

CUSTOMS

EXTERNAL **POLICY**

FORMALITIES FOR THE IMPORTATION AND EXPORTATION OF UNPOLISHED DIAMONDS

TABLE OF CONTENTS

1	SUMMARY OF MAIN POINTS	3
2	POLICY	3
3	RECORD KEEPING	4
4	PENALTIES	5
5	PROMOTION OF ADMINISTRATIVE JUSTICE ACT	5
6	APPEALS AGAINST DECISIONS	5
7	RELATED INFORMATION	6
7.1	Legislation	6
7.2	Cross References	6
7.3	Quality Records	6
8	DEFINITIONS AND ACRONYMS	6
9	DOCUMENT MANAGEMENT	7

1 SUMMARY OF MAIN POINTS

- a) The movement of unpolished diamonds is governed by the Kimberly Process Certification Scheme to prevent conflict diamonds from entering the legitimate unpolished diamond trade.
- b) Specific restrictions were put in place requiring that all unpolished diamonds must be issued with a Kimberly Process Certificate (KPC) by the country of export.
- c) The South African Diamond and Precious Metals Regulator (SADPMR) are mandated in South Africa to amongst other regulate control over the unpolished diamond trade.
- d) Formal clearance is required for all unpolished diamond imports and exports.

2 POLICY

- a) The export and import of unpolished diamonds may only be allowed with countries that participate in the Kimberley Process.
- b) The Kimberley Process Certificate (KPC) validates that the diamond is not a “conflict” diamond and legitimises the trade therein.
- c) All clients must be in a possession of a valid KPC to be able to export or import unpolished diamonds, any imports/exports that does not have a valid KPC will not be allowed. The original KPC must always accompany the physical shipment.
- d) The clients or agents may not open the sealed containers until they have been exported or imported. During the importation and exportation process of the unpolished diamonds, only the SADPMR may open the parcel.
- e) Requirements prior to export:
 - i) Before exportation can occur, the seller must offer the unpolished diamonds to the local market for sale at the Diamond Exchange and Export Centre (DEEC) for a minimum of four (4) days. If there is no local offer to purchase the client may licence for export with the SADPMR.
 - ii) The SADPMR issues the client with a KPC provided all rules and regulations are met.
 - iii) The diamonds are packed in a sealed container using the SADPMR’s export seals and kept safe by the SADPMR.
 - iv) The SADPMR provides the client with a copy of the KPC and invoice. The original KPC is sealed inside the container together with the diamonds.
- f) Client arriving at a port of entry/exit with unpolished diamonds:
 - i) The client must approach Customs, advising them of the unpolished diamonds in their possession.
 - ii) Clients arriving in the country without a KPC but in possession of unpolished diamonds will be requested by Customs to return the unpolished diamonds to the country of origin at the expense and risk of the client. The client has 48 hours to make the necessary arrangements to return the unpolished diamonds to the country of origin.
 - iii) The client must indicate whether the unpolished diamonds were formally cleared:
 - A) If formal clearances was already made the response message must be produced to the Customs Officer; and
 - B) If formal clearance was not made the traveller must be informed of the unpolished diamonds requirements and proceed with paragraph j).
- g) In cases where it is required that the client registers as an importer / exporter such application must be lodged latest by the day following the detention. Refer to SC-CF-19 – Licensing, Registration and Designation – External **Policy**.
- h) A time period of 7 (seven) days is allowed to make formal import clearance, an extension of a further 7 (seven) days may be allowed for all modalities excluding road.

- i) Should the application for registration as an importer / exporter with Customs not be approved, the unpolished diamonds must be returned to the country of origin under Customs, Physical Security and SADPMR supervision at the expense and risk of the client.
- j) The client or agent must declare the exportation or importation of unpolished diamonds by submitting the declaration in either Electronic Data Interchange (EDI) or manual format. Refer to Completion of Declarations, SC-CF-04.
- k) The client must ensure that he / she completes the following information on the Customs declaration in the additional information field:
 - i) The licence number issued by the SADPMR;
 - ii) KPC number;
 - iii) Diamond Dealer Licence number;
 - iv) Export Levy Value;
 - v) Export Levy amount (where applicable);
 - vi) Temporary Exemption details (where applicable);
 - vii) Permit details required in terms of the Diamonds Export Levy Act (where applicable);
 - viii) Exemption certificate and information – Producers and Beneficiaries (where applicable); and
 - ix) Synthetic Diamond transactions must be indicated as such.
- l) The client must ensure that the following supporting documents are submitted:
 - i) Copy of KPC
 - ii) Supplier's invoices, notes of receipt or purchase in terms of Section 56 of the Diamonds Act;
 - iii) Transport documents;
 - iv) SADPMR's documents, if applicable, confirming that the diamonds have been placed on tender as per the requirements:
 - A) Copy of form N endorsed by SADPMR;
 - B) Copy of Parcel Submission Receipt (PSR) endorsed by SADPMR;
 - C) Licence or temporary permit in terms of the Diamond Act;
 - v) Copy of DL 1(A), if applicable, as proof that the diamonds to be exported are exempted from paying the 5% levy; and
 - vi) Other documents as contemplated in Section 101 and the Rules made thereunder and any relevant documents or forms prescribed in the Diamonds Act relating to the recording, sale, or registration of diamonds for export.
- m) It is the responsibility of the client to make sure that the KPC does not expire during the period of Customs clearance. Should the KPC expire the unpolished diamonds will be sent back to the country of origin.
- n) Stopped consignments are inspected by the SADPMR and not Customs. Clients are advised to arrange for physical inspection at the premises of the SADPMR.
- o) The Diamond Export Levy Act imposes a levy on the export of every consignment of unpolished diamonds. Refer to Diamond Export Levy – External Policy, SC-DL-02.

3 Record keeping

- a) Every client must keep for record purposes for a period of five (5) years:
 - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
 - ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A).
- c) Every client must produce such books, accounts and documents on demand.

4 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties (SC-CO-01-02); or
 - ii) Criminal prosecution; or
 - iii) Suspension / cancellation of registration / licence / accreditation.

5 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
 - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
 - ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
 - i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) **Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the cargo reporter the opportunity to be heard, prior to instituting any administrative action.**
- e) Before administrative action can be taken by Customs the client must be allowed the opportunity to:
 - i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and
 - iii) Appear in person.
- f) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within ninety (90) days after the date on which the client became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within ninety (90) days after receiving the request, give the client adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

6 Appeals Against Decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-24.

- b) Should clients be unhappy with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

7 RELATED INFORMATION

7.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 38, 39, 40, 107, 113(8)(a) Customs and Excise Rules: 38.06, 38.07, 38.15 (b)(ii) & (c) Diamond Export Levy (Administration) Rules: Schedule A – Part II: 5.01, 5.02, 5.03, 5.05; Schedule B – Part III: 5.01
Other Legislation:	Diamonds Act No. 56 of 1986: Sections 1, 24, 26, 55, 61, 65, 69, 94, 95 Diamond Export Levy (Administration) Act No. 14 of 2007: Section 1, 19 (Related Schedule) Diamond Export Levy Act No. 15 of 2007: Sections 1, 2 Government Gazette No. 24008 – Vol. 449, 1 November 2002
International Instruments:	Kyoto Convention Specific Annex B: Chapter 1 - Clearance for Home Use Standard 1, Chapter 2 – Re-importation in the Same State Standards 1 – 9 and 11 – 14, Specific Annex C: Chapter 1 - Outright exportation Standard 1, Specific Annex G: Chapter 1 - Temporary admission Standards 1 -3, 5 – 7, 11, 13, Recommended Practice 14, Standards 17 – 18, Recommended Practice 19 SAFE Framework of Standards: Customs-to-Customs Arrangements Standard 1.3.8 and Standard 10

7.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Administrative Appeal – External Policy
SC-CC-26	Alternate Dispute Resolution – External Policy
SC-CF-55	Clearance Declarations – External Policy
SC-CO-01-02	Offences and Penalties – External Policy
SE-DL-02	Diamond Export Levy – External Policy

7.3 Quality Records

Number	Title
SAD 500	Customs Clearance Declaration

8 DEFINITIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
Conflict diamond	Unpolished diamonds used by the rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) regulations insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and as understood in United Nations General Assembly (UNGA) Resolutions 55/56, and 56/263 or in other similar UNGA resolutions which may be adopted in future. For the purpose of the Kimberley Process, unpolished diamonds exclude synthetic diamonds, diamond powder or partly processed diamonds having at least fourteen (14) facets.
Kimberley Process	The international forum of diamond producing and trading countries, the diamond industry and civil society wherein representatives have negotiated the international scheme for the international trade in unpolished diamonds
Kimberley Process Certificate (KPC)	A forgery resistant document in a particular format which identifies a consignment of unpolished diamonds as being in compliance with the requirements of the Kimberley Process Certification Scheme, and which in relation to export, is issued and validated by the Regulator and in relation to import is issued and validated by the Exporting Authority of a Participant

Participant	Any state or a regional economic integration enforcing the Kimberley Process Certification Scheme
SADPMR	South African Diamond and Precious Metals Regulator

9 DOCUMENT MANAGEMENT

Policy Owner	Group Executive: Customs Branch
Detail of change from previous revision	<ul style="list-style-type: none"> a) Appeals against decisions in terms of import VAT penalties can now be made in terms of the Customs and Excise Act b) Reference in this regard to the Tax Administration Act 28 of 2011 (TAA) has therefore been removed from Customs policies and Standard Operating Procedure c) Added the standard "Promotion of Administrative Justice Act (PAJA)" sentence d) Changed "standard" to "policy" e) Updated the Policy owner
Template number and revision	GC-TM-03 - Rev 9