

REPUBLIC OF SOUTH AFRICA

**MINERAL AND PETROLEUM
ROYALTY BILL**

*(As introduced in the National Assembly as a Money Bill)
(The English text is the official version of the Bill)*

(MINISTER OF FINANCE)

10 March 2003

[B1 – 2002]

BILL

To impose a royalty on the extraction and transfer of South Africa's mineral resources.

PREAMBLE

RECOGNISING that South Africa's mineral resources are non-renewable and are part of the common patrimony of all South Africans such that the nation is accordingly entitled to a consideration for the value of those resources when extracted and transferred;

ACKNOWLEDGING that South Africa's mineral resources belong to the nation and that the State is the custodian thereof;

AFFIRMING the State's obligation to provide for economic and social development; and

CONSIDERING the need to create an internationally competitive and efficient mineral resource royalty regime that contains rules seeking: (i) maximum certainty for the investor community in support of sustainable economic growth, and (ii) royalty rate stability within the foreseeable future.

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows—

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CHAPTER 1
ROYALTY DETERMINATION

PART I - DEFINITIONS

General Definitions

1. In this Act, unless the context indicates otherwise—

“administering this Act” means—

- (a) determining the correctness of any return, financial statement, document, declaration of facts, or valuation relevant to this Act,
- (b) determining and collecting any amounts due under this Act,
- (c) determining whether an offence has been committed under this Act, and
- (d) performing any other administrative function necessary for carrying out this Act;

“authorized diamond purchaser” means any person who is a licensee or permit holder authorized to purchase unpolished natural diamonds under the Diamonds Act (Act. 56 of 1986);

“Commissioner” means the Commissioner for the South African Revenue Service;

“company” means any association, corporation, or company incorporated, formed, or otherwise established under—

- (a) any law of the Republic or any part thereof, or
- (b) any law of any country or any part thereof;

“extracted” means any operation or activity for the purpose of winning any mineral resource on, in or under the earth, water or any residue deposit, whether by underground, open working, or otherwise and includes any operation or activity incidental thereto;

“gross sales value” means the amount described in section 7;

“mineral resource” means any substance listed in Schedule 1 whether—

- (a) in solid, liquid, or gaseous form,
- (b) occurring naturally in or under the earth, or in or under water, and
- (c) formed or subjected to a natural or man-made process;

“mineral resource extractor” means any holder of a mineral resource right;

“**mineral resource right**” means any prospecting right, exploration right, mining right, or production right granted or issued under the Mineral and Petroleum Resource Development Act (Act No. 28 of 2002).

“**Minister**” means the Minister of Finance;

“**notice of assessment**” means any notice of assessment described in section 29;

“**person**” means any natural or juristic person including a body of persons, a trust, a deceased estate, an insolvent estate, or any organ of State;

“**purchase**”, in relation to any unpolished natural diamond, means to deal, obtain by way of barter, pledge, or acquire in any other like manner that would qualify as a purchase as defined in section (1) of the Diamonds Act (Act No. 56 of 1986);

“**quarterly payment period**” means any period described in section 20;

“**return**” means any return referred to in section 19;

“**royalty**” means any royalty payable to the State described in section 3;

“**royalty rate**” means any royalty rate described in section 4;

“**transfer**” means any transfer described in section 5;

“**trust**” means any fund consisting of cash or other assets that are administered and controlled by any person acting in a fiduciary capacity if that person is appointed under a deed of trust, by agreement, or by a will;

“**unpolished natural diamonds**” means any mineral resource that is a diamond in its natural state, including diamond powder, crushed diamond, a diamond fragment, or a partly processed diamond;

Arm’s length value definition

2. (1) For purposes of this Act, the arm’s length value of any mineral resource transferred means the commercial price or fair market value that would have been agreed to by unconnected persons for such mineral resource (excluding any transportation or insurance) if those persons were freely negotiating on the open market under similar circumstances taking into account solely the characteristics of quality and quantity of the mineral resource transferred.

(2) For purposes of subsection (1), reliable external proof for demonstrating how the arm’s length value of a transferred mineral resource was derived means—

- (a) a local or international commodity index;
- (b) a local or international sale price list; and
- (c) local and international contemporaneous unit prices obtained between unconnected parties.

(3) The Minister may issue regulations that further elaborate on the definition of arm’s length value described in subsection (1) and on the methodology for determining reliable external proof as described in subsection (2).

PART II - BASIC ROYALTY REGIME

Charging provision

3. (1) A mineral resource extractor is subject to a royalty on a quarterly basis as consideration to the State for every mineral resource extracted and transferred by that extractor.

(2) The royalty imposed on any mineral resource transferred will equal that mineral resource's royalty rate multiplied by—

(a) its published tradable value and by its unit quantity in terms of weight, size, volume, or other similar criteria normally used for that mineral resource; or

(b) its gross sales value to the extent its published tradable value is not available.

(3) Notwithstanding subsection (1), a mineral resource extractor will not be subject to a royalty on any mineral resource transferred if that extractor proves the same mineral resource was previously subject to a royalty.

Rates and classification

4. (1) The royalty rate with respect to any mineral resource transferred will be determined under Schedule 1.

(2) In consultation with the Minister of Minerals and Energy, the Minister may add or otherwise amend the commodity groups determined under Schedule 1 by way of regulation to account for the discovery of new economically exploitable mineral resources, new mineral resource processes, or mineral resources otherwise missing from Schedule 1.

(3) Any regulation described in subsection (2) must be tabled in Parliament for incorporation into this Act within 12 months after the date the regulation is published.

Transfer definition and date

5. (1) A transfer means—

(a) any agreement, act, or operation of law that results in the disposal, distribution, exchange, sale, or any other voluntary alienation of beneficial ownership or title; or

(b) the physical export from the Republic (regardless of any voluntary alienation of beneficial ownership or title),

of any mineral resource.

(2) A transfer occurs on the earliest date when a mineral resource extractor—

(a) makes physical delivery; or

(b) delivers a bill of entry for export as required under the Customs and Excise Act (Act No. 91 of 1964),

with respect to the mineral resource transferred.

Published tradable value

6. (1) The published tradable value of any mineral resource transferred will equal its readily tradable price on the date of transfer as published by the Department of Minerals and Energy.

(2) For purpose of subsection (1), a mineral resource's published tradable value will reflect the arm's length sales price of that mineral resource on relevant local and international markets.

Gross sales value

7. (1) The gross sales value of any mineral resource transferred will equal the higher of—
- (a) the total consideration received or to be received in exchange for a transferred mineral resource, excluding any value-added tax imposed by the Value-Added Tax Act, (Act No. 89 of 1991);
 - (b) in the case of a transfer described under section 6(1)(b), the price declared on the bill of entry for export as required under the Customs and Excise Act (Act No. 91 of 1964);
 - (c) in the case of a transfer described under section 6(1)(b) for any unpolished natural diamond, the value of any unpolished natural diamond determined by a state appointed independent diamond valuator so as to receive an export certificate under the Diamonds Act (Act No. 91 of 1964);
 - (d) in the case of a transfer described under section 6(1)(b) for any unpolished natural diamond, the value of any unpolished natural diamond determined by the reserve price so as to receive exemption from export duty under the Diamonds Act (Act No. 91 of 1964); or
 - (e) the arm's length value of the mineral resource.
- (2) For purposes of subsection (1)(a), “**total consideration**” means—
- (a) money received or to be received;
 - (b) the face value of any outstanding obligations that have been or will be reduced or discharged; and
 - (c) the fair market value of any property, financial assistance, service, or any other benefit received or to be received,

but does not include transportation and insurance related to the mineral resource transferred if the mineral resource extractor provides reliable external proof that these related amounts do not represent disguised amounts for the mineral resource transferred.

(3) If the gross sales value of a transferred mineral resource is denominated in a foreign currency, that value will be translated into the currency of the Republic at the closing spot rate on the date of transfer.

PART III - EXEMPTIONS

Marginal mine rate relief

8. (1) The Minister may issue regulations allowing the Minister of Minerals and Energy to partially or wholly exempt a mineral extractor from any royalty on the transfer of a mineral resource extracted with respect to a mining right granted under the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002)—
- (a) with only low-grade ores remaining as independently verified; and
 - (b) of questionable economic viability.
- (2) To the extent the Minister issues regulations under subsection (1), the regulations must take into account whether—
- (a) the mineral extractor has streamlined all operating and fixed costs with respect to the mining right described in subsection (1) (other than the streamlining of employment);

- (b) cessation of mining operations with respect to the mineral right described in subsection (1) will create a significant loss of employment;
 - (c) cessation of mining operations with respect to the mineral right described in subsection (1) will negatively impact the social and labour plan approved by the Department of Minerals and Energy;
 - (d) cessation of mining operations with respect to the mineral right described in subsection (1) will negatively impact the targets of the Mining Empowerment Charter approved by the Department of Minerals and Energy, and
 - (e) cessation of mining operations with respect to the mineral right described in subsection (1) will negatively impact the environmental management plan approved by the Department of Minerals and Energy or the Mine and Health and Safety Act of 1996 (Act No. 29 of 1996).
- (2) To the extent the Minister issues regulations under subsection (1), the regulation must at a minimum require the Minister of Minerals and Energy—
- (a) to provide written reasons for granting or denying any mineral extractor a partial or whole royalty exemption;
 - (b) to provide written reasons for withdrawing a mineral extractor's approval of a partial or whole royalty exemption;
 - (c) to inform the Commissioner of a mineral extractor that was granted a partial or whole royalty exemption;
 - (d) to publish in the *Gazette* the written decision in paragraphs (a) or (b) no later than 90 days after that decision; and
 - (e) to submit an annual report to Parliament, with a copy of that report to the Auditor General, setting out the following information in respect of each company that was granted or denied a partial or whole royalty exemption under this section—
 - (i) the name of each mineral extractor;
 - (ii) the name of the type of mineral resource rights that mineral extractor holds;
 - (iii) the potential national revenue foregone as a result of granting a partial or whole royalty exemption to that mineral resource extractor;
 - (iv) the direct benefits of granting a mineral extractor a partial or whole royalty exemption; and
 - (v) any decision to withdraw the granting of a mineral extractor's partial or whole royalty exemption.

Exemption for sampling

9. (1) A mineral extractor will be exempt from any royalty on the transfer of a mineral resource to the extent that the mineral resource is extracted with respect to a prospecting right granted under the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) solely for purposes of analysis, assay, regular or bulk sampling, identification, or other testing.

(2) Subsection (1)(a) will not apply to the transfer of any mineral resource classified under Group 9 or Group 10 under Schedule 1.

Exemption for domestic use

10. (1) A mineral extractor will be exempt from any royalty on the transfer of a mineral resource to the extent that the mineral resource consists of—

- (a) salt to be used solely for domestic consumption;
- (b) sand, stone, sandstone, slate, gravel, and clay to be used solely for domestic brick-making;
- (c) concrete, mortar, plaster, and bricks to be used solely for domestic public infrastructure;
- (d) dolomite, limestone, shale, and gypsum to be used solely for domestic cement manufacturing; or
- (e) limestone, perlite, salt, and phosphate rock to be used solely for domestic agriculture.

(2) A mineral resource extractor will be subject to only half the royalty rate otherwise determined under Schedule 1 for any mineral resource consisting of bituminous coal to be used solely for domestic energy consumption.

Incentive for petroleum exploration

11. (1) A mineral extractor will be exempt from any royalty on the transfer of a mineral resource if that mineral resource is extracted with respect to an exploration right granted under the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002).

(2) A mineral resource extractor will be subject to only half the royalty rate otherwise determined under Schedule 1 for any mineral resource classified under Group 2 or Group 6 if—

- (a) that extractor extracts oil or gas with respect to a production right; and
- (b) that extractor initially discovered economically exploitable oil or gas reserves in the same area as covered by that production right.

PART IV - ANTI-AVOIDANCE RULES

Transfers between connected persons

12. (1) If a mineral resource extractor was subject to a royalty on an amount determined under section 7 upon initially—

- (a) transferring a mineral resource under section 6(1)(a) to a connected person; or
- (b) exporting a mineral resource under section 6(1)(b) without alienating both beneficial ownership and title,

the mineral resource extractor will be subject to an additional royalty when beneficial ownership of that mineral resource is subsequently transferred to any other person that is not a connected person in relation to that mineral extractor.

(2) The additional royalty described in subsection (1) will equal—

- (a) the gross sales value of the mineral resource initially transferred by the mineral extractor as described in that subsection; less
- (b) the gross sales value of the mineral resource initially transferred by the mineral extractor as described in that subsection,

multiplied by the royalty rate as determined under Schedule 1 for the initial transfer.

(3) If, as described in subsection (2), the gross sales value of the subsequently transferred mineral resource is less than or equal to the gross sales value of the mineral resource initially transferred, no additional royalty applies.

(4) The additional royalty described in subsection (1) will not apply if the mineral resource extractor proves the same mineral resource was previously subject to an additional royalty.

(5) The additional royalty described in subsections (1) will not apply if the mineral resource extractor provides reliable external proof of the gross sales value of the mineral resource initially transferred as described in subsection (1).

Deemed charge on exports in lieu of additional royalty

13. (1) The mineral resource extractor will be subject to a deemed charge in lieu of any additional royalty described under section 13 if—

- (a) the mineral resource extractor is subject to a royalty on an amount determined under section 7 upon initially—
 - (i) transferring a mineral resource under section 6(1)(a) to a connected person; or
 - (ii) exporting a mineral resource under section 6(1)(b) without alienating both beneficial ownership and title; and
- (b) that mineral resource has not been subject to an additional royalty under section 13; and
- (c) that mineral resource is held outside of the Republic for more than one year from the date of export indicated on the bill of entry for export.

(2) The deemed charge described in subsection (1) will equal 50 per cent of the royalty imposed on the initial transfer and will apply on the day after one year from the date of export indicated on the bill of entry for export.

(3) The deemed charge described in subsection (1) will not apply if the mineral resource extractor proves the same mineral resource was previously subject to a deemed charge.

(4) The deemed charge described in subsection (1) will not apply if the mineral resource extractor provides reliable external proof of the gross sales value of the mineral resource initially transferred as described in subsection (1).

Connected persons definition

14. (1) For purposes of this Act, the term “**connected persons**” means—

- (a) in relation to any natural person (including the estate of the natural person if that person is deceased or insolvent)--
 - (i) any relative of that natural person (or the estate of that relative if that relative is deceased or insolvent); or
 - (ii) any trust in respect of which any such relative or such estate of such relative is a vested or contingent beneficiary; or
- (b) in relation to any trust and any person who is a vested or contingent beneficiary in respect of that trust; or
- (c) in relation to any partnership or close corporation and—
 - (i) any member thereof; or
 - (ii) any other person if that person and a member of the partnership or close corporation are connected persons in terms of this definition; or
- (d) in relation to any company (other than a close corporation) and

- (i) any person (other than a company), relative of that person, or any trust in respect of which that person or relative is a vested or contingent beneficiary, that directly or indirectly holds (either separately or in the aggregate) more than 25 per cent of the rights in the fixed capital (being share capital, share premium, current or accumulated profits, or reserves) of the company;
 - (ii) any other company in which the persons described in subparagraph (i) are substantially the same persons as those holding rights in the fixed capital in the first-mentioned company, or which is controlled by the same persons who control the first-mentioned company; or
 - (iii) any other person if that other person and the person, relative or trust described in subparagraph (i), or the other company referred to in subparagraph (ii), are connected persons in terms of this definition.
- (2) For purposes of this section, “**relative**” means—
- (a) any spouse of a person or any person related to that person or spouse within the second degree on consanguinity; or
 - (b) any spouse of any person so related in paragraph (a), taking into account any child adopted by any law as if that child were related by blood;
- (3) For purposes of this section, “**spouse**” means a person who is a partner—
- (a) in a marriage or customary union recognized in terms of the laws of the Republic;
 - (b) in a union recognized as a marriage in accordance with the tenets of any religion; or
 - (c) in a same-sex or heterosexual union which is intended to be permanent;

PART V - FISCAL STABILISATION

Fiscal stabilisation election

15. (1) Any mineral resource extractor may make a fiscal stabilization election as described in subsection (2) with respect to—

- (b) an exploration right;
- (c) a mining right; or
- (d) a production right,

granted or renewed under the Mineral and Petroleum Resource Development Act (Act No. 28 of 2002).

(2) In order to make a fiscal stabilization election with respect to a granted or renewed right described under subsection (1), the mineral resource extractor must submit the election—

- (a) on or before the forty-fifth day following the close of the quarterly payment period in which that mineral extractor first transfers a mineral resource with respect to that granted or renewed right; and
- (b) in the form and manner required by the Commissioner.

(3) From the date a fiscal stabilization election is submitted, a mineral resource extractor will be guaranteed royalty rates with respect to a right described under subsection (1) (or any subsequent right covering the same area) equal to—

- (a) the royalty rates under Schedule 1 existing on the date of submission;
- (b) plus the lesser of—
 - (i) 2 per cent; or

- (ii) 50 per cent of the royalty rates under Schedule 1 on the date of submission.

(4) A fiscal stabilisation election described under subsection (2) is valid for a period of 30 continuous years from the submission date of the fiscal stabilisation election (disregarding any period relating to an exploration right granted or renewed under the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002)).

(5) Unless forfeiture arises under section 16, the fiscal stabilisation election described under subsection (2) will serve as a binding contractual agreement between the mineral resource extractor and the State, thereby entitling the mineral resource extractor to—

- (a) reinstatement of the royalty rates under Schedule 1 existing on the date of submission if the mineral extractor is subject to a royalty (or a disguised royalty) in excess of those rates; and
- (b) compensation for any payment in excess of those rates.

Forfeiture of fiscal stabilisation

16. (1) Any mineral resource extractor with a fiscal stabilisation election under section 15(2) will unilaterally forfeit that election as soon as the mineral resource extractor fails to—

- (a) satisfy the requirements of that section;
- (b) make timely payment under section 19 unless the mineral resource extractor has demonstrated a history of timely payment performance; or
- (c) disclose a transfer of a mineral resource as required with respect to a return due to negligence, recklessness, or intentional disregard.

(2) A mineral resource extractor with a fiscal stabilization election under section 15(2) will not unilaterally forfeit that election merely because the mineral resource extractor makes payment pursuant to a notice of assessment under section 29.

PART VI – WITHHOLDING REGIME FOR DIAMONDS

Withholding obligation of authorised diamond purchasers

17. (1) Whenever an authorised diamond purchaser transacts a purchase of any unpolished natural diamond, the authorised diamond purchaser is subject to a withholding royalty in accordance with subsection (2).

(2) The withholding royalty imposed on the purchase of any unpolished natural diamond under subsection (1) will equal that diamond's royalty rate multiplied by—

- (a) its published tradable value and by its unit quantity in terms of weight, size, volume, or other similar criteria; or
- (b) its gross sales value to the extent its published readily tradable value is not available.

(3) Notwithstanding subsection (1), a mineral resource extractor will not be subject to a withholding royalty on any mineral resource transferred by that extractor if that extractor proves the same mineral resource was previously subject to a withholding royalty.

Royalty exemption for withholding receipts

18. (1) A mineral resource extractor will be exempt from any royalty with respect to a transferred unpolished natural diamond if—

- (a) the transfer of that diamond was subject to a withholding royalty; and

- (b) that mineral resource extractor submits a withholding receipt from an authorised diamond purchaser as described under subsection (2).
- (2) For purposes of this section, a “**withholding receipt**” means a receipt from an authorised diamond purchaser indicating—
 - (a) a description of the unpolished natural diamonds purchased;
 - (b) the price at which the unpolished natural diamonds were purchased;
 - (c) the amount withheld under section 17; and
 - (d) any other information required by the Commissioner.

CHAPTER 2
ROYALTY ADMINISTRATION

PART I - RETURNS AND PAYMENTS

Submission of returns and payments

- 19.** (1) Every mineral resource extractor and authorized diamond purchaser must submit—
- (a) a return and full payment to the Commissioner on or before the forty-fifth day following the close of the quarterly payment period in which that extractor transfers a mineral resource or that purchaser purchases a natural unpolished diamond; and
 - (b) a copy of that return to the Minister of Minerals and Energy on or before the same date.
- (2) If the date provided in subsection (1) falls on a Saturday, Sunday or public holiday, the return and payment must instead be submitted by the business day falling before the Saturday, Sunday, or public holiday.
- (3) Payment submitted by way of a debit order or electronic equivalent is acceptable for purposes of subsection (1).

Quarterly payment periods

- 20.** (1) The quarterly payment period for a mineral resource extractor or an authorized diamond purchaser occurs every three calendar months following the beginning of that extractor's or purchaser's financial year.
- (2) For purposes of this section, "**financial year**" means the yearly period for which financial accounts are prepared; and if any financial year begins on any day other than the first day of a month, the financial year will be deemed to begin on the first day of that month.
- (3) For purposes of this section, "**month**" means any calendar month.

Return information

- 21.** (1) Any return that must be submitted by a mineral resource extractor must contain the following information (individually and collectively) with respect to mineral resources or petroleum transferred—
- (a) the name and address of the registered office or place of business of the mineral resource extractor;
 - (b) the name and address of the person to whom the mineral resource was transferred (unless the transfer is a deemed transfer on export under section 10, in which case, the address for the ultimate location for delivery or consignment outside the Republic);
 - (c) whether the mineral resource extractor and the person described in paragraph (b) are connected persons;

- (d) the date of transfer;
 - (e) the quantity (including physical volume and weights) and quality (including grades) of the mineral resource transferred;
 - (f) any claimed exemptions from the royalty;
 - (g) the gross sales value of the mineral resource transferred on a per unit basis taking into account any currency conversions required;
 - (h) a copy of the fiscal stabilization election under section 20, if any;
 - (i) the royalty rate used to calculate the royalty payable (including the additional stabilization rate, if any);
 - (j) the total royalty payable with respect to the mineral resources or petroleum transferred less any rebates;
 - (k) any additional royalty payable by virtue of sections 10, 17, or 18; and
 - (l) any other information required by the Commissioner and by the Minister of Minerals and Energy;
- (2) Any return that must be submitted by an authorized diamond purchaser must contain the following information (individually and collectively) with respect to an unpolished natural diamond purchased—
- (a) the name and address of the registered office or place of business of the authorized diamond purchaser;
 - (b) the name and address of the person from whom the unpolished natural diamond was purchased;
 - (c) the date of purchase;
 - (d) the quantity (including physical volumes and weights) and quality (including by grade) of the unpolished natural diamond purchased;
 - (e) the gross sales value of any unpolished natural diamonds purchased on a per unit basis taking into account any currency conversions required;
 - (f) verification of the purchase price by a State appointed diamond valuator;
 - (g) the rate used to calculate the withholding payable;
 - (h) the total withholding payable with respect to the unpolished natural diamond purchased; and
 - (i) any other information required by the Commissioner and by the Minister of Minerals and Energy.

Maintenance of records

- 22.** (1) Every mineral resource extractor and authorized diamond purchaser must maintain electronic or written records necessary to observe the requirements of this Act and for the Commissioner and the Minister of Minerals and Energy to verify those requirements, including—
- (a) a record of all mineral resources and petroleum transferred by the mineral resource extractor, or unpolished natural diamonds purchased by the authorized diamond purchaser, in sufficient detail to identify the persons, mineral resources, petroleum, or diamonds involved, as well as the gross sales value and rate applicable;
 - (b) all invoices, contractual agreements, financial statements, deposit slips, and paid cheques relating to the transfer or purchase described in paragraph (a); and
 - (c) any charts, codes of account, accounting instruction manuals, as well as the system and program documentation describing the accounting system used during each payment period.

(2) The records described in subsection (1) must be fully retained and preserved in their original form (or in any other form permitted by the Commissioner) for a period of 5 years after the transfer or purchase to which they relate).

(3) Any mineral resource extractor or authorized diamond purchaser must make the records described in subsection (1) fully accessible for inspection by the Commissioner and the Minister of Minerals and Energy at all reasonable times—

- (a) during the period described in subsection (2); and
- (b) during any period of objection or appeal described in Part V before an assessment or court decision becomes final without right of appeal to the extent any records may be relevant for issuing that assessment or court decision.

PART II - CIVIL AND CRIMINAL PENALTIES

Civil penalties of the Commissioner

23. (1) Any mineral resource extractor or authorised diamond purchaser failing to submit a return or payment in the time and manner described in section 19 must additionally pay a penalty to the Commissioner in accordance with subsection (2) if—

- (a) that failure stemmed from negligence, recklessness, or intentional disregard;
- (b) that failure resulted in a significant understatement of the tax payable;
- (c) that failure stemmed from a significant understatement of an arm's length value claimed or;
- (d) that holder or agent does not have a history of timely payment performance.

(2) Any penalty described in subsection (1) will equal the greater of R5 000 or 20 per cent of the tax owed by virtue of any failure described therein.

Suspension and cancellation penalties of the Minister of Minerals and Energy

24. (1) In addition to the powers of cancellation and suspension under sections 47, 90, and 93 of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002), the Minister of Minerals and Energy must prohibit (after consultation with the Commissioner) any mineral resource extractor from transferring any mineral resource removed with respect to a mineral resource right if—

- (a) the mineral resource extractor has not paid one or more amounts due as a royalty under this Act with respect to that right;
- (b) the unpaid amount with respect to that right amounts to more than 50 per cent of the royalty due during the past period of 12 financial months; and
- (c) the mineral resource extractor has a poor history of timely payment performance,

with the prohibition remaining in effect until all outstanding royalties have been fully paid regarding that right.

(2) Any mineral resource extractor conducting a transfer in violation of subsection (1) will be guilty of a criminal offence and will be liable on conviction—

- (a) to a fine or imprisonment for a period not exceeding 6 months for each month in which a transfer in violation occurs; or
- (b) a penalty equal to 100 per cent of the gross sales value of the mineral resource transferred in violation.

Criminal offences and penalties

25. (1) In addition to any possible criminal offence described under section 98 of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002), a person commits a criminal offence if that person:

- (a) provides, causes, or allows a false statement or omits a material statement in any return rendered, or signs any such return without reasonable grounds for believing that return to be true;
- (b) provides, causes, or allows a false statement or a material omission with respect to an answer to the Commissioner or any authorized officer thereof;
- (c) prepares, maintains, or authorizes a false accounting record; or
- (d) provides or authorizes the use of any fraud, art, or contrivance whatsoever, to intentionally evade payment or to obtain a refund in violation of this act or where that person intentionally assists another person to evade payment or obtain a refund in violation of this Act.

(2) Any person guilty of a criminal offence under subsection (1) will be liable upon conviction to—

- (a) a fine or imprisonment for a period not exceeding 60 months;
- (b) a penalty equal to double the evaded amount; or
- (c) a penalty equal to double the excess of the properly refundable amount.

Publication of criminal convictions

26. (1) Notwithstanding section 56, the Commissioner may publish a list of persons convicted of evasion as described in section 30 after appeal.

(2) The list described in subsection (1) will specify the following:

- (a) the name and address of the person convicted and the name and address of any employer of that person at the time of the criminal offence;
- (b) the particulars of the criminal offence;
- (c) the dates when the criminal offence occurred, and
- (d) the amount evaded.

PART III - INTEREST AND ROUNDING

Interest

27. (1) Any mineral resource extractor or withholding agent that fails to pay any royalty or withholding required under this Act by the last day of payment allowed under section 19—

- (a) is liable for interest on the unpaid amount; and
- (b) the interest on the unpaid amount becomes payable after the last day of payment allowed.

(2) The Commissioner must pay interest with respect to any refund properly due under section 35 if that refund is not paid within 30 days (ignoring weekends and public holidays) after receipt of the refund request.

(3) The interest described in this section will be calculated in accordance with section 80 of the Public Finance Management Act (Act No. 1 of 1999).

Rounding off

- 28.** All royalties, withholding, penalties, and all interest thereon will be rounded to the nearest Rand—
- (a) by rounding up if the fraction equals 50 cents or more; and
 - (b) by otherwise rounding down.

PART IV – ASSESSMENTS AND REFUNDS**Assessments**

- 29.** (1) The Commissioner is empowered to recalculate or estimate the amount of any royalty or withholding payable under this Act by issuing a written notice of assessment in accordance with subsection (2) if—
- (a) the mineral resource extractor or authorized diamond purchaser fails to furnish a return; or
 - (b) the Commissioner is not satisfied with the return described in paragraph (a).
- (2) Any assessment described in subsection (1) must include—
- (a) the amount of any royalty or withholding that the Commissioner believes to be payable; and
 - (b) the essential legal and factual grounds for those beliefs.
- (3) The mineral resource extractor or authorized diamond purchaser must pay the amount payable under the notice of assessment within 60 days after receipt of the notice.

Refunds

- 30.** (1) Any mineral resource extractor or authorized diamond purchaser may receive a refund in respect of a return or notice of assessment to the extent that—
- (a) any royalty, withholding, penalty, or interest is paid in excess of the amount required;
 - (b) any rebate was not fully applied against any royalty paid; or
 - (c) any amount refunded was less than the amount actually due as a refund under this subsection.
- (2) Notwithstanding subsection (1), no mineral resource extractor may claim a refund with respect to a return if that refund is based on a recalculation or readjustment of an arm's length value initially claimed on that return.
- (3) Notwithstanding subsection (1), no mineral resource extractor or authorized diamond purchaser may claim a refund with respect to a return until all outstanding returns are submitted if that mineral resource extractor or authorized diamond purchaser has a history of failing to submit timely returns.

Time limits for assessments and refunds

- 31.** (1) Notwithstanding section 34, the Commissioner may not issue a notice of assessment to a person with respect to a payment period after five years following the close thereof unless—
- (a) no return was filed by that person with respect to that period;

- (b) the Commissioner has reason to believe that the person failed to pay an amount properly due with respect to that payment period as a result of negligence, recklessness, or intentional disregard; or
- (c) the Commissioner has reason to believe that the person failed to pay with respect to that payment period as a result of a criminal offence described in section 30.

(2) Notwithstanding section 35, a mineral resource extractor and an authorized diamond purchaser may not claim a refund with respect to a payment period after five years following the close thereof.

Reliance on prevailing administrative and judicial practice

32. (1) If a mineral resource extractor or an authorised diamond purchaser submits a timely return with respect to a payment period—

- (a) that holder or authorised purchaser may not submit a refund; and
- (b) the Commissioner may not issue a notice of assessment,

with respect to that payment period to the extent the refund or notice of assessment is based on prevailing administrative or judicial practice that differs from the practice existing when the return was submitted.

(2) If a return or associated refund submitted by a mineral resource extractor or an authorised diamond purchaser is under objection (either administratively or on appeal) as described in Part V—

- (a) the mineral resource extractor or authorised diamond purchaser may rely on any prevailing administrative or judicial practice that arises while the objection remains open with respect to the objected amount unless subsection (3) applies; and
- (b) the Commissioner may rely on any prevailing administrative or judicial practice that arises while the objection remains open with respect to the objected amount.

(3) If a mineral resource extractor or an authorised diamond purchaser fails to submit a return, or fails to submit a return within a timely manner, with respect to any given payment period, that extractor or purchaser may not—

- (a) submit a refund;
- (b) submit a return; or
- (c) otherwise take a position,

based on prevailing administrative or judicial practice that is more favourable to that holder or purchaser than the practice in existence when the return was due.

PART V – OBJECTIONS AND APPEALS

Objections

33. (1) An objection by the mineral resource extractor or an authorized diamond purchaser may be lodged against any written decision of the Commissioner if—

- (a) a refund has been refused; or
- (b) a notice of assessment of the royalty payable has been issued.

(2) An objection under subsection (1) must be lodged within 30 days of receipt of a written document indicating a refusal or assessment as described in section (1), and that objection must include—

- (a) the amount of royalty or withholding that person lodging the objection believes to be payable; and
- (b) the essential legal and factual grounds for those beliefs.
- (3) After receiving the objection described in subsection (1), the Commissioner may:
 - (a) alter or disallow the refund; or
 - (b) alter or disallow the assessment, and send a written notice of the decision to the person making the objection.

Appeals

- 34.** (1) A mineral resource extractor or authorized diamond purchaser may appeal the decision of the Commissioner described in section 33(3).
- (2) The appeal will be heard by the special court established under section 83 of the Income Tax Act (Act No. 58 of 1962) for the area in which the taxpayer resides or carries on a business.
- (3) The appeal described in subsection (1) must be in writing and received by the Commissioner within 30 days of receipt of the written notice described in section 33(3).
- (4) The provisions of sections 83 (8), (9), (10), (11), (12), (14), (15), (16), (17), (18) and (19), 84 and 85 of the Income Tax Act (Act No. 58 of 1962) apply *mutatis mutandis* to an appeal under this section before the special court.
- (5) The special court may—
- (a) limit the appellant to the original grounds of the objection or revised grounds or the objection unless the Commissioner agrees to an amendment of such grounds; or
 - (b) order that a refund or assessment be altered, confirmed, or referred back to the Commissioner for further investigation and reconsideration in the light of the principles laid down by the court.
- (6) The taxpayer objecting under section (1)(1), or the Commissioner, may appeal against the ruling of the special court to the High Court or the Supreme Court of Appeal under section 86A(2) of the Income Tax Act (Act No. 58 of 1962).
- (7) The provisions of section 86A of the Income Tax Act (Act No. 58 of 1962) are *mutatis mutandis* applicable to an appeal described in subsection (6).

Payments and refunds pending objections and appeals

- 35.** (1) Assessed amounts must be paid to the Commissioner and are not suspended because of any pending appeal before the courts described in sections 34(2) and 34(6).
- (2) Refunds or adjustments to assessed amounts are payable—
- (a) when the Commissioner concedes to a special court ruling favouring the taxpayer described in this Act; or
 - (b) when the High Court or the Supreme Court of Appeal described in this Act rule in favour of the taxpayer.
- (3) The taxpayer carries the burden of proof regarding all issues subject to objection with respect to a disputed refund or disputed assessment under this Act, and the decision of the Commissioner shall not be reversed or altered unless it is shown by the taxpayer that the decision is wrong.

Burden of proof

36. Every mineral resource extractor or authorised diamond purchaser bears the burden of proof with respect to any return under objection (either administratively or on appeal) with respect to any factual matter relating to the objection.

Court jurisdiction over criminal offences

37. Notwithstanding anything to the contrary contained in any law, any person charged with an offence under this Act may be tried for that offence by any court having jurisdiction within any area in which that person resides or carries on business.

PART VI – COLLECTION AND REPRESENTATIVE PERSONS

Amounts payable as debts to the state

- 38.** Any tax, penalty, or interest payable by any person under this Act will—
- (a) become a debt due to the State when that amount becomes due or payable; and
 - (b) be recoverable by the Commissioner in the manner and place required by the Commissioner.

Civil proceedings for collection

39. (1) If any person fails to timely pay any amount as required by this Act, the Commissioner may file a certified statement with the clerk or registrar of any competent court setting forth the amount due and payable by that person.

(2) Any statement filed under subsection (1) will have all the effects of a civil judgment lawfully granted in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(3) The Commissioner may withdraw the statement filed under subsection (1) by notice in writing to the clerk or registrar of the court in which the statement was initially filed so that the statement will thereupon cease to have any effect, and the Commissioner may further institute proceedings anew under that subsection with respect to any amount set forth in the statement.

(4) The Commissioner may institute proceedings for the sequestration of the estate of any person and, for purposes of those proceedings, will be deemed to be the creditor in respect of any amount payable by that person under this Act.

(5) Notwithstanding anything contained in the Magistrates' Court Act of 1944 (Act No. 32 of 1944), a statement provided in subsection (1) may be filed with the clerk of the magistrate's court having jurisdiction regardless of the amount involved.

(6) No person in any proceedings will be competent to question the correctness of any assessment upon which the statement described in subsection (1) is based, notwithstanding that an objection and appeal may have been lodged against the assessment.

Persons acting as representatives

40. (1) For purposes of this Act, each of the following persons will qualify as a representative responsible for performing duties under this Act while acting in their capacity as—

- (a) a public officer of a company (as contemplated in section 101 of Income the Tax Act (Act No. 58 of 1962));
 - (b) a liquidator of a company in liquidation (as contemplated in section 101 of the Income the Tax Act (Act No. 58 of 1962));
 - (c) a treasurer of a local authority;
 - (d) a treasurer of an incorporated or unincorporated body;
 - (e) a guardian, curator, administrator or other person controlling the affairs of a legally disabled person;
 - (f) an agent or manager controlling the affairs of a person who is not a resident (as defined under section 1 of the Income Tax (Act No. 58 of 1962)), or who is temporarily outside the Republic, with respect to those affairs occurring within the Republic;
 - (g) an executor or administrator of a deceased estate;
 - (h) a trustee or administrator of an insolvent estate; and
 - (i) a person acting in a fiduciary capacity for a trust.
- (2) In addition to the representatives described in subsection (1), the Commissioner has the authority to appoint persons as representatives of a mineral resource extractor or an authorized diamond purchaser with respect to some or all of the responsibilities required under this Act.

Representative liability

- 41.** (1) If a person fails to make payment under this Act, every representative of that person will be liable for all unpaid amounts, interest, and penalties imposed by this Act on the persons so represented in respect of—
- (a) any money, property, or other benefit held, possessed, or under the control of the representative; or
 - (b) any transaction or action concluded or undertaken by that representative, while acting in a representative capacity.
- (2) The failure of a representative to perform any duties imposed by this Act does not relieve the person being represented from any liability imposed by this Act.
- (3) Every representative who is required to make payment by virtue of subsection (1) is entitled to—
- (a) recover the amount so paid from the person represented on whose behalf the amount is paid; or
 - (b) retain any money or property of that person represented that may be in the possession of the representative to the extent of the amount so paid.

PART VII – INFORMATION COLLECTION

Commissioner requests for information

- 42.** (1) For purposes of administering this Act, the Commissioner may require any person to furnish, produce, or make available any (oral, written, or electronic) information, documents, or objects by way of request or by way of authorization letter as long as—
- (a) that request or authorization letter allows for a reasonable period of compliance given the nature and location of the information, documents, or objects requested and the persons involved; and

- (b) that no authorization letter is issued for information, documents, or objects until after at least one request is made with respect to that information, documents, or objects.
- (2) Any mineral resource extractor, authorized diamond purchaser, and any other person who fails to promptly and fully comply with subsection (1) in a truthful manner—
 - (a) may be subject to a penalty of R1 000 when failing with respect to a request; or
 - (b) will be subject to a penalty of R5 000 when failing with respect to an authorization letter.
- (3) Any officer acting pursuant to an authorization letter must produce that letter on demand from the person whom the letter is directed.

Commissioner calling on persons for questioning and investigation

- 43** (1) For purposes of administering this Act, the Commissioner may call on any person for questioning or investigation at any location at any time during normal business hours or by way of authorization letter as long as—
- (a) that request or authorization letter allows for a reasonable period of compliance given the nature and location of questioning or investigation requested and the persons involved; and
 - (b) that no authorization letter is issued for questioning or investigation until after at least one request is made with respect to that questioning or investigation.
- (2) For purposes of subsection (1), the Commissioner may not enter any domestic premises (except any part thereof used for trade) without the consent of the occupant.
- (3) Any person who fails to promptly and fully comply with subsection (1) in a truthful manner will be subject to a penalty of—
- (a) R1 000 when failing with respect to a request; or
 - (b) R 5000 when failing with respect to an authorization letter.
- (4) Any officer acting pursuant to an authorization letter must produce that letter on demand from the person whom the letter is directed.

Inquiries upon judicial grant

- 44** (1) For purposes of administering this Act, the Commissioner may conduct an inquiry to investigate or question any person upon application and granting of an order from a judge of the High Court (including a judge in chambers).
- (2) A judge may grant the order pursuant to subsection (1) if that judge determines reasonable grounds exist to believe that the person who is the target of the inquiry described in this section—
- (a) (i) has failed to comply with the requirements of this Act; or
(ii) has committed an offence under this Act;
 - (b) information, documents or objects are likely to be revealed in the inquiry that will afford proof of a failure to comply or an offence under paragraph (a).
- (3) An order granted pursuant to subsection (1) must—
- (a) designate the presiding officer of the inquiry described in this section;
 - (b) identify the person who is the target of the inquiry;
 - (c) describe the alleged failure to comply or offence that will be the subject of the inquiry; and
 - (d) provide a reasonable description of the ambit of the inquiry.

(4) For purposes of the inquiry described in this section, the presiding officer designated in subsection (3) will qualify as a person appointed by the Minister in terms of section 83A (4) of the Income Tax Act of 1962 (Act No. 58 of 1962) and that person—

- (a) must determine the form and manner of the inquiry;
- (b) must record the proceedings and evidence arising during the inquiry;
- (c) has the same powers to compel the attendance of the person who is the target of the inquiry and any witnesses thereto, and to compel that person and those witnesses to furnish, provide or make evidence available; and
- (d) has the same powers as those vested in a President of the Special Court contemplated in section 83 of the Income Tax Act (Act No. 58 of 1962) (with sections 84 and 85 of that Act applying *mutatis mutandis*) in relation to any contempt committed during the inquiry.

(5) Any person who is the target of an inquiry described in this section or any witness thereto must receive written notice from the presiding officer designated in subsection (3) specifying—

- (a) the place where the inquiry will be conducted;
- (b) the date and time of the appearance required for the inquiry; and
- (c) the reasons for the involvement of that person or witness in the inquiry.

(6) Any person who is the target of the inquiry described under this section has the right—

- (a) to be present; and
- (b) to have a legal representative present,

throughout the inquiry to the extent the presiding officer designated under subsection (3) does not otherwise direct on the ground that such presence would be prejudicial to the effective conduct of the inquiry.

(7) An inquiry described in this section will be private and confidential, and the presiding officer may exclude or require the withdrawal of any persons whose attendance is not necessary for the inquiry upon application—

- (a) by the person who is the target of the inquiry;
- (b) by any witness thereto; or
- (c) by the Commissioner.

(8) The presiding officer designated in subsection (3) may provide any witness with compensation for reasonable expenditures incurred in connection with the attendance of the inquiry described in this section by way of witness fees pursuant to the tariffs prescribed under section 51*bis* of the Magistrates' Courts Act of 1944 (Act No. 32 of 1944).

(9) The judge, presiding officer, and any other person present at the inquiry described in this section (including the person who is the target thereof) will be fully subject to the secrecy provisions of section 49.

(10) Except as provided in subsection (11), any evidence provided pursuant to an inquiry described in this section may be used by the Commissioner in any subsequent proceedings to which the person who is the target of the inquiry is a party or to which any other person who had dealings with that person is a party.

- (11) (a) No person may refuse to answer any question or provide any evidence during an inquiry described in this section on the grounds that the answer or the evidence may incriminate that person; and
- (b) no incriminating answers or evidence so obtained will be admissible in any criminal proceedings against the person providing such answers or evidence, other than in proceedings in which that person stands trial on a charge relating to the providing of a false statement or false evidence in connection with the inquiry.

(12) An inquiry described in this section will proceed notwithstanding the fact that any civil or criminal proceedings are pending against any person who is a target of the inquiry or against any witness in that inquiry.

Warrants for search and seizure

45. (1) For purposes of administering this Act, the Commissioner may receive a warrant upon application and granting of an order from a judge of the High Court (including a judge in chambers), and that warrant will allow the Commissioner to—

- (a) enter and search any premises for any information, documents, or objects that may afford evidence of a failure to comply or an offence by any person under this Act;
- (b) search any person present on the premises for any such information, documents, or objects as long as that search is conducted by an officer of the same gender as the person being searched for any such information, documents, or objects;
- (c) seize any such information, documents or objects; and
- (d) in conducting a search, remove and open anything in which the officer suspects any such information, documents, or objects could be contained.

(2) Without prior notice and at any time, a judge may grant a warrant pursuant to subsection (1) if that judge determines reasonable grounds exist to believe that a person—

- (a) (i) has failed to comply with this Act; or
(ii) has committed an offence under this Act;
- (b) information, documents, or objects specified in the application for the warrant are likely to be revealed that will afford proof of a failure to comply or an offence under paragraph (a); and
- (c) the premises specified in the application for the warrant are likely to contain such information, documents, or objects.

(3) A warrant described in subsection (1) must—

- (a) designate the officer who will carry out the warrant;
- (b) identify the premises to be searched;
- (c) identify the person who allegedly failed to comply or committed the offence described in subsection (2);
- (d) describe the alleged failure to comply or offence described in subsection (2); and
- (e) be reasonably specific as to the information, documents, or objects that are the target of the warrant.

(2) In addition to the information, documents, or objects specified in the warrant described in this section, an officer designated in the warrant may search and seize any other information, documents, or objects located at the premises described in subsection (3)(b) if that officer reasonably believes that such information, documents, or objects will afford evidence of a failure to comply or an offence described under subsection (3)(d).

(5) If the officer named in the warrant described in this section has reasonable grounds to believe that—

- (a) the information, documents or objects that are the target of the warrant are—
 - (i) at any premises not identified in the warrant; and
 - (ii) about to be removed or destroyed; and

- (b) a warrant cannot be timely granted to prevent this removal or destruction, the officer may search those premises and further exercise all the powers under the warrant, as if those premises had been identified in the warrant.
- (6) The officer named in the warrant described in this section must produce that warrant on demand from the person whom the warrant is directed.
- (7) As long as reasonable care is taken to ensure that the information, documents, or objects seized under the warrant described in this section are preserved, the Commissioner may retain such information, documents, or objects until the conclusion of the later of—
 - (a) the investigation into the failure to comply or offence that is the target of the warrant; or
 - (b) any subsequent legal proceedings related thereto.
- (8) Any person who had information, documents, or objects seized under a warrant described in this section may—
 - (a) examine and make extracts of such information, documents, or objects as well as receive one copy thereof at the expense of the State during normal business hours under the supervision of the Commissioner; and
 - (b) may reacquire such information, documents, or objects upon application of good cause shown and granting of an order from a judge of the High Court (including a judge in chambers).
- (9) Any person who hinders, obstructs, or assaults any officer who is engaged in executing a warrant described in this section will be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 24 months.

Powers of information collection held by the Minister of Minerals and Energy

46. (1) For purposes of administering this Act, the Minister of Minerals and Energy may use the powers granted under the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) to—

- (a) obtain information, documents, or objects;
- (b) call on, investigate, or question persons; and
- (c) obtain a warrant for search and seizure,

including those powers granted under sections 91 and 92 of that Act.

(2) Any person failing to comply with the requests or demands made under subsection (1) will be subject to the civil and criminal penalties as provided in the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002).

Authentication of communications

47. (1) Any form, request, authorization letter, notice, or other written communication from the Commissioner or the Minister of Minerals and Energy under this Act will be sufficiently authenticated if the official designation of the Commissioner or Minister of Minerals and Energy is respectively stamped or printed on that written communication.

(2) Any form, request, authorization letter, notice, or other written communication described in subsection (1) will be deemed effectively issued to, given to, or served upon a person—

- (a) in the case of a company—
 - (i) if delivered to the public officer of that company as described in section 101 of the Income Tax Act (Act No. 58 of 1962);
 - (ii) if left with an adult person apparently employed at the place appointed by the company as its registered office, or at the last known address of the place of business or post office box number of the company to

- the extent the company does not have a registered office in the Republic; or
- (iii) if dispatched by register or by any other post addressed to the public officer as provided in subparagraph (i) or at last known address or post office box number as provided in subparagraph (ii); and
- (b) in the case of a person other than a company—
- (i) if delivered to that person;
 - (ii) if left with an adult person apparently residing or employed at the last known abode or place of business of that person; or
 - (iii) if dispatched by register or by any other post addressed to the last known address or post office box number of that person or of that person's employer.
- (3) Any form, request, authorization letter, notice, or other written communication dispatched by register or by any other post as provided in subsection (2) will be deemed received by the person to whom it was addressed at the time when that written communication would have arrived at the place to which the written communication was addressed in the ordinary course, unless—
- (a) reasonable grounds to believe that the written communication was not so received or was received at some other time; or
 - (b) the receipt of the written communication is in dispute in any court having jurisdiction to decide the matter and the court has reasonable grounds to believe that the written communication was not so received or was received at some other time.
- (4) If reasonable grounds exist to believe that any form, request, authorization letter, notice, or other written communication of the Commissioner or the Minister of Minerals and Energy under this Act was issued to, given to, or served under subsection (2) (b), (c) or (d) (ii) or (iii) and has either—
- (a) not been received by the person to whom it was addressed; or
 - (b) has been received by that person considerably later than the written communication should have been received by that person; and
 - (c) that person has been placed at a significant disadvantage as a result,
- the written communication must be withdrawn and issued, given, or served such anew if the circumstances so dictate.

Language translations

48. (1) For purposes of administering this Act, the Commissioner or the Minister of Minerals and Energy may request a translation from any person who furnishes, produces, or makes available any information or documents written in a language that differs from the official languages of the Republic, and that person must furnish that translation to the Commissioner or the Minister of Minerals and Energy within a reasonable period given the size and language of the information or document involved.

(2) Any translation described in subsection (1) must be prepared and certified by a sworn translator or any person approved by the Commissioner or the Minister of Minerals and Energy.

CHAPTER 3
GOVERNANCE OF THE ACT

Division of responsibility

49. (1) The Commissioner will be responsible for administering this Act with the assistance of the Minister of Minerals and Energy as described in subsection (2).

(2) The Minister of Minerals and Energy will be responsible for assisting the Commissioner—

- (a) in the verification of the gross sales value of any mineral resource transferred or unpolished natural diamonds purchased; and
- (b) in the verification of the quantity and quality of any mineral resources transferred or any unpolished natural diamonds purchased and;
- (c) in the verification of any other information that the Commissioner and the Minister of Minerals and Energy agree will assist in the administering of this Act.

Exercise of powers and performance of duties

50. (1) The Commissioner and the Minister of Minerals and Energy will each administer this Act—

- (a) personally; or
- (b) through any appointed person, agency, or organ of State under their control or direction.

(2) The Commissioner, the Minister of Minerals and Energy, or an appointed person described in subsection (1) may withdraw or amend any decision, notice or communication respectively issued or signed.

(3) Unless the context indicates otherwise, the term “Commissioner” and the term “Minister of Minerals and Energy” will include any appointee described in subsection (1)(b).

Government oath of secrecy

51. (1) The Commissioner, the Minister of Minerals and Energy, and all appointees described in section 50(1)(b) may freely communicate to one another with regard to all matters of any persons that may come to their attention in performing their duties administering this Act and in pursuance thereof, but the Commissioner, the Minister of Minerals and Energy, and all the appointees so described—

- (a) may not communicate any of these matters to any other person; nor
- (b) permit any other person (or any other lawful representative of that person) to have access to any information, documents, or objects regarding these matters,

unless that communication or access is permitted or required under this Act (including as described in subsections (2) through (6)) or under order of a competent court.

(2) The Commissioner, the Minister of Minerals and Energy, all persons so employed may freely communicate or provide access to information, documents, or objects

obtained in performance of their respective duties under this Act for purposes of any other law respectively administered.

(3) For purposes of revenue estimation and tax policy design, persons responsible for the statistics of income function within the National Treasury as designated by the Director-General will have access to all information, documents, or objects obtained by the Commissioner and the Minister of Minerals and Energy pursuant to their respective duties under this Act.

(4) For purposes of carrying out section 3 of the Auditor-General Act of 1995 (Act No. 12 of 1995), the Auditor-General and any person under the control or direction thereof will have access to all information, documents, or objects obtained by the Commissioner and the Minister of Minerals and Energy pursuant to their respective duties under this Act.

(5) For purposes of collecting statistics under the Statistics Act of 1999 (Act No. 6 of 1999) or any rule there-under, the Statistician-General and any person under the control or direction thereof will have access to all information, documents, or objects obtained by the Commissioner and the Minister of Minerals and Energy pursuant to their respective duties under this Act.

(6) Upon application *ex parte* and granting of an order from a judge in chambers, the Commissioner may reveal evidence to the National Commissioner of the South African Police Service (as described in section 6 (1) of the South African Police Service Act, 1995 (Act No. 68 of 1995)), the National Director of Public Prosecutions (as described in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998)), or any person under their respective direction and control for purposes of their respective duties of investigation and prosecution—

- (a) that an offence has been committed or that may be relevant to the investigation or prosecution of an offence as long as—
 - (i) the offence carries a possible liability on conviction to imprisonment for a period exceeding 5 years,
 - (ii) the offence is not an offence under this Act, any other Act administered by the Commissioner, or in respect of which the Commissioner is a complainant; or
- (b) of an imminent and serious public safety or environmental risk,

but only if the public interest in the disclosure outweighs any potential harm to the taxpayer concerned, and in the case of any evidence consisting of a return described in this Act or any information, document, or object obtained from a person under this Act, such evidence will not be admissible in any criminal proceedings against that person to the extent that the evidence constitutes an admission by that person of an offence contemplated in paragraph (a).

(7) Any person having access to information, documents, or objects as described in subsections (3) through (6)—

- (a) may not communicate any of these matters to any other person; nor
- (b) permit any other person to have access to any information, documents, or objects regarding these matters,

besides the person concerned any lawful representative thereof, to carry out their respective duties as described in subsections (3) through (6), or by order of a competent court.

(8) Every person having access to matters described in this section must take and subscribe to an oath or solemn declaration of fidelity or secrecy before a magistrate, justice of the peace, or a commissioner of oaths as a prerequisite to that access.

(9) This section shall not apply in respect of any matters relating to any person if that person has consented that such matters may be published or made known to any other person.

- (10) Any person having access to matters described in this section who—

- (a) acts in contravention of the oath or solemn declaration described in subsection (8);
- (b) or has access before taking the oath or solemn declaration will be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Publication of monthly statistics

52. (1) The Minister of Minerals and Energy and the Commissioner must issue a monthly report to Parliament about the economic activity occurring within the Republic that involves the mining and petroleum industry as described in subsections (2) and (3) below.

(2) Pursuant to the responsibility described in subsection (1), the Minister of Minerals and Energy must collect and report the following monthly data—

- (a) the physical volumes, weights, and unit values of mineral resources and petroleum removed;
- (b) the physical volumes, weights, and unit values of mineral resources and petroleum sold in the Republic, or sold for export or delivered for export without sale for each country of final destination.

on an aggregate basis, divided by commodity classification provided in Schedule 1, and additionally by grades pursuant to the responsibility described in subsection (1), the Commissioner must collect and report the following monthly data—

- (a) the gross sales value of mineral resources and petroleum transferred in the Republic, or sold for export or delivered for export without sale for each country of final destination;
- (b) the royalty collections of mineral resources and petroleum transferred in the Republic, or sold for export or delivered for export without sale for each country of final destination;
- (c) the gross sales value of mineral resources and petroleum transferred that are exempt under this Act;
- (d) the rebates claimed under this Act with respect to mineral resources and petroleum transferred; and
- (e) the gross sales value of mineral resources and petroleum transferred by mineral resource extractors that are utilizing the fiscal stabilization election.

on an aggregate basis and divided by commodity classification as determined in Schedule 1.

Payments to and from the National Revenue Fund

53. (1) Any royalty, penalties, or interest payable in terms of this Act must be paid into the National Revenue Fund.

(2) Any interest payable by the Commissioner in terms of this Act must be paid from the National Revenue Fund.

Act binding on State and application of other laws

54. This Act shall bind the State, and no provision in any other law will be construed as applying or referring to the royalty unless the royalty is specifically mentioned in that provision.

Short title

55. (1) This Act will be entitled the Mineral and Petroleum Royalty Bill, 2002.

SCHEDULE 1

Substance Classification and Royalty Rates

Group	Substance	Royalty Rates %
1	Salt, sand, stone, sandstone, late, gravel, clay, concrete, mortar, platar, brick, dolorite, limestone, shale, gypsum, limestone, perlite, and phosphate rock extracted by a mineral extractor outside of the exemption described under section 12.	1
2	Oil and gas: natural gas and natural gas condensate petroleum crude offshore production where the water depths are deeper than 500 meters.	1
3	Alumino-silicates (andalusite, sillimanite, kyanite), asbestos, ammonium sulphate, barytes, zirconium oxide uranium oxide, kaolin, talk, magnesite, mica, silica, sulphur, sodium sulphite, mineral pigment, pyrophyllite, dimension stone (granite, norite), and perlite.	1
4	Anthracite and bituminous coal (low ash and steam)	2
5	Antimony, copper, iron, manganese, lead, zinc, cobalt, nickel, silicon, tin, and vermiculite.	2
6	Oil and gas: natural gas and natural gas condensate petroleum crude onshore and offshore production where the water depths are shallower than 500 meters.	3
7	Gold, silver, vanadium, chromite, and titanium dioxide (Ilmenite, rutile).	3
8	Platinum group metals: platinum, paladium, rhodium, iridium, ruthenium, and osmium.	4
9	Amethyst, quartz (smoky quartz, citrine, rose quartz), cryptocrystalline quartz (jasper, opal), or chalcedony (blue lace agate, moss agate, onyx, rainbow chalcedony), tiger's eye, blue asbestos (crocidolite), beryl (emeralds, aquamarine, morganite, heliodor), chrysoberyl (cat's eye, alexandrite), corundum (rubies, sapphires), garnet (jade, hydro-grossular, spessartine), lolite, kyanite, sodalite, sugilite (royal lavulite or royal azel), tourmaline, verdite (serpentine), and topaz.	5
10	Unpolished natural diamonds	8

