant intends to search for such mineral or group of minerals;

(b) that such applicant has, or has sufficiently provided for, the necessary technical ability and financial resources to conduct the prospecting activities and to mitigate or rehabilitate any environmental impacts which will be generated by the intended prospecting activities satisfactorily; and

(c) that the estimated expenditure for such prospecting activities are compatible with the submitted work programme.

### **31. Criteria to refuse the granting of a prospecting right**

(1) The Minister must refuse to approve the granting of prospecting right if in his or her opinion -

(a) an applicant does not comply with the provisions of this Act;

(b) the intended operation will cause unacceptable environmental impacts;

(c) an applicant or any director or member of any applicant who, with respect to a previous or existing prospecting or mining right in respect of which such applicant, director or member is or was involved, has been advised in writing of a contravention of the provisions of this Act or any other legislation repealed by this Act and he or she has failed to remedy such contravention; or

(d) the granting of the prospecting right will not be in the national interest.

**32. Granting of a prospecting right**

- (1) Upon receipt of the Minister's approval in terms of section 30 to grant a prospecting right and after approval of the Environmental Management Programme, the Director: Mineral Development must grant the prospecting right.
- (2) If the Minister refuses to approve the granting of a prospecting right in terms of section 31, the Director: Mineral Development must inform the applicant in writing accordingly.

**33. Duration and renewal of a prospecting right**

- (1) Subject to the provisions of this Act, a prospecting right is valid for the period as may be stipulated therein and such period may not exceed 5 years.
- (2) Notwithstanding the provisions of subsection (1) and subject to section 34 the Director: Mineral Development may approve the renewal of a prospecting right for a further period not exceeding 3 years.
- (3) Notwithstanding the provisions of subsection (1) and (2) and subject to section 34, the Minister may approve the granting of a prospecting right or the renewal thereof for longer periods.

**34. Application for the renewal of a prospecting right**

- (1) Subject to the provisions of this Act, the holder of a prospecting right may at any time but not later than ninety days before the expiry of such right, apply for the renewal of a prospecting right.

(2) Any application for renewal of a prospecting right must-

(a) be lodged with the Director: Mineral Development on a prescribed form together with the payment of a non-refundable prescribed fee;

(b) state the period for which a renewal is needed;

(c) give reasons as to why a renewal is required;

(d) be accompanied by a report reflecting the results and interpretation of completed prospecting activities and the costs thereof;

(e) be accompanied by a report reflecting the extent of environmental rehabilitation conducted and completed thus far and the costs thereof;  
and

(f) include a detailed prospecting work programme for the renewal period.

**35. Refusal of an application for the renewal of a prospecting right**

(1) An application for the renewal of a prospecting right must be refused by the Director: Mineral Development if the holder thereof -

(a) has not complied with the terms and conditions of the prospecting right granted in terms of section 32;

(b) has not complied with the prospecting work programme in respect of which such right was granted;

(c) has not complied with the requirements of the approved environmental management programme;



(d) is in contravention of any provision of this Act; and

(e) does not comply with the requirements of section 34;

(2) The renewal of a prospecting right must be refused by the Minister if -

(a) in his or her opinion, the renewal thereof will result in the hoarding or lock-up of mineral resources; or

(b) he or she is not satisfied with the reasons given in terms of section 34(2)(c).

### **36. Obligations of a holder of a prospecting right**

(1) The holder of a prospecting right must, subject to the provisions of this Act-

(a) commence with the prospecting activities within thirty (30) days from the date on which the right was granted;

(b) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;

(c) comply with the terms and conditions of the prospecting right;

(d) comply with the requirements of the approved environmental management programme;

(e) pay the prescribed prospecting fees to the State; and

- (f) pay the prescribed royalties to the State in respect of any mineral or group of minerals removed and disposed of in terms of section 37(b).
- (2) Subject to the approval of the Director: Mineral Development, the holder of a prospecting right may relinquish any portion or portions of the prospecting area in respect of such right, provided the prospecting right is amended accordingly by the Director: Mineral Development.
- (3) Upon relinquishment of such portion, all the provisions and requirements of this Act must be complied with, in so far as they relate to the termination of a prospecting right in any manner whatsoever.

### **37. Ancillary rights of a holder of a prospecting right**

The holder of a prospecting right has, subject to the provisions of this Act-

- (a) the exclusive right to apply for a mining right over a portion or portions of the area which forms the subject of such prospecting right and for the same mineral or group of minerals in respect of which the prospecting right is held: Provided that such application is lodged in accordance with section 38 of this Act and not later than ninety days before the expiry of the prospecting right; and
- (b) the right to remove and dispose of any mineral or group of minerals in respect of which the prospecting right is held and which are found during prospecting operations: Provided that the extent of such removal and disposal is in accordance with the terms and conditions of the prospecting right.

**38. Application for a mining right**

- (1) Subject to the provisions of this Act, the Minister must, approve the granting of a mining right, on such terms and conditions as he or she may determine.
- (2) An application for a mining right must be lodged on the prescribed form together with the payment of a non refundable prescribed application fee at the office of the Director: Mineral Development and must contain -
  - (a) full particulars of the applicant;
  - (b) a plan indicating the co-ordinates and boundaries of the area applied for;
  - (c) an indication of the mineral, associated minerals or group of minerals for which the right is required;
  - (d) the period for which the right is required;
  - (e) a business plan comprising of -
    - (i) a comprehensive geological report with details of the mineral resources, and reserves as determined by the geological study and feasibility study in respect of the area applied for;
    - (ii) a comprehensive technical and feasibility report with details of the mining method, capacity of production and scale of operations, mineral extraction, processing and treating, mineral beneficiation, infrastructure requirements as well as details of marketing arrangements for the sale of such minerals;

(iii) a detailed forecast of capital requirements, sales revenues, operating costs, environmental management and remediation costs, environmental management programme financial guarantees, mine safety and health costs and other costs presented in a cashflow format in respect of the period required for mining operations; and

(iv) details with documentary evidence to prove the applicant's technical ability and financial resources, or the scheme for obtaining such ability and resources and capital requirements, that will enable the applicant to conduct the mining operations effectively;

(f) a social plan containing details of the socio-economic impact of the proposed mining project, as well as the measures to remedy any negative socio-economic impacts during the life of the mine and after closure.

(g) a scoping report reflecting the expected environmental impacts;

(h) identification of interested and affected parties;

(i) details of consultation with affected and interested parties and the results thereof; and

(j) any other information or documentation which the Director: Mineral Development may require in connection with the information required in terms of this subsection.

(3) Subject to the provisions of section 62(1) and (2), the Director: Mineral Development shall not consider any application for a mining right if -

- (a) such application does not comply with the provisions of subsection (2);
- (b) another person holds a prospecting right or mining right or retention permit for the same mineral or group of minerals and area;
- (c) an application for a prospecting right or mining right for the same mineral and area has already been approved in terms of sections 30 and 42; or
- (d) in the opinion of the Chief Inspector, the applicant does not have the ability or cannot make the necessary provision to mine in a healthy and safe manner.

(4) The opinion contemplated in subsection (3)(d) must be provided to the Director: Mineral Development within 7 days from the date on which the request for such an opinion was received by the Chief Inspector, the Director: Mineral Development must inform the applicant accordingly in writing.

(5) If an application is not accepted or considered for the reasons referred to in subsection (3), the Director: Mineral Development must inform the applicant accordingly in writing.

### 39. Objections to the granting of a mining right

(1) After the acceptance of an application for a mining right with due regard to section 38(3) the Director: Mineral Development must cause to be displayed at his or her office and in a public building in the district in which the land concerned is situated, a notice in the prescribed manner -

(a) making it known that an application for a mining right was lodged in respect of the land concerned; and

(b) calling upon any person who wishes to object, to furnish his or her objections and the grounds thereof, supported by a sworn or solemnly affirmed declaration in writing and such documents as he or she may be able to submit, to the said Director: Mineral Development within a period of fourteen (14) days after the expiry of the period referred to in the said notice.

(2) Any objection lodged in terms of subsection (1)(b) must be in writing and must set out clearly and concisely the facts upon which the objection is based.

(3) If, with due regard to the information submitted in terms of section 38(2), the Director: Mineral Development is of the opinion that any further notice will be necessary to ensure that interested and affected parties will receive adequate notice, he or she must give such further notice as may be appropriate in the circumstance, and which may include -

(a) a notice in the *Provincial Gazette*;

(b) a notice in a newspaper or any other news medium covering the district in which the land concerned is situated; or

(c) the sending of a copy of the notice referred to in subsection (1) to any specific interested and affected party.

(4) Upon receipt of a properly substantiated objection, lodged as result of any notice given in terms of this section, the Director: Mineral Development must convene a hearing in terms of section 40.

#### **40. Convening of a meeting to hear objections**

(1) If the Director: Mineral Development, decides to convene a hearing in terms of section 39(4), he or she must constitute a forum where such objection is to be heard in order to -

(a) hear the objection; and

(b) address the issues raised.

(2) The Director: Mineral Development must determine the place, date, time and duration of the hearing contemplated in subsection (1).

#### **41. Processing of an application for a mining right**

(1) The Director: Mineral Development must forward to the Director-General for his or her consideration a submission containing the Director: Mineral Development's recommendation for approval or refusal of the mining right, and the outcome of any hearing held in terms of section 40.

- (2) The Director-General must, after considering a submission in terms of subsection (1), forward to the Minister his or her recommendation for the approval or refusal of the mining right.
- (3) Subject to subsection (4), any recommendation for approval in terms of subsection (1) and (2) must contain the particulars of the terms and conditions under which the mining right is to be granted in terms of section 38(1).
- (4) The approval by the Minister in terms of subsection (3) must be subject to the approval of the relevant Environmental Management Programme in terms of 67(3)(b).
- (5) Should any Environmental Management Programme not be approved, such a decision must be conveyed to the Minister to enable him or her to review the approval of the mining right.

#### **42. Approval to grant a mining right**

- (1) The Minister must, subject to the provisions of this Act, approve the granting of a mining right provided that he or she is satisfied -
  - (a) with the manner and scale in which the applicant intends to mine for mineral or group of minerals applied for;
  - (b) the applicant has, or has sufficiently provided for, the necessary technical abilities and financial resources to conduct the mining activities on a sustainable basis and mitigate or rehabilitate the environmental impacts generated by the mining activities satisfactorily; and



- (c) with the scheme or arrangements whereby the applicant proposes to obtain capital requirements for mining.

#### **43. Criteria to refuse the granting of a mining right**

- (1) The Minister must refuse to approve the granting of a mining right if in his or her opinion-

- (a) the application does not comply with the requirements and provisions of this Act;

- (b) the intended mining operation will cause unacceptable environmental impacts;

- (c) an applicant or director or member of the applicant who, with respect to a previous or existing prospecting right or mining right in respect of which such applicant, director or member is or was involved, has been informed in writing of a contravention of the provisions of this Act or any other legislation repealed by this Act and he or she has failed to remedy such contravention;

- (d) the manner and scale in which the applicant intends to mine for such mineral or group of minerals or the provisions for the necessary technical ability and financial resources are not satisfactory;

- (e) the proposed operations will detrimentally affect any existing prospecting or mining operations on the same land;

- (f) the intended mining operation will not be in the national interest; or

- (g) the mineral or group of minerals applied for is unlikely to occur in mineable quantities in or on the land concerned.

#### **44. Granting of a mining right**

- (1) Upon receipt of the Minister's approval to grant a mining right in terms of section 42 and after approval of the environmental management programme the Director: Mineral Development must grant the mining right.
- (2) If the Minister refuses to approve the granting of a mining right in terms of section 43, the Director: Mineral Development must inform the applicant in writing accordingly.

#### **45. Duration and renewal of a mining right**

- (1) Subject to the provisions of this Act, a mining right is valid for the period as may be stipulated therein and such period may not exceed twenty five years.
- (2) Notwithstanding the provisions of subsection (1) and subject to section 46, the Minister may, upon recommendation by the Director-General, approve the renewal of a mining right for a further period or periods not exceeding twenty five years.

**46. Application for the renewal of a mining right**

- (1) Subject to the provisions of this Act, the holder of a mining right may at any time but not later than 90 days before the expiry of such right, apply for the renewal thereof.
- (2) Any application for renewal of a mining right must-
  - (a) be lodged with the Director: Mineral Development on the prescribed form and together with the payment of a non-refundable prescribed fee;
  - (b) state the period for which the renewal is required;
  - (c) give reasons as to why a renewal is required;
  - (d) be supported by a revised business plan;
  - (e) be accompanied by a report reflecting the extent of the environmental rehabilitation conducted and completed thus far and the costs thereof; and
  - (f) any other information or documentation the Director: Mineral Development may require.

**47. Refusal of an application for the renewal of a mining right**

- (1) An application for the renewal of a mining right must be refused by the Director: Mineral Development if -
  - (a) the holder thereof-

- (i) has not complied with the terms and conditions of the mining right granted in terms of section 44(1);
  - (ii) has not complied with the mining plan in respect of which such right was granted;
  - (iii) has not complied with the requirements of the approved environmental management programme;
  - (iv) is in contravention of any provision of this Act; or
- (b) the application does not comply with the requirements of section 46.
- (2) The renewal of a mining right must be refused by the Minister if -
- (a) in his or her the opinion, the renewal thereof will result in the hoarding or lock-up of mineral resources; or
  - (b) he or she is not satisfied with the reasons given in terms of section 46(2)(c).

#### **48. Obligations of a holder of a mining right**

The holder of a mining right must, subject to the provisions of this Act-

- (a) commence with mining operations on or before the date stipulated in the mining right unless the Director: Mineral Development grants extension of such commencement date, upon acceptable reasons explaining why such operations cannot be commenced with;

- (b) continuously and actively conduct mining operations in accordance with the business plan;
- (c) comply with the terms and conditions of the mining right;
- (d) comply with the requirements of the environmental management programme;
- (e) comply with the provisions of this Act or any other law in respect of mining operations;
- (f) in accordance with the social plan referred to in section 38(2)(f), contribute towards the local economic development of the area within which it is operating; and
- (g) pay the prescribed royalties to the State.

#### **49. Application for a retention permit**

- (1) Subject to the provisions of this Act, the Minister may, approve the granting of a retention permit, on such terms and conditions as he or she may determine.
- (2) An application for a retention permit must be lodged on the prescribed form and together with the payment of a non refundable prescribed fee with the Director: Mineral Development and must contain -
  - (a) full particulars of the applicant;
  - (b) the period for which the retention permit is required;

(c) particulars of the prospecting right in terms of which prospecting operations were conducted on the area concerned;

(d) a plan indicating the co-ordinates and boundaries of the area applied for;

(e) a detailed geological description of the area of land to which the application relates;

(f) an identification of the mineral or group of minerals for which a retention permit is required;

(g) documentary evidence to prove the existence of the mineral reserves occurring within the area under application;

(h) a description supported by a plan, of any existing pollution or damage to the environment in the area to which the application relates;

(i) particulars, substantiated by documentary proof, of the technical ability and financial resources of, or available to the applicant;

(j) the reasons why no further prospecting or mining operations can be carried out on the area concerned;

(k) an indication of the circumstances in which and the earliest date on which, such mineral or group of minerals can in the opinion of the applicant, be mined or won on a profitable basis; and

(l) any other information, data or documentary evidence that the Director: Mineral Development may require.

**50. Acceptance of an application for a retention permit**

The Director: Mineral Development must not accept an application for a retention permit if—

- (a) the application does not comply with the provisions of section 49(2);
- (b) the applicant is not the holder of a prospecting right in respect of the area to which the application relates; or
- (c) the mineral or group of minerals for which the applicant wishes to apply for a retention permit is not included in the prospecting right concerned.

**51. Criteria for issuing a retention permit**

A retention permit may only be issued in cases where the holder of the prospecting right has —

- (a) prospected the land to which the application relates;
- (b) completed the prospecting programme and a feasibility study;
- (c) established the existence of a potentially minable mineral reserve; and

- (d) researched the matter and found that mining of the mineral or group of minerals concerned would be uneconomical due to prevailing market conditions.

## **52. Criteria to refuse the issuing of a retention permit**

The Minister must refuse to approve the issuing of a retention permit if at the time of the application such applicant is in contravention of the terms and conditions of the prospecting right or any provisions of this Act or if the Minister with due consideration of the information submitted in terms of section 49(2) is of the opinion that -

- (a) the deposit of mineral or group of minerals in the area to which the application relates -
  - (i) can be mined on a profitable basis at the time of the application; and
  - (ii) is likely to be mined profitably at the end of the period indicated in the application;
- (b) the applicant has not satisfactorily completed the required prospecting work programme and the necessary feasibility study;
- (c) the unprofitable and uneconomic nature of the deposit is due to reasons other than temporary market conditions;
- (d) it is not desirable, having regard to the sustainable development of the mineral resources of South Africa and in the national interest, to issue such permit; or
- (e) the issuing of such permit will result in -



- (i) an exclusionary act;
- (ii) the promotion of uncompetitive behaviour by the applicant;
- (iii) the hoarding or lockup of the nation's mineral resources; or
- (iv) protecting the applicant against competition.

### **53. Issuing of a retention permit**

- (1) Upon receipt of the Minister's approval, in respect of an application for a retention permit, the Director: Mineral Development must issue the permit.
- (2) A retention permit will be issued for a specified mineral or group of minerals and for a specified area.
- (3) If the Minister refuses to approve the issuing of a retention permit, the Director: Mineral Development must inform the applicant in writing accordingly.

### **54. Duration and renewal of a retention permit**

- (1) Subject to the provisions of this Act, a retention permit is valid for the period as may be stipulated therein and such period may not exceed three years.
- (2) Notwithstanding the provisions of subsection (1) and subject to section 55 and 56, the Minister may approve the renewal of a retention permit for a

further final period not exceeding two (2) years and the Director: Mineral Development must renew the retention permit accordingly.

**55. Application for the renewal of a retention permit**

- (1) The holder of a retention permit may at any time but not later than three (3) months before the expiry of such permit, apply for the renewal thereof.
- (2) Any application for renewal of a retention permit must –
  - (a) be lodged with the Director: Mineral Development, in writing on the prescribed form together with the payment of a non-refundable prescribed fee;
  - (b) reflect updated information required in terms of sections 49(2); and
  - (c) any other information or data that the Director: Mineral Development may require.

**56. Obligations of a holder of a retention permit**

The holder of a retention permit must, subject to the provisions of this Act –

- (a) ensure the continued relevance and execution of the environmental management programme approved in respect of the prospecting operations, until such time as an exoneration certificate has been issued in terms of 73(1);
- (b) pay the prescribed retention fees;

(c) submit progress reports on a six (6) monthly basis to the Director: Mineral Development indicating -

- (i) prevailing market conditions and the effect thereof on the necessity to hold a retention permit over the land concerned;
- (ii) efforts undertaken by the holder to ensure that mining operations commence before the expiry of the retention period; and
- (iii) any other information or documentary evidence that the Director: Mineral Development may require.

#### **57. Effect of issuing of a retention permit**

When a retention permit is issued –

- (a) the prospecting right concerned lapses;
- (b) no prospecting right or mining right may be granted to any third party in respect of the area and mineral to which the retention permit relates; and
- (c) the holder of such permit, shall during the period of validity of the permit, have the sole and exclusive right to acquire a mining right;

#### **58. Direction by Minister to a holder of retention permit to apply for a mining right**

- (1) Subject to the provisions of this Act, the Minister may, if the Minister has reason to believe –

(a) that any mineral or group of minerals to which a retention permit relates may be mined on a profitable basis;

(b) that it is in the national interest that such mineral or group of minerals be mined;

instruct such holder to apply within a specified period -

(i) for a mining right to carry out mining operations in respect of such mineral or group of minerals; or

(ii) for a prospecting right to conduct further prospecting in respect of such mineral or group of minerals.

(2) If the holder of a retention permit fails to comply with any instructions given in terms of subsection (1), the Minister must cancel such permit.

#### **59. Retention permit not to be transferred or encumbered**

A retention permit shall not be transferred, ceded, let, sub-let, alienated, disposed of or encumbered by mortgage.

#### **60. Notice of commencement of prospecting or mining operations**

(1) The holder of a prospecting right or mining right must before commencement of any prospecting or mining operation, notify the Director: Mineral Development in writing of such intended commencement, and provide particulars in connection with location, nature and extent of such operation.

- (2) The holder of or applicant for a prospecting right or mining right must, at least fourteen (14) days prior to the commencement of any prospecting or mining operation, notify the occupant or owner of the land in writing of his or her intention to commence with such operation.

#### **61. Transfer of prospecting right or mining right**

- (1) Subject to the provisions of subsection (2), no person shall transfer, cede, assign, let, sub-let, alienate, dispose of or encumber by mortgage any prospecting right or mining right, or any part thereof or interest therein without the written approval of the Minister.

- (2) Any person who wishes to apply for approval in terms of subsection (1) must lodge an application to that effect with the Director: Mineral Development, giving detailed reasons why such holder wishes to transfer the said prospecting right or mining right.

- (3) Any prospecting right or mining right transferred, ceded, assigned, let, sub-let, alienated, disposed of or encumbered by mortgage without the written approval of the Minister shall be of no force or effect.

#### **62. Exemption from certain provisions of this Act**

- (1) The Minister may by notice in the *Government Gazette*, in order to promote-
- (a) the participation of certain category of persons in prospecting and mining activities; or
  - (b) any category of prospecting or mining activities,

exempt such category of person or prospecting or mining activities from any provisions of sections 26(2) or 38(2).

(2) The Minister may by notice in the *Government Gazette*, exempt any organ of State from the provisions of section 26(2) or 38(2) in respect of any specific prospecting or mining activity carried out for public purposes.

(3) Notwithstanding the provision of subsection (1) and (2), the category or persons or the organ of state so exempted must submit an environmental management programme for approval in terms of section 67(3)(b).

### **63. Abandonment of prospecting right or mining rights or retention permit**

The holder of any prospecting or mining right or retention permit may at any time abandon it as a whole or in respect of a particular mineral or group of minerals or in respect of any portion of the area concerned by written notice to the Director: Mineral Development and thereupon such right or permit must be cancelled or amended accordingly by the Director: Mineral Development: provided that the holder will only be relieved of its obligations under this Act, after the issuing of an exoneration certificate in terms of 73(1).

**Part II: Regulatory control in respect of environmental management and remediation of environmental damage**

**64. Principles**

(1) The principles set out in this section shall –

- (a) apply to all matters and actions relating to prospecting and mining operations regulated in terms of this Act; and
- (b) serve as a general framework and guide for the interpretation, administration and implementation of the regulatory requirements for environmental management and remediation of environmental damage required by this Act.

(2) The development of mineral resources will take place within the framework of sustainable development and environmental management and will be regulated in accordance with national environmental management policy, norms and standards.

(3) (a) Sustainable development requires the consideration of all relevant factors including the following –

- (i) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment;

- (ii) that the use and exploitation of non-renewable natural resources is responsible and equitable and takes into account the consequences of the depletion of the resource;
- (iii) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
- (iv) that the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be avoided, are minimised and remedied;
- (v) that pollution and degradation of the environment are avoided, or, where they cannot be avoided, are minimised and remedied;
- (vi) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be avoided, is minimised and remedied;
- (vii) that the generation of waste is avoided, or where it cannot be avoided, is minimised, re-used or recycled where possible and disposed of in a responsible manner;
- (viii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
- (ix) that negative impacts on the environment and on people's environmental rights be anticipated and prevented and



where they cannot be prevented, are minimised and remedied.

- (b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.
- (c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to discriminate unfairly against any person, particularly vulnerable and disadvantaged persons.
- (d) Responsibility for the environmental health and safety consequences of a project, product, process, service or activity must exist throughout its life cycle.
- (e) Decisions must take into account the interests, needs and values of all interested and affected parties;
- (f) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.
- (g) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
- (h) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health

effects must be paid for by those responsible for harming the relevant environment.

(i) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems must receive special attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

(j) Effective monitoring, control and reporting to ensure the attainment and maintenance of the principles.

#### **65. Duty of care, responsibility for environmental management and for remediation of environmental damage**

(1) The holder of a prospecting right or a mining right, the owner of a mine or an employee or any other person, including a contractor or any employee of a contractor, who, within or outside the boundaries of the mining area, causes, has caused, prior to or after the promulgation of this Act, or may cause pollution or degradation of the environment as a result of prospecting or mining activities conducted on such mining area, must take reasonable measures to prevent such pollution or degradation from occurring, continuing, or recurring. If harm to the environment cannot be avoided or stopped, such holder, owner, employee or person shall minimise and rectify such pollution or degradation of the environment in accordance with relevant legislative requirements to the satisfaction of the Director: Mineral Development.

(2) The holder of a prospecting right or a mining right must appoint –

(a) a responsible person who shall report to such holder; or

- (b) him or herself,  
to be in charge of environmental management at such mine or prospecting operation. Such appointment does not derogate from the holder's responsibilities in terms of this Act.
- (3) The Director: Mineral Development may require that any or all of the measures required to be taken in terms of subsection (1) shall include measures to -
- (a) establish baseline information concerning the affected environment to determine protection, remediation and management objectives;
  - (b) investigate, assess and evaluate the impact on the environment;
  - (c) inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
  - (d) modify, remedy or control any action, activity or process causing the pollution or degradation;
  - (e) contain or remedy the cause of pollution or degradation and migration of pollutants;
  - (f) eliminate or prevent any source of pollution or degradation;
  - (g) remedy the effects of the pollution or degradation;
  - (h) comply with any prescribed waste standard or management practice;  
and

- (i) monitor and report on compliance or non-compliance with or deviation from standards and environmental management programme objectives;
- (4) (a) The Director: Mineral Development may, if no other authority has already taken similar action in terms of the National Environmental Management Act, 1998, or the National Water Act, 1998, direct any person referred to in subsection (1), who fails to take the measures required under subsection (1) to –
- (i) commence taking specific measures before a given date;
  - (ii) diligently continue with those measures; and
  - (iii) complete such measures before a given date.
- (b) The Director: Mineral Development must on issuing of the directive in terms of paragraph (a), inform the authorities referred to in section 28(4) of the National Environmental Management Act, 1998, and section 19(3) of the National Water Act, 1998.
- (5) Should a person fail to comply, or comply inadequately with a directive given under subsection (4) –
- (a) such person shall be guilty of an offence and over and above the penalties that may be imposed on conviction, such person shall continue to be required to comply with the said directive; and
  - (b) the Director: Mineral Development may subject to the provisions of section 64(3)(h) take the necessary measures to remedy the situation and such measures may be funded from money -

- (i) demanded from any person referred to in subsection (6); or
  - (ii) appropriated by Parliament in the budget of the Department.
- (6) Subject to subsection (8), the Director: Mineral Development may recover all costs incurred as a result of acting under subsection (5) jointly or severally from the following persons:-
  - (a) Any person who is or was responsible for, or who directly or indirectly contributed to the pollution or degradation or the potential pollution or degradation.
  - (b) Any such person who failed to prevent –
    - (i) the activity or the process being performed or undertaken; or
    - (ii) the situation from coming about.
- (7) The Director: Mineral Development may in respect of the demand for payment or the recovery of costs under subsection (6), demand or claim proportionally from any other person who, in the opinion of the Director: Mineral Development, benefited from the measures undertaken under subsection (5), to the extent of such benefit.
- (8) The costs demanded or claimed under subsections (6) and (7), must be the actual costs incurred and will include, without being limited thereto, consultancy costs, labour, administrative and overhead costs.
- (9) If more than one person is liable in terms of subsections (6) and (7), the Director: Mineral Development must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

(10) If in the opinion of the Minister it is necessary that measures be taken to prevent pollution or degradation of the environment or to rehabilitate dangerous occurrences and it is found that the responsible person is deceased or has (in the case of a corporate body) ceased to exist or cannot be traced, the Minister may instruct that the Department takes the necessary measures to prevent further pollution or degradation or to make the area safe. The cost of such measures may be apportioned between the State from monies voted by Parliament and any person, including the owner of the land concerned, who will directly benefit from the measures being taken. The Minister may, if he or she is of the opinion that it would be unreasonable, impractical or inequitable or unfair to require such person or persons to contribute to the taking of the said measures, exempt such person or persons from contributing.

(11) The Director-General, may if an exoneration certificate has been issued in terms of section 73, require the registrar of deeds concerned to make entries in the appropriate registers and to endorse the title deed to any land on which rehabilitated occurrences, structures, including residue deposits, are situated to reflect the presence of such occurrences or structures and to describe the measures that must be observed and undertaken by the owner thereof or the owner of the land to protect the integrity of the rehabilitation measures that have been undertaken in respect of such occurrences or structures.

(12) For the purposes of subsection (11) the owner of the land or any mortgagee shall within a period of one month from the date of notification, submit the title deed in respect of the land concerned to the Director-General for submission to the registrar of deeds concerned. If such owner or mortgagee fails to submit the said title deed within such period, the registrar concerned shall, nevertheless, make such entries at

the written request of the Director-General and make such endorsement if the title deed is at any time lodged with the registrar for any reason.

**66. Integrated Environmental Management the requirements for an Environmental Impact Assessment**

- (1) The philosophy of integrated environmental management must be pursued during the process of environmental impact assessment and the management of all environmental impacts resultant from prospecting and mining activities. The general objectives of integrated environmental management are to -
  - (a) promote the integration of the principles of environmental management set out in section 64 into decision-making which may have a significant effect on the environment;
  - (b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 64;
  - (c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection therewith;
  - (d) ensure adequate and appropriate opportunity for input from interested and affected parties prior to taking any decision which may affect the environment;



- (e) ensure the consideration of environmental characteristics in management and decision-making which may have a significant effect on the environment; and
  - (f) identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the principles of environmental management set out in section 64.
- (2) In order to give effect to the objectives of integrated environmental management referred to in subsection (1), the potential impact on –
- (i) the environment;
  - (ii) socio-economic conditions; and
  - (iii) the cultural heritage,
- of prospecting or mining operations and which may significantly affect the environment, must be considered, investigated and assessed prior to their implementation and communicated to the Director: Mineral Development through the process involved in the development of an environmental management programme referred to in section 67.
- (3) (a) The investigation, assessment and communication of the potential impact of activities contemplated in subsection (2) must take place in accordance with the procedures and requirements contemplated in subsection (4).
- (b) The Minister may, in consultation with the Committee for Environmental Co-ordination, make regulations laying down the



procedures to be followed and the report to be prepared for the purpose of compliance with subsection (a).

(c) Any regulations made in terms of this subsection must comply with subsection (4).

(d) This section does not affect the validity of any approved environmental management programme that is in force at the commencement of this Act.

(4) Procedures and requirements for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure the following -

(a) investigation of the environment likely to be affected by the proposed prospecting or mining activities in order to compile a pre-prospecting or pre-mining environmental database;

(b) investigation of the potential impact, including cumulative and synergistic effects, of the proposed activities on the environment, socio-economic conditions and cultural heritage, and assessment of the significance of the potential impact;

(c) investigation of alternative methods and mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;

(d) public information and participation, independent review if required and conflict resolution in all phases of the investigation and assessment of impacts;

- (e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information; and
  - (f) investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation.
- (5) The applicant for a prospecting right or mining right or any organ of State referred to in section 62(2) must consult with all affected parties and, furthermore, with interested affected persons who have identified themselves as having a substantial and material interest in the matter.

#### **67. Environmental Management Programme**

- (1) Subject to the provisions of this Act, no person shall prospect or mine unless he or she has complied with the provisions of section 66(1), (2), (3)(a) and (4) and is in possession of an approved environmental management programme, based on an environmental impact assessment contemplated in the said provisions and drawn up in accordance with the requirements of this Act and with the directives and guidelines published by the Department.
- (2) (a) The management of all environmental impacts generated by or resultant from prospecting or mining shall be carried out –
- (i) in accordance with the environmental management programme approved in terms of subsection (3);
  - (ii) as an integral part of the prospecting or mining operations concerned;

- (iii) simultaneously with such operations unless determined otherwise in writing by the Director: Mineral Development; and
    - (iv) to the satisfaction of the Director: Mineral Development.
  - (b) The environment affected by the prospecting or mining shall be rehabilitated by the holder of a prospecting right or mining right to, as far as is practicable, its natural state or to a predetermined and agreed to standard or land use which conforms with the concept of sustainable development. The affected environment must maintain a stable condition that will not be detrimental to the safety and health of humans and animals and that will not pollute the environment or lead to the degradation thereof.
- (3)
  - (a) The applicant for a prospecting right or mining right or an organ of State referred to in section 62(2), shall submit to the Director: Mineral Development for consideration an environmental management programme in respect of the environment that has been or will be affected by the prospecting or mining on the area concerned.
  - (b) If the Director: Mineral Development is satisfied with the content thereof, the said Director: Mineral Development may subject to subsection (5); approve such environmental management programme after which the requirements of the environmental management programme shall be legally binding on the applicant or organ of State referred to in paragraph (b).

- (c) No applicant or organ of State referred to in paragraph (a) shall commence with any prospecting or mining or operations incidental thereto or in preparation thereof, on the intended prospecting area or mining area before obtaining the approval referred to in paragraph (b)
- (d) A prospecting right or a mining right shall not be granted prior to the approval of the environmental management programme.

(4) The Director: Mineral Development may -

- (a)(i) within a period of one hundred and twenty (120) days from the date of acceptance of an environmental management programme for consideration, or amended environmental management programme as result of any requirements in terms of subsection (6), approve or refuse to approve an environmental management programme; or
- (ii) approve an environmental management programme subject to the requirement that supplementary information that is not immediately available be furnished and incorporated into the environmental management programme within a period stipulated by the Director: Mineral Development. This arrangement shall not apply in cases where the absence of the said information will invalidate the effectiveness of the environmental management programme to acceptably manage, in the meantime, pollution or the degradation of the environment;
- (b) from time to time, on application from the holder of an environment management programme, approve amendments to an environmental management programme, subject to conditions determined by the Director: Mineral Development.

- (c) without application being made therefor, but after consultation with such holder, amend any approved environmental management programme.

(5) Before the Director: Mineral Development –

- (a) approves any environmental management programme referred to in subsection (3);
- (b) grants any approval under subsection (4)(a)(ii); or
- (c) effects an amendment under subsections (4)(b) or (c);

the Director: Mineral Development shall consult with the Chief Inspector, each department charged with the administration of any law which relates to any matter affecting the environment, with affected parties and with persons who have identified themselves as having a material interest in the matter. The Chief Inspector, department, parties or persons who have identified themselves as having a material interest in the matter, must provide their comments on the environmental management programme to the Director: Mineral Development within sixty days from the date of the request from the Director: Mineral Development to comment on the environmental management programme.

- (6) The Director: Mineral Development may, after consultation with the applicant and pending the approval of an environmental management programme require that-

- (a) the completed environmental impact assessment referred to in section 67(1) be reviewed, or that another, or an amplifying environmental impact assessment be carried out in respect of the intended prospecting or mining operations by the applicant or by a professional body designated by the Director: Mineral Development; and
- (b) any costs in respect of an environmental impact assessment referred to in paragraph (a) shall be borne by the applicant.

#### **68. Financial guarantees for remediation of environmental damage**

Before the Director: Mineral Development approves any environmental management programme, the applicant for a prospecting right or a mining right must satisfy the Director: Mineral Development that he or she -

- (a) has the financial means to execute the environmental management programme; and
- (b) has demonstrated in the environmental management programme that adequate financial provision, as prescribed, has been made which may be called up and the funds utilised by the Director: Mineral Development for rehabilitation or management of negative environmental impacts, should the holder, in the opinion of the Director: Mineral Development fail or be unable to undertake uncompleted rehabilitation obligations or the required management.

**69. Monitoring and environmental management programme performance assessments**

In order to ensure compliance with the environmental management programme and the continued appropriateness and effectiveness of the environmental management programme, the holder of the prospecting right or the mining right or the owner of a mine shall, in the prescribed manner, monitor operations against the requirements of the approved environmental management programme, conduct performance assessments and report the results to the Director: Mineral Development.

**70. Prevention of environmental damage or degradation**

The Director: Mineral Development may at any time issue directives to the holder of a prospecting right or a mining right or the owner of the mine or to any contractor operating on the mining area and may determine conditions in order to limit or prevent any detrimental effect, including pollution or degradation or disturbance of the earth, any water body, fauna and flora, the atmosphere or any part of the affected environment or to human health or well-being.

**71. Management of mine residue deposits**

- (1) No person shall temporarily or permanently deposit mine residue elsewhere than on the site or sites demarcated for that purpose by the Director: Mineral Development. Every such site shall be limited to a minimum and the residue shall be managed in the prescribed manner to prevent environmental pollution and degradation and to ensure safety.
- (2) Notwithstanding the provisions of any other law the Minister may in consultation with the Minister of Environmental Affairs and Tourism and

with the Minister of Water Affairs and Forestry, prescribe measures to ensure the integrity of mine residue deposits and to prevent pollution of the environment arising from such mine residue deposits.

## **72. Removal of buildings, structures and objects**

Whenever a prospecting right or a mining right is cancelled, relinquished, abandoned or if it lapses in terms of this Act, or if any portion of the mining area or the surface of such mining area, comprising the subject of such right is abandoned, the person who is or was the holder of such right is or was the owner of the mine immediately prior to such lapsing, cancellation, relinquishment, abandonment or other termination as the case may be, shall demolish all buildings, structures or any other object which the concerned may require and as far as is practicable, restore any such surface to its natural state to the satisfaction of and within a period determined by the Director: Mineral Development: Provided that such demolition or removal shall not be applicable in respect of buildings, structures or objects –

- (a) which shall, in terms of any other law, not be demolished or removed;
- (b) which have been identified by the Director: Mineral Development, or in respect of which the Director: Mineral Development has granted exemption subject to such conditions as may be determined by him or her; or
- (c) which the owner of the land wishes to retain and which has been agreed upon accordingly in writing with such former holder of such right or owner of the mine and with the Director: Mineral Development, who may grant exemption subject to such conditions as may be determined by the Director: Mineral Development.



**73. Continuation of liability until exoneration certificate is issued**

- (1) If a prospecting right or mining right or retention permit is suspended, cancelled, relinquished, abandoned or if it lapses in terms of this Act, or if any portion of the area comprising the subject of such right or permit, is abandoned, the person who is or was the holder of such right or permit immediately prior to such suspension, cancellation, abandonment, relinquishment or lapsing shall be deemed to have applied for an exoneration certificate as from that date and shall remain liable and responsible for complying with the relevant provisions of this Act, which includes the requirements of the environmental management programme, until the Director: Mineral Development issues an exoneration certificate in respect of the area or portion thereof to the effect that the said provisions have been complied with.
- (2) The Director: Mineral Development may on written application by a competent person referred to in subsection (6), with agreement of the holder referred to in subsection (1), transfer such liability and responsibility to the applicant.
- (3) (a) On application for exoneration the holder referred to in subsection (1), shall conduct an assessment acceptable to the Director: Mineral Development to identify and quantify all residual environmental impacts and the risks associated with such impacts and to identify and quantify the probability of latent environmental impacts occurring and the potential risks associated with such impacts.  
(b) Adequate arrangements, including financial arrangements, to the satisfaction of the Director: Mineral Development shall be made by the holder referred to in subsection (1) or the competent person referred to in subsection (2), prior to the granting of exoneration to provide for the management, including monitoring and remediation of any identified

residual or latent impacts while they have the potential to affect the environment negatively.

- (c) The said holder or competent person referred to in subsection (2) shall remain liable and responsible for complying with the arrangements referred to in paragraph (b) until the Director: Mineral Development issues an exoneration certificate to the effect that the said arrangements have been complied with and are no longer required.
  - (d) Any liability and responsibility of a competent person or holder referred to in subsection (7) shall not be transferred without the written consent of the Director: Mineral Development which consent shall only be granted in respect of another competent person or owner referred to in subsection (7).
- (4) Before issuing an exoneration certificate, the Director: Mineral Development must consult with the Chief Inspector, departments, parties and persons contemplated in section 67(5) and no exoneration certificate shall be issued unless the Chief Inspector and the Department of Water Affairs and Forestry have indicated in writing that the provisions pertaining to health and safety and arrangements referred to in paragraph (3)(b) pertaining to the management of water resources have adequately been addressed.
- (5) When the application for an exoneration certificate is lodged and conveyed to the Department of Water Affairs and Forestry, that department must indicate in writing the extent to which the arrangements referred to in paragraph (3)(b) relating to the management of water resources still have to be complied with.
- (6) For the purposes of this section, a competent person shall be a person who—

- (a) has the expertise, resources and organisational abilities to integrate risk assessment, risk management and risk financing to ascertain the cost of environmental management;
  - (b) has expertise, financial and other resources to meet its obligations to carry out its obligations to carry out actions necessary to fulfil the environmental obligations as set out in the environmental management programme concerned;
  - (c) has appropriate experience in environmental management specific to mining;
  - (d) has direct access to insurance products and alternative risk financing services appropriate to financing of exposure to risks;
  - (e) can manage trusts set up in terms of section 10(1)(cH) of the Income Tax Act, 1962 (Act No 58 of 1962); and
  - (f) has in-house expertise and experience to interpret and manage the findings of an environmental risk assessment.
- (7) In the event that the risk assessment referred to in subsection (3)(a) does not identify the possibility of latent impacts occurring and the rehabilitation measures in respect of residual impacts require only monitoring and maintenance, the Director: Mineral Development may, in consultation with the land owner, consider that the land owner be identified as a competent person for the purposes of subsection (2) and in such a case, the provisions of subsection (3)(c) shall *mutatis mutandis* apply.

#### **74. Preferential claim in case of liquidation or sequestration**

If the holder or the owner of the mine or the competent person referred to in section 73(3)(c) or the competent person referred to in section 73(2) or 73(7) is liquidated or is deceased or is sequestrated the Department shall have a preferential claim against the estate of such holder, or competent person for the amount determined in terms of section 68(b) and section 73(3)(b).

#### **75. Control of emergency incidents**

(1) In this section –

(a) "incident" means an occurrence occurring within the boundaries of a mining area, leading to serious danger to the public or potential serious pollution of or detriment to the environment, whether immediate or delayed; and

(b) "responsible person" means the holder of prospecting right or mining right or retention permit or the owner of a mine.

(2) Notwithstanding the provisions of the Mine Health and Safety Act, 1996 the responsible person must forthwith after becoming aware of the incident, report through the most effective means reasonably available -

(a) the nature of the incident;

(b) any risk posed by the incident to public health, safety and property or the environment;

(c) the toxicity of substances or by-products released by the incident; and

(d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health safety and property or the environment to -

(i) the Director: Mineral Development;

- (ii) the South African Police Service and the relevant fire prevention services;
- (iii) the relevant provincial government;
- (iv) the relevant municipality; and
- (v) all persons whose health, safety or property may be affected by the incident.

(3) The responsible person must, as soon as reasonably practicable after becoming aware of the incident –

- (a) take all measures to contain and minimise the effects of the incident, including its effect on the environment and any risks posed by the incident to the health, safety and property of persons;
- (b) undertake clean-up operations;
- (c) remedy the cause of the incident; and
- (d) assess the immediate and long-term effects of the incident on public health, safety and property or the environment.

(4) The responsible person must within fourteen days of the incident, report in writing to the Director: Mineral Development such information as is available to enable an initial evaluation of the incident, including –

- (a) the nature of the incident;
- (b) the substances involved and the estimation of the quantity released and their possible effect on humans and the environment and the data needed to assess these effects;
- (c) initial measures taken to minimise the impacts;
- (d) causes of the incident, whether direct or indirect, including equipment, technology, system or management failure; and
- (e) measures taken and to be taken to avoid a recurrence of such incident

(5) The Director: Mineral Development may direct the responsible person to undertake specific measures within a specific time to fulfil its obligations under subsections (3) and (4) and must, when considering any such measure or time period, have regard to the following –

- (a) the necessity of consultation with the authorities referred to in section 30 of the National Environmental Management Act, 1998;
- (b) the severity of any impact on the environment as a result of the incident and the costs of the measures being considered;
- (c) any measures already taken or proposed by the person on whom measures are to be imposed, if applicable;
- (d) any measures already taken or proposed or imposed by any other authority; and
- (e) any other relevant factors.

(6) A verbal directive given in terms of subsection (5) must be confirmed in writing within seven days.

(7) Should –

(a) the responsible person fail to comply or inadequately comply with a directive under subsection (5), such person shall be guilty of an offence and over and above the penalties that may be imposed on conviction, such person shall continue to be required to comply with the said directive; and

(b) there be an immediate risk of serious danger to the public or potentially serious detriment to the environment, the Director: Mineral Development may in consultation with the authorities referred to in subsection 5(a) and with funds appropriated by Parliament, take the measures necessary to –

- (i) contain and minimise the effects of the incident;

- (ii) undertake clean-up operations; and
- (iii) remedy the cause of the incident.

(8) The Director: Mineral Development may claim reimbursement of all costs incurred by the State under subsection (7) from the responsible person.

(9) If the Director: Mineral Development takes steps under subsection (5) or (7) he or she must, as soon as reasonable practicable, prepare a report on the incident, which report must be made available to –

- (a) the Director-General;
- (b) the Chief Inspector;
- (c) the Directors-General of the Department of Environmental Affairs and Tourism and of the Department of Water Affairs and Forestry;
- (d) the South African Police Service and the relevant fire prevention service;
- (e) the relevant provincial government;
- (f) the relevant municipality; and
- (g) all persons whose health, safety or property have been detrimentally affected by the incident.

## CHAPTER 6

### THE MINERALS AND MINING DEVELOPMENT BOARD

#### 76. Establishment of the Minerals and Mining Development Board

- (1) The Minerals and Mining Development Board is hereby established, the purpose of which shall be to advise the Minister on policy matters relating to the subject matter of this Act.
- (2) Any recommendation by the Board to the Minister shall be of an advisory nature only.
- (3) The Board shall not be a body corporate.

#### 77. Functions of the Board

- (1) The Board shall advise the Minister regarding any policy matter relating to the subject matter of this Act including –
  - (a) the sustainable development of the nation's mineral resources;
  - (b) environmental issues relating to prospecting and mining operations;
  - (c) access to mineral resources;
  - (d) transformation and downscaling of the minerals and mining industry;
  - and
  - (e) adding value to the nation's mineral resources.
- (2) The Board must give priority to matters referred to it by the Minister.



**78. Constitution of the Board**

(1) The Board must consist of at least sixteen (16) but not more than eighteen (18) members appointed by the Minister.

(2) The Minister must appoint –

- (a) the Director-General as the Chairperson;
- (b) a senior manager in the service of the Department as the Deputy Chairperson; and
- (c) the Chief Inspector.

(3) In addition, the Minister must appoint persons as members who equitably represent other relevant departments, organised labour, organised business, non-governmental organisations and community based organisations who will, in the Minister's opinion, enable the Board to carry out its functions.

(4) The Minister may appoint any other natural person as a member, who in the Minister's opinion, has the experience, expertise or skills necessary to enable the Board to carry out its functions.

**79. Persons not qualified to be members of the Board**

(1) No person shall be appointed as member of the Board –

- (a) unless he is a South African citizen permanently residing in the Republic;

(2) if the person –

- (a) is a member of Parliament;

- (b) is an office-bearer of any party, movement, organisation or body of political nature;
- (c) is an unrehabilitated insolvent;
- (d) is subject to an order of a competent court holding that person to be mentally unfit or disordered; and
- (e) has been convicted of an offence committed after the Constitution, took effect, and sentenced to imprisonment without the option of a fine unless the person has received a grant of amnesty or a free pardon before the date of the person's appointment.

#### **80. Vacating of office by a member of the Board**

(1) A member of the Board must vacate his or her office if the member-

- (a) becomes subject to any disqualification mentioned in section 79 or in the case of an official in the service of the state ceases to be such an official;
- (b) is absent from more than two consecutive meetings of the Board without leave of the Chairperson;
- (c) ceases to hold the qualification by virtue of which the member has been appointed as a member of the Board;
- (d) resigns by way of written notice to the Minister and the Minister has condoned the resignation; or
- (e) is relieved of his or her office under subsection (2).

(2) The Minister may relieve a member of the Board of his or her office if such member, in the opinion of the Minister –

(a) has been found guilty of improper conduct or serious misconduct;

(b) is unable to carry out or perform efficiently and diligently the member's functions; or

(c) has engaged in any activity that may undermine the integrity of the Board.

#### **81. Term of office of members of the Board and filling of vacancies**

(1) Subject to the provisions of this Act and save for the members appointed in terms of section 78(2) any other member of the Board shall hold office for a maximum period of three (3) years.

(2) The Minister may, in his or her sole discretion re-appoint a person as member of the Board at the expiry of the member's term of office for a further period of three years.

(3) Any person who replaces a member who vacates his or her office in terms of any provision of section 80, must serve for the balance of the term of the member who has been so replaced.

## **82. Meetings of the Board**

- (1) The Chairperson shall convene the first meeting of the Board, thereafter he or she must decide on the date and venue of future meetings.
- (2) The Minister may, if he or she deems it necessary, call for special meetings of the Board.
- (3) The Chairperson or, in the absence of the Chairperson, the Deputy-Chairperson will preside at every meeting of the Board.
- (4) No meeting of the Board shall be held in the absence of both the Chairperson and the Deputy-Chairperson.
- (5) Fifty-one percent of the members present at a meeting of the Board shall form a quorum for that meeting.
- (6) The decision of the majority of the members of the Board present at a meeting shall constitute a resolution of the Board and, in the event of an equality of votes on any matter, the person presiding at the meeting concerned, shall have the casting vote in addition to the person's vote.
- (7) Recommendations to the Minister must be submitted to him or her by the Chairperson within seven (7) days after the Board has approved such recommendations.

## **83. Committees established by the Board**

- (1) The Board may, subject to the availability of funds, establish *ad hoc* or permanent committees, to assist the Board in the performance of its

functions, and such committees, may include persons who need not necessarily be members of the Board.

(2) Any committee established in terms of subsection (1), may subject to the approval of the Board, establish ad hoc working groups to assist the committee in the performance of its functions, and such working group may include persons who need not necessarily be members of the Board or committee.

(3) A committee established under subsection (1), shall consist of one or more members of the Board and so many other natural persons as the Board may deem necessary, and the Board may at any time dissolve or reconstitute such committee.

(4) If a committee or working group consists of more than one member, the Board shall designate a member of such committee or working group as Chairperson thereof.

(5) The Board shall not be absolved from any function performed by virtue of the provisions of this section by any committee or working group of the Board.

#### **84. Funding of the activities of the Board**

The activities of the Board shall be funded from monies appropriated by Parliament, and provided for on the Budget of the Department of Minerals and Energy.

**85. Remuneration of members of Board and committees**

With the exception of a member of the Board who is in the full time employment of the State, a member of the Board or any member of a committee or working group of the Board shall be appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister may determine with the concurrence of the Minister of Finance.

**86. Report of the Board**

Notwithstanding any specific report which the Minister may request from the Board from time to time, the Board must before 31 March of each year, submit to the Minister a report giving particulars regarding the activities of the Board during that year and plan for the next year.

**87. Administration**

The secretarial support and administrative functions of the Board, shall be performed by officials of the Department designated for that purpose by the Director-General.

## CHAPTER 7

### TRANSITIONAL ARRANGEMENTS

#### 88. Definitions

(1) In this Chapter, unless the context shows that another meaning is intended-

- (i) **"old order right"** means any right referred to in sections 5(1), 44(1) and 47(1)(e) read with section 47(5) of the Minerals Act, 1991 (Act 50 of 1991);
- (ii) **"prospector's right"** means any permit issued in terms of section 6 of the Minerals Act, 1991 (Act 50 of 1991); and
- (iii) **"miner's right"** means any authorization issued in terms of section 9 of the Minerals Act, 1991.

#### 89. Objects of this chapter

The object of this chapter is to -

- (a) ensure that active prospecting and mining operations are guaranteed security of tenure;
- (b) give an opportunity to existing holders of old order rights to re-adjust in compliance with the provisions of this Act;
- (c) ensure that equitable access to the nation's mineral resources is promoted; and
- (d) advance historically disadvantaged persons or association of persons.

**90. Continuation of pending prospecting and mining applications**

- (1) Any application in terms of sections 6(1), 6(2), 6(3), 8(2), 9(1) or 9(2) of the Minerals Act, 1991 (Act No 50 of 1991) which were lodged at least 60 days before the commencement of this Act, must be dealt with as if this Act had not been enacted: Provided that the processing thereof is not contrary to the objectives of this Act.
- (2) Any application lodged after the period referred to in subsection (1) must be dealt with in terms of this Act.

**91. Continuation of prospector's right**

- (1) A prospector's right, in force on the date of the commencement of this Act, remains in force subject to the terms and conditions under which it was granted or issued or deemed to have been granted or issue until it lapses: Provided that such period is not longer than two years.
- (2) Before expiry of the period referred to in subsection 1, the prospector must, in order to continue with prospecting or to commence with mining activities -
  - (a) apply for a prospecting right in terms of section 26; or
  - (b) apply for a mining right in terms of section 38 of this Act.
- (3) Notwithstanding the provisions of subsection (1), any prospector's right in respect of which an application has been lodged in terms of



subsection (2) will remain in force until such time as a decision to approve such application has been taken.

(4) Subject to section 100 any old order right on which a prospector's right referred to in subsection (1) is based will cease to exist in respect of the land and mineral concerned -

(a) if an application in terms of subsection (2) is not lodged within the period specified in subsection (1); or

(b) on the date that the Minister makes a decision in respect of any application made in terms of subsection (2) in respect of the land and mineral concerned.

**92. Continuation of permission to remove and dispose of minerals during prospecting**

(1) Any permission to remove and dispose of any mineral granted or acquired in terms of section 8(1) of the Minerals Act, 1991 (Act No 50 of 1991) or deemed to have been granted or acquired in terms of section 44 (5) of the Minerals Act, 1991 (Act No 50 of 1991), in force immediately prior to the commencement of this Act, remains in force until it lapses: Provided that such period is not longer than two years.

(2) Before expiry of the period referred to in subsection (1), the holder of the permission referred to in the said subsection must, in order to continue with such removal and disposal, apply for a prospecting right in terms of section 26.

- (3) Notwithstanding the provisions of subsection (1), any permission referred to in that subsection attached to a prospector's right in respect of which an application has been lodged in terms of subsection (2) will remain in force until such time as a decision to approve such application has been taken.

**93. Continuation of miner's right**

- (1) A miner's right, in force on the date of the commencement of this Act, remains in force subject to the terms and conditions under which it was granted or issued or deemed to have been granted or issued until it lapses: Provided that such period is not longer than five years.
- (2) Before expiry of the period referred to in subsection (1), the miner must, in order to continue mining, apply for a mining right in terms of section 38.
- (3) Notwithstanding the provisions of subsection (1), any miner's right in respect of which an application has been lodged in terms of subsection (2) will remain in force until such time as a decision to approve such application has been taken.
- (4) Subject to section 100 any old order right on which a miner's right referred to in subsection (1) is based will cease to exist in respect of the land and mineral concerned -
- (a) if an application in terms of subsection (2) is not lodged within the period specified in subsection (1); or

- (b) on the date that the Minister makes a decision in respect of any application made in terms of subsection (2) in respect of the land and mineral concerned.

**94. Notification to holders of old order rights**

- (1) The Minister must by notice in the *Government Gazette* publish a general invitation to holders of old order rights which are not subject to sections 91 or 93 to within a period of one year -

- (a) apply for a prospecting or mining right in terms of this Act;  
or

- (b) give written reasons why a prospecting or mining right should not be granted to another party.

- (2) In the event that the holder referred to in subsection (1) opts for the provision of subsection (1)(b), such holder must submit in writing within the period referred to in subsection (1) -

- (a) a detailed explanation why it is not in the national interest that a prospecting or mining right be granted to another party; or

- (b) (i) as much information as possible on intended prospecting or mining operations including an indication as to when such operations will commence; and

- (ii) reasons how such intended prospecting or mining will promote equitable access to mineral resources; and
- (c) such other information as the Minister may require or stipulate at the time of publication of the notice.

**95. Powers of Minister to grant prospecting right or mining right to another party**

- (1) Upon cessation of any old order right in terms of sections 91(4)(a) or 93(4)(a) the Minister may grant a prospecting right or mining right to any applicant in respect of the land and mineral concerned in terms of the provisions of this Act.
- (2) If the Minister refuses any application referred to in sections 91(4)(b) or 93(4)(b) he/she may grant a prospecting right or mining right to any applicant in respect of the land and mineral concerned in terms of the provisions of this Act.
- (3) If any holder referred to in section 94(1) fails to comply with the provisions of paragraphs (a) or (b) of the said subsection within the period referred to in that subsection, the old order right of such holder will cease to exist and the Minister may, subject to the provisions of this Act grant a prospecting right or mining right to any applicant in respect of the land and mineral or group of minerals concerned.

- (4) Any reasons given in terms of section 94(1)(b) must be considered by the Minister taking into account the national interest and the principles and objectives of this Act.
- (5)
  - (a) The Minister's decision with regard to the acceptability of the reasons referred to in subsection (4) must be conveyed in writing to the holder of the old order rights concerned.
  - (b) Any decision referred to in paragraph (a) must be accompanied by the reasons on which such a decision is based.
- (6)
  - (a) If the reasons referred to in subsection (4) are found to be unacceptable by the Minister, the holder concerned must be given the opportunity to respond within a period of 30 days.
  - (b) The Minister must consider the response referred to in paragraph (a) and convey in writing his/her final decision to the said holder.
- (7)
  - (a) Should the holder concerned not respond within the period referred to in subsection (6)(a); or
  - (b) if the final decision by the Minister in terms of subsection (6)(b) is that the reasons provided are unacceptable,

the old order right of such holder will cease to exist and the Minister may, subject to the provisions of this Act, grant a prospecting right or mining right to any applicant in respect of the land and mineral or group of minerals concerned.

**96. Powers of Minister if reasons are acceptable**

(1) If the reasons referred to in section 95(4) are found to be acceptable by the Minister he or she must with due consideration of the nature of such reasons -

(a) prohibit prospecting or mining in respect of such land and mineral or group of minerals concerned in terms of section 14; or

(b) instruct the holder referred to in section 94(1) in writing to lodge an application for a prospecting right or mining right within a specified period.

(2) The Minister's decision in terms of subsection (1)(a) must be conveyed in writing to the holder of the old order right concerned.

(3) Subject to section 100, the old order rights contemplated in subsection (1) will cease to exist -

(a) when the Minister exercise his/her power in terms of subsection (1)(a);

(b) if the holder concerned fails to lodge an application within the specified period referred to in subsection (1)(b); or

(c) on the date that the Minister makes a decision in respect of any application lodged in terms of subsection (1)(a) or section 94(1)(a).

**97. Continuation of reservations, permissions and certain rights**

- (1) Any right to use the surface of land granted or deemed to have been granted or acquired or which continues to exist or is in force in terms of section 48(1)(a) of the Minerals Act, 1991, and in force immediately prior to the commencement of this Act, remains in force subject to the terms and conditions under which it was granted or acquired or deemed to have been granted or acquired.
- (2) Any right to use the surface of land which could be ceded, transferred, let, sublet, tributed, subdivided, amended or mortgaged wholly or as to a part or parts immediately prior to the commencement of this Act, may be so dealt with: Provided that the prior written consent of the Director: Minerals Development concerned is obtained, and such dealing must be registered in the Mining Titles Office.
- (3)
  - (a) The Director-General may upon application by any person or upon recommendation of the Director: Mineral Development cancel any right referred to in subsection (1) if he/she is satisfied that the exercising of such right no longer complies to the terms and conditions under which it was granted or deemed to have been granted or acquired.
  - (b) Any cancellation in terms of paragraph (a) must be recorded in the Mining Titles Office.

**98. Registration of mineral rights**

(1) Notwithstanding the provisions of the Deeds Registries Act, 1937, or any other law, no registration in respect of any old order right in connection therewith shall be effected in the Deeds Registries Office or the Mining Titles Office after six months following the commencement of this Act.

(2) Upon the cessation of any old order right in terms of this Act, any deed registered in terms of the Deeds Registries Act, 1937, or the Mining Titles Act, 1967, in respect of such right shall be deemed to be de-registered.

(3) The Director-General shall inform the Registrar of Deeds of any cessation of an old order right in terms of this Act and the Registrar of Deeds shall make such endorsement and such entries in the appropriate registers as he/she may deem necessary in order to reflect the effect of subsection (2).

(4) The Director-General shall make such endorsements and such entries in the appropriate registers as he/she may deem necessary in order to reflect the effect of subsection (2) in respect of any old order right registered in the Mining Titles Office.

**99. Lease of State interest in a mine**

(1) If the Minister referred to in section 74 of the repealed Precious Stones Act, 1964 has leased the interest of the State in a mine, notwithstanding the repeal of the Minerals Act, 1991, the State shall continue to be entitled to the division of profits referred to in the said section 74.



- (2) Notwithstanding the provision of the lease contemplated in subsection (1), the Minister is entitled to cancel such lease agreement and from the date of such cancellation the State shall be entitled to its full share of royalties.
- (3) The Minister may, in order to promote the participation of historically disadvantaged persons sell or lease its interest in a mine referred to in subsection (1) to persons or association of persons from the said disadvantaged group.

#### **100. Consideration payable**

- (1) Any consideration in the form of royalties or otherwise, payable in terms of any old order right will continue to be paid to the person entitled thereto or to his or her successor in title, in terms of the provisions of the old order right concerned until the said old order right ceases to exist in terms of section 91(4) or 93(4): Provided that if the conditions of the old order right in terms of which such royalties are paid, lapse or are terminated before the old order right ceases to exist in terms of the said sections, no further royalties will have to be paid in terms of the said old order right.
- (2) Notwithstanding the provision of subsection (1), the Minister may, having regard to -
  - (a) whether such consideration was used to promote rural and local economic development;
  - (b) the impact that the termination of the payment of the said consideration will have on the livelihood or viability of the person referred to in subsection (1); or
  - (c) any other issue that the Minister may deem necessary,

decide, subject to the terms and conditions which may be determined by the Minister, that the consideration concerned continues to be paid to the person entitled thereto.

**101. Continuation of approved environmental management programme**

(1) Any environmental management programme approved in terms of section 39(1) of the Minerals Act, 1991 (Act 50 of 1991) shall continue in force.

(2) The provision of subsection (1) does not derogate from the power of the Director: Mineral Development from requiring that the environmental management programme be amended in order to bring it in line with the requirements of this Act.

## CHAPTER 8

### CONTROL OVER THE POSSESSION, THE TRADE IN, THE PROCESSING, THE EXPORT AND IMPORT OF DIAMONDS AND MATTERS INCIDENTAL THERETO.

#### 102. Definitions

In this chapter, unless the context indicates otherwise

**“Diamond Board”** means the South African Diamond Board established by section 3 of the Diamonds Act, 1986 (Act 56 of 1986);

**“business premises”**, in relation to a licensee, means premises of the licensee of which particulars of the location have been endorsed on his or her licence in terms of section 114 (3) (b) and 116 (4);

**“Commissioner”** means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

**“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 such that it has been rendered into fragments, splinters or particles, but does not include diamond powder;

**“cutter”** means the holder of a diamond cutting licence contemplated in section 111 (b);

**“dealer”** means the holder of a diamond dealer’s licence contemplated in section 111 (a);

**“diamond exchange”** means any premises registered in terms of section 131;

**“diamond inspector”** means a diamond inspector appointed in terms of section 166(1);

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

**“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;

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

**“licence”** means a diamond dealer’s licence, diamond cutting licence, diamond tool-making licence or diamond research licence contemplated in section 111;

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

**“permit”** means any permit contemplated in section 124;

**“police official”** means a police official as defined in section 1 (1) of the Criminal Procedure Act, 1977 (Act 51 of 1977);

**“polished diamond”** means an unset diamond, including a synthetic diamond, which has undergone various manufacturing processes resulting in a gemstone which is of acceptable cut by international standards and is marketable as a polished diamond without undergoing any further manufacturing process;

**“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;

**“producer”** means any person who is in terms of this Act, 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;

**“regulation”** means a regulation made under section 178;

**“researcher”** means the holder of a diamond research licence contemplated in section 111 (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 an artificially-made diamond produced by means of any synthetic, mechanical or chemical process;

**“tool-maker”** means the holder of a diamond tool-making licence contemplated in section 111 (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;

**“vessel”** means any navigable craft of any description, whether self-propelled or not.

**PART I****ILLEGAL ACTS*****Possession of and dealing in unpolished diamonds*****103. Prohibition on the possession of unpolished diamond**

Save as is otherwise provided in this Act, no person may have any unpolished diamond, irrespective of the origin thereof, in his or her possession unless such person-

- (a) is a producer who has won or recovered that diamond from a mine in accordance with any right granted to him or her in terms of this Act or which remains in force in terms of section 91 or section 93 of this Act;
- (b) has manufactured a synthetic diamond;
- (c) is a licensee in terms of this Act;
- (d) is in respect of that diamond the holder of a permit contemplated in section 124;
- (e) is in possession of that diamond in implementing an agreement entered into by him or her with a person referred to in (a), (b), (c) or (d) of this section;
- (f) is a police official in possession of that diamond while acting in the execution of his or her official duties in the service of the South

African Police Service and is duly authorised thereto by the National Commissioner of the South African Police Service.

#### **104. Prohibition on the sale of unpolished diamonds**

(1) No person may sell any unpolished diamond unless such person is-

(a) a producer;

(b) a seller of synthetic diamonds;

(c) a dealer; or

(d) the holder of a permit issued to in terms of section 125(1)(a).

(2) The provisions of subsection (1) will not be so construed to authorize such producer, dealer or holder of a permit to sell any unpolished diamond which has come into his or her possession in an unlawful manner.

#### **105. Prohibition on the purchase unpolished diamonds**

No person may purchase any unpolished diamond unless such person is-

(a) a licensee in terms of this Act; or

(b) the holder of a permit issued in terms of section 125(1)(a)



**106. Restriction to deal in unpolished diamonds**

No person-

- (a) referred to in section 104(1) may sell any unpolished diamond to any person other than a person referred to in section 105; or
- (b) referred to in section 105 may purchase any unpolished diamond from any person other than a person referred to in section 104(1).

**Processing of diamonds****107. Prohibition to process diamonds**

No person may cut, polish, crush or set any unpolished diamond in any tool, implement or other article unless such person is-

- (a) a cutter, tool-maker or researcher;
- (b) an employee acting in the course of his or her employment with that cutter, tool-maker or researcher; or
- (c) authorised thereto in writing by the Director-General.

**108. Prohibition to erect and operate machinery**

No person may erect or operate any machine designed or adapted for the polishing of unpolished diamonds unless such person is -

- (a) a cutter, tool-maker or researcher;

- (b) an employee acting in the course of his or her employment with that cutter, tool-maker or researcher; or
- (c) authorised thereto in writing by the Director-General.

### **Export or import of unpolished diamonds**

#### **109. Prohibition on the export or import unpolished diamond**

- (1) No person may export any unpolished diamond from the Republic unless such person-
  - (a) is a producer;
  - (b) exports a synthetic diamond;
  - (c) is a dealer; or
  - (d) is the holder of a permit issued in terms of section 125(1)(a).
- (2) No person may import any unpolished diamond into the Republic unless such person is the holder of a permit issued in terms of section 125(1)(a).

**110. Unpolished diamond found or picked up****(1) Should-**

- (a) any person who finds or picks unpolished diamond in or on a prospecting area or a mining area, must, forthwith, hand over such unpolished diamond to the holder of the prospecting right or mining right concerned. Should such handing over be impractical, the unpolished diamond must, forthwith be handed to the officer on duty at the nearest office of the South African Police Service; or
- (b) any unpolished diamond be found or picked up at any other place than an area referred to in subsection (1)(a), such unpolished diamond must forthwith be handed to the officer on duty at the nearest office of the South African Police Service.

**(2) Any person who hands over any unpolished diamond to the officer of the South African Police Service referred to in subsections (1)(a) and (1)(b), must-**

- (i) provide the officer with a sworn affidavit in which it is stated when, how and under what circumstances the unpolished diamond was found or picked up and the estimated value thereof; and
- (ii) obtain from such officer an official receipt.

**(3) If the National Commissioner of the South African Police Service or any other member designated by him or her-**

- (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 or she shall

deliver that diamond to such person; or

- (b) is not so satisfied, he or she 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 or her ownership or right of possession.
- (4) If no person furnishes proof to the satisfaction of the National Commissioner or member of his or her ownership or right of possession within 21 days after the date of publication of a notice referred to in subsection (3) (b), the National Commissioner or member must cause the diamond in question to be sold and the proceeds thereof must, subject to subsection (5), be paid into the National Revenue Fund.
- (5) If the National Commissioner or member is satisfied that the diamond in question was found or picked up in the circumstances mentioned in subsection (1), he or she must pay to the person who so found or picked up that diamond an amount calculated at one-third of the amount realised at the sale in terms of subsection (4).

## PART II

### LICENCES AND PERMITS

#### Licences

#### 111. Types of licences

Subject to the provisions of this Chapter, the Director-General may issue the following licences -

- (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 purpose of such setting or for the purpose of trade;
- (d) a diamond research licence entitling the holder to do applied research and tests in connection with diamonds, but not to polish diamonds for the purpose of business or trade.

#### 112. Application for a licence

- (1) An application for any licence in terms of section 111 must be lodged in writing on the prescribed form and on payment of a non-refundable prescribed fee at the office of the Director-General.

- (2) An applicant for a licence must furnish such additional information, data or documentation in connection with his or her application as the Director-General may require.
- (3) Before a decision is made on any application for a licence, the Director-General may conduct an investigation if he or she may deem it necessary.

### **113. Consideration of application for a licence**

- (1) Notwithstanding anything to the contrary in this Act, the Director-General may not consider any application for a licence, if-

- (a) 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) an interest which any person has in the applicant is contrary to the public interest or the interest of the diamond trade in general;

- (c) the applicant will probably not be able to exercise in a satisfactory manner control over the activities authorized by the licence;

- (d) there are already a sufficient number of persons to whom such licence has been issued; or

- (e) the issue of the licence will be contrary to the public interest.

#### **114. Issue or refusal of a licence**

- (1) If an application for a licence in terms of section 111 is considered favourably, the Director-General must, subject to subsection (3), issue the licence.
- (2) If a licence is refused, the Director-General must notify the applicant in writing of the decision and the reasons therefor.
- (3) The Director-General must endorse on such licence-
  - (a) any condition determined by him or her in terms of section 115(1)(a); and
  - (b) details of the location of the premises approved by him or her in terms of section 116(1).

#### **115. Powers of the Director-General to cancel, vary or to impose conditions in respect of a licence**

- (1) The Director-General may-
  - (a) when considering the issuing of a licence, impose any terms and conditions he or she deems necessary;
  - (b) at any time cancel or vary any terms and condition of a licence;

(c) at any time impose any further terms and condition in respect of a licence.

(2) In order to give effect to subsection (1)(b) or (1)(c), the Director-General may request a licensee in writing to submit his or her licence to the Director-General within the period specified in the request.

(3) The Director-General must endorse on the licence any cancellation, variation or condition referred to in subsection (1);

(4) The Director-General may not cancel, vary or impose a further condition in terms of subsection (1), unless the licensee concerned has been given a reasonable opportunity to make written representations in relation to such cancellation, variation or imposition.

#### **116. Business premises**

(1) No licence will 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 Director-General.

(2) Any licensee who wishes to move or extend his or her business premises to any other premises must apply to the Director-General



in writing for approval of the new or additional premises, as the case may be.

(3) The Director-General may grant, on such conditions as may be determined by him or her, or refuse an application referred to in subsection (2), but will not grant any application if he or she 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 Director-General-

- (a) grants an application referred to in subsection (2), the Director-General must 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 amendments to the conditions as he or she may deem necessary; or
- (b) refuses the application, the Director-General must notify the licensee in writing of the decision and the reasons therefor.

**117. Period of validity of a licence**

- (1) Subject to the provisions of subsection (2), a licence shall be valid until it lapses, is suspended or cancelled in terms of this Act.
- (2) If a licence issued in terms of this Act lapses, the Director-General may, pending the granting of a new licence issue a temporary licence for a specified period, but not exceeding one year, and subject to any condition he or she may deem necessary.

**118. Prohibition on the transfer, disposal of or acquisition of any interest in a licence**

Subject to the provisions of section 119, no licence issued in terms of this Act may be transferred or disposed of in any manner and the licensee will not allow any person to acquire any interest therein.

**119. Application by licensee to transfer a licence**

- (1) A licensee who desires to transfer his or her licence to a company or close corporation must apply to the Director-General in writing for approval of such transfer.
- (2) A licensee who has applied in terms of subsection (1), must furnish any additional information, data or documentation in connection with the application as the Director-General may require.
- (3) The Director-General will not grant approval for the transfer of a licence to a company or close corporation if-

- (a) the licensee concerned does not hold the controlling interest in the company or close corporation;
- (b) 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) an interest which any person has in the company or close corporation is undesirable.

(4) If the Director-General-

- (a) grants approval for a transfer referred to in subsection (1), the Director-General must endorse on the licence such amendments as are necessary as a result of the transfer; or
- (b) refuses approval for the transfer, the Director-General must notify the licensee in writing of the decision and the reasons therefor.

**120. Controlling interest in a company or close corporation**

- (1) No person may without the prior written approval of the Director-General, acquire a controlling interest in any company or close corporation after a licence has been issued or transferred in terms of this Act to that company or close corporation.
- (2) The Director-General will grant the approval referred to in subsection (1) only if-

- (a) 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) the acquisition of a controlling interest by that person will be in the interest of the diamond trade in general.

#### **121. Conversion of a company or close corporation**

(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,
- must 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 Director-General.

(2) The Director-General must endorse on the licence such amendments as are necessary as a result of a conversion referred to in subsection (1).

**122. Suspension and cancellation of a licence**

(1) If-

- (a) a licensee has furnished information to the Director-General in or in connection with his or her application for a licence which is in a material respect untrue;
- (b) a controlling interest was acquired without the written approval of the Director-General in a licensee which is a company or close corporation;
- (c) any interest, other than an interest referred to in paragraph (b), has been acquired by a person who is not a suitable person or which in the opinion of the Director-General is not in the public interest or in the interest of the diamond trade in general, 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 convicted of any offence concerning the illegal possession of or trade in unpolished diamonds;
- (g) a licensee has at any time been convicted of any offence which in the opinion of the Director-General renders him or her unsuitable; or

(h) a licensee has ceased to carry on the activities authorized by the licence,

the Director-General 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 30 days after the date of the notice, why his or her licence should not be suspended or cancelled.

(2) Upon expiry of the period referred to in subsection (1), the Director-General may-

(a) suspend the licence in question for such period as may be determined; or

(b) cancel that licence with effect from such date as may be determined.

(3) While a licence is suspended under subsection (2)(a), the licensee concerned shall be deemed not to be licensed.

(4) The Director-General may cancel the licence of a licensee if requested to do so by the licensee.

(5) For the purposes of subsection (1) (d), (e), (f) or (g) 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.

(6) If the Director-General suspends or cancels a licence in terms of subsection (2), the Director-General must notify the licensee in writing of the decision and the reasons therefor.

### **123. Return of a licence**

Any licensee who has ceased to carry on the activities authorized by his or her licence or whose licence has been suspended or cancelled under section 122(2), must within 30 days after having ceased to carry on such activities or after becoming aware of such suspension or cancellation, return his or her licence to the Director-General.

## **Permits**

### **124. Application for a permit**

(1) An application for any permit in respect of subsections (2) or (3) must be lodged on the prescribed form together with the payment of a non-refundable prescribed fee at the office of the Director-General.

(2) Any person must apply for a permit authorising him or her to-

(a) deliver or sell an unpolished diamond which he or she has lawfully in his or her possession;

(b) receive or purchase an unpolished diamond;

- (c) export an unpolished diamond; or
  - (d) import an unpolished diamond.
- (3) Any producer must apply for a permit authorising any other person to sell unpolished diamonds on behalf of that producer.
- (4) The Director-General may require that the application in respect of subsection (2)(a), (c) or (d) be accompanied by a sworn affidavit by the applicant in which he or she sets forth how the diamond in question came into his or her possession.
- (5) An applicant for a permit in terms of this Act must furnish such additional information, data or documentation, in connection with his or her application, as the Director-General may require.

#### **125. Issuing or refusal of permit**

- (1) The Director-General may-
  - (a) issue a permit, subject to any terms and conditions he or she may deem necessary;
  - (b) refuse to issue a permit; or
  - (c) not issue any permit if the granting thereof will be contrary to the national or public interest.
- (2) If the Director-General refuses an application for a permit, the Director-General must notify the applicant in writing of the decision and the reasons therefor.



**126. Manner of issuing of a permit**

If the Director-General issues a permit in terms of section 125(1)(a), the Director-General must-

- (a) issue to the applicant the permit on the prescribed form; and
- (b) endorse on such permit any terms and conditions determined by him or her in terms of section 125 (1)(a).

**127. Powers of the Director-General to cancel, vary or to impose conditions in respect of a permit**

(1) The Director-General may at any time-

- (a) cancel or vary any condition to which a permit issued in terms of this Act is subject; or
- (b) impose any condition or any further condition in respect of a permit issued in terms of this Act.

(2) The Director-General must endorse on the permit any cancellation, variation or condition referred to in subsection (1).

(3) In order to give effect to subsection (2), the Director-General may request the holder of a permit issued in terms of this Act, in writing, to submit his or her permit to the Director-General within the period specified in the request.

- (4) The Director-General will not cancel, vary or impose a condition in terms of subsection (1), unless the permit issued holder concerned has been given a reasonable opportunity to make written representations in relation to such cancellation, variation or imposition.

### **PART III**

## **THE DIAMOND TRADE**

### **Diamond exchanges**

#### **128. Prohibition to utilise unregistered premises as a diamond exchange**

No person may utilise any premises as a diamond exchange unless such premises is registered as a diamond exchange in terms of this Act.

#### **129. Application for registration of a diamond exchange**

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

- (3) If the Director-General refuses an application in terms of subsection (1) the Director-General must notify the applicant of the decision and the reasons therefor.

**130. Consideration of an application for registration of a diamond exchange**

- (1) Before the Director-General decides on any application referred to in section 129, the Director-General may conduct such investigation regarding the application as may be deemed necessary.
- (2) The Director-General may approve or refuse an application referred to in section 129, but the Director-General will not approve any application if –
- (a) 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 utilise the premises as a diamond exchange, or to be involved in such utilisation;
  - (b) an interest which any person has in the applicant is not in the public interest or the interest of the diamond trade in general;
  - (c) the premises do not comply with the prescribed requirements;
  - (d) 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) the registration of the premises as a diamond exchange will be contrary to the public interest.

### **131. Registration of a diamond exchange**

- (1) If the Director-General approves an application referred to in section 129, the Director-General must 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) must be subject to the prescribed conditions.
- (3) If the Director-General refuses an application for the approval of premises, the Director-General must notify the applicant in writing of the decision and the reasons therefor.

### ***Premises***

### **132. 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 124(1) or (2) may 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 Act;
  - (c) the premises referred to in subsection (2)(d); or
  - (d) such other premises as the Director-General may approve in terms of section 133 on application in writing by such producer, manufacturer or holder.
- (2) No licensee or holder of a permit referred to in section 124(2)(b) may 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 Act;
  - (c) the premises referred to in subsection (1)(d); or
  - (d) such other premises as the Director-General may approve in terms of section 133 on application in writing by the licensee.

### **133. Approval of premises**

- (1) If an application for the approval of premises is made to the Director-General in terms of section 132(1)(d) or (2)(d), the Director-General may conduct such investigation regarding the application as may be deemed necessary.

(2) The Director-General may approve on such conditions as may be determined, or refuse to approve the establishment of premises, but the Director-General may refuse to approve if-

(a) the granting of the application will not be in the national or public interest; or

(b) the premises do not comply with the prescribed requirements.

(3) If the Director-General grants an application for the approval of premises, the Director-General must 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) If the Director-General refuses an application for the approval of premises, the applicant must be notified in writing of the decision and the reasons therefor.

(5) The Director-General must endorse on such certificate any condition determined under subsection (2).

#### **134. Processing of diamond restricted to approved premises**

(1) Subject to the provisions of this section, no cutter, tool-maker or researcher may polish any diamond or crush or set any unpolished diamond in any tool, implement or other article elsewhere than on his or her business premises.

- (2) A cutter may apply to the Director-General, in writing, to polish diamonds on such premises other than his or her business premises and for such period as the Director-General may approve.
- (3) The provisions of section 133 apply *mutatis mutandis* in respect of an application in terms of subsection (2).

### **135. Licensees to display names and other particulars at business premises**

Every licensee must display his or her full name and a description indicating that he or she 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 or her business premises.

### **Authorised representatives**

### **136. Dealing in unpolished diamond on behalf of a juristic person restricted to an authorised representative**

No person may sell or purchase any unpolished diamond on behalf of a juristic person unless he or she is registered as an authorised representative of the juristic person in terms of this Act.

### **137. Applications for registration of an authorised representative**

- (1) Any juristic person may apply to the Director-General on the prescribed form for the registration of a person as its authorised representative.

- (2) A juristic person which has applied in terms of subsection (1) for the registration of an authorised representative must furnish such additional information, data or documentation in connection with its application as the Director-General may require.
- (3) If the Director-General refuses an application in terms of subsection (1), the applicant must be notified in writing of the decision and the reasons therefor.

### **138. Registration of an authorised representative**

- (1) The Director-General will not grant any application referred to in section 137 if-
  - (a) the person concerned does not comply with the prescribed requirements; or
  - (b) a sufficient number of authorised representatives have already been registered in respect of the juristic person.
- (2) If the Director-General approves an application referred to in section 137, the Director-General must register the person concerned as an authorised representative of the juristic person and issue to the juristic person a certificate of registration as an authorised representative of the juristic person on the prescribed form.
- (3) If the Director-General approves an application for the registration of an authorised representative, the Director-General may determine any condition in respect of such application.



### **Handling of unpolished diamonds**

#### **139. Receipt of unpolished diamonds by licensee**

No licensee may receive or purchase any unpolished diamond-

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

#### **140. Note of receipt or purchase of unpolished diamonds**

- (1) Whenever a licensee or a holder of a permit referred to in section 124(2)(b) receives or purchases, whether through an authorised representative or otherwise, any unpolished diamond he or she must 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) must be handed over to the person who delivered or sold the unpolished diamond, and the copy thereof must be retained by the licensee or the holder of a permit referred to in section 124(2)(b), for a period of at least two years after the date on which he or she received or purchased the unpolished diamond.

#### **141. Register in respect of unpolished diamond**

- (1) Every producer, manufacturer of synthetic diamonds, dealer, cutter or tool-maker must keep or cause to be kept the prescribed register,

in which must be entered the prescribed particulars in respect of unpolished diamonds.

- (2) Every entry referred to in subsection (1) must be made, in the case of a producer, within 24 hours and, in the case of any other person, within 72 hours after the occurrence of the event recorded.
- (3) Every person required to keep a register in terms of subsection (1) must within 14 days after the end of each month, transmit or deliver to the Director-General a true copy of such register kept in respect of that month, together with a sworn affidavit of the truth and correctness thereof.
- (4) Every person required to keep a register in terms of subsection (1) must retain the register for a period of at least two years after the date on which the last entry was recorded therein.

**142. Cutter, tool-maker and researcher to obtain a permit to sell, export or import unpolished diamond**

In order to sell, export or import any unpolished diamond, other than unpolished diamonds mounted in tools or implements, a cutter, tool-maker or researcher must obtain a permit referred to in section 124(2)(a), (c) or (d), as the case may be.

### General

#### **143. Supply of unpolished diamonds to the diamond processing industry**

- (1) In order to promote the local diamond processing industry, no person shall, notwithstanding the provisions of this Act, export any unpolished diamond unless such person has entered into an agreement with the Director-General in pursuance of which any such person allocates or offers such unpolished diamond to cutters and tool-makers for processing in the Republic or to researchers for the exclusive purpose of research.
- (2) An agreement entered into under subsection (1) must provide for but is not limited to-
  - (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) Before any agreement referred to in subsection (1) is concluded, any association or organisation protecting, promoting and representing the interests of cutters, tool-makers and researchers must be allowed by the Director-General to comment on the proposed terms and conditions, within a specified period.
- (4)(a) Any agreement which continues to exist or is in force in terms of section 59 of the Diamonds Act, 1986 (Act 56 of 1986), shall, notwithstanding the repeal of the said Act, remain in force for a period of one year from the date of commencement of this Act, or until it lapses in accordance with the terms and conditions under which it was concluded, whichever period is the shorter.
- (b) Any agreement referred to in paragraph (a) shall be deemed to be an agreement entered into in terms of subsection (1).

## **PART IV**

### **EXPORT AND IMPORT OF DIAMONDS**

#### **Unpolished diamonds**

#### **144. Export of unpolished diamond**

Subject to the provisions of section 143(1), no person may export any unpolished diamond from the Republic unless that diamond has been registered and released for export in terms of this Act.

**145. Registration of unpolished diamond for export**

- (1) Any exporter who wishes to register any unpolished diamond for export must at a prescribed export centre furnish the Commissioner with a return on the prescribed form in respect of that diamond.
- (2) In the return furnished in terms of subsection (1) the exporter must specify the value of the unpolished diamond and declare that the value so specified is to the best of his or her knowledge and belief the fair market value of that diamond.
- (3) A return referred to in subsection (1) must be accompanied by the unpolished diamond in question and the prescribed documents.
- (4) If the Commissioner is satisfied that an exporter has complied with the provisions of this section and section 144 he or she must register the unpolished diamond in question for export.

**146. Levying of export duty on unpolished diamond**

- (1) Subject to the provisions of sections 147 and 148, the Minister of Finance may, after consultation with the Minister, levy an export duty on any unpolished diamond exported from the Republic.
- (2) An export duty, referred to in subsection (1), shall be levied on the fair market value of an unpolished diamond in the Republic as at the date on which that diamond is registered for export from the Republic in terms of this Act.

**147. Exemption from export duty**

(1) An unpolished diamond may be exempted from export duty-

(a) if it is a synthetic diamond; or

(b) if the Minister of Finance, with the concurrence of the Minister, determines that it is so exempted.

(2) The Commissioner must 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.

**148. Deferment of payment of export duty**

(1) If the Commissioner 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,

he or she 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 Act, as the Commissioner may determine.

- (2) If the payment of export duty on an unpolished diamond has been deferred under subsection (1), the Commissioner must 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 is payable on any unpolished diamond in respect of which the payment of export duty has been deferred in terms of this section if that diamond is returned to the Republic to the exporter within the period determined by the Commissioner under subsection (1).

#### **149. Examination and valuation of unpolished diamond**

- (1) The Commissioner may-
  - (a) examine any unpolished diamond registered for export in terms of this Act and verify any information 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 Commissioner 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), must furnish the Commissioner with a certificate in which he or she 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.

#### **150. Market value**

For the purposes of levying export duty on any unpolished diamond in terms of this Act-

- (a) the value of that diamond as specified in the return referred to in section 145(2); or
- (b) the value of that diamond as specified in the certificate referred to in section 149(2),

whichever is the higher value, shall be deemed to be the fair market value of that diamond.

#### **151. Fine in case of difference in value**

- (1) If the value of an unpolished diamond as specified in the certificate referred to in section 149(2) differs from the value of that diamond



as specified in the return referred to in section 145(2) by 20 per cent or more, the Commissioner must 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 149(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.

#### **152. Payment of export duty and fine**

(1) Any export duty levied or any fine imposed in terms of this Act must be paid by the exporter concerned to the Commissioner for the benefit of the National Revenue Fund.

(2) The Commissioner must issue to the exporter a receipt in respect of any export duty or fine paid by the exporter.

#### **153. Release of unpolished diamond for export**

(1) The Commissioner may not release any unpolished diamond for export unless

(a) that diamond has been registered for export in terms of this Act;

(b) either a certificate of exemption, a certificate of deferment or a receipt for the payment of export duty has been issued

to the exporter in respect of that diamond if any exporting duty is imposed in terms of this Act;

(c) the exporter has paid any fine imposed upon him or her in terms of section 151;

(d) the Commissioner is satisfied that the provisions of section 143(1) or 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 parcel in such manner as the Commissioner may determine.

(2) The Commissioner must release an unpolished diamond for export by sealing the parcel referred to in subsection (1)(e) with the seal of the Commissioner.

#### **154. Import of unpolished diamond**

(1) No person may import any unpolished diamond into the Republic unless such diamond –

(a) is accompanied by the prescribed import certificate;

(b) has been duly entered for customs and excise purposes in accordance with the Customs and Excise Act, 1964 (Act 91 of 1964); and

(c) has been described and declared in the prescribed manner.

(2) An unpolished diamond will be refused entry into the Republic if –

- (a) it has been incorrectly described or declared; or
- (b) that diamond is in the opinion of the Commissioner of dubious origin or originates from a source from which the importation of diamonds is contrary to the public interest or the interest of the diamond trade in general.

### **Polished diamonds**

#### **155. Export of polished diamond**

No person may 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 Act.

#### **156. Registration of polished diamond for export**

- (1) Any person who wishes to register any polished diamond for export must at a prescribed export centre furnish the Commissioner with a return on the prescribed form in respect of that diamond.
- (2) A return referred to in subsection (1) must be accompanied by the polished diamond in question and the prescribed documents.
- (3) If the Commissioner is satisfied that the provisions of this section have been complied with, he or she must register the polished diamond in question for export.

**157. Examination and retention of polished diamond**

The Commissioner may-

- (a) examine any polished diamond registered for export in terms of this Act 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 Commissioner for that particular valuation or for valuations in general; or
  - (ii) determine whether it is in fact a polished diamond.

**158. Release of polished diamond for export**

- (1) The Commissioner may not release any polished diamond for export unless-
  - (a) that diamond has been registered for export in terms of this Act;
  - (b) the Commissioner 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 parcel in such manner as the Commissioner may determine.

- (2) The Commissioner must release a polished diamond for export by sealing the parcel referred to in subsection (1)(c) with the seal of the Commissioner.

#### **159. Exemption from provisions relating to registration of polished diamond**

The Minister may by notice in the *Gazette* exempt any person or category of persons from the provisions of section 155 on such conditions as may be specified in the notice.

#### **General**

#### **160. Commissioner's decision on the export or import of unpolished or polished diamond**

If in connection with the export or import of diamonds the question arises whether any diamond is an unpolished or a polished diamond the Commissioner must decide as to whether it is an unpolished or polished diamond.

#### **161. Assessment of value of unpolished and polished diamonds**

For the purposes of this Act, the value of any unpolished or polished diamond must be assessed-

- (a) by assessing jointly the value of all diamonds indicated on the return referred to in section 145(1) or 156(1), as the case may be; and
- (b) on such further basis as may be prescribed.

**162. Right of appeal**

Any person who feels aggrieved at any action or decision that the Commissioner has taken or made in terms of this Act may, within one month from the date on which such action or decision was made known by the latter, lodge an appeal in writing with the Minister of Finance against any such action or decision, and thereupon the Minister of Finance may confirm, set aside or amend any such action or decision.

**163. Agreement between the Commissioner and any person**

The Commissioner may enter into an agreement with any person for the performance of any particular act or work or the rendering of any particular service for the purposes of the performance of the Commissioner's functions.

**PART V****CONTROL MEASURES****164. Furnishing Director-General with information**

(1) The Director-General may for the purpose of this Act direct any person in writing to-

(a) furnish the Director-General with such information as may be considered necessary; or

(b) submit 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 Director-General may require that information requested in terms of subsection (1)(a) be furnished in the form of a sworn affidavit.

(3) The Director-General may examine a register, book or document submitted in terms of subsection (1)(b) or make an extract therefrom or a copy thereof.

#### **165. Inquiries by Director-General**

(1) The Director-General may inquire into any matter to which this Act relates.

(2) For the purposes of any such inquiry, the Director-General may-

(a) summon any person who may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his or her possession or custody or under his or her control any register, book or document which may have a bearing on that subject, to appear before the Director-General;

(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 or document referred to in paragraph (a).

(3) A summons for the attendance before the Director-General of any person must be in the form determined by the Director-General, must be signed by the Director-General, and must 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).

#### **166. Appointment of diamond inspectors**

(1) The Director-General may appoint any officer in the Department as a diamond inspector.

(2) A diamond inspector must be furnished with a certificate of appointment signed by the Director-General.



**167. Functions of diamond inspectors and police officials**

(1) In addition to the other functions assigned to a diamond inspector or a police official in terms of any other law, the diamond 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, vehicle, aircraft 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 or she has reasonable grounds to suspect that an offence in terms of 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 vehicle, aircraft or vessel on or in which such diamond or machinery is suspected to be found;

(c) if he or she has reasonable grounds to suspect that any machinery is used or intended for use in connection with the unlawful polishing of diamonds, examine, test or take photographs of such machinery;

(d) question any person who in his or her opinion may be capable of furnishing any information on any matter to which this Act relates, and for that purpose require a vehicle, aircraft or vessel to be stopped;

- (e) if he or she has reasonable grounds to suspect that any person has committed an offence in terms of this Act in respect of any diamond, search or cause to be searched any such person or any article in his or her possession or custody or under his or her control and such search shall be carried out with strict regard to decency;
- (f) require from any person who has in his or her possession or custody or under his or her control any register or document in terms of this Act, to produce to him or her forthwith, or at such time and place as may be determined by him or her, 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 or she has reasonable grounds to suspect that any parcel which is being or has been dispatched 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 parcel, and open and examine any such parcel in the presence of the person by whom it was dispatched, or any other suitable person; or
- (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 a diamond inspector when he or she performs any function in terms of this Act.
- (3) A diamond inspector may not perform any function in terms of this Act unless he or she is at the time of performing that function in possession of a certificate of appointment referred to in section 166(2), which certificate shall be produced at the request of any person affected by the performance of that function.

## **PART VI**

### **OFFENCES, PENALTIES AND OTHER JUDICIAL MATTERS**

#### **168. Offences relating to illegal acts**

Any person who-

- (a) contravenes a provision of section 103, 104(1), 105, 106, 109, 110 or 139;
- (b) places any unpolished diamond in the possession, or on the premises or in or on the vehicle, aircraft or vessel of any other person with intent that such other person be charged with an offence under this Act; or
- (c) contravenes a provision of section 107 or 108,

shall be guilty of an offence.

**169. Offences relating to diamond trade**

Any person who-

- (a) contravenes a provision of sections 118, 120(1), 128, 132, 134(1) or 136;
- (b) contravenes or fails to comply with a condition of a licence, permit or certificate under this Act;
- (c) fails to comply with a provision of sections 121(1), 123, 135, 140 or 141;
- (d) fails to comply with a request or notice under sections 115(2) or 127(3), or
- (e) contravenes or fails to comply with the provisions of any agreement referred to in section 143,

shall be guilty of an offence.

**170. Offences relating to export and import of diamonds**

Any person who-

- (a) contravenes a provision of section 144;
- (b) contravenes a provision of section 154;
- (c) contravenes a provision of section 155;

(d) in connection with the registration of any unpolished or polished diamond for export or import wilfully furnishes information or makes a statement which is false or misleading; or

(e) fails to comply with a provision of section 145(1), 148(3), 151(3) or 156(1).

shall be guilty of an offence.

**171. Offences relating to functions of the Director-General, diamond inspectors and police officials**

Any person who-

(a) fails to comply with a direction in terms of section 164(1);

(b) has been duly summoned in terms of section 165 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 in terms of section 165(2)(b) and who refuses to be sworn in 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 or her in terms of section 165(2)(c); or
  - (ii) to produce any register, book or document in his or her possession or custody or under his or her control which he or she has been required to produce in terms of section 165(2)(c);
  - (e) hinders or obstructs any diamond inspector or police official in the performance of his or her functions in terms of this Act;
  - (f) refuses or fails to comply to the best of his or her ability with any requirement or request made by any diamond inspector or police official in the performance of his or her functions in terms of this Act;
  - (g) refuses or fails to answer to the best of his or her ability any question which any diamond inspector or police official in the performance of his or her functions in terms of this Act has put to him or her;
  - (h) wilfully furnishes to any diamond inspector or police official information which is false or misleading; or
  - (i) except for the purposes of performing his or her functions in terms of 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 or her in the performance of his or her functions under this Act,
- shall be guilty of an offence.

**172. 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 in terms of this Act; or
- (c) falsely gives himself or herself 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 a diamond inspector,

shall be guilty of an offence.

**173. Penalties**

Any person who is convicted of an offence in terms of this Act shall be liable-

- (a) in the case of an offence referred to in section 168(a) or 169(e), to a fine not exceeding R1 000 000, or to imprisonment for a period not

exceeding twenty years, or to both such fine and such imprisonment;

(b) in the case of an offence referred to in section 168(b) or (c), to a fine not exceeding R250 000 or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment;

(c) in the case of an offence referred to in section 169(a) or 170(a), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;

(d) in the case of an offence referred to in section 169(b), 170(b) or (c), to a fine not exceeding R50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; and

(e) in the case of an offence referred to in section 169(c) or (d), 170(c), (d) or (e), 171 or 172, to a fine not exceeding R25 000 or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

#### **174. 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 State, must on its production in the court be admissible in evidence and be *prima facie* proof of the particulars contained therein.



**175. 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.

**176. 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 or her employer or principal, and that employer or principal may be convicted and sentenced in respect of it if the State proves beyond a reasonable doubt-

(a) that he or she permitted or connived at such act or omission;  
or

(b) that he or she failed to take all reasonable steps to prevent an act or omission of the kind in question;

(2) 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.

**177. Forfeiture**

(1) Notwithstanding anything to the contrary in any other law contained, any money or property which a person has paid or delivered to a diamond inspector or a member or agent of the South African Police Service 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 or she satisfies the court concerned-

(i) that he or she 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 or she 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 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).

(4) Any diamond seized in accordance with the provisions of section 167 (1) (i) by a diamond inspector or a member or agent of the South African Police Service, must be kept in safe custody and shall

upon conviction of a person having conducted an offence under this Act, be forfeited to the State and sold in the prescribed manner and the proceeds thereof shall be paid into the National Revenue Fund.

## **PART VII**

### **GENERAL**

#### **178. Regulations**

- (1) The Minister may, by notice in the Gazette, make regulations as to—
  - (a) the prevention of illegal acts relating to diamonds;
  - (b) 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;
  - (c) control over and the searching of those persons;
  - (d) the imposition of a restriction on or prohibition of any particular interest in the activities carried on by a producer or licensee;
  - (e) the cancellation of any registration in terms of this Act or of any permit, certificate or other right issued or obtained in terms of this Act;
  - (f) the supply of unpolished diamonds to the diamond processing industry;

- (g) the payment of witness fees to persons summoned to appear before the Director-General;
- (h) the imposition of a fine by the Commissioner on the failure of any person to pay any export duty within the period determined by or in terms of 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 sale of diamonds seized and forfeited to the State;
- (j) any matter required or permitted to be prescribed by regulation in terms of this Act; and
- (k) 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 in terms subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of R25 000 or imprisonment for a period of twelve months.

#### **179. Savings**

- (1) Anything done by virtue of a provision of the Diamonds Act, 1986 (Act 56 of 1986), 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.

- (2) 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 this Act.

## **PART VIII**

### **ABOLITION OF THE SOUTH AFRICAN DIAMOND BOARD**

#### **180. Abolition of the Diamond Board**

The Diamond Board is hereby abolished.

#### **181. Vesting and transfer of assets, liabilities, rights, duties and obligations of the Diamond Board-**

- (1) Notwithstanding anything to the contrary in any other law, all the powers, assets, finances, liabilities, rights, duties and obligations of the Diamond Board shall vest as follows:

(a) **State**

Assets (including non-liquid assets), liabilities and rights.

(b) **Minister**

Finances and liquid assets (including but not limited to levies), duties, obligations and powers.

(2) The Minister shall, with due consideration to sections 182(2)(c) and 183(1), transfer the finances referred to in subsection (1) to the State and shall take all the necessary steps and perform all the duties required to give effect to such transfer, including but not limited to the winding-up of the financial system and closing of bank accounts referred to in section 183(1).

(3)(a) The levies referred to in subsection (1)(b) determined in terms of section 93 of the Diamonds Act, 1986 (Act 56 of 1986), shall after the commencement of this Act be payable to the Minister until the date referred to in paragraph (b).

(c) The Minister shall determine a date on which the finances and bank accounts referred to in subsection (2) will be transferred and closed.

## **182. Transfer, retrenchment and remuneration of staff**

(1) Every person referred to in section 14 of the Diamonds Act, 1986 (Act 56 of 1986), in the service of the Diamond Board and who would have been in the service of the Diamond Board but for the adoption of this Act, shall on the date of commencement of this Act be placed in the service of the Minister until such person is transferred and employed or retrenched in terms of subsection (4).

(2)(a) The provisions of any contract of service and the conditions of service applying to any person referred to in subsection (1) and which would have applied to him or her but for the adoption of this

- Act, shall without change, subject to the provisions of paragraph (b) and of subsection (3), continue to apply to him or her until he or she is transferred and employed or retrenched in terms of subsection (4).
- (b) The conditions of service referred to in paragraph (a) may, after the commencement of this Act be amended by the Minister after consultation with such person: Provided that any such amendment shall not in the opinion of such person, result in less favourable conditions of service for the person concerned than those that applied to him or her on the commencement of this Act.
- (c) A person referred to in subsection (1) shall be remunerated by the Minister in accordance with his or her conditions of service referred to in paragraph (a) out of finances referred to in section 181(1) for as long as such person is in the service of the Minister in terms of subsection (1).
- (3) Notwithstanding anything to the contrary in any other law, but subject to the provisions of this Act, the provisions of the Labour Relations Act, 1995 (Act 66 of 1995), shall continue to apply to a person referred to in subsection (1) save in so far as the negotiation and determination of his or her remuneration in respect of his or her employment are concerned: Provided that in the case of any person who, in terms of subsection (4) is transferred to and employed in a post in the Public Service, the said Act shall, as from the date of such transfer and employment, only apply to the extent to which it applies to persons in the service of the State in respect of their services as such.

(4)(a) A person referred to in subsection (1) shall, after having been given at least 30 days' notice by the Minister, with effect from a date determined by the Minister-

(i) subject to the provisions of subsection (5) be transferred to and employed in a post in the Public Service;

(ii) subject to the provisions of paragraph (b) and subsection (6) be transferred to and employed by any other body established by or under any law and approved by the Minister; or

(iii) subject to the provisions of the Labour Relations Act, 1995, and any contract of service and the conditions of service applying to such person in terms of subsection (2) be retrenched.

(b) The notice contemplated in paragraph (a) to transfer or retrench a person in terms of subparagraphs (i), (ii) or (iii) of that paragraph shall be given by the Minister within 90 days as from the date of commencement of this Act.

(c) A person referred to in paragraph (a)(i) and (ii) may be transferred and employed only with his or her consent.

(5) If any person is transferred and appointed in a post in the Public Service in terms of subsection (4)(a)(i), he or she shall be appointed and employed on a salary approved for such post and on the conditions applying to the appointment and service of officers and employees in the Public Service: Provided that-



- (a) vacation leave standing to the credit of any person with the Diamond Board shall stand to his or her credit in the Public Service;
- (b) pensionable service performed by any person in the service of the Diamond Board and pensionable service recognized by the Diamond Board shall be deemed to be pensionable service performed by him or her in the Public Service;
- (c) a person shall not as a consequence of such transfer and appointment acquire a retirement age which is less favourable than that which applied to him or her in the service of the Diamond Board;
- (d) any person shall, within six months, or such longer period as the Minister of Finance may determine, after his or her transfer to and appointment in a post in the Public Service, be given a non-recurrent choice either to remain a member of the pension fund of which he or she was a member while in the service of the Diamond Board or, subject to the conditions determined by the Minister of Finance, to become a member of the pension fund applicable to officers or employees in the Public Service;
- (e) any disciplinary steps instituted or being considered against such person in respect of alleged misconduct committed before the date of his or her transfer and appointment shall be dealt with in terms of the conditions applying to the appointment and service of officers and employees in the Public Service, as if the person concerned was an officer or employee in the Public Service at the time when the misconduct was committed.

(6) If any person is transferred and appointed to any body established by or under any law and approved by the Minister in terms of subsection (4)(a)(ii), he or she shall be appointed and employed on a salary approved by such body and on the conditions applying to the appointment and service of employees with such body: Provided that-

(a) vacation leave standing to the credit of any such person with the Diamond Board shall stand to his or her credit with such body;

(b) pensionable service performed by any person in the service of the Diamond Board and pensionable service recognised by the Diamond Board shall be deemed to be pensionable service performed by him or her in the service of the body concerned;

(c) a person shall not as a consequence of such transfer and appointment acquire a retirement age which is less favourable than that which applied to him or her in the service of the Board;

(d) any person shall, within six months after his or her transfer to and appointment by the body concerned, be given a non-recurrent choice either to remain a member of the pension fund of which he or she was a member while in the service of the Diamond Board or to become a member of the pension fund applicable to employees of the body concerned, subject to the laws and rules applicable to that pension fund;

(e) any disciplinary steps instituted or being considered against such person in respect of alleged misconduct or improper conduct committed before the date of his or her transfer and appointment shall be dealt with in terms of the provisions of the laws that apply

to employees of the body concerned as if such person was an employee of that body at the time when the misconduct or improper conduct was committed.

### **183. Accounting responsibility**

- (1) The Minister shall honour obligations out of finances referred to in section 181(1) and shall keep and maintain such financial records and systems and bank accounts in the name of the Diamond Board for that purpose and which may be necessary or required to give effect to the provisions of section 182(2)(c) and for the period referred to therein.
- (2) The financial records contemplated in subsection (1) shall be audited by the Auditor-General.

### **184. Administration of laws**

- (1) The administration or exercise of any power or right conferred or duty imposed which is assigned by any law to the Diamond Board shall on the fixed date pass to the Director-General.
- (2) Any person referred to in section 182(1) who exercised a power in any post or office, shall continue, unless clearly inappropriate, to perform the functions attached to that post or office as if this Act has not been adopted, unless the Minister determines otherwise.

### **185. Interpretation of certain expressions**

Unless it is clearly inappropriate in any particular case, any reference in any law or document to-

(a) the Diamond Board shall on the date commencement of this Act be construed as a reference to the Minister;

(b) a person in the service of the Diamond Board shall on the fixed date be construed as a reference to a person in the service of the Minister.

**186. Termination of agreements between the Diamond Board and any person**

(a) Any agreement entered into between the Diamond Board and any person in terms of section 13(b) of the Diamonds Act, 1986 (Act No.56 of 1986), for the performance of any particular act or work or for the rendering of any particular service, which continues to exist or is in force in terms of that section, shall, notwithstanding the repeal of the said Act, be re-negotiated with the Commissioner within a period of six months from the date of commencement of this Act.

(b) If the agreement referred to in paragraph (a) is not re-negotiated within the period referred to in that paragraph, such agreement shall lapse at the end of the period or such earlier date as may be agreed upon.

## CHAPTER 9

### PETROLEUM EXPLORATION AND PRODUCTION

#### 187. Application of this Chapter

- (1) This Chapter provides for the issuing and granting of reconnaissance licences and exploration and production rights.
- (2) This Chapter shall not be construed as exempting any holder of a reconnaissance licence or an exploration or production right from any provision of this Act, and the provisions of this Act shall apply *mutatis mutandis* to any exploration and production right granted in terms of this chapter.

#### 188. Definitions

In this Chapter unless the context otherwise indicates –

“**block**”, means any area on land or over the sea situated wholly or partly in the Republic and indicated as a block on a map of the Republic prepared by the Petroleum Agency, and shall include a part of such a block;

“**CEF (Proprietary) Limited**”, means the State-owned company established in terms of the Central Energy Fund Act, 1977, (Act No 38 of 1977);

“**discovery**”, means the discovery of petroleum recoverable at the surface in a flow measurable by conventional petroleum industry testing methods;

“**discovery block**”, means a block in respect of which a discovery has been made;

**“drilling”**, in relation to a well, included the fitting of wellheads, coring and logging and any operations carried out for the purpose of preventing the sides of the well from collapsing or the well from being filled by any extraneous substance;

**“exploration area”**, means the area comprising the block or blocks to which an exploration right relates;

**“exploration right”**, means a prospecting right granted in terms of section 32(1) for the exploration of petroleum;

**“exploration operation”**, means any operation carried out for or in connection with the exploration for petroleum, and includes -

- (a) geological, geophysical, geochemical, palaeontological, aerial, magnetic, gravity or seismic surveys and the appraisal of such surveys and drilling for appraisal purposes;
- (b) the study of the feasibility of any production operations or development operations to be carried out in such exploration area;

**“good oil field practice”**, means any internationally accepted practices which are generally applied by persons involved in the exploration or production of petroleum as good, safe, efficient, and necessary in the carrying out of exploration operations or production operations;

**“Petroleum Agency”**, means the State agency established under CEF (Pty) Limited and known as the South African Agency for Promotion of Petroleum Exploration and Exploitation;

**“petroleum”**, means any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any such liquid or solid hydrocarbon or combustible gas which gas has in any

manner been returned to such natural condition, but shall not include coal, bituminous shale or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits;

**“petroleum field”**, means a block or blocks declared as such in terms of section 206;

**“petroleum reservoir”**, means a place in the earth’s crust where petroleum accumulated naturally;

**“production area”**, means the area comprising the area in respect of which a production right has been granted;

**“production operations”**, means any operations carried out for or in connection with the production of petroleum;

**“production right”**, means a mining right granted in terms of section 44(1) for the mining of petroleum;

**“reconnaissance licence”**, means the licence to conduct reconnaissance operations issued in terms of section 200;

**“reconnaissance operation”**, means any operation carried out for or in connection with the search for petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques, but does not include any exploration operation;

“well”, means a borehole, made by drilling for purposes of exploration operations or production operations, but does not include a seismic shot hole.

#### **189. Administration**

(1) This Chapter shall be administered under the control of the Minister by the Director-General.

(2) The Petroleum Agency must perform those functions assigned to it in terms of this Act in accordance with and subject to the instructions and directives of the Director-General.

#### **190. Functions of the Petroleum Agency**

(1) The Petroleum Agency shall for and on behalf of the State -

- (a) promote onshore and offshore exploration for and production of petroleum;
- (b) notwithstanding any other provisions of this Act, receive applications for reconnaissance licences and exploration rights and production rights;
- (c) evaluate, negotiate and make recommendations via the Director: Mineral Development to the Director-General regarding applications for exploration rights and production rights;
- (d) evaluate, negotiate and issue reconnaissance licences;
- (e) monitor, and report regularly to the Director-General in respect of, performance by, and enforcement against, holders of reconnaissance licences and exploration and production rights of their obligations, in respect of rights granted or agreements entered into with the State;
- (f) receive, maintain, store, interpret, evaluate, add value, disseminate and deal in, all geological and geophysical information relating to petroleum;



- (g) bring to the notice of the Director-General any information in relation to exploration and production of petroleum, which is likely to be of use or benefit to the State;
- (h) advise and recommend to the Director-General on the need to carry out on behalf of the State reconnaissance operations in connection with petroleum;
- (i) advise the Director-General on the disposal of any participation interest in any production operation; and
- (j) assist the Department in the performance of any functions or carry out any instruction by the Minister or the Director-General in respect of petroleum exploration and production.

#### **191. Invitation for applications**

Subject to the provisions of this Act, the Minister may, if he or she deems it necessary or expedient in the national interest or for the promotion of the upstream petroleum industry, by notice in the *Government Gazette* call for applications for reconnaissance licences exploration or production rights in respect of any block or blocks, and may specify in such notice a period within which any application may be lodged and the terms and conditions subject to which such licence or right may be granted.

#### **192. Obligations of holders of exploration rights**

- (1) The holder of an exploration right must, subject to the provisions of this Act-

- (a) carry out exploration operations in the exploration area in accordance with the objects of good oil field practices;

- (b) maintain in good condition and repair all structures, equipment and other goods in the exploration area used in connection with the exploration operations concerned;
  - (c) remove from the exploration area concerned all structures, equipment and other objects not used or intended to be used in connection with the exploration operations concerned;
  - (d) take steps to warn persons who may from time to time be in the vicinity of any such structure, equipment or other objects, of the possible hazard or danger resulting therefrom; and
  - (e) make payment of the prescribed fees in relation to an exploration right;
- (2) Without derogating from the generality of subsection (1), the holder of an exploration right shall-
- (a) control the flow and prevent the waste, escape or spilling in the exploration area of petroleum, water or any gas;
  - (b) prevent the waste or spilling in the exploration area of water or drilling fluid or water and drilling fluid or any other substances extracted from a well drilled for the purposes of or in connection with exploration operations or used in relations to the drilling of such well;
  - (c) prevent damage to petroleum-bearing strata in any area outside the exploration area;
  - (d) prevent that petroleum reservoirs in the exploration area or such water sources as may be determined by the Petroleum Agency from being connected with each other;

- (e) prevent water or any other substance entering any petroleum reservoir through the wells in the exploration area, except if required by, and in accordance with good oil field practices;
- (f) prevent pollution of any aquifer, estuary, harbour, lake, reservoir, river, springs, stream, borehole and all other areas of water by spilling of petroleum, drilling fluid, chemical additive, any gas or any waste product or effluent;
- (g) furnish the Petroleum Agency prior to drilling of any well a report containing particulars of the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed in the drilling of such well; and
- (h) not flare any combustible gas, except-
  - (i) for the purposes of testing such gas, or for operational reasons; or
  - (ii) with the approval in writing, previously obtained in every particular case, of the Petroleum Agency and in accordance with such terms and conditions determined by the Petroleum Agency.

### **193. Obligations of holders of production rights**

- (1) The provisions of section 192 shall apply *mutatis mutandis* in relation to the holder of a production right.
- (2) The holder of a production right shall –

- (a) with due regard being paid to good oil field practices, measure and weigh in accordance with a method approved, by the Petroleum Agency, all petroleum produced and saved from the production area; and
  - (b) cause all appliances used for the purposes of weighing and measuring to be tested and examined in accordance with any directions in writing by the Petroleum Agency.
- (3) If, upon any test or examination referred to in subsection (2)(a), it is proved that any such appliance is defective, it shall, for the purposes of payment of royalties, be deemed to be so defective during a period equal to a period of half the period as from the date on which petroleum was last measured or weighed with such appliances to the date on which the test or examination was completed, unless the Petroleum Agency determines otherwise after having considered any representations in writing made by the holder of the right concerned.
- (4) For the purposes of measuring any petroleum consisting of combustible gas produced and saved from the area to which the right concerned relates, the volume of such gas shall be calculated at an absolute pressure of one atmosphere and at a temperature of 15,5° Celsius.

#### **194. Petroleum agreements**

- (1) The Minister may, when considering the granting of an exploration or production right, enter into an agreement, not inconsistent with the provisions of this Act, with the applicant concerned containing the terms and conditions provided for in subsection (2).

(2) An agreement referred to in subsection (1) shall, whenever necessary, include terms and conditions relating to-

(a) the basis upon which the market value of petroleum may from time to time be determined;

(b) minimum exploration operations or production operations to be carried out and the time-table determined for the purposes of such operations;

(c) the minimum expenditure in respect of exploration operations or production operations;

(d) the formation of joint ventures or operations of production sharing or other joint arrangements, including profit-sharing by the State;

(e) participation interest by the State or its nominee;

(f) the manner in which reconnaissance operations, exploration operations, or production operations as the case may be, shall be carried out;

(g) guarantees to ensure the due and proper performance by the holder of a reconnaissance licence or an exploration or production right of its obligations;

(h) financial and insurance arrangements; and

(i) the manner in which or method to be used to resolve any disputes which may arise in the application or interpretation of any terms and condition of such agreement.

(3) Any term and condition contained in an agreement referred to in subsection (1) which is inconsistent with the provisions of this Act is to the extent of its inconsistency of no force or effect.

(4) Nothing contained in any agreement shall be construed to absolve any party thereto from any requirement laid down by any law or from any provisions of this Act.

#### **195. Relinquishment of land by holder of exploration right**

(1) If the holder of an exploration right applies for a renewal of such right, he or she shall by notice in writing to the Petroleum Agency relinquish –

(a) not later than thirty days before the expiry of the exploration right, at least 50 percent of the exploration area to which the right relates and which is identified in such notice; and

(b) not later than thirty days before the expiry of any renewal period, at least 25 percent of such exploration area and which is so identified.

(2) The holder of an exploration right shall relinquish land in such a manner so as to ensure that the exploration area is, after such relinquishment, as a single area consisting, in as far as it is possible, of rectangular blocks bounded by lines running either due North and South or due East and West and having sides, each of at least 30 seconds of longitude or latitude, as the case may be.

(3) If an exploration right is cancelled in relation to any area of land in any year of the currency of the exploration right, such area of land shall be deemed to have been relinquished for the purposes of the determination of

the relinquishment next required to be made by the holder of such right under subsection (1)(a) or (b).

- (4) An agreement referred to in section 194 may provide for a relinquishment on any other basis provided for in subsection (1).
- (5) The Minister may, on application by the holder of an exploration right, by notice in writing exempt such holder from the provisions of subsection (1) if he or she deems it in the national interest and the development of petroleum resources of the Republic.
- (6) This section shall not be construed to as requiring the holder of an exploration right to relinquish any land in the exploration area which is-
  - (a) the subject of an application for a production right;
  - (b) situated within a petroleum field; or
  - (c) the subject of application for declaration of a petroleum field.

#### **196. Application for reconnaissance licence**

- (1) An application for a reconnaissance licence must be lodged on the prescribed form and on payment of non-refundable prescribed fee at the Petroleum Agency and must contain-
  - (a) full particulars of the applicant;
  - (b) a plan indicating the block or blocks to which the application relates;
  - (c) particulars in relation to-

- (i) the minimum reconnaissance operations and expenditure proposed to be carried out or expended in respect of the block or blocks to which the application relates;
- (ii) the programme of such reconnaissance operations, the expenditure in respect thereof, the period within which such operations will be carried out and such expenditure will be made; and
- (iii) an estimate of the effect which the proposed reconnaissance operations may have on the environment;
- (d) the period for which the licence is required;
- (e) any other information, data or documentation that the Minister or the Petroleum Agency may require in connection with the information required under paragraphs (a) to (c); and
- (f) the reconnaissance work programme.

#### **197. Rights of holder of reconnaissance licence**

- (1) Subject to the provisions of this Act, the holder of a reconnaissance licence authorises the holder of such licence to conduct reconnaissance operations subject to the terms and conditions of such licence and in such block or blocks as may be specified in such licence.
- (2) A reconnaissance licence shall not be issued in relation of any block or blocks in respect of which, at the time of lodgement of such application, any licence or permit has been issued or right has been granted in terms of this Act.



**198. Duration of reconnaissance licences**

(1) Subject to the provisions of this Act, a reconnaissance licence shall be valid-

(a) for such period, not exceeding two years, as may be determined by the Petroleum Agency; and

(b) for such further period, not exceeding two years, as may be determined by the Petroleum Agency at the time of application for the renewal of a reconnaissance licence.

(2) A reconnaissance licence shall only be renewed once.

(3) Notwithstanding the provisions of subsection (1), but subject to the provisions of this Act, a reconnaissance licence shall not expire during the period within which an application for the renewal of such licence is being considered until it is refused, withdrawn or it lapses, whichever occurs first.

**199. Application for renewal of reconnaissance licence**

(1) The holder of a reconnaissance licence may at any time but not later than ninety days before the expiry of such reconnaissance licence, apply for the renewal of the reconnaissance licence.

(2) Any application for renewal of a reconnaissance licence must-

(a) be lodged with the Petroleum Agency on a prescribed form together with the payment of a non-refundable prescribed application fee;

(b) state the period for which the renewal is required;

- (c) give reasons why a renewal is required;
- (d) be accompanied by a report reflecting the results and interpretation of the completed exploration operation and the costs thereof;
- (e) be accompanied by a report reflecting the extent of environmental rehabilitation, if any, conducted and completed thus far and the costs thereof; and
- (f) include a detailed reconnaissance work programme for the renewal period.

#### **200. Issue and renewal of reconnaissance licence**

If the Petroleum Agency is satisfied that the holder has complied with the provisions of sections 199 or 202 and having due regard to the reasons given under section 202(2)(c) and the contents of the report referred to in section 202(2)(d), the Agency must issue the reconnaissance licence or renewal thereof as the case may be.

#### **201. Transfer of reconnaissance licence**

A reconnaissance licence shall not be transferred, ceded, sub-let, let, alienate, disposed of or encumbered by mortgage.

#### **202. Work programmes for reconnaissance licences**

- (1) The Petroleum Agency must approve the reconnaissance work programme submitted in terms of section 199(2)(f) or section 202(2)(f) as the case may be.

(2) The holder of a reconnaissance licence shall carry out the reconnaissance operations in accordance with the reconnaissance work programme approved in terms of subsection(1).

(3) The Petroleum Agency, may upon written application by the holder of a reconnaissance licence, amend any work programme referred to in subsection (1).

### **203. Discovery of petroleum**

(1) When a discovery is made in an exploration area, the holder of the exploration right concerned must-

(a) inform the Petroleum Agency, in writing, that a discovery in respect of the exploration area concerned has been made;

(b) furnish the Petroleum Agency in writing within a period of sixty days from the date of such discovery with particulars relating to-

(i) the block or blocks where such discovery was made;

(ii) the nature and extent of such discovery; and

(iii) other information or data as the Petroleum Agency may require;

(c) cause tests to be made in connection with such discovery in order to determine the commercial interest of such discovery;

(d) within a period of sixty days after completing such tests-

- (i) furnish the Petroleum Agency with a written report containing an evaluated result of such tests; and
  - (ii) provide an evaluation of the potential commercial interest of such discovery.
- (2) If it appears from the report referred to in subsection (1)(d) that a discovery may be of commercial interest, the holder of the exploration right concerned must-
  - (a) take such steps, as may be necessary, to appraise the discovery and determine the quantity of petroleum so discovered; and
  - (b) furnish the Petroleum Agency with a written report containing information and data of such appraisal and determination.
- (3) The Minister may, upon written application lodged by the holder of the exploration right concerned with the Petroleum Agency and subject to such condition determined by him or her, exempt such holder from provisions of subsection (2).

#### **204. Information to be furnished in respect of discovery of petroleum**

The Petroleum Agency may at any time during the period referred to in section 203(1)(b) or within such other period as may be specified by the Petroleum Agency, require the holder of the exploration right concerned to furnish the Petroleum Agency with such information or data on any matter concerning the discovery or any appraisal of such discovery.

**205. Discovery which is of no commercial interest**

(1) If it appears from the report referred to in section 203(1)(b) that a discovery is not of potential commercial interest, the Minister may direct that with effect from a date specified in such notice the right in question shall cease to be of any force or effect in relation to the discovery block concerned and any adjoining land required for the purpose of obtaining access to such block.

(2) The Minister shall not exercise his or her powers under subsection (1), unless he or she –

(a) has informed such holder of his or her intention to exercise such powers requiring such holder to make representations to the Minister in relation to the matter; and

(b) is satisfied that the discovery is not of any commercial interest.

**206. Declaration of a petroleum field**

(1) If it appears from the report referred to in section 203(1)(b) that the discovery is of a commercial interest, the Minister shall, upon written application by the holder of the exploration right, declare by notice in the *Government Gazette* the discovery block and any other adjoining blocks to be a petroleum field.

(2) Subject to the provisions of subsection (1) and (3), the Minister may, upon written application lodged with the Petroleum Agency by the holder of the exploration right concerned, declare by notice in the *Government Gazette* that the blocks specified in such application shall form part or cease to form part of a petroleum field.

- (3) The holder of an exploration right shall not lodge any application referred to in subsection (1) or (2) in respect of any block, unless such block contains a petroleum reservoir or part of a petroleum reservoir adjoins any such block.
- (4) The Minister shall not under subsection (1) or (2) declare any block to be a petroleum field or to form part thereof, unless such block contains a petroleum reservoir or part of a petroleum reservoir adjoins any such block.
- (5) For the purposes of this section a block shall be regarded to adjoin a discovery block or a block containing a petroleum reservoir or part thereof, if any part of such block has a side in common or touches such discovery block or such other block.

#### **207. Right to apply for production rights**

- (1) When a petroleum field is declared under section 206, the holder of the exploration right may subject to the provisions of section 38 apply within a period of two years from the day of declaration of such petroleum field or such further period as may be determined by the Minister, for a production right in respect of such petroleum field.
- (2) If the holder referred to in subsection (1) –
  - (a) fails to apply for a production right within the specified period; or
  - (b) informs the Petroleum Agency in writing within such period that he or she does not intend to apply for a production right,

the Minister may by notice in the Government Gazette withdraw the notice in terms of which the petroleum field was declared.

#### **208. Unitization of production areas**

(1) If the Minister is satisfied that any land over which a production right has been granted forms geologically part of the same petroleum reservoir over which any other such right has been granted, and that it is desirable that the said petroleum reservoir be mined as a unit, he/she may by notice in writing require the holders of such production rights together to prepare a scheme for mining the said petroleum reservoir as a unit and to submit such scheme to the Minister within a period so specified.

(2) If no scheme is submitted within the period specified in the notice or within such further period as the Minister may allow, or if the scheme submitted is not acceptable to the Minister, he/she may after consultation with the holders of the said production rights, prepare a scheme for mining the area as a unit.

(3) The Minister may, if he/she is satisfied that any scheme submitted under subsection (1) is practicable and is fair and equitable to all the parties concerned, confirm such scheme, and it, or any scheme prepared by the Minister under subsection (2), shall become binding

upon the holders of the said production rights as from a date to be determined by the Minister.

(4) The Minister shall forthwith notify the holders of such production rights in writing of any decision and determination under subsection (3).

(5) If any holder of a production right fails to carry out any provision of a scheme which is binding upon him/her, the Minister may by notice in writing require him/her to do so within a period specified in the notice, and if he/she fails to comply with the notice, the Minister may terminate his/her production right.



**CHAPTER 10****GENERAL AND MISCELLANEOUS PROVISIONS****209. Power to enter upon land or place and to perform any acts**

(1) The Minister may authorise any person in writing to enter, without a warrant, at any time and without prior notice, any prospecting or mining area or any land, place, structure, vessel, vehicle, or aircraft to conduct any investigation concerning a matter which the Minister requires to be investigated in pursuance of the objectives of this Act.

(2) The Director-General may authorise any officer of the Department in writing to enter, without a warrant, at any time and without prior notice, any prospecting or mining area, or any land, place, structure, vehicle, vessel or aircraft to exercise any power or duty or to perform any function required in terms of this Act.

(3) Any authorised person or official referred to in subsections (1) and (2) is empowered to-

(a) take with him or her such persons or vehicles, appliances, instruments and material as he or she may deem necessary;

(b) question any person and take a statement from such person; and

(c) require to be made available and examine any report, balance sheet, profit and loss account, book, record, document, programme, diagram, plan or drawing relevant to the investigation, power, duty or function contemplated in sub-section (1) and (2).

- (4) Any holder of a prospecting right or mining right or owner of land or any employee of such holder or owner requested thereto by an authorised person or officer referred to in subsections (1) and (2), shall accompany such person or officer and provide the necessary assistance in order to enable such person or officer to conduct any investigation, exercise any powers or to perform any duty or function, required in terms of subsections (1) or (2).
- (5) The Director: Mineral Development is deemed to have been authorised in terms of subsection (2), by virtue of his or her appointment in terms of section 8.

#### **210. Producing of documents at request of the Director: Mineral Development**

Any person who in accordance with this Act is the holder or who should be in possession of any right, permit, or any other document must promptly produce such right, permit or document at the request of the Director: Mineral Development or any other person or officer authorised in terms of section 209(1) or (2).

#### **211. Limitation of State's liability**

- (1) Save as otherwise provided in this Act, neither the State nor any person in the employ of the State is liable for any claims, loss, damage, injury or death caused by or resulting from –
- (a) the exercise of any power or the performance of any duty or function in terms of this Act;

- (b) the failure to exercise any power or perform any duty or function in terms of this Act, or

unless the exercise of or failure to exercise the power or performance or failure to perform the duty or function was unlawful, negligent or in bad faith.

## **212. Serving of documents**

- (1) Save as is otherwise provided in this Act, any notice, order, directive or other document which is required in terms of this Act to be served on or given to any person, shall be deemed to have been duly served or given if –

(a) it is delivered by hand to that person;

(b) it is sent by registered mail to that person's latest known business, postal or residential address; or

(c) published in the *Government or Provincial Gazette*.

- (2) Any notice, order, directive or any other document issued in terms of this Act, shall be valid according to the terms thereof, notwithstanding any want of form or lack of power on the part of any person to issue or authenticate it, provided such power is subsequently conferred upon such person.

## **213. Right of appeal**

- (1) Any person who feels aggrieved by any action or decision that a Director: Mineral Development has taken or made in terms of this Act, may, within

40 days from the date on which such action or decision was taken or made by the latter, lodge an appeal in writing with the Director-General against any such action or decision, and thereupon the Director-General may confirm, set aside, substitute or amend any such action or decision.

(2) Any person who feels aggrieved by any action or decision that the Director-General has taken or made in terms of this Act, may, within 30 days from the date on which such action or decision was taken or made by the latter, lodge an appeal in writing with the Minister against any such action or decision, and thereupon the Minister may confirm, set aside, substitute or amend any such action or decision.

(3) Any appeal in terms of subsection (1) or (2) must set out the grounds of appeal in writing and must be accompanied by the prescribed fee which must be refunded if the appeal is upheld.

(4) An appeal in terms of subsection (1) or (2) does not suspend the decision, unless so suspended by the Director-General or the Minister as the case may be.

#### **214. Prohibition on obstruction of official or person**

No person shall hinder, oppose or obstruct any officer or any other person in the exercise of his or her powers or the performance of his or her duties conferred or imposed on him or her by this Act.

#### **215. Prohibitions on victimisation**

No person shall take any action or permit any action to be taken against any employee in any way which may be to his or her detriment, or shall alter his or

her position or allow his or her position to be altered to his disadvantage relative to other employees, by reason of the fact, or because such person suspects or believes, whether or not such suspicion or belief is justified or correct, that such employee has given information to the Minister or any other person charged with the execution of this Act in respect of anything which is required to be done or omitted in terms of this Act or which relates thereto, or because he or she has complied with a prohibition, order, request or instruction of the Director: Mineral Development.

## **216. Offences**

(1) Any person who contravenes or fails to comply with -

(a) any provision of -

(i) sections 5(2), 13(1), 19, 20(1), 20(4), 23(1), 59, 60(1) or 61(1);

(ii) sections 269(6), (7), 265(a), (b), (c), (d), (e) or (f);

(iii) sections 65(1), 65(4) or 65(5);

(iv) sections 67(1), 67(2)(b) or 67(3)(c);

(v) sections 69, 70, or 71(1);

(vi) section 72; or

(vii) sections 75(2), 75(3), 75(4), or 75(7);

(b) any provision of -

(i) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act; or

(ii) any request referred to in section 209(4);

shall be guilty of an offence.

(2) Any person who contravenes or fails to comply with any provision of this Act, any regulation or any condition, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under this Act by the Director-General, a Director: Mineral Development or any other officer in the service of the Department duly authorised thereto *ex officio* or by the Director-General shall, if any such contravention or failure is not declared an offence elsewhere, be guilty of an offence.

## 217. Penalties

(1) Any person convicted of any offence in terms of this Act, is liable -

(a) in the case of an offence referred to in section 216(1)(a)(i) or (b)(i) or (ii), to a fine or imprisonment for a period not exceeding one year or both a fine and such imprisonment, and to a further fine not exceeding R 5000 or to further imprisonment not exceeding five days per day for every day upon which the person so contravened the provision concerned or failed to comply therewith: Provided that the period of such further imprisonment shall not exceed six months;

(b) in the case of an offence referred to in section 216(a)(ii) to a fine or to imprisonment for a period not exceeding 2 years or both a fine and such imprisonment, and to a further fine not exceeding R 10 000 or to further

imprisonment not exceeding 5 days per day for every day upon which the person so contravened the provision concerned or failed to comply therewith: Provided that the period of such further imprisonment shall not exceed one year;

- (c) in the case of an offence referred to in section 216(a)(iii) to a fine or to imprisonment for a period not exceeding two years or both a fine and such imprisonment;
  - (d) in the case of an offence referred to in section 215(a)(iv) to the penalty that may be imposed in law for perjury;
  - (e) in the case of an offence referred to in section 216(a)(v) to the penalty applicable to a similar offence in a magistrate's court;
  - (f) in the case of an offence referred to in section 216(1)(a)(vi) to a fine or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment; or
  - (g) in the case of any conviction of an offence in terms of this Act for which no penalty is expressly determined, to a fine or to imprisonment for a period not exceeding six months or both a fine and such imprisonment.
- (2) Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have the jurisdiction to impose any penalty provided for in this Act.

**218. Delegation of Powers**

(1) The Minister may delegate any power, function or duty conferred upon him or her in terms of this Act, excluding the power to make regulations under section 219 and the hearing of an appeal referred to in section 213(2) above, to-

(a) the Deputy Minister of Minerals and Energy;

(b) the Director-General;

(c) any other officer in the service of the Department; or

(d) to the executive head of an organ of state under the control of the Minister with due consideration of the objects for which such an organ of state was established.

(2) The Director-General may delegate any power, function or duty vested in him or her in terms of this Act to -

(a) the Deputy-Director General: Mineral Development; or

(b) any other officer in the service of the Department.

(3) The Director: Mineral Development may delegate any power, function or duty conferred upon in him or her in terms of this Act to any officer in the service of the Department.

(4) The delegations referred to in subsection (1), (2), and (3) -

(a) must be in writing;



- (b) may be made subject to conditions;
- (c) does not prevent the exercise of the power, function or duty by the person who has delegated such power, function or duty; and
- (d) may be withdrawn by the person who has delegated such power, function or duty.

### **219.Regulations**

(1) The Minister may, by notice in the *Government Gazette*, make regulations-

- (a) dealing with any matter which under this Act must be dealt with by regulations; and
- (b) on any matter that the Minister considers necessary or expedient to prescribe or be governed by regulation in order to achieve the objects of this Act.

(2) The Minister may by regulation provide that infringement of any regulation constitute a criminal offence and prescribe penalties for such offence with the approval of the Minister of Justice.

### **220.Proof of facts**

In any legal proceeding in terms of this Act any statement, entry, record, information in or on any book, document, plan, drawing, or computer storage medium shall be admissible in evidence as an admission of the facts in or on it by the person who made, entered, recorded or stored it unless it is proved that

such statement, entry, record or information was not made, entered, recorded or stored by such person within the scope of his functions.

## **221. Orders, suspensions and instructions**

(1) If an officer authorised by the Director-General is of the opinion that any contravention or suspected contravention of or any failure to comply with any provision of this Act or any condition to which any prospecting right, mining right, retention permit, exemption or environmental management programme granted or approved in terms of this Act, is subject, occurs at any mine or place presumed to be a mine, such officer may –

(a) order the holder of any prospecting right, mining right or retention permit, manager or any official, employee or agent of such holder to take immediate rectifying steps;

(b) order that the operations at such mine or place or part thereof be suspended, and give such instructions in connection therewith as he or she may deem desirable, or

(c) impose a fine.

(2) Any order referred to in subsection (1) (b) shall be confirmed or set aside by the Director: Mineral Development, who shall notify the holder or manager of the mine or presumptive mine concerned in writing of his or her decision as soon as practicable.

(3) Any order given under subsection (1) (b) shall take effect from the date fixed by the officer concerned and shall remain in force until set aside by the Director: Mineral Development or until the instruction of the officer has been complied with.

**222. Inquiries**

- (1) If any contravention or suspected contravention of or any failure or suspected failure to comply with any provision of this Act occurs at any mine or place presumed to be a mine, an inquiry may be held to any such matter by an officer designated by the Director-General.
- (2) The Director-General may, either before the commencement or at any stage of an inquiry held in terms of subsection (1) or (4) designate one or more other officers to assist in the holding of such inquiry and may designate an officer to preside at such inquiry.
- (3) Any investigating officer holding an inquiry into any matter in terms of this section shall, if necessary with the assistance of an interpreter, take down or record the evidence given thereat and submit a written copy thereof with a report thereon to the Director: Mineral Development, who shall transmit it to the Director-General, unless otherwise directed by the latter.
- (4) Upon consideration of the evidence and report referred to in subsection (3) the Director-General may require that the matter concerned be inquired into further.

**223. Attendance and examination of witnesses at inquiry**

- (1) An investigating officer holding an inquiry in terms of section 222(1) or (4) into any matter or who is to preside or is presiding at such inquiry may, for the purpose of such inquiry-
  - (a) direct or summon any person to appear before him or her at such time and place as may be determined by him or her; or

(b) order any person present at the place where such inquiry is being held –

(i) to give evidence thereat;

(ii) to produce any document or thing which he or she may deem necessary for the proper disposal of such inquiry; or

(iii) to perform any other act in relation to this Act which he or she may direct.

(2) If any person has reason to believe that he or she may be held liable for any matter which shall or may be inquired into in terms of section 222(1) or (4), he or she shall have the right, subject to subsection (1), not to be compelled, to be present at any such inquiry and to be assisted or represented by another person.

(3) If at any inquiry held in terms of section 222(1) or (4) evidence has been or is being given from which any person may reasonably infer that he or she may be charged with contravening any provision of this Act or failing to comply therewith or may be held responsible in any manner for the matter comprising the subject of such inquiry, he or she shall have the right, but is not compelled, to give evidence, either personally or through a representative –

(a) to be heard:

(b) to call any witness or to request the investigating officer to direct or summon any witness on his or her behalf, either to give evidence thereat or to produce any document or thing;

(c) to cross-examine anybody giving evidence at such inquiry; and

- (d) to peruse any document which has been presented as evidence.
- (4) Any person who satisfies an investigating officer that he or she has a material interest in any inquiry held in terms of section 222(1) or (4) may, either personally or through a representative, put such questions as the investigating officer may consider relevant to such inquiry, to a witness giving evidence thereat.
- (5) Any investigating officer may, at any inquiry held in terms of section 222(1) or (4), administer an oath which is normally administered to a witness in a court of law, to any witness before giving evidence, or if objecting to taking such oath, he or she may make an affirmation, and such affirmation shall have the same legal force and effect as such oath.
- (6) No person called as a witness at any inquiry held in terms of section 222(1) or (4) shall, when he or she is requested thereto, refuse or fail to take an oath or, if he or she objects thereto, to make an affirmation.
- (7) No person to whom an oath referred to in subsection (5) has been administered or who has made an affirmation so referred to, shall give evidence knowing it to be false or make a statement under oath or affirmation which is contrary to any statement which that person made under oath or affirmation on a previous occasion.
- (8) Any witness at any inquiry held in terms of section 222(1) or (4) shall have the same privilege in relation to the answering of questions or the production of documents or things as such witness would have had under the same circumstances if the witness had been summoned as such before a court of law.

- (9) (a) Any inquiry or any part thereof held in terms of section 222(1) or (4) shall, in so far as it is in the opinion of the investigating officer practically possible or desirable, be held in public.
- (b) The investigating officer may decide whether any witness who has to give evidence or has given evidence at an inquiry referred to in paragraph (a), shall be present whilst other witnesses are giving their evidence thereat.

**224. Obstruction of inquiry or investigating officer or failure to render assistance**

No person shall, in relation to any inquiry held in terms of section 222(1) or

(4) –

- (a) without reasonable justification fail to comply with any direction, summon or order issued or given under section 223(1) or by virtue of a request under section 223(1) (b) (ii);
- (b) refuse or fail to answer to the best of his or her knowledge any question lawfully put to him or her by or with the concurrence of the investigating officer: Provided that no person shall be obliged to answer any question whereby that person may incriminate himself or herself;
- (c) in any manner whatsoever advise, encourage, incite, order or persuade any person who has been directed, summoned or ordered under section 223(1) or by virtue of a request under section 223(1) (b)(ii), not to comply with such direction, summons or order or in any manner prevent him or her from doing so;

(d) refuse or fail, when required thereto by the investigating officer, to furnish him or her with the means or render him or her the necessary assistance for holding such inquiry;

(e) refuse or fail, when required thereto by the investigating officer, to attend an inquiry; or

(f) intentionally insult an investigating officer or intentionally interrupt the proceedings thereat.

### **225. Act binds the State**

The provisions of this Act shall bind the State or any organ of State, save in so far as –

(a) criminal liability is concerned; or

(b) may be determined by the Minister by notice in the *Government Gazette*.

### **226. Repeal and amendment of laws**

(1) Subject to subsection (2), the laws specified in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

(2) The provisions of this Act shall, not be affected by any term or condition of any agreement, whether such agreement, was notarially executed or not or was entered into before or after the commencement of this Act.

**227.Short title**

This Act shall be called the Minerals Development Act, 2000


**228.Commencement**

- (1) The Act shall come into operation on a date fixed by the President by proclamation in the Gazette,
- (2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.



## Schedule

No. and Year of Law	Short Title	Extent of repeal or amendment
47 of 1937	Deeds Registries Act, 1937	Sections 70 – 74, and deletion of reference to a registered lease of a right to a mineral in the definitions of immovable property and deletion of the definition of prospecting contract
50 of 1956	General Laws Amendment Act, 1956	Sections 3 and 4
96 of 1969	Expropriation of Mineral Rights (Township) Act, 1969	The whole
57 of 1976	National Parks Act, 1976	Deletion of reference to mineral right in sections 2A, 2C, 2D, 3 and 3A
39 of 1979	Bophuthatswana Land Control Act, 1979	Section 16(1)
16 of 1986	Venda Land Control Act, 1986	Section 16(1)
56 of 1986	Diamonds Act, 1986	The whole
9 of 1987	Rural Areas Act (House of Representatives), 1987	Section 51
50 of 1991	Minerals Act, 1991	The whole, except the definitions of "precious metals" and "unwrought precious metal" in section 1 and Chapter XVI of the Mining Rights Act, 1967
47 of 1994	Mineral and Energy Laws Rationalisation Act, 1994	The whole
3 of 1996	Land Reform (Labour Tenant's) Act, 1996	Deletion of reference to mineral rights in section 2(3)
94 of 1998	Transformation of Certain Rural Areas Act, 1998	Section 6
107 of 1998	National Environmental Management Act, 1998	Deletion of proviso in section 36(1)
8 of 1997	Land Survey Act	Deletion of reference to mineral rights or right to minerals where it appears in the Act.



*Looking for back copies and out of print issues of  
the Government Gazette and Provincial Gazettes?*

## The National Library of SA has them!

Let us make your day with the information you need ...

National Library of SA, Pretoria Division

PO Box 397

0001 PRETORIA

Tel.:(012) 321-8931, Fax: (012) 325-5984

E-mail: [infodesk@nlsa.ac.za](mailto:infodesk@nlsa.ac.za)



*Soek u ou kopieë en uit druk uitgawes van die  
Staatshoerant en Provinsiale Koerante?*

## Die Nasionale Biblioteek van SA het hulle!

Met ons hoef u nie te sukkel om inligting te bekom nie ...

Nasionale Biblioteek van SA, Pretoria Divisie

Posbus 397

0001 PRETORIA

Tel.:(012) 321-8931, Faks: (012) 325-5984

E-pos: [infodesk@nlsa.ac.za](mailto:infodesk@nlsa.ac.za)

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504

Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737

Kaapstad-tak: Tel: (021) 465-7531