The historical development of the right to mine diamonds in South Africa

Abstract
This thesis is an analyses of the historical development of diamond mining legislation in South Africa. Diamond mining legislation in South Africa developed as a result of and following the discovery of diamonds. There were at least four factors that influenced the development of diamond mining legislation in South Africa. In the first instance, there was the governing authority, secondly the habitat played a role or the source of the diamonds, thirdly the developments in diamond mining technology had an influence on legislation, and fourthly the form of land tenure played an important part. The primary focus of this study was to determine what the influence of the form of land tenure was on the historical development of the right to mine diamonds in South Africa. The right to mine diamonds was in a number of diamond mining legislation, which was in force during different periods of time in various parts of South Africa in the past, stated to be reserved to the British Crown or the relevant Government or State. In these historical diamond mining legislation, distinction was made between different types of land tenure and certain entitlements were granted to the owners or occupiers thereof, depending on the form of land tenure. In parts 1 and 2 of this thesis, the different diamond mining legislation that was enacted in the former British colonies and the Boer Republics are analysed. The purpose of the analysis is to determine who was entitled to prospect for or to mine diamonds and the influence of the form of land tenure thereon. After the end of the second Anglo Boer War, diamond mining legislation was enacted in the former Boer Republics, which became British colonies in which provision was made for the Crown to share in the profits derived from the working of the diamond mines. The particular shares and the persons who were entitled to mine the diamond mines, depended on the form of land tenure. The different diamond mining legislation continued to apply when South Africa became a Union in 1910 and was only consolidated with the commencement of the Precious Stones Act 44 of 1927 which is discussed in part 3 of this thesis. The development of the right to mine diamonds in terms of the Precious Stones Act 73 of 1964 and after its repeal in terms of the Minerals Act 50 of 1991 (hereafter the 1991 Minerals Act), which was enacted in the Republic of South Africa is discussed in part 4 of this thesis. The prospecting for and mining of diamonds (and all other minerals) are in force from 1 May 2004, regulated by the Mineral and Petroleum Resources Development Act 28 of 2002 (hereafter MPRDA). The MPRDA fundamentally changed the legal basis upon which rights to prospect for and to mine minerals are acquired and exercised. This was achieved mainly, by disconnecting the form of land tenure and the concept of mineral rights from the right to prospect for or to mine diamonds. There were numerous diamond mines in South Africa proclaimed before the enactment of the MPRDA. Transitional provisions were included in schedule II of the MPRDA in which three categories of rights were created, namely old order prospecting rights, old order mining rights and unused old order rights to provide for security of tenure. In these transitional provisions, reference is made to rights, permits, permissions and documents which were granted or entered into in terms of legislation repealed by the MPRDA. The terms and conditions that applied to diamond mines proclaimed prior to the commencement of the MPRDA may still be relevant for purposes of interpreting item 9(7) of schedule II of the MPRDA. Item 9(7) of schedule II of the MPRDA deals specifically with precious stones and provides that any lease of the State's interest in a mine in terms of section 74 of the 1964 Precious Stones Act which was in force immediately before the commencement of the MPRDA in terms of section 47(1)(a)(iiii) of the 1991 Minerals Act continues in force subject to the terms and conditions contained in the documents under which it was granted or entered into. Section 74 of the 1964 Precious Stones Act empowered the relevant Minister to lease the State's interest in any precious stones mine to the person entitled to work the mine. The person who was entitled to work a diamond mine in terms of the 1964 Precious Stones Act depended on the form of land tenure. The lease of the State's interest formed part of the terms and conditions under which a mineholder was entitled to work a diamond mine in terms of the 1964 Precious Stones Act and such terms and conditions were, with certain exceptions preserved in section 47 of the 1991 Minerals Act. It is submitted that in the case of a lease of the State's interest in respect of land where the rights to diamonds were previously held by the State, the lessee was for the duration of the agreement obliged to continue paying the lease consideration in terms of the 1991 Minerals Act and that this lease of the State's interest continues in force in terms of item 9(7) of schedule II of the MPRDA subject to the terms and conditions under which it was granted or entered into. There is finally the issue of historical tailings, which the Department of Mineral Resources will be including within the ambit of the MPRDA if the Mineral and Petroleum Resources Amendment Bill [B15D-2013] is enacted and comes into effect. These historical
The discovery of gold and diamonds in South Africa changed the course of the country's history dramatically. It brought South Africa success and wealth, but also heartbreak and lost hopes. People came from all over the world to stake their claims in the diamond fields. In 1867, diamonds were discovered at Hopetown and in 1871, more diamonds were discovered in the vicinity of Kimberley. A company, "De Beers Consolidated Mines" was established under the leadership of Cecil John Rhodes. This company went from strength to strength and is still in existence today. More towns, such as Koffiefontein and Jagersfontein, started up as a result of a concentration of diamond diggers in certain areas. The history of diamond mining and diamonds in South Africa. The 1867 discovery of diamonds in the Cape Colony, South Africa, radically modified not only the world's supply of diamonds but also the conception of them. Working resumed in 1945, but its fourth life really began in 1979 with the opening up of the mine below the Gabbro sill, a 70-meter geologic intrusion of barren rock which cuts right through the pipe some 400 meters below the surface. Production from this new source has not only given the mine its longest life, but one that should enable production to continue for another fifteen years. South Africa's rough diamond production is typically composed of perfectly round dodecahedral diamonds, in high white colors and qualities. Some of the most beautiful stones in the world are originally from South Africa. This includes The Cullinan diamond, which is the largest non-carbonado and largest gem-quality diamond ever found, at 3106.75 carats. South Africa is also home to some of the most amazing pink and blue diamonds, which were found over the last few years by Petra Diamonds. South Africa has the most diverse range of diamond deposits in the world. Deposits include open pit and und