

## **The Kimberley Process (KP)**

### **The Kimberley Process definition:**

- The Kimberley Process started in Kimberley, in South Africa in May 2000 as a consultation process. In December 2000, the United Nations General Assembly adopted a landmark resolution supporting the establishment of an international certification scheme for rough diamonds. Joint negotiations between governments, representatives of the international diamond industry and civil society organizations resulted in the creation of the Kimberley Process Certification Scheme (KPCS) in Interlaken, Switzerland in November 2002 for controlling rough diamond production and trade. The Kimberley Process entered into force in 2003 when participating countries started to implement its rules.
- The Kimberley Process applies only to rough diamonds, i.e. unworked diamonds or simply sawn, cleaved or bruted, that fall under Harmonized Commodities classification and coding system 7102.10, 7102.31 and 7102.21.
- This process defines the national certification scheme in order to be implemented by all the participants through the adoption of domestic legislation.
- The Kimberley Process establishes a firm and compliant scheme to rough diamonds trade designed to exclude the conflict diamonds that plays a role in fuel in armed conflicts regarding the legitimate production, export and import of diamonds between countries; whereof it hinders the participating countries in this agreement to import or export any rough diamonds except for the participating States.
- The Kimberley Process is chaired by participating countries on a yearly basis. KP participating countries representatives, diamond industry representatives and civil society observers gather twice a year at plenary and intersessional meetings as well as in working groups and committees on regular basis.
- Implementation is monitored through “review visits” from the participating countries to ensure the optimum implementation of Kimberly Process rules. Moreover, annual reports for each member as well as regular exchange and analysis of statistical data are considered a controlling method for the implementation of Kimberly Process rules.
- The Kimberly Process has 54 participants till May 2016 (representing 81 countries with the European Union States counting as a single participant).

## **Lebanon's admission to the Kimberley Process**

Lebanon's admission to the Kimberly Process was the fruit of a long and organized process as a result of Lebanon totally commitment with the International Community in counterfeiting the illegitimate trade of rough diamonds and its consequences. It is to mention that it establishes a firm and compliant scheme to rough diamonds trade designed to exclude the conflict diamonds from the legitimate production, export and import of diamonds between countries and plays a role in protecting the legitimate trade. This process also warranties the implementation of the General Assembly and Security Council resolutions relevant to the conflict diamonds traffic. The Participating Countries do not trade with non-participating countries.

It is to mention that many Lebanese traders deal with the rough diamonds trade in Lebanon and abroad whereof they face tough competition in this sector, especially in Africa. For this reason, this sector gains special importance for the Lebanese economy which is convenient to Lebanon's open economy and does not contradict with the commercial and economic agreements that Lebanon has signed. Lebanon admission to the Kimberley Process confirms its commitment toward the international standards.

### **The admission mechanism and requirements:**

The admission of any country to the Kimberley Process stipulates the fulfillment of the two following requirements jointly:

1. To ratify the agreement of "Kimberley Process Certification Scheme"
2. To issue a certification Scheme that contains the minimum requirements

### **The fulfilled procedures:**

- Law n° 581 was promulgated on February 25<sup>th</sup>, 2004 to allow Government admission to the Kimberley Process for the diamonds trade. The said law was published in the Official Gazette n° 13 on March 4<sup>th</sup>, 2004.

- Law n° 645 issued on November 24<sup>th</sup>, 2004 on the Control of Export, Import, and Transit of Rough Diamonds. It entered into force following its publication in the Official Gazette, n° 64 dated on December 2<sup>nd</sup> 2004.
- Elaborate the Kimberley certification according to the requested specifications.
- Determine the application form to obtain the certificate of importing rough diamonds.
- Determine the application form to obtain the Kimberley certificate.
- Issue implementing decrees on export, import, and transit of rough diamonds upon the approval of the Council of Ministers and after consulting both the State Council and the Ministry of Finance on July 1<sup>st</sup> 2005, which are the following:
  - Decree n° 14861 concerning the establishment of the Special Committee to implement the provisions of Kimberley Process in the most effective manner,
  - Decree n° 14862 to determine the fees that should be paid by the persons concerned in order to get the certification of rough diamonds export according to the Kimberley Process. The fees were determined by twenty thousand Lebanese pounds to be paid by a revenue stamp affixed on the certificate application,
  - Decree n° 14863 concerning the authorized ports of entry to the Lebanese territories according to the Kimberley Process, which are the office of Beirut–Rafic Hariri International Airport/R.B.H.BIA and the Postand Parcel Clearance Customs Office.
  - Decree n°1937 issued on April 29<sup>th</sup>, 2015 regarding the establishment of the Special Committee to implement the provisions of Kimberley Process in the most effective manner consisting of the General Director of the Ministry of Economy and Trade, as president with representatives from the Ministry of Industry, the Higher Council of Customs, Ministry of Economy and Trade and Syndicat des Bijoutiers et des Joailliers du Liban, as members.
  - Decision n° 153/1/E.T was issued on July 10<sup>th</sup>, 2014 regarding the signature of the export certificate by the General Director of Economy

and Trade; a substitute signatory was nominated to sign the certificate in case of absence of DG.

- **The parties entitled to import or export rough diamonds:**

- Any moral or natural person should get a prior approval to import rough diamond.

- **The requested key documents:**

- Copy of the company or firm Commercial Circular, to be issued by the Chamber of Commerce, Industry and Agriculture in the governorate whereof the said company or firm is registered.
- Company registration certificate at the Ministry of Finance.
- Company registration certificate at the commercial register (Ministry of Justice) in the same governorate whereof the company is registered.
- Partial Quittance from the National Social Security Fund.
- Copy of the identity card or individual status record of a period not exceeding three months and certified from the General Directorate of Civil Status at the Ministry of Interior and Municipalities.
- Copy of the Foreign Kimberley Certificate in case of import.

- **The substantial obligations:**

- The forms and documents accompanying the shipment shall be correct.
- Monetary purchase of rough diamonds shall be through banks.
- The final destination of the rough diamonds shall be to a participant to the Kimberley Process.
- The Kimberley certificates shall be kept for minimum period of five years.
- A certificate issued by the Special Committee in compliance with the Kimberley Process requirements should be attached.

- Wrapping of rough diamonds shall be in compliance with the enforced procedures.
  - Rough diamonds shall be accompanied with a certificate proving that the Kimberley Process requirements are fulfilled.
  - Rough diamonds shall be imported in a parcel properly wrapped and sealed in compliance with the applicable procedures.
- **The mechanism that shall be fulfilled at the Ministry of Economy and Trade to import or export rough diamonds:**

**In case of import:**

- The import of rough diamonds application shall be submitted to the Minister of Economy and Trade or whomever substitute him sequentially (clerk office of the president of the Special Committee of the Kimberley Process) attached with a copy of the Kimberley certificate as well as of the invoice and all the mentioned documents.
- Once the license is given, the import customs declaration shall be submitted attached with the requested documents, namely: the original invoice, detailed list of packing in case the invoice does not include the proper details, copy of the bill of lading, the value declaration sample, the Kimberley certificate and the former import or transit license issued by the Minister of Economy and Trade.
- The parcel shall be checked at the airport.
- The original certificate shall be submitted.
- The Ministry of Economy and Trade shall keep the stub with a copy of the application
- The special committee shall confirm the import process to the Kimberley Process certification authority after verifying the rough diamonds import.

**In case of export:**

- The Kimberley certificate application shall be submitted to the Kimberley Committee president according to a form that contains information about the certificate/ certificates upon which the parcel entered attached with the invoice.

- A date shall be fixed to examine the goods at the airport. Once the inspection is done, the competent officer authorized from the Ministry of Economy and Trade shall confirm the compliance of the goods with the data mentioned in the application of the certificate issuance in the presence of both the customs officer and the concerned person.
- The Lebanese Kimberley certificate shall be issued.
- This certificate shall be deposited in the parcel to be stamped and sealed with a numbered bolt seal.
- The application shall be attached to the stub of Kimberley certificate; to be kept in a private register once registered after the signature of the competent authorities on the certificate.
- The concerned person receives the parcel to report on it and the registers applications non settled shall be reviewed periodically in comparison with the customs declarations.
- The export customs declaration shall be drafted after attaching the original invoice and all the documents related to the goods such as the Kimberley certificate issued by the special committee overseeing the Kimberley Process. In the event the goods were suspicious, the Ministry of Economy and Trade shall be informed.
- The special committee shall inform the competent authority to whom the goods are exported thus after inspecting the goods and issuing the Kimberley certificate.

● **The customs implementation mechanism for the Kimberley Process:**

The rough diamonds customs clearance shall be done according to the following mechanism:

**First: the customs formalities**

- I. The customs declaration shall be submitted, including the full address of the concerned person in addition to the following documents:

**a- In case of Import:**

- The original invoice.

- A detailed list of packing if the invoice does not include the proper details.
- A copy of the bill of lading.
- The value declaration sample (DEV).
- The Kimberley Certificate.
- A prior import license issued by the Minister of Economy and Trade.

**b- In case of Export:**

- The original invoice and all the documents related to the goods.
- The Kimberley Certificate, which is considered as an export license, issued by the Special Committee overseeing the Kimberley Process. This certificate shall be valid for one month as of its issue date.

**c- In case of transit:**

- The Kimberley certificate.
- If the seal is broken or down, the customs inspector shall undertake the following:

a. In case the parcels have been opened, the imported goods are returned to their source.

b. The compliance of the rough diamonds with the Kimberley certificate.

In case of any discrepancies between the goods and the certificate, the following procedures are taken:

- A confiscation of the shipment and a confiscation report shall be drafted of which an authenticated copy is delivered to the concerned person.
- The customs office notifies the Special Committee overseeing the Kimberley process and transmits an authenticated copy of the confiscation report to the latter committee.

In all cases, the Customs prosecution is due in the event a shortage or an increase was confirmed concerning the information on the manifest or in case of any other customs breaches.

- II. A special register is opened in the International Beirut Airport Customs office and the Post and Parcel Clearance Customs Office to register all the import, export and transit licenses of rough diamonds.
- III. After the registration of the import / export license, the declaration is given its path and transmitted to the red channel for inspection and control.
- IV. The customs inspector shall verify during the inspection, the following issues:
  - a- The declared rough diamonds are properly wrapped and sealed in a parcel in compliance with the regulations. In case the parcels have been opened, the imported goods or the ones in transit are returned to their source. As for the goods intended to be exported, they are returned inside the country after informing the Kimberley Process competent authority at the exporting country.
  - b- The compliance of the rough diamonds with the Kimberley certificate. In case of any discrepancies between the goods and the certificate, the following procedures are taken:
    - The shipment shall be confiscated and a seizure report shall be drafted of which an authenticated copy is delivered to the concerned person.
    - The customs office notifies the Special Committee overseeing the Kimberley process and transmits an authenticated copy of the confiscation report to the latter committee.
- In all cases, the Customs prosecution is due in the event a shortage or an increase was confirmed concerning the information on the manifest or in case of any other customs breaches.
- V. The Customs office draws up a monthly detailed schedule regarding the import, export and transit operations of rough diamonds including all the information on each operation; to be submitted to the Special Committee overseeing the Kimberley process.
- VI. In case the passenger is accompanying the rough diamonds in-transit, the following procedures shall be undertaken:



- Assure the safety of the parcels and their compliance with the accompanying Kimberley Process Certificate given that the transit state should be clearly mentioned on the attached Kimberley Process Certificate.
  - Withhold the rough diamonds as a consignment until transferring them out of Lebanon and escorting them to the airport.
- VII. Compliance with the import (the goods shall bear the customs seal and returned by the special committee overseeing the Kimberley Process).

### **Second: Procedures taken upon the confiscation of rough diamonds:**

Upon the confiscation of both the rough diamonds and related documents by the customs officers, the following articles 14 and 15 of the law 645/2004 shall apply:

“Article fourteen: The customs officers undertake, upon confiscating the rough diamonds and related documents, to explain to the violator the reasons of the confiscation and the review procedure to have them returned. The customs officers shall take necessary measures to keep them in a secure storage”.

“Article fifteen: The customs officers shall refer the confiscation report attached with the file to the Special Committee which refers it to the competent judicial authorities in order to decide what it deems appropriate according to the applicable laws”.

### **Third: Customs Officers' competences in inspecting rough diamonds and restraining contraventions**

These competences are specified in article 24 of the law 645/2004 as follows:

“Article twenty four: In addition to the powers stipulated in the applicable laws and regulations, the customs officers shall have the right to:

1. Access to all documents related to the import and export of rough diamonds.
2. Inspect any place or conveyance, other than a dwelling-place; to open any parcel or container where the officer has reasons to

- believe that there are rough diamonds or any documents to which this law applies.
3. Check rough diamonds or any other things related to them, take measurements and conduct tests that do not affect their value.
  4. Examine any violations to the provisions of the present law and withhold any conveyance as well as any means used in the smuggling of rough diamonds in accordance with the provisions of article 19 of the present law”.

#### **Fourth: the applicable laws upon the violation of Kimberley provisions and the imposed sanctions**

- The provisions of sanctions law, customs law, and the laws and regulations applied in the Ministry of Economy and Trade shall be applied provided not to contravene with the provisions of law n° 645/2004 dated on November 24<sup>th</sup>, 2004 regarding the regulations relevant to the import, export and transit of rough diamonds.
- Whoever imports or attempts to import and whoever exports or attempts to export rough diamonds in violation of the provisions of law n° 645/2004 shall be imprisoned for not more than 6 months and fined for not more than 30% (thirty percent) of the value of the rough diamonds; or any of these two sanctions.
- Whoever conceals information or submit misleading information concerning any document in order to obtain the certificate, shall be subject to any of the above mentioned sanctions or both of them.
- Whoever violates the provisions of law n° 645/2004 or the enforced regulations shall be imprisoned for a period not exceeding one month and /or subject to a fine not exceeding 15% (fifty percent) of the value of the rough diamonds.

#### **Fifth: Role of the Special Investigation Commission at Banque Du Liban**

- The Special Investigation Commission was established pursuant to article 6 of law n° 318 on April 20<sup>th</sup>, 2001 (fighting money-laundering). Its mission consists of investigating operations that are suspected to be money-laundering offences and to decide on

- the seriousness of evidences and circumstantial evidences related to any such offence or offences and ensure the compliance with the rules and procedures stipulated in the law.
- The Commission cooperates with Lebanese or foreign authorities (judicial- administrative- financial and security) in order to obtain information or to view the details of the investigations that had done concerning the issues related to investigations that the Commission already performed.
  - The Financial Intelligence Administrative Unit established by the Special Investigation Commission acts as the competent authority and the official center for monitoring, collecting and archiving information on money-laundering offences and for exchanging information with foreign counterparts.
  - The reporting obligation by any natural person or legal entity as well as the documents submitted for this purpose and the investigations documents and procedures at all stages are absolutely confidential.
  - The Special Investigation Commission received applications from both the Special Committee overseeing the Kimberley Process and the Customs that include an attempt to export rough diamonds without attaching Kimberley certificate for the purpose of inquiring and checking their available database or information concerning companies or individuals.

## **Sixth: Role of the Ministry of Industry**

1. For rough diamonds:
  - It acts as a member in the Kimberley Process Special Committee
2. For worked and sawn diamonds:  
In particular, the Ministry of Industry undertakes the following:
  - To organize the national industries.
  - To give license for the purpose of establishing industry institutions.

- To take the appropriate measures in order to encourage the national industries.
- To control the continued availability of the license requirements for the industry institutions and to control quality.

### **Seventh: Role of the Syndicat des Bijoutiers et des Joailliers du Liban**

#### **1. For rough diamonds:**

- It acts as a member in the Kimberley Process Special Committee
- It is responsible for the training and awareness of the syndicate members working in the field of rough diamonds import or export.

#### **2. For worked and sawn diamonds:**

- The rough diamonds industry and trade in Lebanon shall take all the appropriate steps to apply the diamonds trade regulation according to the standards suggested by the World Diamond Council, including but not limited to: each company trading in rough diamonds shall be obliged to keep warranty declaration on each sales invoice; to keep record showing the flow of warranties in and warranties out; to keep a separate record for these data and to inform the Special Committee overseeing the Kimberley Process of its content.
- Pursuant to the laws in force at the Customs and the Consumer Protection Directorate at the Ministry of Economy and Trade, diamonds polishers shall submit quarterly reports concerning the worked rough diamonds to the Special Committee overseeing the Kimberley Process.