

**DE BEERS GROUP OF COMPANIES**

**SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON  
FINANCE REGARDING THE DRAFT MINERAL AND PETROLEUM  
RESOURCES ROYALTY BILL READ TOGETHER WITH ITEM 9 (7) OF THE  
MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002**

**11 MARCH 2008**

## 1. Introduction

- 1.1 De Beers welcomes the opportunity to comment on the recently published third draft of the Mineral and Petroleum Resources Royalty Bill ("**the Bill**").
- 1.2 De Beers has made a separate and comprehensive written submission to the National Treasury in the process of developing this part of South Africa's emerging new minerals legislation.
- 1.3 In the submission to the Parliamentary Portfolio Committee on Finance De Beers will focus on one particular aspect of its submission to the National Treasury in respect of the Bill which is of fundamental importance to De Beers, namely the double taxation that may arise as a result of item 9 (7) of Schedule 2 to the Mineral and Petroleum Resources Development Act 28 of 2002, read together with the Bill.
- 1.4 This submission is made without prejudice to De Beers' rights and De Beers reserves the right to amend or supplement this submission in future.

## 2. Double taxation

- 2.1 Item 9(7) of Schedule 2 to the Mineral and Petroleum Resources Development Act 28 of 2002 ("**the MPRDA**") provides that "[a]ny lease of the State's interest in a mine in terms of section 74 of the Precious Stones Act, 1964...which was in force immediately before this Act took effect in terms of...the Minerals Act continues in force subject to the terms and conditions contained in the document under which it was granted or entered into".
- 2.2 The effect of item 9(7) is that the lessee of any lease of the State's interest in a mine in terms of section 74 of the Precious Stones Act, 1964 (which was in force in terms of section 47 (1) (a) (iii) of the Minerals Act, 1991, immediately before the MPRDA took effect), will continue to pay lease consideration (which in our view is substantially equivalent to a royalty) to the State in terms of the lease concerned.



- 2.3 Item 9(7) may have application, for example, in the context of De Beers' Finsch Mine in the Northern Cape.
- 2.4 By way of illustration, the imposition of a royalty in addition to any lease consideration that remains payable in terms of item 9 (7) in the case of Finsch Mine would for the period 2009 to 2014 be roughly equivalent to a gross revenue royalty of eleven percent over that same period.<sup>1</sup>
- 2.5 This would clearly amount to an unfair form of double taxation.
- 2.6 An increase in royalty liability to the extent set out in 2.4 above would, in the context of Finsch mine, also result in the mine operating closer to marginality or even unprofitably.
- 2.7 This might lead to decisions against further expansion of the mine as well as a danger of premature closure (possibly as early as 2015), which will in turn result in a loss of tax revenue for government, potential job losses and a detrimental impact on the local economy in the Finsch mine area.<sup>2</sup>
- 2.8 In previous discussions with Treasury in regard to this issue De Beers was assured that the intention was not for both a royalty and item 9 (7) lease consideration to be payable and that the provision to this effect (as it appeared in the earlier drafts of the Bill) was an oversight on the part of the drafters of the first and second versions of the Mineral and Petroleum Royalty Bill made available for comment.
- 2.9 In De Beers' view, Item 9 (7) of the Schedule to the Act should accordingly be repealed or at least amended clearly to avoid the double taxation that might otherwise occur and to ensure a consistent application of the royalty to diamond mines in South Africa.

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<sup>1</sup> The actual amount will depend on the mining solution chosen (if there is indeed an economic mining solution).

<sup>2</sup> Approximately fifty five percent of the resource by tonnes (seventy percent by carats) constituting Finsch mine (consisting of the underground portion of Finsch mine below block 4, which is currently being mined) may not be economical to mine if both lease consideration in terms of item 9 (7) and the royalty are payable.