



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

*Regulation Gazette*

No. 7479

Vol. 449

Pretoria

1

November

2002

**No. 24008**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

---

## GOVERNMENT NOTICE

---

### DEPARTMENT OF MINERALS AND ENERGY

No. R. 1361

1 November 2002

### DIAMONDS ACT, 1986 (ACT NO. 56 OF 1986)

### AMENDMENT OF REGULATIONS

Under section 95 of the Diamonds Act, 1986 (Act No. 56 of 1986), the Minister of Minerals and Energy, after consultation with the South African Diamond Board, hereby make the regulations in the Schedule.

Minister of Minerals and Energy

### SCHEDULE

#### Definitions

1. In these regulations "the Regulations" means the regulations published under Government Notice No. R.680 of 1 April 1987, as amended by Government Notice No. R.462 of 16 April 1999.

#### Amendment of regulation 1

2. Regulation 1 of the regulations is amended by the addition of the following definitions –
  - "**conflict diamonds**" means unpolished diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) regulations insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and as understood and recognised in United Nations General Assembly (UNGA) Resolution 55/56, and 56/263 or in other similar UNGA resolutions which may be adopted in future;
  - "**consignment**" means one or more packets or parcels of unpolished diamonds that are placed in a tamper-resistant container and are exported or imported, and has the same meaning as shipment;
  - "**country of origin**" means the country where a consignment of unpolished diamonds has been mined or extracted;
  - "**country of provenance**" means the last Participant from where a consignment of unpolished diamonds was exported, as recorded in import documentation;
  - "**export**" means to take or send an unpolished diamond from the Republic to a country or territory outside the Republic which is a Participant, or to cause an unpolished diamond to be so taken or dispatched out to a Participant;
  - "**Exporting Authority**" means the authority or body designated by a Participant from whose country or territory a consignment of unpolished diamonds is leaving, and which is authorised to validate the Kimberley Process Certificate;

- "import"** means the receiving of an unpolished diamond from a Participant; which involves the physical entering or bringing of that diamond from outside the borders or the geographical territory of the Republic into the Republic;
- "Importing Authority"** means the authority or body designated by a Participant to whose country or territory a consignment of unpolished diamonds is imported;
- "Kimberley Process"** means the international forum of diamond producing and trading countries, the diamond industry and civil society wherein representatives have negotiated the international certification scheme for the international trade in unpolished diamonds;
- "Kimberley Process Certificate"** means a forgery resistant document in a particular format which identifies a consignment of unpolished diamonds as being in compliance with the requirements of the Kimberley Process Certification Scheme, and which in relation to export, is issued and validated by the Board and in relation to import is issued and validated by the exporting authority of a Participant;
- "Kimberley Process Certification Scheme"** means the international certification scheme for the international trade in unpolished diamonds negotiated in the Kimberley Process;
- "packet"** means one or more unpolished diamonds that are packed together, that are not individualized, and which may contain unpolished diamonds from two or more countries of origin, and has the same meaning as parcel;
- "Participant"** means any state or a regional economic integration enforcing the Kimberley Process Certification Scheme;
- "Regional Economic Integration Organisation"** means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the Kimberley Process Certification Scheme;
- "Republic"** means the Republic of South Africa;
- "transit"** means the physical passage across the territory of a Participant or a non-Participant, with or without transshipment, warehousing or change in mode of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Participant or non-Participant across whose territory a consignment passes.

#### Amendment of regulation 6

3. Regulation 6 is amended by the insertion after paragraph (1) (d) for the following paragraph:

"(cA) an Export Declaration for unpolished diamonds in the form of Form KPC(ii) prescribed in the annexure;"

#### Insertion of regulations

4. The regulations are amended by the insertion after regulation 6 of the following regulations –

#### "KIMBERLEY PROCESS CERTIFICATION SCHEME FOR EXPORT AND IMPORT OF UNPOLISHED DIAMONDS

- 6A (1) No unpolished diamond may be registered for export in terms of section 61 of the Act, unless that diamond is accompanied by a Kimberley Process Certificate issued and validated by the registering officer in terms of

- subregulation (3): Provided that a Kimberley Process Certificate will not be required for the export of a synthetic diamond, diamond powder or a partly processed diamond having at least 14 facets.
- (2) For the purposes of the issuing and validation of a Kimberley Process Certificate in terms of subregulation (3) in respect of an unpolished diamond to be registered for export in terms of section 61 of the Act –
    - (a) the Export Return contemplated in section 61 of the Act, must be accompanied by an Export Declaration in the prescribed Form KPC(ii) in the annexure, together with the unpolished diamond to be registered for export;
    - (b) the unpolished diamond must be exported to a Participant;
    - (c) the unpolished diamond must be inspected by the registering officer to verify conformity with the Export Return;
    - (d) the unpolished diamond must be placed in a tamper-resistant container, subject to the provisions of subregulation 6C;
    - (e) the container must be sealed with the Board's seal; and
    - (f) the exporter must furnish the registering officer with a written undertaking contained in the Export Declaration Form KPC(ii) as prescribed, to export the unpolished diamond within 10 working days from the date of release of that diamond for export in terms of the Act.
  - (3) The registering officer must issue and validate a Kimberley Process Certificate in the prescribed Form KPC(i) in the annexure, containing the minimum requirements as set out therein, if he or she is satisfied that the provisions of subregulation (2) have been complied with.
  - (4) The original of the Kimberley Process Certificate must be affixed in an inseparable manner to the container, and the exporter must be furnished with an authenticated copy of such certificate.
  - (5) Subject to section 69(1) of the Act, the container with its affixed Kimberley Process Certificate, sealed with the seal of the Board, must be released for export in terms of section 69(2) of the Act.
  - (6) The unpolished diamond registered for export must be recorded forthwith in the computerised National Database of Diamond Exports and Imports.
  - (7) The Participant's Importing Authority must be notified forthwith electronically of the details of the export consignment due to arrive in that Participant's territory.
  - (8) Any person who contravenes or fails to comply with any provisions of subregulations (1), 2(a), (b) and (f) shall be guilty of an offence.

- 6B (1) No unpolished diamond shall be imported by any person authorised to do so unless –
- (a) that diamond is accompanied by a valid Kimberley Process Certificate;
  - (b) the relevant Participant's Exporting Authority has given prior notice to the Board of the imminent entrance of that diamond into the Republic;
  - (c) adequate arrangements have been made for the examination of the consignment by the Board prior to clearance for customs and excise purposes;
  - (d) the Board is satisfied that the consignment has not been tampered with; and
  - (e) the provisions of subregulation (3) have been complied with: Provided that a Kimberley Process Certificate will not be required for the import of a synthetic diamond, diamond powder or a partly processed diamond.
- (2) A consignment must be returned to the Exporting Authority if, in the opinion of the Board, it has been tampered with.
- (3) After clearance for customs and excise purposes, the Board must ensure that –
- (a) the Kimberley Process Certificate is affixed in an inseparable manner to the container;
  - (b) the container in which the diamond is contained has been properly sealed by the Participant's Exporting Authority; and
  - (c) the content of the container is inspected to ascertain whether the diamond conforms with the details in the accompanying Kimberley Process Certificate.
- (4) If the provisions of subregulation (3) have been complied with, any person authorised in terms of the Act to import that diamond must be furnished with the unpolished diamond and an authenticated copy of the Kimberley Process Certificate in respect of the diamond to be imported.
- (5) Details of the unpolished diamond so imported must be recorded forthwith in the computerised National Database of Diamond Exports and Imports.
- (6) Details of the consignment must be confirmed electronically by the Board with the relevant Participant's Exporting Authority.
- (7) The original of the Kimberley Process Certificate must be kept by the Board for a minimum period of 3 years.

- (8) Any person who contravenes or fails to comply with any provision of subregulation (1), shall be guilty of an offence.
- 6C (1) Should the Board be of the opinion that the provisions of regulation 6B have not been complied with or suspect that an unpolished diamond in a consignment has been acquired unlawfully, the Board may retain such unpolished diamond and –
- (a) inform the exporter or importer of its decision; and
  - (b) request the exporter or importer to provide proof and reasons as to why that diamond should not be retained.
- (2) Should the proof and reasons in terms of subregulation (1)(b) be acceptable, the Board must –
- (a) in the case of an exporter, release that diamond for export in terms of section 69 of the Act; or
  - (b) in the case of an importer, release that diamond in accordance with subregulation 6B(4).
- (3) Should the proof and reasons in terms of subregulation 1(b) be unacceptable, the Board must –
- (a) inform the person intending to export or import that diamond thereof; and
  - (b) cause an investigation to be conducted.
- (4) Upon completion of the investigation, the Board must –
- (a) return that unpolished diamond to the rightful owner thereof; or
  - (b) return that unpolished diamond to the country of origin.
- (5) The provisions of these regulations shall not apply to consignments of unpolished diamonds that are passing through the geographical territory of the Republic to another country or territory in transit and such consignments of unpolished diamonds in transit may not be opened or tampered with in any manner.
- (6) Any person who contravenes or who fails to comply with subregulations (1)(b) and (5), shall be guilty of an offence.

**TRANSPORT OR CONVEYANCE OF UNPOLISHED DIAMONDS**

- 6D (1) Any producer or the holder of any licence, permit or authorisation issued in terms of the Act or the Minerals Act, 1991 (Act No. 50 of 1991), must have in his or her possession that licence, permit or authorisation, as the case may be, or a certified copy thereof, in order to transport or in any manner convey any unpolished diamond outside the boundaries of any mine, business premises, approved premises or place in which such unpolished diamonds are kept.
- (2) Any person who contravenes or who fails to comply with the provisions of subregulation (1), shall be guilty of an offence."

**Amendment of regulation 10**

5. Regulation 10 is amended by the substitution in paragraph (3) (c) (i) of the amount "US \$50" for the amount "US \$70".

**Amendment of regulation 14**

6. Regulation 14 is hereby amended by the substitution of paragraph (b) for the following paragraph:
- "(b) in the case of an offence referred to in regulation 6A(8), 6B(8), 6C(6), 6D(2), 8(12), 9(12) or 11(9), to a fine not exceeding R2 500-00 or to imprisonment for a period not exceeding 6 months."

**Commencement**

7. These regulations shall come into force on the date of publication thereof.

FORM KPC(i)

ANNEXURE

Minimum requirements of the Kimberley Process Certificate in terms of subregulation 1(1)(f):

REPUBLIC OF SOUTH AFRICA



KIMBERLEY PROCESS CERTIFICATE

Issued in terms of Regulation 1(1)(f) of the Diamonds Act, 1986 (Act No. 56 of 1986).

ZA and NUMBER:

SOUTH AFRICAN DIAMOND BOARD

It is hereby certified that the unpolished diamonds in this consignment have been handled in accordance with the provisions of the Kimberley Process International Certification Scheme for unpolished diamonds.

Country of Origin: ..... Number of Packets: .....  
 Name of Exporter: .....  
 Address of Exporter: .....  
 Fax no. and e-mail: .....  
 Name of Importer: .....  
 Address of Importer: .....  
 Fax no. and e-mail: .....

HS CODE	Carat Mass	Value (US\$)
7102.21		
7102.31		

Issued on: ..... Expires on .....

Signature of registering officer

Stamp of Diamond Board

It is hereby verified that the content of the container accompanying this Kimberley Process Certificate corresponds with the Certificate.

.....(Perforation) .....

Importing authority: ..... Date: .....

**IMPORT CONFIRMATION**

This is to certify that the unpolished diamonds accompanied by Republic of South African Kimberley Process Certificate No ..... were imported into ..... and verified in compliance with the Kimberley Process Certification Scheme for Unpolished Diamonds. Copy of certificate to accompany confirmation.

Date of receipt by importing authority: .....

Importing authority:

Date .....

Signature .....



FORM KPC(ii)

DIAMONDS ACT, 1986 (ACT No. 56 OF 1986)

EXPORT DECLARATION FOR UNPOLISHED DIAMONDS  
(In terms of Regulation 1(1)(a))

A. PARTICULARS OF EXPORTER

Name / Company Name: .....  
Identity Number / Company Registration No.....  
Address: .....  
.....  
.....

B. CHARACTERISTICS OF DIAMONDS

	<u>Carat Mass / Weight</u>	<u>Value US\$</u>
GEM		
INDUSTRIAL		
TOTAL		

C. COUNTRY OR TERRITORY OF ORIGIN / PROVENANCE OF  
CONSIGNMENT: .....

C. DECLARATION

- (i) I ..... hereby declare that the unpolished diamonds mentioned above have been acquired in a lawful manner and will be exported within 10 working days from the date of release; and
- (ii) the prescribed register in terms of section 57 of the Diamonds Act, 1986, confirming substantiation of such acquisition has been submitted to the South African Diamond Board / is attached hereto.

Signature: .....

Date: .....