

## CHAPTER 21:06

# PRECIOUS STONES TRADE ACT

*Acts 8/1978, 1/1982, 22/2001 (s. 4), 10/2007, 5/2014 (s. 33).*

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**AN ACT to regulate the possession of and dealings in precious stones; and to provide for matters incidental to and connected with the foregoing.**

[Date of commencement: 21st April, 1978.]

#### **1 Short title**

This Act may be cited as the Precious Stones Trade Act [*Chapter 21:06*].

#### **2 Interpretation**

(1) In this Act—

“deal”, in relation to precious stones, means buy, sell, barter, pledge, exchange, give or receive, or offer or expose for sale, barter, pledge or exchange, or have any other dealing or transaction whatsoever;

“holder of a mining location” means the person in whose name the mining location is registered and, in the case of a deceased person, a company in liquidation or any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered;

“inspector of mines” means an inspector of mines appointed in terms of the Mines Act;

“licence” means a licence issued in terms of section *seven*;

“licensed dealer” means a dealer licensed in terms of section *seven*;

“Mines Act” means the Mines and Minerals Act [*Chapter 21:05*];

“mining commissioner” means a mining commissioner appointed in terms of the Mines Act;

“mining location” means a mining location registered in terms of the Mines Act;

“Minister” means the Minister of Mines or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“permit” means a permit issued in terms of section *eight*;

“permit holder” means the holder of a permit;

“postal article” means any letter, parcel, packet or newspaper or any other article whatsoever in the course of transmission by post or intended to be transmitted by post;

“precious stones” means rough or uncut diamonds, or rough or uncut emeralds or any other substance which is, in terms of subsection (2), declared to be precious stones for the purposes of this Act;

[Definition substituted by section 2 Act No. 10 of 2007]

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“tributor” means the lessee or assignee of the rights of the holder of a mining location.

(2) The Minister may, by notice in a statutory instrument, declare any substance to be precious stones for the purposes of this Act.

### **3 Unlawful dealing in or possession of precious stones prohibited**

(1) Except as provided in this Act, no person shall deal in or possess precious stones unless he is—

- (a) a licensed dealer; or
- (b) a permit holder; or
- (c) the holder of a mining location or a tributor who has lawfully recovered such precious stones in terms of any enactment; or
- (d) the employee or agent of any person referred to in paragraph (a), (b) or (c) who is authorized by his employer or principal to deal in or possess on his behalf precious stones;

and deals in or possesses the precious stones in accordance with this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, on conviction, shall be sentenced to imprisonment for a period of not less than five years and, in addition, be liable to a fine of any amount up to or exceeding level fourteen, unless the convicted person satisfies the court that there are special reasons in the particular case, which reasons shall be recorded by the court, why such a sentence should not be imposed, in which event he or she shall be liable to a fine of any amount up to or exceeding level fourteen or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection substituted by section 3 of Act No. 10 of 2007]

(3) Notwithstanding anything contained in the Magistrates Court Act [*Chapter 7:10*] or any other enactment—

- (a) a court of a provincial or senior magistrate shall have special jurisdiction, on summary trial or on remittal by the Prosecutor-General of the case for trial or sentence, to impose imprisonment for a period not exceeding five years and a fine of any amount up to or exceeding any amount up to or exceeding level fourteen;

[Paragraph as amended by section 4 of Act No. 22 of 2001 and section 3 of Act No. 10 of 2007]

- (b) a court of a magistrate other than a regional, provincial or senior magistrate shall have special jurisdiction, on summary trial or on remittal by the Prosecutor-General of the case for trial or sentence, to impose imprisonment for a period not exceeding three years and a fine of any amount up to or exceeding level fourteen;

in respect of a contravention of subsection (1).

[Paragraph as amended by section 4 of Act No. 22 of 2001 and section 3 of Act No. 10 of 2007]

(4) Upon the trial of any accused for a contravention of subsection (1), the burden shall lie upon such accused of proving that he falls within one of the exceptions provided in that subsection.

(5) A court sentencing a person to imprisonment under subsection (2) shall not order the suspension of any part of the sentence if the effect of such suspension is that the convicted person will serve a period of less than three years.

[Subsection inserted by section 3 of Act No. 10 of 2007]

### **4 Conditions on which licensed dealer or permit holder may deal in or possess precious stones**

(1) A licensed dealer may only—

- (a) possess precious stones deposited with or received by him as a result of his lawful dealing therewith; or
- (b) deal in precious stones with a person referred to in section *five*, a licensed dealer or a permit holder and then only to the extent to which he and such other person are permitted in terms of this Act, any other enactment relating to dealing in precious stones and by the terms of their licences or permits, as the case may be, to deal in precious stones; or
- (c) export precious stones referred to in paragraph (a) subject to any other enactment relating to the export of precious stones.

(2) A permit holder may only—

- (a) possess precious stones in accordance with his permit; or
- (b) deal in precious stones with a person referred to in section *five*, a licensed dealer or a permit holder and then only to the extent to which he and such other person are permitted in terms of this Act, any other enactment relating to dealing in precious stones and by the terms of their licences or permits, as the case may be, to deal in precious stones.

### **5 Conditions on which miner may deal in or possess precious stones**

The holder of a mining location or a tributor may only—

- (a) possess precious stones which have been lawfully recovered by him or on his behalf from the mining location in respect of which he holds mining rights; or

- (b) deal in precious stones referred to in paragraph (a) with a licensed dealer or permit holder and then only to the extent to which such licensed dealer or permit holder is permitted in terms of this Act, any other enactment relating to dealing in precious stones and by the terms of their licenses or permits, as the case may be, to deal in precious stones; or
- (c) export precious stones referred to in paragraph (a) subject to any other enactment relating to the export of precious stones.

## 6 Registers to be kept and returns to be made

(1) The holder of a mining location or a tributor shall keep in the prescribed form a register in which he shall, on or before the tenth day of each month, enter, in respect of precious stones recovered from his mining location, such details relating to—

- (a) the amount thereof recovered or disposed of during the preceding month; and
- (b) the amount thereof held by him at the end of the preceding month;

as may be prescribed.

(2) A licensed dealer shall—

- (a) keep a register in the prescribed form in which he shall, within twenty-four hours of each transaction, enter in respect of any precious stones deposited with or received or disposed of by him—
  - (i) the date of the transaction; and
  - (ii) the name and address of the other party to the transaction; and
  - (iii) particulars of the licence, permit or authority of the other party to the transaction; and
  - (iv) the nature and mass of the precious stones involved; and
  - (v) the price, if any, paid or received; and
- (b) on or before the tenth day of each month, render to the Secretary—
  - (i) a return in the prescribed form setting out full details of all precious stones deposited with or received or disposed of by him during the preceding month; and
  - (ii) such affidavits, certificates and documents relating to the matters referred to in subparagraph (i) as the Secretary may require.

(2a) Any person who—

- (a) contravenes subsection (1) or (2); or
- (b) supplies any information or renders any return required to be supplied or rendered by him or her in terms of subsection (1) or (2) which he or she knows to be false or which he or she does not know or reasonably believe to be true in any material, particular; or
- (c) makes any statement which he or she knows to be false or which he or she does not know or reasonably believe to be true in any register required to be kept in terms of subsection (1) or (2)(a), or in any return required to be rendered in terms of subsection (2)(b), or in any affidavit, certificate or document submitted in connection therewith in terms of subsection (2)(b)(ii);

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

[Subsection as substituted by section 4 of Act No. 10 of 2007]

(3) If a licensed dealer, the holder of a mining location or a tributor is in possession of precious stones in excess of the amount shown to be in his possession by his register in terms of this section, he shall, for the purposes of section *three*, be deemed to be in unlawful possession of such excess unless he proves the contrary.

## 7 Issue and cancellation of licences

(1) No licence to deal in precious stones shall be issued to any person or renewed except upon the written authority of the Minister who may, without assigning any reason therefor, refuse to grant the authority for the issue or renewal of such licence or impose such conditions upon the issue or renewal of such licence as he may think fit.

(2) Subject to subsection (1), a licence to deal in precious stones shall be issued by the Secretary.

(3) The Minister may—

- (a) subject to subsection (4), direct the Secretary to alter the conditions of any licence;
- (b) on the breach of any condition of the licence or upon the conviction of the holder of a licence for any offence in terms of this Act or for any other good and sufficient reason, at any time direct the Secretary to cancel the licence.

(4) Before giving a direction in terms of paragraph (a) of subsection (3), the Minister shall give notice in writing of his intention to the holder of the licence and afford such holder a reasonable opportunity to make representations thereupon.

(5) The Secretary shall keep a register in which shall be recorded full particulars of every licence issued by him in terms of this section and of every renewal, alteration or cancellation of such licence.

## **8 Issue and cancellation of permits**

(1) The Secretary or any official of his Ministry authorized by him may, subject to such conditions as he may fix, issue or renew a permit to acquire, possess and dispose of precious stones otherwise than for the purposes of trade.

(2) The Secretary may—

- (a) subject to subsection (3), amend the conditions of any permit;
- (b) on the breach of any condition of a permit or upon the conviction of the holder of a permit for any offence in terms of this Act or for any other good and sufficient reason, at any time cancel the permit.

(3) Before altering the conditions of a permit in terms of paragraph (a) of subsection (2), the Secretary shall give notice in writing of his intention to the holder of the permit and afford such holder a reasonable opportunity to make representations thereupon.

(4) A person referred to in subsection (1) shall keep a duplicate original of each permit issued by him and note thereon any renewal, alteration or cancellation of such permit.

## **9 Miscellaneous provisions relating to licences and permits**

(1) A licence or permit shall be in the prescribed form.

(2) An application for a licence or permit shall be accompanied by the prescribed fee.

(3) A licence or permit shall have endorsed upon it any conditions imposed in terms of this Act.

(4) Unless previously cancelled in terms of paragraph (b) of subsection (3) of section *seven*, every licence which—

(a) is issued shall expire on the 31st December next succeeding the date of issue:

Provided that, if such licence is issued on or after the 1st December in any year, it shall expire on the 31st December of the next following year;

(b) is renewed shall expire on the 31st December of the year for which it is renewed.

## **10 Licensed dealer not to hold interest in mining location registered for precious stones**

(1) No licensed dealer and no person who is the husband, wife or minor child of a licensed dealer shall, without the approval in writing of the Secretary, hold any interest, direct or indirect, in any block of claims registered for precious stones or any block of claims in respect of which the principal mineral recovered is precious stones or in any special grant or mining lease in respect of which the principal mineral being mined or to be mined is precious stones.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

## **11 Transmission of precious stones by post**

(1) No person shall dispatch by post any postal article containing precious stones unless he or she is authorised to do so by regulations.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Whenever any magistrate, police officer or mining commissioner or any other person authorised by the Minister in that behalf has reason to believe that—

(a) any postal article suspected to contain precious stones is in the course of transmission through the post and has been dispatched by a person not authorised to do so by regulations; or

(b) any postal article contains precious stones being dealt with in contravention of this Act;

he or she may, by written order, instruct a postmaster or any other postal official to detain such postal article and the postal official shall thereupon detain and open such postal article in the presence of the officer who instructed its detention.

(4) If any postal article detained in terms of subsection (3) is found to contain precious stones, it shall be dealt with in terms of section 57 of the Postal and Telecommunication Services Act [*Chapter 12:05*] (No.4 of 2000).

(5) If in the opinion of the Prosecutor-General some person has committed an offence in terms of this Act in respect of any precious stones found in a postal article and such person cannot be found or brought to trial, the Prosecutor-General may order that such precious stones be forfeited to the State unless some person, other than a person liable to prosecution in respect of dealing with such precious stones, is able to prove a legal claim thereto within the period referred to in section 16(3).

(6) Upon the issue of an order in terms of subsection (5), the precious stones shall be sent to the Secretary or such person as he or she may designate who shall deal with them in terms of section 16.

[Subsection as substituted by section 4 of Act No. 10 of 2007]

## 12 Precious stones in deceased estate

If precious stones are found in the assets of a deceased estate and the deceased was not lawfully in possession of them in terms of this Act, unless the Secretary issues a permit, they shall be forfeited to the State and the executor of the deceased estate shall forthwith deliver them to the Secretary who shall deal with them in terms of section *sixteen*.

## 13 Precious stones ownership of which is unknown

If a police officer or any other person delivers to the Secretary precious stones the lawful owner or holder of which is not known, they shall be forfeited to the State and the Secretary shall deal with them in terms of section *sixteen*.

## 14 Powers of entry and search by police officer, mining commissioner and inspector of mines

(1) Any police officer, mining commissioner or inspector of mines may, without warrant at all times—

- (a) enter and search the premises of any licensed dealer on which he conducts his trade or business as such or any mining location on which precious stones are mined:

Provided that no such entry or search shall be made unless—

- (a) the licensed dealer or occupier of the premises or mining location concerned consents thereto; or  
 (b) the person so entering has reasonable grounds for believing that the entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Act, for the seizure of any property that is the subject-matter of such an offence or evidence relating to such an offence or for the lawful arrest of any person in connexion with such an offence;

- (b) require any person who is required in terms of section *six* to keep a register to produce such register and permit the inspection and copying thereof;

- (c) require any licensed dealer or permit holder to produce and show his licence or permit to him and allow it to be read and a copy thereof to be taken.

(2) Any person who—

- (a) resists, hinders or disturbs any person in the execution of his powers in terms of subsection (1); or

- (b) fails to comply with any requirement in terms of paragraph (b) or (c) of subsection (1);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## 15 Other offences and penalties; procedure on confiscation

(1) Any person who—

- (a) maliciously places any precious stones in the possession of or on the premises of any other person with intent that such other person shall be prosecuted for or convicted of an offence in terms of this Act, or

- (b) for the purpose of procuring for himself or herself any other person the grant of a licence, makes any statement which he or she knows to be false or which he or she does know or reasonably believe to be true in any material particular; or

- (c) not being a licensed dealer cuts or polishes any precious stone;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) On the conviction of any person for an offence in terms of this Act the court shall—

- (a) order that any precious stones which are the subject of the offence shall be forfeited to the State unless some person other than the person convicted, establishes a legal claim thereto within the period mentioned in section 16(3); and

- (b) immediately cause notification of such conviction to be sent to the Secretary.

[Section substituted by section 6 of Act No. 10 of 2007]

## 15A Forfeiture of precious stones on conviction of offence

The court convicting a person of an offence in terms of this Act shall—

- (a) order that any precious stones that are the subject of the offence shall be forfeited to the State unless some person, other than the person convicted, establishes a legal claim to them within the period mentioned in subsection (3) of section *sixteen*; and

- (b) immediately cause notification of the conviction to be sent to the Secretary.

[Subsections as inserted by section 4 of Act No. 22 of 2001]

## 16 Procedure on confiscation of precious stones

(1) If in terms of this Act or any other enactment any court declares any precious stones to be forfeited to the State, the court shall cause the precious stones to be delivered to the Secretary.

(2) The Secretary shall publish a notice in the *Gazette* stating that the precious stones so forfeited are in the possession of the Secretary.

(3) At any time within two months of the date of publication of a notice in terms of subsection (2) any person claiming a legal right to the precious stones may apply to the Secretary for the delivery thereof to him and the Secretary, if satisfied as to the legality of such claim, shall deliver the precious stones to the applicant.

(4) If the Secretary declines to recognize such claim, the applicant may, within twenty-one days after being notified of the decision of the Secretary, apply to the High Court for such delivery and the High Court may on such application make such order as it may deem just.

(5) Any expense incurred by the Secretary in connection with the retention and custody of precious stones in terms of this section shall be paid to the Secretary by the person, if any, to whom such precious stones are delivered in terms of subsection (3) or an order of the High Court referred to in subsection (4).

(6) If on the expiration of the period of two months no person has established a legal right to the precious stones, the Secretary may dispose of them in such manner as the Minister may direct and may in writing authorize any person to sell them.

(7) Any person duly authorized to sell precious stones in terms of subsection (6) shall not be liable in respect of such sale to any prosecution for an offence in terms of this Act.

#### **17 Disabilities entailed by a trader on conviction**

(1) If a person who is the holder of any licence to carry on any trade, business or occupation issued in terms of any other enactment is convicted of any offence in terms of this Act, the conviction shall have the effect of cancelling the licence, unless the convicting court for any special reason which it shall record thinks fit to order otherwise.

(2) No person who is convicted of any offence in terms of this Act shall, during the period of five years from the date of his conviction, be entitled to obtain any licence issued in terms of any other enactment authorizing him to carry on any trade, business or occupation upon any mining location or within a distance of ten kilometres therefrom and, if any such licence is issued to such a person during the said period, it shall be void.

#### **18 Persons convicted may not enter mining location**

(1) No person who is convicted of a contravention of subsection (1) of section *three*, subsection (1) of section *eleven* or paragraph (a) or (b) of subsection (1) of section *fifteen* shall enter or be upon any precious stones mining location during the period of five years from the date of his conviction unless the court for any special reason which it shall record thinks fit to order otherwise:

Provided that this subsection shall not prohibit the person convicted from passing through a precious stones mining location upon a road to which the public have right of access.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment

[Subsections as amended by section 4 of Act No. 22 of 2001]

#### **19 Regulations**

(1) The Minister may make regulations for the better carrying out of the objects and purposes of this Act.

(2) Regulations in terms of subsection (1) may provide for—

- (a) the conditions under which the holder of a prospecting licence or any other person who finds a precious stone on ground not registered as a mining location may possess such precious stone;
- (b) the form of licences or permits;
- (c) the days and hours during which it shall be unlawful to deal in precious stones;
- (d) the persons who may dispatch precious stones through the post and the conditions to be followed before such precious stones may be accepted at a post office for transmission by post;
- (e) the better prevention of theft, unlawful dealing in or unlawful possession of precious stones;
- (f) any other matter which is required or permitted in terms of this Act to be prescribed.

(3) Regulations in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsections as inserted by section 4 of Act No. 22 of 2001]