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ACT

To provide for the establishment of a board to be known as the Diamond Board of Namibia; to define the objects and the powers, duties and functions of the said Board; to provide for the establishment of a fund to be known as the Diamond Board Fund; to provide for the establishment of a fund to be known as the Diamond Valuation Fund; to provide for the management and control of the said Funds; to provide for control measures in respect of the possession, the purchase and sale, the processing and the import and export of diamonds; and to provide for matters connected therewith.

(Signed by the President on 30 September 1999)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I
PRELIMINARY

Definitions

1. In this Act, unless the context otherwise indicates -
"auditor" means an auditor who -

(a) is registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951);

(b) is a member of an institution recognized by the Auditor-General, for the purposes of this Act, as a controlling body for auditors; and

(c) is resident in Namibia;

"authorized representative" means an authorized representative registered as such in terms of section 43;

"Board" means the Diamond Board of Namibia established by section 2(1);

"business premises", in relation to a licensee, means premises of the licensee of which particulars of the location have been endorsed on his or her licence in terms of section 17(3)(c) or 18(5)(a);

"Commissioner" means the Diamond Commissioner appointed under section 14(1);

"contractor" means any person with whom a producer or the holder of an exclusive prospecting licence has entered into an agreement to win or recover or to prospect for diamonds on his or her behalf, but does not include an agreement of employment or an agreement with an individual for the rendering of services by that individual personally;

"controlling interest", in relation to -

(a) a company, means -

(i) direct or indirect beneficial ownership of 50 per cent or more of the issued share capital of the company by a person, acting singly or in concert with any other person; or

(ii) direct or indirect control by a person, acting singly or in concert with any other person, of 50 per cent or more of the voting power in respect of the issued shares of the company; or

(iii) the direct or indirect power by a person, acting singly or in concert with any other person, to appoint or remove the majority of the directors of the company; and

(b) a close corporation, means -

(i) direct or indirect beneficial ownership of 50 per cent or more of the interest in the close corporation by a person, acting singly or in concert with any other person; or

(ii) direct or indirect control by a person, acting singly or in concert with any other person, of 50 per cent or more of the voting power in the close corporation;

"Criminal Procedure Act" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"crushed diamond" means any diamond deriving from a diamond which has been subjected to a process of crushing such that it has been rendered into fragments, splinters or particles, but does not include diamond powder;

"cutter" means the holder of a diamond cutting licence contemplated in section 15(b);

"dealer" means the holder of a diamond dealer's licence contemplated in section 15(a);

"diamond inspector" means a diamond inspector designated under section 65(1) or (2);

"diamond powder" means any powder deriving from a diamond which has been subjected to a process of polishing or crushing;

"diamond prospecting or mining vessel" means any vessel which is used for prospecting for or mining of diamonds;
"diamondiferous concentrate" means the end product of the treatment process of diamond bearing host rock or sediment through a heavy mineral concentration system, prior to removal of the diamonds by X-ray, hand sorting or other means;

"exclusive prospecting licence" means an exclusive prospecting licence issued under section 70 of the Minerals (Prospecting and Mining) Act and specifying that the holder thereof is entitled to carry on prospecting operations, as defined in section 1(1) of that Act, in respect of diamonds, and includes the renewal of any such licence;

"financial institution" means a banking or like institution authorized or registered in terms of the applicable laws of Namibia to conduct business as such;

"financial year" means -

(a) in relation to the Board, the financial year of the Board referred to in section 12(2);

(b) in relation to the Diamond Valuation Fund, the financial year of the Diamond Valuation Fund referred to in section 63(4);

(c) for the purposes of section 62(8), a financial year as defined in section 1(1) of the State Finance Act, 1991 (Act No. 31 of 1991);

"Inspector-General" means the Inspector-General of the Namibian Police Force;

"land" means land as defined in section 1(1) of the Minerals (Prospecting and Mining) Act;

"licence" means a diamond dealer's licence, diamond cutting licence, diamond tool-making licence or diamond research licence contemplated in section 15, and includes the renewal of any such licence;

"licensee" means a dealer, cutter, tool-maker or researcher;

"low-water line" means the line of lowest astronomical tide;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in, on or under any land and having been formed by or subjected to a geological process, but does not include -

(a) water, not being water taken from land or from the sea for the extraction therefrom of a mineral or a group of minerals;

(b) petroleum, as defined in section 1(1) of the Petroleum (Exploration and Production) Act, 1991 (Act No. 2 of 1991);

(c) sand, soil, clay, gravel, stone or rock; or

(d) any diamond;

"mineral deposit retention licence" means a mineral deposit retention licence as defined in section 1(1) of the Minerals (Prospecting and Mining) Act;

"Minerals (Prospecting and Mining) Act" means the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992);

"mining" means mining as defined in the definition of "mine" in section 1(1) of the Minerals (Prospecting and Mining) Act;

"Minister" means the Minister of Mines and Energy;

"Ministry" means the Ministry of Mines and Energy;

"Namibian Police Force" means the Namibian Police Force established by section 2 of the Police Act, 1990 (Act No. 19 of 1990);

"Namibian waters" means the Namibian waters as defined in section 1 of the Sea Fisheries Act, 1992 (Act No. 29 of 1992);

"non-exclusive prospecting licence" means a non-exclusive prospecting licence as defined in section 1(1) of the Minerals (Prospecting and Mining) Act;

"offshore" means seaward from the low-water line or any other base line from which the territorial sea was measured, whichever of such lines is the most landward;

"onshore" means landward from the low-water line or any other base line from which the territorial sea was measured, whichever of such lines is the most landward;

"partly processed diamond" means a diamond which has undergone one or more phases of the manufacturing processes to render it a polished diamond but which manufacturing processes have not been completed with the result that the diamond is not marketable as a polished diamond without undergoing any further manufacturing process;

"Permanent Secretary" means the Permanent Secretary: Mines and Energy;

"permit" means any permit contemplated in section 27;

"person" includes any company, close corporation or partnership;

"police official" means a member of the Namibian Police Force;

"polished diamond" means an unset diamond, including a synthetic diamond, which has undergone various manufacturing processes resulting in a gemstone which is of acceptable cut by international standards and is marketable as a polished diamond without undergoing any further manufacturing process;

"polishing", in relation to any unpolished or polished diamond, means the sawing, cutting, cleaving or dividing in any manner, faceting or altering of that diamond, and "polish" has a corresponding meaning;

"possess" includes keeping, storing or having in custody or under control or supervision, and "possession" has a corresponding meaning;

"prescribe" means prescribe by regulation, and "prescribed" has a corresponding meaning;

"producer" means any person who is in terms of the Minerals (Prospecting and Mining) Act entitled to win or recover diamonds, but does not include the holder of an exclusive prospecting licence or a non-exclusive prospecting licence acting in his or her capacity as such a holder;

"prospecting" means prospecting as defined in section 1(1) of the Minerals (Prospecting and Mining) Act, and "prospect" has a corresponding meaning;

"purchase", in relation to an unpolished diamond, means to purchase the unpolished diamond, to deal in it or to obtain it by way of barter, pledge or in any like manner;

"register" includes a computer print-out as defined in section 1(1) of the Computer Evidence Act, 1985 (Act No. 32 of 1985);
"regulation" means a regulation made under section 69;

"researcher" means the holder of a diamond research licence contemplated in section 15(d);

"restricted area" means a restricted area referred to in section 52(2);

"sell", in relation to an unpolished diamond, means to sell the unpolished diamond, to offer or expose it for sale, barter or pledge or for any like purpose or to dispose of or deliver it for the purpose of trade;

"staff member" means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

"State Revenue Fund" means the State Revenue Fund referred to in Article 125(1) of the Namibian Constitution;

"sub-contractor" means -

(a) any person with whom a contractor has entered into an agreement to win or recover or to prospect for diamonds on behalf of such contractor, but does not include an agreement of employment or an agreement with an individual for the rendering of services by that individual personally;

(b) any person with whom a sub-contractor, as defined in paragraph (a), has entered into an agreement to win or recover or to prospect for diamonds on behalf of such sub-contractor, but does not include an agreement of employment or an agreement with an individual for the rendering of services by that individual personally;

"synthetic diamond" means a man-made diamond which has the same chemical, physical and optical properties as a natural diamond;

"territorial sea" means the territorial sea of Namibia referred to in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990);

"this Act" includes the regulations and notices made or issued thereunder;

"tool-maker" means the holder of a diamond tool-making licence contemplated in section 15(c);

"unpolished diamond" means a diamond in its natural state or a synthetic diamond which has after the production thereof not been altered in any manner, and includes a crushed diamond and a partly processed diamond, but does not include any unpolished diamond set for industrial purposes in any tool;

"vessel" means any ocean- or sea-navigable craft of any description whether self-propelled or not;

"voting member of the Board" means a member of the Board who is in terms of section 4(4) entitled to vote at meetings of the Board.

PART II
DIAMOND BOARD OF NAMIBIA

Establishment of Diamond Board of Namibia

2. (1) There is hereby established a board to be known as the Diamond Board of Namibia.
(2) The Board shall for all purposes be a juristic person.

Objects of Board

3. The objects of the Board are -

(a) to advise the Minister on any matter relating to the diamond industry in, and the control and protection of the diamond resources of, Namibia;

(b) to advise the Minister on any such matter referred to it by the Minister for investigation or advice;

(c) to facilitate by financial or other means the promotion and protection of such diamond industry and diamond resources;

(d) to perform such other functions in relation to the control and protection of such diamond industry and diamond resources as the Minister after consultation with the Board may prescribe.

Constitution of Board

4. (1) The Board shall consist of -

(a) one staff member of the Ministry, who shall be the chairperson;

(b) one staff member of the Ministry of Finance, nominated by the Minister of Finance;

(c) one staff member of the Ministry of Fisheries and Marine Resources, nominated by the Minister of Fisheries and Marine Resources;

(d) the commanding officer of that unit of the Namibian Police Force charged with the protection of diamonds;

(e) three persons who are nominated by producers, which producers in the opinion of the Minister are capable of representing the interests of large-scale producers;

(f) one person who is nominated by a producer, which producer in the opinion of the Minister is capable of representing the interests of small-scale producers;

(g) one person who is a member of a recognized trade union which in the opinion of the Minister represents the interests of employees in the diamond industry and who is nominated by that trade union;

(h) one person who is nominated by a cutter, which cutter in the opinion of the Minister is capable of representing the interests of cutters;

(i) one person who is nominated by a dealer, which dealer in the opinion of the Minister is capable of representing the interests of dealers;

(j) one person who is nominated by a dealer in polished diamonds engaged in the manufacturing of jewellery, which dealer in the opinion of the
Minister is capable of representing the interests of such dealers; and

(k) so many other persons, but not more than two, as the Minister may deem necessary and who in his or her opinion are able to assist the Board in achieving its objects.

(2) Subject to the provisions of section 5, the Minister shall appoint the persons referred to in subsection (1) as members of the Board.

(3) The Minister may, having regard to the provisions of this section, appoint an alternate member to every member of the Board, and an alternate member so appointed shall act as member of the Board only when the member to whom he or she is alternate is for any reason absent or unable to perform his or her functions on the Board.

(4) Only members of the Board referred to in subsection (1)(a), (b), (c), (d), (e) and (f) or, when acting as contemplated in subsection (3), their respective alternates shall have the right to vote at meetings of the Board.

(5) The Minister shall appoint a voting member of the Board as vice-chairperson of the Board.

(6) The vice-chairperson shall act as chairperson of the Board whenever the chairperson is for any reason absent or unable to act as chairperson.

(7) All administrative work incidental to the performance of the functions of the Board and its committees shall be performed by staff members of the Ministry designated for that purpose by the Permanent Secretary.

(8) The Permanent Secretary may designate a staff member referred to in subsection (7) as secretary of the Board.

Persons not qualified to be members of Board

5. No person shall be appointed as a member or an alternate member of the Board, if such person -

(a) is not -

(i) a Namibian citizen; or

(ii) ordinarily resident in Namibia;

(b) is an unrehabilitated insolvent;

(c) is of unsound mind and has been declared so by a competent court;

(d) has been convicted of any offence under this Act or the Diamond Industry Protection Proclamation, 1939 (Proclamation No. 17 of 1939);

(e) has, whether in Namibia or elsewhere, been convicted under any law of -

(i) any offence involving fraud or dishonesty; or

(ii) any other offence which in the opinion of the Minister renders him or her unsuitable for such appointment;

(f) has elsewhere than in Namibia been convicted under any law of any offence relating to the unlawful dealing in or possession of diamonds; or

(g) in the opinion of the Minister is or has been involved in activities relating to the unlawful dealing in or possession of diamonds.

Term of office of members of Board and filling of vacancies

6. (1) (a) Subject to the provisions of subsection (2), a member or an alternate member of the Board shall hold office for a periods of three years and shall, upon the expiry of his or her term of office but subject to the provisions of paragraph (b) of this subsection, be eligible for reappointment.

(b) No member of the Board referred to in section 4(1)(b), (c), (e), (f), (g), (h), (i) or (j) or, where applicable, his or her alternate shall be eligible for reappointment unless he or she has been renominated as contemplated in that section.

(2) A member or an alternate member of the Board shall cease to hold office -

(a) if such member or alternate member becomes subject to any disqualification contemplated in section 5;

(b) if such member or alternate member by notice in writing addressed and delivered to the Minister, resigns as a member or an alternate member of the Board;

(c) if such member or alternate member is removed from office under subsection (3);

(d) if, where applicable, such member's or alternate member's nomination as a member or an alternate member of the Board is withdrawn by notice in writing addressed and delivered to the Minister by the person who has nominated him or her;

(e) in the case of such member, if he or she is absent from three consecutive meetings of the Board without leave of the Board or, in the case of such alternate member, if he or she is so absent during the absence or vacancy in the office of the member of the Board to whom he or she has been appointed as alternate member; or

(f) in the case of a member or, where applicable, an alternate member referred to in section 4(1)(a), (b), (c) or (d), if he or she ceases to hold the qualification by virtue of which he or she was appointed as a member or an alternate member of the Board.

(3) The Minister in consultation with the Board and, where applicable, with the person who has nominated the member or alternate member of the Board concerned may at any time, after having afforded that member or alternate member an opportunity to be heard or to make representations to him or her, remove that member or alternate member from office if the Minister is satisfied that such member or alternate member is for whatever reason unfit or unable to effectively perform his or her functions on the Board or to represent the interests which he or she is for the purposes of this Act required to represent.

(4) If a member or an alternate member of the Board for any reason ceases to hold office before the expiry of his or her term of office, the Minister may, having regard to the provisions of section 4, appoint another person in his or her stead to hold office for the unexpired period of his or her term of office.

Meetings and decisions of Board

7. (1) The first meeting of the Board shall be held at such time and place as the chairperson of the Board may determine and thereafter meetings of the Board shall, subject to the provisions of subsection (2), be held at such times, but not less than three times in each financial year, and such places as the Board may fix.

(2) The chairperson of the Board may at any time, and shall at the request of the Minister or on a reasoned request of at least five members of the Board, upon adequate notice in writing, convene a special meeting of the Board, to be held at such time and place as the chairperson may direct.

(3) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at meetings of the Board at which he or she is present.

(4) If both the chairperson and the vice-chairperson of the Board are absent from any meeting of the Board, the members present thereat shall from among the voting members of the Board elect one member to preside at such meeting.

(5) A quorum for any meeting of the Board shall be four voting members of the Board, one of whom shall be the member referred to in section 4(1)(a).

(6) The decision of a majority of the voting members of the Board present at any meeting of the Board shall constitute a decision of the Board, and, in the event of an equality of votes in regard to any matter, the chairperson or other person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

(7) No decision or act of the Board or act performed by authority of the Board shall be invalid by reason only -

(a) of the existence of a vacancy on the Board; or

(b) of the fact that a person who was not entitled to sit as a member of the Board sat as such a member at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act was performed or authorized by the requisite majority of the voting members of the Board who were present at the time and entitled to sit as such members.

(8) (a) The Board shall cause proper record to be kept of the proceedings at its meetings.

(b) A copy of such record shall be forwarded to the Minister at regular intervals.

(9) The Board may make rules not inconsistent with the provisions of this Act relating to the holding of and procedure at meetings of the Board.

(10) For the purposes of this section "member" includes an alternate member present at the relevant meeting of the Board during the absence or vacancy in the office of the member to whom he or she has been appointed as alternate member.

Committees of Board

8. (1) The Board may establish one or more committees of the Board to perform, subject to the directions and control of the Board, such functions of the Board as the Board may determine.

(2) (a) A committee establish under subsection (1) shall consist of one or more members of the Board, nominated by the Board for that purpose, and, if the Board deems it necessary, one or more other persons not being a member or members of the Board and whom the Board may consider fit to appoint to the committee.

(b) The Board may at any time dissolve or reconstitute such committee.

(3) If a committee established under subsection (1) consists of more than one member, the Board shall designate a member of the committee as chairperson thereof.

(4) The Board shall not be absolved from responsibility for the performance of any functions entrusted to any committee in terms of subsection (1).

Remuneration of members of Board and committees

9. A member or an alternate member of the Board, or a member of any committee of the Board, who is not in the full-time employment of the State may be paid out of the funds of the Board such remuneration and allowances as the Board in consultation with the Minister may determine.

Powers, duties and functions of Board

10. In addition to the other powers, duties and functions conferred upon or assigned to the Board by or under this Act, the Board may -

(a) hire, purchase or otherwise acquire such movable or immovable property as the Board may consider necessary for the performance of its functions and let, sell or otherwise dispose of property so acquired: Provided that immovable property shall not be purchased or otherwise acquired or sold or otherwise disposed of without the prior written approval of the Minister;

(b) in furtherance of its objects, purchase, sell or possess unpolished diamonds, and may make such diamonds available to the Namibian Police Force for use in operations aimed at the enforcement of the provisions of this Act;

(c) for the purpose of the performance of its functions under this Act, enter into any agreement with any person, including the State, for the performance of any particular act or particular work or the rendering of particular services;

(d) by means of insurance provide for cover for the Board against any loss, damage, risk or liability which the Board may suffer or incur;

(e) in general perform such other acts as may be necessary or expedient for the achievement of its objects.

Establishment of Diamond Board Fund

11. (1) There is hereby established a fund to be known as the Diamond Board Fund, which shall consist of -

(a) moneys obtained by the Board by virtue of the provisions of this Act;

(b) moneys which with the prior written approval of the Minister may accrue to the Board from any other source; and

(c) interest derived from moneys standing to the credit of the said Fund.

(2) The Board shall utilize its funds contemplated in subsection (1) to defray the expenses incurred by the Board in the performance of its functions under this Act.

(3) The Board shall open one or more accounts with a financial institution, and shall deposit into that account or those accounts the moneys received by it in terms of subsection (1).

Accounting responsibility, bookkeeping and annual statements, and unexpended balances

12. (1) The Board shall be charged with the responsibility of accounting for moneys received by the Board and payments made by the Board.

(2) The financial year of the Board shall end on 31 December of each year.

(3) The Board shall keep proper accounts and records of all moneys received or expended by it, and of all its assets, liabilities and financial transactions.

(4) Subject to the provisions of subsections (5) and (6), the Board shall as soon as possible, but not later than three months after the end of each financial year, prepare, or cause to be prepared, and submit to the Minister -

(a) annual financial statements in respect of the financial year in question, together with a report by the Auditor-General or, if appointed by the Auditor-General, the auditor so appointed, relating to such statements; and

(b) a report on its activities during that financial year.

(5) The annual financial statements referred to in subsection (4)(a) shall contain -

(a) detailed particulars of moneys received by the Board and expenditure incurred by the Board during, and its assets and liabilities at the end of, the financial year in question; and

(b) such additional particulars as the Minister may determine.

(6) The accounts and records and the annual financial statements referred to in subsections (3) and (4)(a), respectively, shall be examined and audited by the Auditor-General or by an auditor appointed for that purpose by the Auditor-General at the expense of the Board.

(7) The Board shall, not later than three months before the commencement of each financial year, submit to the Minister a copy of its annual budget reflecting the estimated expenditure of the Board for the next ensuing financial year: Provided that the Board may at any time during any financial year submit to the Minister an additional budget reflecting any additional expenditure of the Board for that financial year.

(8) The Minister shall lay upon the Table of the National Assembly all the statements and reports (including the audit report) received by him or her in terms of subsection (4), within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

(9) Any unexpended balance in the Diamond Board Fund at the close of each financial year -

(a) not exceeding an amount equal to the amount required for the estimated expenditure of the Board for its next ensuing financial year, shall be carried forward to the next ensuing financial year as a credit to the said Fund;

(b) exceeding an amount equal to the amount required for the estimated expenditure of the Board for its next ensuing financial year, shall -

(i) to the extent that such balance does not exceed such amount, be carried forward as contemplated in paragraph (a);
(ii) to the extent that such balance exceeds such amount, be deposited into the State Revenue Fund.

Levies payable to Board

13. (1) In order to defray the expenses incurred by the Board in the performance of its functions under this Act, the Minister may from time to time, in consultation with the Board, by notice in the *Gazette* impose a levy on producers.

(2) A levy imposed under subsection (1) shall -

(a) be payable to the Board on or before such day as may be determined in the relevant notice;

(b) be expressed as a percentage of the annual gross sales by producers; and

(c) be determined with due regard to -

(i) the estimated expenditure of the Board as reflected in its annual budget for the financial year in question; and

(ii) the additional expenditure of the Board as reflected in its additional budget for any financial year.

PART III
DIAMOND COMMISSIONER

Appointment, and powers, duties and functions, of Diamond Commissioner

14. (1) The Minister shall, on the recommendation of the Public Service Commission and subject to the laws governing the Public Service, appoint a staff member to be the Diamond Commissioner, who shall, subject to the directions and control of the Minister -

(a) exercise the powers and perform the duties and functions conferred upon or assigned to the Commissioner by or under this Act; and

(b) perform such other duties and functions as may be assigned to the Commissioner by the Minister.

(2) The Commissioner shall be assisted by such other staff members as the Permanent Secretary may consider necessary to designate for that purpose.

(3) (a) The powers, duties and functions conferred upon or assigned to the Commissioner by or under this Act may be exercised or performed by the Commissioner personally or, except in so far as the Commissioner otherwise determines, by any staff member referred to in subsection (2) engaged in exercising or performing any such power, duty or function subject to the directions and control of the Commissioner.

(b) Notwithstanding the provisions of paragraph (a), any power, duty or function conferred upon or assigned to the Commissioner under section 29, in so far as it relates to a permit referred to in section 27(k), may be exercised or performed by any police official attached to that unit of the Namibian Police Force charged with the protection of diamonds.

PART IV
LICENCES

Kinds of licences

15. Subject to the provisions of this Part, the Minister may grant the following licences, namely -

(a) a diamond dealer's licence entitling the holder to carry on business as a buyer, seller and exporter of unpolished diamonds;

(b) a diamond cutting licence entitling the holder to polish diamonds for the purpose of business or trade;

(c) a diamond tool-making licence entitling the holder to set unpolished diamonds in tools, implements or other articles or to crush or to alter those diamonds for the purpose of trade;

(d) a diamond research licence entitling the holder to conduct research and tests in connection with diamonds, but not to polish diamonds for the purpose of business or trade.

Application for licences

16. (1) An applicant for a licence shall, subject to the provisions of subsection (2), apply to the Minister on the prescribed form for such a licence: Provided that, if the prospective licensee is a natural person, that person shall be the applicant and, if the prospective licensee is a partnership, the partners shall be the applicants.

(2) An application in terms of subsection (1) shall -

(a) contain -

(i) such particulars as the Minister may prescribe; and

(ii) such additional particulars relating to such application as the Minister may reasonably require; and

(b) be accompanied by the prescribed application fee.

(3) The Minister may, before deciding on any application for a licence, conduct such investigation regarding the application as he or she may deem fit.

(4) Subject to the provisions of this Part, the Minister may at his or her discretion grant or refuse an application for a licence made under subsection (1), but the Minister shall -

(a) not grant any application unless -

(i) the applicant, where the prospective licensee is a natural person or partnership, is -

(aa) a Namibian citizen; or

(bb) permanently resident in Namibia; and

has registered in Namibia as a tax-payer for income tax purposes: Provided that, where the prospective licensee is a partnership, every partner thereof shall be either a Namibian citizen or permanently resident in Namibia;

(ii) the applicant, where the prospective licensee is a company or close corporation, is a company or close corporation incorporated and registered under the applicable laws of Namibia and registered in Namibia as a tax-payer for income tax purposes; or

(iii) the applicant, where the prospective licensee is a company or close corporation to be incorporated and registered in the event of an application for a licence under this section being granted, has undertaken to incorporate and register such company or close corporation under the applicable laws of Namibia and to register such company or close corporation in Namibia as a tax-payer for income tax purposes;

(b) not grant any application if -

(i) in the case of an applicant referred to in subsection (4)(a)(i), the applicant, or, where the prospective licensee is a partnership, any partner thereof, is a person referred to in section 5(b), (c), (d), (e), (f) or (g), the provisions of which shall *mutatis mutandis* apply;

(ii) in the case of an applicant referred to in subsection (4)(a)(ii), where the prospective licensee is a company, any director thereof or any person holding a controlling interest therein, or, where the prospective licensee is a close corporation, any member thereof or any person holding a controlling interest therein, is a person referred to in section 5(b), (c), (d), (e), (f) or (g), the provisions of which shall *mutatis mutandis* apply;

(iii) in the case of an applicant referred to in subsection (4)(a)(iii), where the prospective licensee is to be incorporated and registered as a company, any prospective director thereof or any person to hold a controlling interest therein, or, where the prospective licensee is to be incorporated and registered as a close corporation, any prospective member thereof or any person to hold a controlling interest therein, is a person referred to in section 5(b), (c), (d), (e), (f) or (g), the provisions of which shall *mutatis mutandis* apply;

(iv) in the case of any applicant, any person, who by virtue of an agreement with the prospective licensee or by virtue of any direct or indirect interest in the prospective licensee or by any other means is able to exert influence over the conduct of the affairs of the prospective licensee, is a person referred to in section 5(b), (c), (d), (e), (f) or (g), the provisions of which shall *mutatis mutandis* apply; or

(v) the prospective licensee is a producer, contractor, sub-contractor, holder of an exclusive prospecting licence or a non-exclusive prospecting licence, or licensee;

(c) grant or refuse such an application within six months from the date of receipt thereof.

(5) If the Minister refuses an application for a licence, the Commissioner shall notify the applicant in writing of the decision of the Minister.

(6) If the Minister grants an application for a licence, he or she may determine any reasonable condition in respect of such licence.

(7) Subject to the provisions of subsection (8), the Minister may at any time after a licence has been issued, and after having afforded a licensee an opportunity to be heard, by notice in writing to the licensee -

(a) cancel or vary any condition to which such licence is subject; or

(b) impose any reasonable condition or any further reasonable condition in respect of such licence.

(8) Anything validly done by virtue of a licence before the cancellation or variation of any condition under subsection (7)(a) or the imposition of any condition or further condition under subsection (7)(b), shall remain valid.

(9) If the Minister grants an application for a licence to a prospective licensee referred to in subsection (4)(a)(iii), the Minister shall specify a period within which the undertaking referred to in that subsection shall be complied with: Provided that the Minister may extend such period on good cause shown.

Issue of licences

17. (1) If the Minister grants an application for a licence under section 16(4), the Commissioner shall, subject to the provisions of subsection (2), issue to the applicant the licence on the prescribed form against payment of the prescribed fee.

(2) No licence shall be issued to a prospective licensee referred to in section 16(4)(a)(iii) unless the undertaking referred to in that section has been complied with within the period specified by the Minister in terms of section 16(9) or, if such period has been extended by the Minister under the proviso to the last-mentioned section, within such extended period.

(3) The Commissioner shall endorse on a licence issued in terms of subsection (1) -

(a) any condition determined by the Minister under section 16(6);

(b) any cancellation, variation or condition referred to in section 16(7);

(c) particulars of the location of the business premises approved by the Minister under section 18(1);

(d) any condition relating to such business premises determined by the Minister under section 18(2).

(4) In order to give effect to subsection (3)(b), (c) or (d), the Commissioner may request a licensee in writing to submit the licence in question to the Commissioner within 30 days from the date of such request.

(5) Any person who fails to comply with a request under subsection (4) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Business premises

18. (1) No licence shall be issued unless the premises upon which the activities authorized by such licence will be carried on have been approved by the Minister.

(2) The Minister may conduct such investigation regarding the premises referred to in subsection (1) as he or she may deem fit, and may determine any reasonable condition subject to which such premises are approved.

(3) Any licensee who desires to move or extend his or her business premises to any other premises, or to materially alter his or her business premises, shall apply to the Minister in writing for his or her approval of the new, additional or altered premises, as the case may be: Provided that only alterations which relate to or affect the activities authorized by the license in question shall require the approval of the Minister.

(4) (a) After such investigation regarding the new, additional or altered permises as the Minister may deem fit, the Minister may grant, on such reasonable conditions as he or she may determine, or refuse an application referred to in subsection (3).

(b) Such an application shall be granted or refused by the Minister within three months from the date of receipt thereof.

(5) If the Minister -

(a) grants an application referred to in subsection (3), the Commissioner shall endorse on the licence in question the particulars of the location of the new or additional premises, as the case may be, and such conditions as the Minister may determine under subsection (4); or

(b) refuses the application, the Commissioner shall notify the licensee in writing of the decision of the Minister.

(6) Subject to the provisions of subsection (7), the Minister may at any time, after having afforded a licensee an opportunity to be heard, by notice in writing to the licensee -

(a) cancel or vary any condition determined under subsection (2) or (4); or

(b) impose any reasonable condition or any further reasonable condition in respect of any business premises or any such new, additional or altered premises.

(7) Anything validly done by virtue of a licence before the cancellation or variation of any condition under subsection (6)(a) or the imposition of any condition or further condition under subsection (6)(b), shall remain valid.

(8) The Commissioner shall, in respect of the premises to which a licence relates, endorse on such licence any cancellation or variation of a condition under subsection (6)(a) or any condition or further condition imposed under subsection (6)(b).

(9) In order to give effect to subsection (8), the Commissioner may request a licensee in writing to submit the licence in question to the Commissioner within 30 days from the date of such request.

(10) Any person who fails to comply with a request under subsection (9) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Licensees to display names and other particulars at business premises

19. Every licensee shall display his or her name and a description indicating that he or she is a licensed diamond dealer, diamond cutter, diamond tool-maker or diamond researcher, as the case may be, in a conspicuous position and in characters easily legible on the outside of his or her premises.

Period of validity of licences and renewal of licences

20. (1) Subject to the provisions of this Part -

(a) a diamond dealer's licence shall be valid for such period, but not exceeding five years, as the Minister may determine;

(b) a diamond cutting licence shall be valid for such period, but not less than ten years, as the Minister may determine;

(c) a diamond tool-making licence shall be valid for such period, but not less than five years, as the Minister may determine;

(d) a diamond research licence shall be valid for such period as the Minister may determine.

(2) Subject to the provisions of subsection (3), the provisions of this Part shall *mutatis mutandis* apply in relation to an application for the renewal of a licence.

(3) An application for the renewal of a licence shall be made not later than three months before the date on which such licence will expire or such later date, but not later than the date on which such licence will expire, as the Minister may allow on good cause shown.

Transfer of licences

21. (1) Without the prior written approval of the Minister having been applied for and obtained, no licensee shall sell or otherwise dispose of his or her licence or allow any other person to receive or acquire any direct or indirect interest therein, nor shall any person so receive or acquire from a licensee any licence or any direct or indirect interest therein.

(2) The provisions of subsections (3), (4), (5) and (6) of section 16 shall *mutatis mutandis* apply in respect of an application in terms of subsection (1) of this section: Provided that in such application the expressions "applicant" and "prospective licensee" in subsection (4) of section 16 shall be construed as "person who is to receive or acquire any licence or any direct or indirect interest therein".

(3) An application for the written approval of the Minister referred to in subsection (1) shall be accompanied by the licence in question.

(4) The Commissioner shall endorse on the licence in question such alterations as are necessary as a result of the sale or disposal of that licence or the receipt or acquisition of any direct or indirect interest therein in terms of subsection (1).

(5) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$250 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Controlling interest in companies and close corporations

22. (1) Without the prior written approval of the Minister having been applied for and obtained, no person shall sell or otherwise dispose of, nor shall any person receive or acquire, a controlling interest in any company or close corporation after a licence has been issued or transferred in terms of this Part to that company or close corporation.

(2) The provisions of subsections (3), (4), (5) and (6) of section 16 shall *mutatis mutandis* apply in respect of an application in terms of subsection (1) of this section: Provided that in such application the expressions "applicant" and "prospective licensee" in subsection (4) of section 16 shall be construed as "person who is to receive or acquire a controlling interest in a company or close corporation referred to in subsection (1) of this section".

(3) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$250 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Conversions of companies and close corporations

23. (1) A licensee which -

(a) is a company and is converted into another type or form of company or into a close corporation; or

(b) is a close corporation and is converted into a company,

shall, within 14 days after such conversion, submit its licence and the amended or new certificate of incorporation or the new founding statement, or a certified copy thereof, to the Commissioner.

(2) The Commissioner shall endorse on the licence in question such alterations as are necessary as a result of a conversion referred to in subsection (1).

(3) Any licensee which fails to comply with a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Preference to be given to Namibian citizens, products and services

24. Notwithstanding anything to the contrary in this Act or any other law contained, it shall be a term and condition of -

(a) any licence, that the holder of such licence;

(b) any approval granted to a contractor or sub-contractor under section 49(4), that such contractor or sub-contractor,

shall -

(i) with due regard to efficiency, economy and practicability, in the employment of employees, give preference to Namibian citizens who possess appropriate qualifications, expertise and experience for purposes of the operations to be carried on by such licence holder, contractor or sub-contractor, as the case may be, and employ persons who are not Namibian citizens only where the qualifications, expertise and experience required for such employment cannot be obtained by recruitment of Namibian citizens;

(ii) with due regard to efficiency, economy and practicability, give preference to the procurement of products, materials or equipment manufactured or produced in Namibia, and of services from service providers located in Namibia;

(iii) with due regard to efficiency, economy and practicability carry out training programs in order to encourage and promote the development of Namibian citizens employed by such licence holder, contractor or sub-contractor, as the case may be;

(iv) in the fulfilment of the obligations in terms of paragraphs (i), (ii) and (iii), have due regard to the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices.

Suspension and cancellation of licences

25. (1) If -

(a) an applicant for a licence has furnished information to the Minister in or in connection with an application for a licence which is in any material respect untrue and a licence is subsequently issued in terms of section 17(1) in respect of such application;

(b) a licensee has sold or otherwise disposed of his or her licence or has allowed any other person to receive or acquire an interest therein without the prior written approval of the Minister having been obtained in terms of section 21(1);

(c) a controlling interest was sold or otherwise disposed of or received or acquired in a licensee which is a company or close corporation without the prior written approval of the Minister having been obtained in terms of section 22(1);

(d) an applicant for written approval of the Minister in terms of section 18(3), 21(1), 22(1), 38(1)(c) or (2)(c) or 41(1) has furnished information to the Minister in or in connection with such application which is in any material respect untrue;

(e) a licensee has contravened or failed to comply with a condition of the licence or a provision of this Act;

(f) a licensee becomes subject to any disqualification or no longer complies with any requirement contemplated in section 16(4)(a)(i), (ii) or (iii) or (4)(b)(i), (ii), (iii), (iv) or (v); or

(g) a licensee has ceased to carry on the activities authorized by the licence,

the Minister shall by notice in writing request the licensee to show cause within the period specified in that notice, but not being less than 30 days after the date of that notice, why the licence in question should not be suspended or cancelled.

(2) Upon the expiry of the period referred to in subsection (1), the Minister may -

(a) suspend the licence in question for such period as he or she may determine; or

(b) cancel that licence with effect from such date as he or she may determine.

(3) Notwithstanding the provisions of subsection (2), anything validly done by virtue of a licence before such suspension or cancellation, shall remain valid.

(4) While a licence is suspended under subsection (2)(a), the licensee concerned shall be deemed not to be licenced.

(5) The Minister shall cancel the licence of a licensee if requested to do so by the licensee.

(6) If a licensee becomes subject to any disqualification or no longer complies with any requirement contemplated in section 16(4)(a)(i), (ii) or (iii) or (4)(b)(i), (ii), (iii), (iv) or (v), such licensee shall, within 14 days after becoming subject to any such disqualification or no longer complying with any such requirement, inform the Minister thereof in writing.

(7) For the purposes of paragraphs (e) and (f) of subsection (1) "licensee" includes -

(a) where the licensee is a partnership, any partner thereof; or

(b) where the licensee is a company, any director thereof or any person holding a controlling interest therein; or

(c) where the licensee is a close corporation, any member thereof or any person holding a controlling interest therein.

(8) A licensee who fails to comply with a provision of subsection (6) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Return of licences

26. (1) If the Minister suspends or cancels a licence under section 25(2), the Commissioner shall notify the licensee in writing of the decision of the Minister.

(2) Any licensee who has ceased to carry on the activities authorized by his or her licence or whose licence has been suspended or cancelled under section 25(2) shall, within 30 days after having ceased to carry on such activities or after having received notification of such suspension or cancellation, return his or her licence to the Commissioner.

(3) Any licensee who fails to comply with a provision of subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART V
PERMITS

Kinds of permits

27. Subject to the provisions of section 28(1), the Minister may grant a permit authorizing any person who is not otherwise so authorized by or under any provision of this Act -

(a) to possess an unpolished diamond;

(b) to sell or otherwise dispose of an unpolished diamond which he or she has lawfully in his or her possession;

(c) to receive or purchase an unpolished diamond which is in the lawful possession of the person from whom it is to be received or purchased;

(d) to export an unpolished diamond;

(e) to import an unpolished diamond;

(f) to polish any diamond or crush or set any unpolished diamond in any tool, implement or other article;

(g) to possess any diamondiferous concentrate outside a restricted area;

(h) to export any diamondiferous concentrate;

(i) to remove any sand, soil, clay, gravel, stone, rock or mineral from a restricted area;

(j) to export any sand, soil, clay, gravel, stone, rock or mineral which it is reasonably believed may contain diamonds;

(k) to enter, reside, travel, work or be in, or to visit a restricted area,

subject to any condition contained in such permit.

Application for permits

28. (1) An applicant for a permit shall apply to the Minister on the prescribed form for such a permit.

(2) An application in terms of subsection (1) shall -

(a) contain -

(i) such particulars as the Minister may prescribe; and

(ii) such additional particulars relating to such application as the Minister may reasonably require; and

(b) be accompanied by the prescribed application fee.

(3) The Minister may at his or her discretion grant or refuse an application for a permit made under subsection (1): Provided that in the case of an application for a permit contemplated in section 27(k), any refusal by the Minister of such an application shall only be on reasonable grounds of security in the restricted area in question.

(4) If the Minister refuses an application for a permit, the Commissioner shall notify the applicant in writing of the decision of the Minister.

(5) If the Minister grants an application for a permit, he or she may, subject to the provisions of section 67(3), determine any condition in respect of such permit.

(6) Subject to the provisions of subsection (7), the Minister may at any time after a permit has been issued, and after having afforded the holder of a permit an opportunity to be heard, by notice in writing to such holder of a permit -

(a) cancel or vary any condition to which such permit is subject;

(b) impose any reasonable condition or any further reasonable condition in respect of such permit; or

(c) cancel such permit:

Provided that a permit contemplated in section 27(k) shall be cancelled only -

(i) on reasonable grounds of security in the restricted area in question; and

(ii) on reasonable notice in writing to the holder of such permit.

(7) Anything validly done by virtue of a permit before the cancellation or variation of any condition under subsection (6)(a) or the imposition of any condition or further condition under subsection (6)(b) or the cancellation of such permit under subsection (6)(c), shall remain valid: Provided that where a permit contemplated in section 27(a) is cancelled, the Minister shall give directions regarding the sale or disposal of any unpolished diamond in respect of which such permit is cancelled: Provided further that such former permit holder shall not by virtue only of such cancellation be considered to have been or to be unlawfully in possession of any unpolished diamond in respect of which such permit is cancelled.

Issue of permits

29. (1) If the Minister grants an application for a permit under section 28(3), the Commissioner shall, against payment of the prescribed fee, issue to the applicant the permit on the prescribed form.

(2) The Commissioner shall endorse on a permit issued in terms of subsection (1) -

(a) any condition determined by the Minister under section 28(5);

(b) any cancellation, variation or condition referred to in section 28(6).

(3) In order to give effect to subsection (2)(b), the Commissioner shall request the holder of a permit in writing to submit the permit in question to the Commissioner within 30 days from the date of such request.

(4) Every person to whom a permit has been issued in terms of subsection (1) shall, at the expiry of such permit, return such permit to the Commissioner.

(5) Any person who -

(a) contravenes or fails to comply with a condition of a permit issued in terms of subsection (1); or

(b) fails to comply with a request under subsection (3); or

(c) fails to comply with a provision of subsection (4),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) A permit issued in terms of subsection (1) shall not be transferable to any other person.

PART VI
CONTROL MEASURES IN RELATION TO UNPOLISHED DIAMONDS

Prohibition relating to possession of unpolished diamonds

30. (1) Save as is otherwise provided in this Act, no person shall have any unpolished diamond in his or her possession unless such person is -

(a) a producer, contractor or sub-contractor who has won, recovered or found that diamond in accordance with the provisions of the Minerals (Prospecting and Mining) Act, proof of which shall be on such producer, contractor or sub-contractor, as the case may be;

(b) the holder of an exclusive prospecting licence or a non-exclusive prospecting licence who has won, recovered or found that diamond in accordance with the terms and conditions of any such licence, proof of which shall be on such holder of an exclusive prospecting licence or a non-exclusive prospecting licence;

(c) a licensee;

(d) in respect of that diamond the holder of a permit referred to in section 27(a), (b), (c), (d), (e) or (f); or

(e) in possession of that diamond while acting in the course and scope of or in the execution of a lawful agreement to which any person referred to in paragraph (a), (b), (c) or (d) is a party, proof of which shall be on such first-mentioned person.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

(3) Notwithstanding anything to the contrary in this Act contained, any natural person referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1) shall, while he or she has any unpolished diamond in his or her possession, carry on his or her person or have readily available in his or her immediate vicinity such documents in such circumstances as the Minister may prescribe.

(4) Any person who fails to comply with a provision of subsection (3) shall be guilty of an offence and on conviction be liable to such penalty as the Minister may prescribe.

Prohibition relating to sale or disposal of unpolished diamonds

31. (1) Save as is otherwise provided in this Act, no person shall sell or otherwise dispose of any unpolished diamond unless such person is -

(a) a producer who has won, recovered or found that diamond in accordance with the provisions of the Minerals (Prospecting and Mining) Act, proof of which shall be on such producer;

(b) the holder of an exclusive prospecting licence or a non-exclusive prospecting licence who has won, recovered or found that diamond in accordance with the terms and conditions of any such licence, proof of which shall be on such holder of an exclusive prospecting licence or a non-exclusive prospecting licence;

(c) a dealer;

(d) the holder of a permit referred to in section 27(b); or

(e) an authorized representative of any person referred to in paragraph (a), (b), (c) or (d) and acting within the scope of his or her duties as such an authorized representative.

(2) The provisions of subsection (1) shall not be construed so as to authorize such producer, licence holder, dealer, permit holder or authorized representative to sell any unpolished diamond which has come into his or her possession in an unlawful manner.

(3) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Prohibition relating to receipt or purchase of unpolished diamonds

32. (1) Save as is otherwise provided in this Act, no person shall receive or purchase any unpolished diamond unless such person is -

(a) a licensee;

(b) the holder of a permit referred to in section 27(c); or

(c) an authorized representative of any person referred to in paragraph (a) or (b) and acting within the scope of his or her duties as such an authorized representative.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Dealing in unpolished diamonds restricted to certain persons

33. Save as is otherwise provided in this Act, any person -

(a) referred to in section 31(1) who sells or otherwise disposes of any unpolished diamond to any person other than a person referred to in section 32(1);

(b) referred to in section 32(1) who receives or purchases any unpolished diamond from any person other than a person referred to in section 31(1),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Illegal acts relating to receipt or purchase of unpolished diamonds

34. Any licensee or holder of a permit referred to in section 27(c), or any authorized representative of such licensee or holder of a permit, who receives or purchases any unpolished diamond -

(a) for any purpose other than the activities authorized by the relevant licence or permit, as the case may be; or

(b) from any person not lawfully in possession of that diamond knowing that such person is not lawfully in such possession; or

(c) from any person not lawfully in possession of that diamond without having reasonable grounds, proof of which shall be on such licensee, holder of a permit or authorized representative, for believing at the time of such receipt or purchase that such diamond is lawfully in possession of the person from whom it is received or purchased,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Prohibition relating to polishing, crushing or setting of unpolished diamonds

35. (1) No person shall polish any diamond or crush or set any unpolished diamond in any tool, implement or other article unless such person is -

(a) a cutter, tool-maker or researcher acting in the course and scope of the activities authorized by his or her licence;

(b) an employee acting in the course and scope of his or her employment with such cutter, tool-maker or researcher;

(c) the holder of a permit referred to in section 27(f) acting in the course and scope of the activities authorized by such permit; or

(d) acting in the course and scope of or in the execution of a lawful agreement to which any person referred to in paragraph (a) or (c) is a party, proof of which shall be on such first-mentioned person.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Prohibition relating to export of unpolished diamonds

36. (1) No person shall export any unpolished diamond from Namibia unless such person is -

(a) a producer who has won, recovered or found that diamond in accordance with the provisions of the Minerals (Prospecting and Mining) Act, proof of which shall be on such producer;

(b) the holder of an exclusive prospecting licence or a non-exclusive prospecting licence who has won, recovered or found that diamond in accordance with the terms and conditions of any such licence, proof of which shall be on such holder of an exclusive prospecting licence or a non-exclusive prospecting licence;

(c) a dealer;

(d) the holder of a permit referred to in section 27(d); or

(e) acting in the course and scope of or in the execution of a lawful agreement to which any person referred to in paragraph (a), (b), (c) or (d) is a party, proof of which shall be on such first-mentioned person.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Prohibition relating to import of unpolished diamonds

37. (1) Subject to the provisions of subsection (2), no person shall import any unpolished diamond into Namibia unless such person is the holder of a permit referred to in section 27(e).

(2) The provisions of subsection (1) shall not apply in respect of any unpolished diamond won or recovered outside Namibia from diamondiferous concentrate, sand, soil, clay, gravel, stone, rock or mineral previously exported from Namibia and which is returned to Namibia in terms of section 54(2) or 56(2), as the case may be, proof of which shall be on the person who is so returning that unpolished diamond.

(3) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Dealings in unpolished diamonds restricted to approved premises

38. (1) No producer, holder of an exclusive prospecting licence or a non-exclusive prospecting licence, dealer or holder of a permit referred to in section 27(b) shall sell or otherwise dispose of any unpolished diamond elsewhere than on -

(a) the business premises of a licensee;

(b) the premises referred to in subsection (2)(c); or

(c) such other premises as the Minister may approve under section 39 on application in writing by such producer, licence holder, dealer or permit holder.

(2) No licensee or holder of a permit referred to in section 27(c) shall receive or purchase any unpolished diamond elsewhere than on -

(a) the business premises of a licensee;

(b) the premises referred to in subsection (1)(c); or

(c) such other premises as the Minister may approve under section 39 on application in writing by such licensee or holder of a permit.

(3) Any person who contravenes a provision of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Approval of premises for purposes of dealing in unpolished diamonds

39. (1) If an application for the approval of premises is made to the Minister in terms of section 38(1)(c) or (2)(c), the Minister may conduct such investigation regarding the application as he or she may deem fit.

(2) (a) The Minister may at his or her discretion grant, on such reasonable conditions as he or she may determine, or refuse an application for the approval of premises.

(b) Such an application shall be granted or refused by the Minister within 30 days from the date of receipt thereof.

(3) If the Minister refuses an application for the approval of premises, the Commissioner shall notify the applicant in writing of the decision of the Minister.

(4) If the Minister grants an application for the approval of premises, the Commissioner shall issue to the applicant concerned a certificate of approval in respect of the premises on the prescribed form.

(5) The Commissioner shall endorse on a certificate of approval issued in terms of subsection (4) any condition determined by the Minister under subsection (2).

(6) Any person who contravenes or fails to comply with a condition of a certificate of approval -

(a) issued in terms of subsection (4); or

(b) issued in terms of the said subsection (4) as applied by section 41(2) to cutters, tool-makers and researchers,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Processing of and research and tests in connection with unpolished diamonds restricted to approved premises

40. (1) No cutter, tool-maker or holder of a permit referred to in section 27(f) shall polish any diamond or crush or set any unpolished diamond in any tool, implement or other article or permit any such process to be conducted on his or her behalf, nor shall any researcher conduct any research or tests in connection with any unpolished diamond or permit any such research or tests to be conducted on his or her behalf, elsewhere than on -

(a) his or her business premises; or

(b) such other premises as the Minister may approve under section 41 on application in writing by such cutter, tool-maker, holder of a permit or researcher.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Approval of premises for purposes of processing or conducting research and tests in connection with unpolished diamonds

41. (1) Any -

(a) cutter may apply in writing to the Minister to polish diamonds;

(b) tool-maker may apply in writing to the Minister to set unpolished diamonds in tools, implements or other articles or to crush or to alter those diamonds for the purpose of trade;

(c) researcher may apply in writing to the Minister to do research and tests in connection with diamonds, but not to polish diamonds for the purpose of business or trade,

on such premises other than his or her business premises as the Minister may approve.

(2) The provisions of section 39 shall *mutatis mutandis* apply in respect of an application for the approval of premises under subsection (1).

Dealings in unpolished diamonds on behalf of other persons restricted to authorized representatives

42. (1) No person shall purchase, sell, receive or dispose of any unpolished diamond on behalf of any other person unless such first-mentioned person is -

(a) a natural person; and

(b) registered as an authorized representative of such other person in terms of section 43.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Application for registration of authorized representatives

43. (1) Any person who is in terms of this Act entitled to purchase, sell, receive or dispose of any unpolished diamonds and who wishes to appoint another natural person as his or her authorized representative to purchase, sell, receive or dispose of any unpolished diamonds on his or her behalf, shall apply to the Minister on the prescribed form for the registration of such other person as his or her authorized representative.

(2) An application in terms of subsection (1) shall contain -

(a) such particulars as the Minister may prescribe; and

(b) such additional particulars relating to such application as the Minister may reasonably require.

(3) The Minister may conduct such investigation regarding an application for the registration of an authorized representative as he or she may deem fit.

(4) The Minister may at his or her discretion grant or refuse an application for the registration of an authorized representative, but the Minister shall-

(a) not granted any such application if he or she is of the opinion-

(i) that the person in respect of whom the application is made is a person referred to in section 5 (b), (c), (d), (e), (f) or (g), the provisions of which shall *mutatis mutandis* apply;

(ii) that the person in respect of whom the application is made does not comply with the prescribed requirements; or

(iii) that a sufficient number of authorized representatives have already been registered in respect of the applicant;

(b) grant or refuse such an application within 30 days from the date of receipt thereof.

(5) If the Minister refuses an application for the registration of an authorized representative, the Commissioner shall notify the applicant in writing of the decision of the Minister.

(6) If the Minister grants an application for the registration of an authorized representative, he or she may determine any condition in respect of such registration.

(7) Subject to the provisions of subsection (8), the Minister may by notice in writing to an authorized representative and to the person he or she is authorized to represent at any time -

(a) cancel or vary any condition determined under subsection (6); or

(b) impose any reasonable condition or any further reasonable condition in respect of the registration of such authorized representative.

(8) Anything validly done by an authorized representative before the cancellation or variation of any condition under subsection (7)(a) or the imposition of any condition or further condition under subsection (7)(b), shall remain valid.

(9) If the Minister grants an application referred to in subsection (1), the Commissioner shall register the natural person concerned as an authorized representative of the applicant and issue to the applicant a certificate of registration as an authorized representative of the applicant on the prescribed form.

(10) Whenever an authorized representative is engaged in any activity within the scope of his or her duties as such an authorized representative, he or she shall, at the request of any person affected by such activity, produce his or her certificate of registration to such person for inspection.

(11) If -

(a) an authorized representative or the person he or she is authorized to represent has contravened or failed to comply with a condition of registration determined or imposed under subsection (6) or (7); or

(b) an authorized representative becomes subject to any disqualification or no longer complies with any requirement contemplated in paragraphs (a) and (b), respectively, of subsection (4),

the Minister may by notice in writing request the authorized representative and the person he or she is authorized to represent, to show cause within the period specified in that notice, but not being less than 30 days after the date of that notice, why the registration in question should not be suspended or cancelled.

(12) Upon the expiry of the period referred to in subsection (11), the Minister may -

(a) suspend the registration in question for such period as he or she may determine; or

(b) cancel that registration with effect from such date as he or she may determine.

(13) Any person who has appointed a registered authorized representative shall, upon termination of such appointment, inform the Minister in writing of such termination.

(14) Whenever an authorized representative ceases to be such, he or she shall, within 30 days after having ceased to be such, return his or her certificate of registration to the Commissioner.

(15) Any person who fails to comply with a provision of subsection (1), (10), (13) or (14) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Unpolished diamonds sold or disposed of to processors of diamonds to be valued and sealed before delivery

44. (1) Whenever any person referred to in section 31(1) sells or otherwise disposes of any unpolished diamond to a cutter, tool-maker, researcher or holder of a permit referred to in section 27(f), or to any authorized representative of such cutter, tool-maker, researcher or holder of a permit, such person shall, before delivery of the unpolished diamond, submit that diamond to the Minister for determination of its market value in terms of subsection (2).

(2) For the purpose of subsection (1), the market value of any unpolished diamond shall be determined in writing by the Minister having regard to the value agreed upon between the person who sells or otherwise disposes of that diamond and the person to whom that diamond is sold or otherwise disposed of in an at arm's-length sale and prices which are in the opinion of the Minister at the particular time paid on international markets for such diamonds,

less any amounts deducted in respect of fees, charges or levies which are in the opinion of the Minister charged on international markets.

(3) After valuation in terms of the preceding subsections, the unpolished diamond in question shall, before being released for sale or disposal, be made up in a parcel and sealed in such manner as the Minister may prescribe or otherwise determine.

(4) The person who sells or otherwise disposes of the unpolished diamond sealed in terms of subsection (3) shall deliver, and the person who receives or purchases that diamond shall take delivery of, that diamond in the sealed parcel referred to in that subsection.

(5) If the sale or disposal of any unpolished diamond contained in a sealed parcel referred to in subsection (3) is subsequently cancelled or rescinded, that sealed parcel shall be dealt with in such manner as the Minister may prescribe in general or direct in particular.

(6) Any person who fails to comply with a provision of subsection (1), (4) or (5) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Unpolished diamonds to be valued and sealed before export

45. (1) Subject to the provisions of subsection (2), no person shall export any unpolished diamond from Namibia unless that diamond has been submitted to the Minister for determination of its market value in terms of subsection (3).

(2) The provisions of subsection (1) shall not apply in respect of diamondiferous concentrate or any sand, soil, clay, gravel, stone, rock or mineral which may contain unpolished diamonds.

(3) For the purpose of subsection (1), the market value of any unpolished diamond shall be determined in writing by the Minister having regard to the value agreed upon between the person who sells or otherwise disposes of that diamond and the person to whom that diamond is sold or otherwise disposed of in an at arm's-length sale and prices which are in the opinion of the Minister at the particular time paid on international markets for such diamonds, less any amounts deducted in respect of fees, charges or levies which are in the opinion of the Minister charged on international markets.

(4) (a) After valuation in terms of subsections (1) and (3), the unpolished diamond in question shall, before being released for export, be made up in a parcel and sealed in such manner as the Minister may prescribe or otherwise determine.

(b) The unpolished diamond so sealed -

(i) shall not be dealt with otherwise than to be exported;

(ii) shall not be exported otherwise than in that sealed parcel.

(5) Any person who contravenes or fails to comply with a provision of subsection (1) or (4)(b) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Registers in respect of unpolished diamonds

46. (1) Every producer, contractor, sub-contractor, holder of an exclusive prospecting licence or a non-exclusive prospecting licence and licensee shall at the prescribed place or places keep or cause to be kept the prescribed register, in which shall be entered the prescribed particulars in respect of unpolished diamonds: Provided that the holder of an exclusive prospecting licence or a non-exclusive prospecting licence shall keep or cause to be kept such register only from such time as he or she has first won, recovered or found unpolished diamonds in accordance with the terms and conditions of any such licence.

(2) Every entry referred to in subsection (1) shall be made immediately after the occurrence of the event recorded, or within such longer period as the Minister may authorize in writing.

(3) Every person required to keep a register in terms of subsection (1) shall, within 14 days after the end of each month, transmit or deliver to the Commissioner a true copy of such register kept in respect of that month, together with a solemn declaration in writing of the truth and correctness thereof.

(4) Every person required to keep a register in terms of subsection (1) shall retain such register for a period of at least three years after the date on which the last entry was recorded therein.

(5) Any person who fails to comply with a provision of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Notes of receipt or purchase in respect of unpolished diamonds

47. (1) Whenever any licensee or holder of a permit referred to in section 27(c) receives or purchases, whether through an authorized representative or otherwise, any unpolished diamond, such licensee or holder of a permit shall forthwith complete in duplicate a note of receipt or purchase on the prescribed form.

(2) The original of every note of receipt or purchase completed in terms of subsection (1) shall be handed over to the person who delivered or sold the unpolished diamond, and the copy thereof shall be retained by the licensee or holder of a permit who so completed such notice for a period of at least three years after the date on which he or she received or purchased the unpolished diamond.

(3) Whenever any person referred to in paragraph (a), (b), (c) or (d) of section 31(1) delivers or sells, whether through an authorized representative or otherwise, any unpolished diamond he or she shall require the person to whom the unpolished diamond is delivered or sold to hand over to him or her the original of every note of receipt or purchase completed in terms of subsection (1), and he or she shall retain such original note for a period of at least three years after the date on which he or she delivered or sold the unpolished diamond.

(4) Any person who fails to comply with a provision of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Security check of persons employed or engaged in certain activities relating to unpolished diamonds

48. (1) No producer, holder of an exclusive prospecting licence or licensee shall permit any employee or other natural person to engage in any activity or operation of or on behalf of such producer, holder of an exclusive prospecting licence or licensee which is related to the winning, recovery, possession, purchase, sale, disposal, export, delivery, receipt, processing, sampling or handling of unpolished diamonds, or which is such that it would be reasonable to foresee that any such employee or natural person may have access to unpolished diamonds unless -

(a) such producer, holder of an exclusive prospecting licence or licensee has performed a security check on such employee or natural person in the prescribed manner; and

(b) the results of such security check indicate that such employee or natural person is according to the prescribed criteria suitable to be engaged in such activity or operation.

(2) If at any time any employee or natural person referred to in subsection (1) who is engaged in any activity or operation contemplated in that subsection has pursuant to a security check referred to in paragraph (a) of that subsection become unsuitable to be so engaged, the producer, holder of an exclusive prospecting licence or licensee on whose behalf such activity or operation is being carried out, shall forthwith ensure that such employee or natural person ceases to be so engaged.

(3) Any producer, holder of an exclusive prospecting licence or licensee who contravenes or fails to comply with a provision of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Approval of contractors and sub-contractors

49. (1) No -

(a) producer or holder of an exclusive prospecting licence shall enter into any agreement with any person whereby such person would become a contractor;

(b) contractor or sub-contractor shall enter into any agreement with any person whereby such person would become a sub-contractor,

unless, in the case of an agreement in terms of paragraph (a), the producer or holder of the exclusive prospecting licence, or, in the case of an agreement in terms of paragraph (b), the producer or holder of the exclusive prospecting licence on whose behalf any unpolished diamonds are ultimately to be won, recovered or prospected for, has applied for and obtained the written approval of the Minister of such person.

(2) Any application in terms of subsection (1) shall contain such particulars relating to such application as the Minister may reasonably require.

(3) The Minister may, before deciding on any application for approval in terms of subsection (1), conduct such investigation regarding the application as he or she may deem fit.

(4) The Minister may at his or her discretion grant or refuse an application for approval made under subsection (1), but the Minister shall refuse such application if he or she is satisfied that the person in respect of whom the application is made is subject to any disqualification contemplated in section 5(d), (e), (f) or (g), the provisions of which shall *mutatis mutandis* apply .

(5) (a) The Commissioner shall notify the applicant in writing of the decision of the Minister under subsection (4).

(b) If such approval is granted, the agreement to which such approval relates may be entered into.

(6) The approval and notification required in terms of subsections (1) and (5)(a), respectively, shall be given to the applicant within 60 days from the date of the application for approval, failing which, the agreement to which such application relates may be entered into without such approval and notification.

(7) If at any time a contractor or sub-contractor becomes subject to any disqualification referred to in subsection (4), or fails to comply with any term or condition referred to in section 24, the Minister shall by notice in writing request such contractor or sub-contractor and the person with whom such contractor or sub-contractor has entered into an agreement under subsection (5)(b) to show cause within the period specified in that notice, but not being less than 30 days after the date of that notice, why the approval granted to him or her should not be suspended or revoked.

(8) Upon the expiry of the period referred to in subsection (7), the Minister may -

(a) suspend the approval in question for such period as he or she may determine; or

(b) revoke that approval with effect from such date as he or she may determine.

(9) If the Minister suspends or revokes an approval under subsection (8), all activities under the agreement to which such approval relates shall forthwith be suspended.

(10) For the purposes of subsection (4) "person", and for the purposes of subsection (7) "contractor" and "sub-contractor", includes -

(a) in the case of a partnership, any partner thereof; or

(b) in the case of a company, any director thereof or any person holding a controlling interest therein; or

(c) in the case of a close corporation, any member thereof or any person holding a controlling interest therein; or

(d) any other person who, by virtue of an agreement with the person referred to in subsection (4) or with the contractor or sub-contractor referred to in subsection (7) or by virtue of any direct or indirect interest in such last-mentioned person or such contractor or sub-contractor or by any other means, is able to exert influence over the conduct of the affairs of such last-mentioned person or such contractor or sub-contractor, as the case may be.

(11) A contractor or sub-contractor shall without delay inform the Minister and the producer or holder of an exclusive prospecting licence concerned in writing -

(a) in the case of a contractor or sub-contractor who is a natural person, whenever he or she, or any of his or her employees engaged in his or her activities or operations as such a contractor or sub-contractor, as the case may be, become subject to any disqualification contemplated in section 5(d), (e) or (f), the provisions of which shall *mutatis mutandis* apply; or

(b) in the case of a contractor or sub-contractor which is a partnership, company or close corporation -

(i) of any changes of its partners, directors or members, or any person referred to in subsection (10)(b), (c) or (d), as the case may be;

(ii) whenever any of its partners, directors or members, or any person referred to in subsection (10)(b), (c) or (d), as the case may be, becomes subject to any disqualification contemplated in section 5(d), (e) or (f), the provisions of which shall *mutatis mutandis* apply.

(12) The provisions of subsections (7), (8), (9) and (10), in so far as subsection (10) refers to subsection (7), and of subsection (11) shall *mutatis mutandis* apply to any person who at the date of commencement of this Act is a contractor or sub-contractor.

(13) Any person who contravenes or fails to comply with a provision of subsection (1), (9) or (11) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$250 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Approval of security plan

50. (1) Every producer, contractor, sub-contractor, holder of an exclusive prospecting licence and licensee shall within a reasonable period submit for approval by the Minister a security plan in which are set out such particulars as the Minister may prescribe in relation to -

(a) security systems or procedures regarding the security, transport and safe-keeping of unpolished diamonds;

(b) security systems regarding the movement of employees and other persons in the relevant area of operations or business premises;

(c) any other relevant security systems or procedures,

which are to be followed or put in place or maintained.

(2) The Minister may grant or refuse approval of a security plan submitted in terms of subsection (1), but, if approval is refused, the Minister shall -

(a) provide reasonable instructions, standards or guidelines with which the security plan should comply; and

(b) determine a reasonable period for compliance with such instructions, standards or guidelines.

(3) (a) Unless the Minister otherwise directs, a producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee may, pending a decision by the Minister under this section, commence or continue operations.

(b) Notwithstanding the provisions of paragraph (a), if any instructions, standards or guidelines provided by the Minister in terms of subsection (2)(a) have not been complied with within the period determined by the Minister in terms of subsection (2)(b), the producer, contractor, sub-contractor, holder of an exclusive

prospecting licence or licensee concerned shall forthwith discontinue such operations unless good cause is shown why such operations should not be discontinued.

(4) The Minister may grant approval of a security plan subject to such conditions as he or she may determine.

(5) The Minister may at any time after approval of a security plan has been granted -

(a) cancel or vary any condition to which such approval is subject; or

(b) impose any reasonable condition or any further reasonable condition in respect of such approval, if the results of an investigation or inspection by the Minister indicate that it would be appropriate to impose such a condition.

(6) No producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee shall, without the prior written approval of the Minister, amend his or her security plan approved under subsection (2).

(7) Any producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee who -

(a) contravenes or fails to comply with a provision of subsection (1), (3)(b) or (6); or

(b) materially fails to comply with any provision of his or her security plan approved under subsection (2); or

(c) fails to comply with a direction under subsection (3)(a),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Unpolished diamonds found or picked up by chance

51. (1) Any person who by chance finds or picks up any unpolished diamond at any place outside a restricted area where such person is not permitted to prospect or mine for diamonds in terms of the Minerals (Prospecting and Mining) Act, shall forthwith take that diamond to the nearest police official on duty and deliver it to him or her.

(2) If the Inspector-General or any other police official designated by him or her -

(a) is satisfied that a person is the owner of a diamond referred to in subsection (1) or is entitled to be in possession thereof, he or she shall deliver that diamond to such person; or

(b) is not so satisfied, he or she shall cause a notice to be published in the *Gazette*,and in one newspaper circulating in the magistrate's court district in which that diamond was allegedly found or picked up, calling upon any person who may be the owner of that diamond or entitled to be in possession thereof to prove his or her ownership or right of possession.

(3) If no person furnishes proof to the satisfaction of the Inspector-General or designated police official of his or her ownership or right of possession within 21 days after the date of publication of the later of the two notices referred to in subsection (2)(b), the Inspector-General or designated police official shall cause the diamond in question to be sold and the proceeds thereof shall, subject to the provisions of subsection (4), be paid into the State Revenue Fund.

(4) If the Inspector-General or designated police official is satisfied that the diamond in question was found or picked up in the circumstances contemplated in subsection (1), he or she shall pay to the person who so found or picked up that diamond an amount calculated at one-third of the amount realized at the sale in terms of subsection (3).

(5) Whenever a diamond has been delivered in terms of subsection (2)(a) to the owner of such diamond or the person entitled to be in possession thereof, such owner or person shall within 60 days of such delivery pay to the person who so found or picked up the diamond by chance an amount calculated at one-third of the fair market value of such diamond as determined by the Minister.

(6) Any person who fails to comply with a provision of subsection (1) or (5) shall be guilty of an offence and on conviction be liable -

(a) in the case of a conviction under subsection (1), to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment; or

(b) in the case of a conviction under subsection (5), to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Restricted areas

52. (1) The areas referred to in subsection (2) shall for the purposes of this Act be restricted areas in which, except as hereinafter in this section provided, no person other than -

(a) a member of the Namibian Police Force;

(b) an inspector of mines appointed as such under section 4(2) of the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968);

(c) the Commissioner;

(d) a diamond inspector;

(e) the Mining Commissioner appointed as such under section 4(1) of the Minerals (Prospecting and Mining) Act and any officer authorized thereto by the Mining Commissioner under section 5(1)(a) of that Act;

(f) a labour inspector appointed as such under section 3(1) of the Labour Act, 1992 (Act No. 6 of 1992);

(g) a fishery control officer designated under section 5 of the Sea Fisheries Act, 1992 (Act No. 29 of 1992);

(h) any staff member authorized thereto by the Permanent Secretary in writing,

acting in the ordinary performance of his or her duties, shall enter, reside, travel, work or be without a permit contemplated in section 27(k): Provided that every such permit shall specify the restricted area, or part thereof, for which it is granted.

(2) A restricted area shall be -

(a) any area in which onshore diamond mining in terms of the Minerals (Prospecting and Mining) Act may be carried on: Provided that every area of land in respect of which a licence under that Act has been issued shall be a separate restricted area notwithstanding that more than one licence has been so issued to the same person in respect of adjoining pieces of land;

(b) any area in which onshore bulk sampling for diamonds in terms of an exclusive prospecting licence or a mineral deposit retention licence in terms of the Minerals (Prospecting and Mining) Act is being carried on;

(c) any diamond prospecting or mining vessel registered in terms of section 57(1), unless the Minister has on application declared in writing such vessel not to be a restricted area;

(d) any installation, equipment or attachment used in conjunction with a vessel referred to in paragraph (c) and used for mining of or prospecting for diamonds offshore, unless the Minister has on application declared in writing such installation, equipment or attachment not to be a restricted area;

(e) any place where processing of diamondiferous concentrate, or processing of gravel with the intention of recovering diamonds, takes place;

(f) any area declared to be restricted by the Minister by notice in the *Gazette*.

(3) Any restricted area shall be clearly indicated by the display of adequate signs to be a restricted area.

(4) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Possession of diamondiferous concentrate

53. (1) Notwithstanding anything to the contrary in any other law contained, no person shall have in his or her possession any diamondiferous concentrate outside any restricted area unless such person is -

(a) a producer, contractor, sub-contractor or holder of an exclusive prospecting licence who is transporting such diamondiferous concentrate in accordance with his or her security plan referred to in section 50;

(b) in respect of such diamondiferous concentrate the holder of a permit referred to in section 27(g); or

(c) in possession of such diamondiferous concentrate while acting in the course and scope of or in the execution of a lawful agreement to which any person referred to in paragraph (a) or (b) is a party, proof of which shall be on such first-mentioned person.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Export of diamondiferous concentrate

54. (1) Notwithstanding anything to the contrary in any other law contained, no person shall export any diamondiferous concentrate from Namibia without a permit contemplated in section 27(h) unless such person is acting in the course and scope of or in the execution of a lawful agreement to which the holder of such permit is a party, proof of which shall be on the person so acting.

(2) All unpolished diamonds won or recovered from diamondiferous concentrate exported from Namibia in accordance with the provisions of subsection (1) shall be returned to Namibia within such period as is specified in the permit referred to in that subsection, accompanied by such documents as may be specified in such permit.

(3) Any person who contravenes or fails to comply with a provision of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Removal of sand, soil, clay, gravel, stone, rock or mineral from restricted areas

55. (1) Notwithstanding anything to the contrary in any other law contained, no person shall remove any sand, soil, clay, gravel, stone, rock or mineral from a restricted area unless such person is -

(a) a producer, contractor, sub-contractor or holder of an exclusive prospecting licence who is removing such sand, soil, clay, gravel, stone, rock or mineral in accordance with his or her security plan referred to in section 50;

(b) in respect of such sand, soil, clay, gravel, stone, rock or mineral the holder of a permit referred to in section 27(i); or

(c) removing such sand, soil, clay, gravel, stone, rock or mineral while acting in the course and scope of or in the execution of a lawful agreement to which any person referred to in paragraph (a) or (b) is a party, proof of which shall be on such first-mentioned person.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Export of sand, soil, clay, gravel, stone, rock or mineral reasonably believed may contain diamonds

56. (1) Notwithstanding anything to the contrary in any other law contained, no person shall export from Namibia any sand, soil, clay, gravel, stone, rock or mineral which such person has reason to believe may contain unpolished diamonds without a permit contemplated in section 27(j) unless such person is acting in the course and scope of or in the execution of a lawful agreement to which the holder of such permit is a party, proof of which shall be on the person so acting.

(2) All unpolished diamonds won or recovered from sand, soil, clay, gravel, stone, rock or mineral exported from Namibia in accordance with the provisions of subsection (1) shall be returned to Namibia within such period as is specified in the permit referred to in that subsection, accompanied by such documents as may be specified in such permit.

(3) Any person who contravenes or fails to comply with a provision of this section shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

PART VII
DIAMOND PROSPECTING OR MINING VESSELS

Registration of diamond prospecting or mining vessels

57. (1) Every producer, holder of an exclusive prospecting licence, contractor and sub-contractor engaged in offshore prospecting or mining shall in the prescribed manner register any vessel in use or to be used by him or her as a diamond prospecting or mining vessel.

(2) The Minister may determine conditions -

(a) in relation to the display of the registration number allocated in respect of any diamond prospecting or mining vessel;

(b) in relation to the use by any diamond prospecting or mining vessel of the landing, handling or any other facilities in a particular harbour;

(c) specifying the type of surveillance system, equipment, gear, apparatus or installation which shall or may be on board of any diamond prospecting or mining vessel;

(d) regulating the transfer of any person or thing to or from any diamond prospecting or mining vessel;

(e) in relation to the inspection of any diamond prospecting or mining vessel, whether at sea or in a harbour;

(f) providing for, with due regard to security and the costs involved, the placement on board the diamond prospecting or mining vessel of diamond inspectors or other staff members or other persons designated by the Minister, to observe diamond prospecting or mining operations;

(g) regarding the terms of engagement by any diamond prospecting or mining vessel with any other vessel or aircraft;

(h) in relation to the reporting of -

(i) the entry into or departure from the Namibian waters of any diamond prospecting or mining vessel;

(ii) the position of any diamond prospecting or mining vessel; or

(iii) the commencement and termination of diamond prospecting or mining operations by any diamond prospecting or mining vessel; or

(i) in relation to the reporting of any particulars of diamonds won or recovered by means of such diamond prospecting or mining vessel.

(3) The Minister may at any time cancel or vary any condition determined under subsection (2) or determine any further reasonable condition.

(4) Any person referred to in subsection (1) who has registered a diamond prospecting or mining vessel in terms of that subsection shall, within 21 days after -

(a) any alteration to the diamond prospecting or mining vessel in question, including a change in the name thereof, which renders the description thereof incorrect or inapplicable; or

(b) such person has sold the diamond prospecting or mining vessel in question or ceased to use it as a diamond prospecting or mining vessel,

furnish the Commissioner with particulars of any such event in writing.

(5) Any person who uses as a diamond prospecting or mining vessel any vessel which is not registered in terms of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

(6) Any person who fails to comply with any condition determined by the Minister under subsection (2) or (3) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$250 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(7) Any person who fails to comply with a provision of subsection (4) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART VIII
SPECIAL POWERS OF MINISTER RELATING TO DIAMOND INDUSTRY, INFORMATION AND ENQUIRIES

Securing regular supply of unpolished diamonds for diamond processing

58. (1) In order that a regular supply of unpolished diamonds of such quantities, classes, qualities and descriptions as may be required by any cutter, tool-maker or researcher may be secured by the cutter, tool-maker or researcher concerned, the Minister may, subject to the provisions of subsection (2), from time to time by written notice to any producer require the producer to make available for sale to that cutter, tool-maker or researcher, during a period specified in that notice, such quantities, classes, qualities and descriptions of unpolished diamonds as the Minister may by that notice reasonably fix and determine.

(2) No notice shall be given by the Minister to any producer under subsection (1) unless the cutter, tool-maker or researcher concerned has been unable by agreement with any producer or dealer to acquire, on reasonable terms and conditions of sale, a regular supply of unpolished diamonds of such quantities, classes, qualities and descriptions as will enable that cutter, tool-maker or researcher to carry on without interruption the diamond cutting, tool-making operations or research and tests authorized by his or her licence.

(3) The Minister shall in the notice given under subsection (1) also fix and determine terms and conditions of sale in accordance with the provisions of subsections (5) and (6), and the purchase price shall be paid against delivery of the unpolished diamonds.

(4) The producer concerned shall on the written demand of the cutter, tool-maker or researcher concerned sell to him or her unpolished diamonds in accordance with the terms and conditions of sale fixed and determined by the Minister by the notice given under subsection (1).

(5) The terms and conditions of sale reasonably fixed and determined by the Minister by the notice given under subsection (1) shall prescribe that the prices to be paid by the cutter, tool-maker or researcher concerned to the producer concerned for the unpolished diamonds to be supplied in terms of that notice shall be in accordance with the current market price of the unpolished diamonds arrived at on the basis of the prices obtained by that producer.

(6) The terms and conditions of sale reasonably fixed and determined by the Minister by the notice given under subsection (1) shall also include provisions as to -

(a) the proof to be adduced as to the prices obtained by the producer concerned and the manner in which the prices of the unpolished diamonds to be sold to the cutter, tool-maker or researcher concerned were determined;

(b) the manner in which all questions and disputes which may arise between that cutter, tool-maker or researcher and that producer in regard to such sale shall be finally settled; and

(c) fair and equitable arrangements between that cutter, tool-maker and researcher and that producer in respect of any matter arising under this Act in regard to such sale.

(7) Any producer who fails to comply with a provision of subsection (4) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Measuring of international market prices of unpolished diamonds

59. (1) If the Minister is satisfied that it is necessary in order to measure international market prices for unpolished diamonds, he or she may, subject to the provisions of subsection (2), from time to time by written notice to any producer, holder of an exclusive prospecting licence or dealer engaged in the sale of unpolished diamonds require such producer, holder of an exclusive prospecting licence or dealer to sell during a period specified in that notice, but no exceeding six months in any calendar year, by such means and on such terms and conditions customary in the diamond trade, such quantities, classes, qualities and descriptions of unpolished diamonds as the Minister may by that notice reasonably specify.

(2) No notice shall be given by the Minister under subsection (1) unless he or she is satisfied that the net proceeds received by the producer, holder of an exclusive prospecting licence or dealer concerned from the sale of unpolished diamonds specified in that notice -

(a) will not be less than the net proceeds that, but for that notice, would have been received by that producer, holder of an exclusive prospecting licence or dealer from the sale of unpolished diamonds so specified; and

(b) will not exceed, during any calendar year, 10 per cent of the net proceeds received by that producer, holder of an exclusive prospecting licence or dealer from the sale of all unpolished diamonds sold by that producer, holder of an exclusive prospecting licence or dealer during that year.

(3) Any producer, holder of an exclusive prospecting licence or dealer to whom a notice under subsection (1) is directed, shall sell the unpolished diamonds specified in that notice in accordance with the terms of that notice.

(4) Any producer, holder of an exclusive prospecting licence or dealer who fails to comply with a provision of subsection (3) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Furnishing Minister with information

60. (1) The Minister may in writing direct any person -

(a) to furnish the Minister periodically or otherwise and before the dates or within the period specified in the direction with such information as the Minister may consider necessary to effectively perform his or her functions under this Act and as may be available to any such person;

(b) to submit to the Minister within the period specified in the direction any register, book or document in the possession or custody or under the control of any such person which contains or is believed to contain any such information.

(2) The Minister may require that information requested under subsection (1)(a) be furnished in the form of a sworn statement.

(3) The Minister may examine a register, book or document submitted to him or her in terms of subsection (1)(b) or make an extract therefrom or a copy thereof.

(4) Any person who fails to comply with a direction under subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Enquiries by Minister

61. (1) The Minister may enquire into any matter to which this Act relates.

(2) For the purposes of an enquiry under subsection (1), the Minister may -

(a) by written notice summon any person who in the opinion of the Minister may be able to give information of material importance concerning the subject matter of the enquiry, or who the Minister suspects or believes has in his or her possession or custody or under his or her control any register, book, document or thing which may have a bearing on the subject matter of the enquiry, to appear before the Minister at the time and place specified in that notice, to be examined or to produce such register, book, document or thing;

(b) call upon, and administer an oath to or accept an affirmation from, any person present at the enquiry who was summoned under paragraph (a);

(c) examine any person who was called upon under paragraph (b) or require such person to produce any register, book, document or thing referred to in paragraph (a).

(3) A notice contemplated in subsection (2)(a) shall be served in the prescribed manner.

(4) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or thing before a court of law, shall *mutatis mutandis* apply in respect of the examination of, or the production of a register, book, document or thing to the Minister by, any person referred to in subsection (2)(c).

(5) Any person who -

(a) having been duly summoned under subsection (2)(a), without sufficient cause fails -

(i) to attend at the time and place specified in the notice contemplated in that subsection; or

(ii) to remain in attendance until excused from further attendance by the Minister; or

(b) having been called upon under subsection (2)(b), refuses to be sworn or to affirm as a witness; or

(c) without sufficient cause fails -

(i) to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her under subsection (2)(c); or

(ii) to produce any register, book, document or thing in his or her possession or custody or under his or her control which he or she has been required to produce under subsection (2)(c),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART IX
FINANCIAL MATTERS

Duties payable on unpolished diamonds

62. (1) Subject to the provisions of subsections (4) and (5) of this section, any person who is in terms of section 36(1) entitled to export unpolished diamonds from Namibia and who wishes to so export any unpolished diamond shall, before the release of that diamond by the Minister following valuation thereof in terms of section 45,

pay to the Commissioner, in accordance with the provisions of subsection (2) of this section, a duty at a rate of 10 per cent of the value of that diamond as determined by the Minister in terms of the last-mentioned section.

(2) Whenever the Minister has made a determination under section 63(1), the Commissioner shall direct that payment of any duty payable in terms of subsection (1) of this section be made to the Commissioner in two parts in such amounts as specified by the Commissioner having regard to such determination: Provided that -

(a) the part which consists of a percentage of the duty payable in terms of subsection (1) of this section and which has been determined under section 63(1), shall be paid to the Commissioner for the benefit of the Diamond Valuation Fund established by that section; and

(b) the other part shall be paid to the Commissioner for the benefit of the State Revenue Fund.

(3) Notwithstanding anything to the contrary in any other law contained, any person -

(a) who is liable to pay a duty in terms of subsection (1) in respect of any unpolished diamond; or

(b) in respect of whom -

(i) any such duty was remitted or refunded; or

(ii) payment of any such duty was deferred,

under subsection (7),

shall be exempt from liability to pay any royalty which he or she may be required to pay in terms of the Minerals (Prospecting and Mining) Act in respect of that diamond.

(4) No person shall be liable to pay any duty in terms of subsection (1) in respect of any unpolished diamond, if any such duty has already been paid in respect of that diamond or if any royalty has already been paid in respect of that diamond in terms of the Minerals (Prospecting and Mining) Act, proof of any such payment being on the person claiming to be exempt from liability in terms of this section.

(5) No person shall be liable to pay any duty in terms of subsection (1) in respect of any unpolished diamond not won or recovered in Namibia, proof of which shall be on the person claiming to be exempt from liability in terms of this section: Provided that the provisions of subsection (1) shall apply in respect of the export of any unpolished diamond which was won or recovered outside Namibia from diamondiferous concentrate, sand, soil, clay, gravel, stone, rock or mineral previously exported from Namibia and which was returned to Namibia in terms of section 54(2) or 56(2), as the case may be.

(6) Notwithstanding anything to the contrary in any other law contained, no person who sells or otherwise disposes of any unpolished diamond to a licensee shall be required to pay any royalty in terms of the Minerals (Prospecting and Mining) Act in respect of that diamond.

(7) Notwithstanding anything to the contrary contained in the State Finance Act, 1991 (Act No. 31 of 1991), the Minister in consultation with the Minister of Finance may, on application made to him or her in writing by any person referred to in subsection (1) -

(a) by notice in writing to such person -

(i) remit, either wholly or partly, any duty payable in terms of subsection (1); or

(ii) defer payment of any such duty; or

(b) refund, either wholly or partly, any duty paid in terms of subsection (1),

on such conditions as may be determined by the Minister and specified in that notice, or the Minister may refuse to so remit or refund such duty or to so defer such payment.

(8) The Minister shall, not later than 30 June in each year, lay upon the Table of the National Assembly a report showing -

(a) the full names of all persons in respect of whom duties were remitted or refunded or payments of duties were deferred under subsection (7) during the financial year which ended in that year; and

(b) the amounts remitted, refunded or deferred and the reasons for such remission, refund or deferment.

Diamond Valuation Fund

63. (1) There is hereby established a fund to be known as the Diamond Valuation Fund, which shall consist of such percentage of the duties paid to the Commissioner in terms of section 62(1) as the Minister may, after consultation with the Minister of Finance, determine to be necessary for the purposes referred to in subsection (2).

(2) The moneys available in the Diamond Valuation Fund shall be utilized to defray the cost of valuation of any unpolished diamond pursuant to the provisions of this Act and to defray the expenses incurred in administering the said Fund.

(3) The Permanent Secretary shall -

(a) be responsible for the administration of the Diamond Valuation Fund; and

(b) be the accounting officer of the said Fund, and as such be charged with the responsibility of accounting for all moneys accruing to and payments made out of the said Fund.

(4) The financial year of the Diamond Valuation Fund shall end on 31 December of each year.

(5) The Permanent Secretary shall open one or more accounts in the name of the Diamond Valuation Fund with a financial institution, and shall deposit into that account or those accounts all moneys accruing to the said Fund in terms of this Part.

(6) The Permanent Secretary shall keep proper accounts and records of all moneys accrued to and payments made out of the Diamond Valuation Fund.

(7) Subject to the provisions of subsections (8) and (9), the Permanent Secretary shall as soon as possible, but not later than three months after the end of each financial year, prepare, or cause to be prepared, and submit to the Minister annual financial statements in respect of the financial year in question, together with a report by the Auditor-General or, if appointed by the Auditor-General, the auditor so appointed, relating to such statements.

(8) The annual financial statements referred to in subsection (7) shall contain -

(a) detailed particulars of all moneys accrued to and expenditure incurred by the Diamond Valuation Fund during the financial year in question; and

(b) such additional particulars as the Minister may determine.

(9) The accounts and records and the annual financial statements referred to in subsections (6) and (7), respectively, shall be examined and audited by the Auditor-General or by an auditor appointed for that purpose by the Auditor-General at the expense of the Diamond Valuation Fund.

(10) The Permanent Secretary shall, not later than three months before the commencement of each financial year, submit to the Minister a copy of the annual budget reflecting the estimated expenditure of the Diamond Valuation Fund for the next ensuing financial year: Provided that the Permanent Secretary may at any time during any financial year submit to the Minister an additional budget reflecting any additional expenditure of the said Fund for that financial year.

(11) The Minister shall lay upon the Table of the National Assembly all the statements and the audit report received by him or her in terms of subsection (7), within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

(12) Any unexpended balance in the Diamond Valuation Fund at the close of each financial year -

(a) not exceeding an amount equal to the amount required for the estimated expenditure of the said Fund for its next ensuing financial year, shall be carried forward to the next ensuing financial year as a credit to the said Fund;

(b) exceeding an amount equal to the amount required for the estimated expenditure of the said Fund for its next ensuing financial year, shall -

(i) to the extent that such balance does not exceed such amount, be carried forward as contemplated in paragraph (a);

(ii) to the extent that such balance exceeds such amount, be deposited into the State Revenue Fund.

PART X
POLISHED DIAMONDS

Export of polished diamonds

64. (1) Any person who intends to export from Namibia any polished diamonds of a prescribed weight shall notify the Minister thereof in the prescribed manner at least 14 days before such intended export.

(2) The Minister may, within the period of 14 days referred to in subsection (1), examine the polished diamonds which are intended for export in order to determine whether those diamonds are in fact polished diamonds.

(3) For the purpose of exercising the power conferred by subsection (2), the Minister may direct the person who intends to export the polished diamonds in question to submit those diamonds to him or her for examination.

(4) (a) If the Minister is satisfied that the diamonds examined by him or her under subsection (2) are polished diamonds, those diamonds shall, before being released for export, be made up in a parcel and sealed in such manner as the Minister may prescribe or otherwise determine.

(b) The polished diamonds so sealed shall not be exported otherwise than in that sealed parcel.

(5) If the Minister fails to examine the polished diamonds which are intended for export within the period of 14 days referred to in subsection (1), those diamonds may thereafter be exported without having been so examined or having been sealed in terms of subsection (4)(a).

(6) Any person who -

(a) contravenes or fails to comply with a provision of subsection (1) or (4)(b); or

(b) fails to comply with a direction under subsection (3),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

PART XI
SEARCH, SEIZURE AND ARREST AND OTHER MISCELLANEOUS POWERS

Designation of diamond inspectors

65. (1) The Minister may, on the recommendation of the Public Service Commission and subject to the laws governing the Public Service, designate posts in the Ministry of which the incumbents shall be diamond inspectors.

(2) The Minister in consultation with the Minister of Fisheries and Marine Resources may, on the recommendation of the Public Service Commission and subject to the laws governing the Public Service, designate by notice in the *Gazette* posts in the Ministry of Fisheries and Marine Resources of which the incumbents shall be

diamond inspectors: Provided that the diamond inspectors so designated shall exercise the powers conferred upon diamond inspectors by section 66 only in the restricted areas referred to in section 52(2)(c) and (d).

(3) The Minister may at any time withdraw or, in consultation with the Minister of Fisheries and Marine Resources, alter a designation made under subsection (2).

(4) Every diamond inspector designated under subsection (1) or (2) shall be furnished with an identity card stating that the person concerned has been designated as a diamond inspector under this Act.

(5) Whenever a diamond inspector exercises a power or performs a duty or function in terms of this Act, he or she shall, at the request of any person affected thereby, produce his or her identity card to such person for inspection.

Powers and duties of diamond inspectors and police officials

66. (1) In addition to any other powers conferred or duties imposed upon a diamond inspector or police official by or under any other law, the diamond inspector or police official may, subject to the provisions of subsections (3), (6) and (7) -

(a) board any diamond prospecting or mining vessel or installation, or enter any premises or other property or place or any vehicle, aircraft or other vessel, on which any activity in connection with unpolished diamonds is carried on and perform on any such diamond prospecting or mining vessel or installation or on any such premises, property, vehicle, aircraft or other vessel or at any such place such acts as may be necessary to ascertain whether the provisions of this Act have been or are being complied with;

(b) if he or she has reasonable grounds to suspect that an offence under this Act has been or is about to be committed in respect of any unpolished diamond, or has been or is about to be committed in respect of or by means of any machinery, and that such diamond or machinery is upon any diamond prospecting or mining vessel or installation or upon any premises, property, vehicle, aircraft or other vessel or at any place at any time board or enter and search any such diamond prospecting or mining vessel or installation or any such premises, property, vehicle, aircraft or other vessel or any such place, and search or cause to be searched any person thereupon or therein;

(c) if he or she has reasonable grounds to suspect that any machinery is used or intended for use in connection with the unlawful polishing of diamonds, examine, test or take photographs of such machinery;

(d) question any person who in his or her opinion may be capable of furnishing any information on any matter to which this Act relates, and for that purpose require any diamond prospecting or mining vessel or other vessel or any vehicle or aircraft to be stopped;

(e) if he or she has reasonable grounds to suspect that any person has committed an offence under this Act, search or cause to be searched any such person or any article in his or her possession or custody or under his or her control, including any clothing worn by such person, and arrest such person;

(f) require from any person who has in his or her possession or custody or under his or her control any register or document under this Act, to produce to him or her forthwith, or at such time and place as may be determined by him or her, any such register or document;

(g) if he or she has reasonable grounds to suspect that any parcel which is being or has been dispatched through the post or by means of a courier service contains any unpolished diamond, notwithstanding anything to the contrary in any other law contained, stop or cause to be stopped either during transit or otherwise any such parcel, and open and examine such parcel in the presence of the person by whom it was dispatched, or any other suitable person;

(h) seize any diamond, machinery, register, document or thing which appears to provide proof of a contravention of a provision of this Act.

(2) A diamond inspector shall in the exercise of his or her powers conferred by subsection (1) be deemed to be a peace officer, as defined in section 1 of the Criminal Procedure Act.

(3) A search of any person or dwelling under subsection (1) shall not be carried out without a search warrant unless -

(a) the person concerned or the owner or occupier of the dwelling, as the case may be, has consented to the search; or

(b) the diamond inspector or police official on reasonable grounds believes -

(i) that a search warrant will be issued if applied for; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.

(4) The provisions of sections 21 and 29 of the Criminal Procedure Act shall *mutatis mutandis* apply in relation to the obtaining and execution of a search warrant referred to in subsection (3), and to the execution of any search under this section, and for the purposes of such application a reference in the said sections to a police official shall be construed as including a reference to a diamond inspector.

(5) The provisions of section 39 of the Criminal Procedure Act shall *mutatis mutandis* apply in relation to the execution of any arrest under this section.

(6) A diamond inspector who receives information of an offence or suspected offence under this Act which has been or is about to be committed, or who arrests any person or seizes any diamond, machinery, register, document or other thing under subsection (1), shall without delay inform that unit of the Namibian Police Force charged with the protection of diamonds accordingly and communicate such information, or deliver such person, diamond, machinery, register, document or other thing, to the said unit of the Namibian Police Force.

(7) A diamond inspector may exercise the powers conferred by subsection (1) only -

(a) in a restricted area;

(b) on the business premises of any licensee;

(c) on premises approved under section 39 or 41; or

(d) on any other premises where any unpolished diamond or diamondiferous concentrate, or any sand, soil, clay, gravel, stone, rock or mineral which has been removed from a restricted area or which is reasonably believed may contain unpolished diamonds, is held or is reasonably suspected to be held by any producer, contractor, sub-contractor, holder of an exclusive prospecting licence or a non-exclusive prospecting licence, licensee, or holder of a permit referred to in section 27(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j):

Provided that a diamond inspector may exercise such powers in an area or on a premises other than an area or a premises referred to in paragraph (a), (b), (c) or (d) of this subsection, if -

(i) he or she reasonably believes that any person -

(aa) has committed an offence under this Act; and

(bb) is fleeing or escaping from an area or a premises referred to in paragraph (a), (b), (c) or (d) of this subsection; and

(ii) he or she follows such person from an area or a premises referred to in paragraph (a), (b), (c) or (d) of this subsection to such other area or premises,

as the case may be.

(8) Notwithstanding the provisions of subsection (7), the powers conferred by subsection (1) may, in respect of any diamond prospecting or mining vessel registered in terms of section 57(1) or any other vessel used as a diamond prospecting or mining vessel in the Namibian waters and in respect of any person or any unpolished diamonds thereon, be exercised also outside the Namibian waters.

(9) To the extent that the provisions of this section provide for a limitation of the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution, in that they authorize interference with the privacy of a person's home, correspondence or communications, such limitation is enacted on authority of the said Article 13.

Search of persons and things

67. (1) Subject to the provisions of subsection (2), any producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee, or his or her authorized representative, may search or cause to be searched -

(a) any person, whether employed in connection with the activities of such producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee or not, on any land, premises, vessel or installation upon which or in any building in which such activities are being carried on; and

(b) any vehicle, vessel or aircraft, or any other object in the possession of or any clothing worn by such person, or any vehicle, vessel or aircraft on or in which such person is or was,

and may without warrant -

(i) seize any article referred to in section 20 of the Criminal Procedure Act; and

(ii) subject to the provisions of Article 11(2) and (3) of the Namibian Constitution, arrest any person in regard to whom such producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee, or his or her authorized representative, has a reasonable suspicion that such person has committed an offence under this Act.

(2) A search under subsection (1) shall not be carried out unless -

(a) the person concerned has consented to the search;

(b) in the case of a search of a vehicle, vessel or aircraft, the person in charge of the vehicle, vessel or aircraft at the scene has consented to the search; or

(c) such producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee, or his or her authorized representative, on reasonable grounds believes -

(i) that a search warrant will be issued if applied for by a police official; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.

(3) Notwithstanding the provisions of section 28(5), it shall be a condition of every permit contemplated in section 27(k) that the holder thereof consents to being searched in a lawful manner upon leaving or immediately after having left the restricted area or upon leaving or immediately after having left such places within the restricted area as the permit may specify.

(4) A search under this section may include -

(a) the dismantling or taking apart of any vehicle, vessel, aircraft, object or clothing if no other reasonable means of adequately searching such vehicle, vessel, aircraft, object or clothing exists;

(b) an examination by means of an X-ray or any other apparatus in the manner regulated by law.

(5) Whenever any person has been arrested or any article has been seized under subsection (1), that unit of the Namibian Police Force charged with the protection of diamonds shall without delay be informed accordingly, and the person so arrested or the article so seized shall be delivered to the said unit of the Namibian Police Force.

(6) To the extent that the provisions of this section authorize the interference with a person's fundamental right to privacy or the deprivation of the personal liberty of such person by conducting a search or making an arrest under those provisions, as the case may be, such interference or deprivation shall be authorized only -

(a) in the case of such interference, on the grounds of the prevention of crime and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution; or

(b) in the case of such deprivation, on the grounds of the procedures established under this section pursuant to the provisions of Article 7 of the said Constitution.

(7) Any person who resists any search or arrest under this section, or who wilfully hinders or obstructs any other person exercising his or her powers under this section, shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Malicious arrest, seizure and search

68. (1) Any person who, purporting to act under this Act, wrongfully and maliciously or without reasonable grounds arrests, or seizes the property of or under the control of, any other person or effects any search, shall be guilty of an offence and on conviction be liable to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Nothing in this section contained shall be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest, seizure or search.

PART XII
MISCELLANEOUS PROVISIONS

Regulations

69. (1) The Minister may make regulations as to -

(a) the manner in which meetings of any committee of the Board shall be convened, the procedure and quorum at those meetings and the manner in which minutes of those meetings shall be kept;

(b) the purchase, sale and possession of unpolished diamonds by the Board, and the safe-keeping of those diamonds;

(c) the prevention of illegal acts relating to diamonds;

(d) the registration of persons in the service, or involved in the activities, of a licensee and the keeping of a register of persons so registered;

(e) control over and the searching of persons referred to in paragraph (d);

(f) the imposition of a restriction on or prohibition of any particular interest in the activities carried on by a producer, contractor, sub-contractor, holder of an exclusive prospecting licence or a non-exclusive prospecting licence, or licensee;

(g) the cancellation of any registration under this Act or of any permit, certificate or other authority issued or obtained in terms of this Act;

(h) the payment of witness fees to persons summoned to appear before the Minister;

(i) the manner in which notices required to be given in terms of this Act shall be given and served;

(j) any records, information or registers which shall be kept for the purposes of this Act;

(k) any matter required or permitted to be prescribed; and

(l) in general, any matter which the Minister may consider necessary or expedient to prescribe or regulate in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(2) A regulation made under subsection (1) may prescribe a penalty, not exceeding a fine of N$100 000 or imprisonment for a period of two years or not exceeding both such fine and such imprisonment, for any contravention of or failure to comply with any provision thereof.

Application of Act, and jurisdiction of courts in respect of offences under this Act

70. (1) This Act, and any amendment thereof, shall apply also in the territorial sea, the exclusive economic zone of Namibia referred to in section 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), and the continental shelf of Namibia referred to in section 6 of that Act.

(2) Notwithstanding anything to the contrary in any other law contained -

(a) the High Court of Namibia; or

(b) any magistrate's court whose area of jurisdiction borders on or includes any part of the sea in the vicinity where the offence has allegedly been committed, and which would otherwise have jurisdiction,

shall be competent to try any offence under this Act which is committed or alleged to have been committed within the territorial sea, the exclusive economic zone of Namibia referred to in section 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990, or the continental shelf of Namibia referred to in section 6 of that Act.

General offences and penalties

71. Any person who -

(a) resists or wilfully hinders or obstructs any diamond inspector or police official in the performance of his or her functions under this Act;

(b) without sufficient cause refuses or fails to comply to the best of his or her ability with any requirement or request made by any diamond inspector or police official in the performance of his or her functions under this Act;

(c) without sufficient cause refuses or fails to answer to the best of his or her ability any question which any diamond inspector or police official in the performance of his or her functions under this Act has put to him or her;

(d) wilfully furnishes to any diamond inspector or police official information which is false or misleading;

(e) except for the purposes of performing his or her functions under this Act or when required to do so by any court or under any law, discloses to any other person any information acquired by him or her in the performance of his or her functions under this Act;

(f) places any unpolished diamond on the body or in the possession, or in or on the premises or any other property or in or on the vessel, vehicle or aircraft, of any other person with intent that such other person be charged with an offence under this Act;

(g) in or in connection with any application in terms of this Act wilfully furnishes information or makes a statement which is false or misleading;

(h) with intent to defraud, alters, defaces, destroys or mutilates any register or document under this Act; or

(i) falsely gives himself or herself out -

(i) to be a producer, contractor or sub-contractor, or the holder of an exclusive prospecting licence or a non-exclusive prospecting licence, or the holder of any other licence or any permit under this Act;

(ii) to be registered as an authorized representative of any person; or

(iii) to be a diamond inspector,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Negligent loss of unpolished diamonds

72. Any person who by his or her gross negligence loses any unpolished diamond or causes or contributes to the loss, theft or robbery of any unpolished diamond or makes possible the actual loss, theft or robbery of any unpolished diamond, shall be guilty of an offence and on conviction be liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Falsely creating impression that unpolished diamonds naturally occur in any place

73. (1) Any person who, with intent to deceive, makes any false statement, either expressly or impliedly, or performs any act or engages in any conduct which is calculated to create the false impression that any unpolished diamond naturally occurs or occurred in any place or was found in that place or to create the false impression that unpolished diamonds naturally occur or are to be found in that place, shall be guilty of an offence and on conviction be liable to a fine not exceeding N$500 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) Where in any prosecution for a contravention of subsection (1) the accused is proved to have made a statement or performed any act or engaged in any conduct which would be likely to lead any person to form or have the false impression referred to in that subsection, or would tend to mislead any person, the facts so proved shall be prima facie proof that the accused made such statement or performed or engaged in such conduct with the intent referred to in that subsection.

Theft of diamonds

74. Any person who steals any diamond the property of or in the lawful possession of another person, shall be guilty of an offence and on conviction be liable to a fine not exceeding N$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

Attempt, conspiracy, aiding and inducing another person to commit offence

75. (1) Any person who attempts to commit any offence under this Act shall be guilty of an offence and on conviction be liable to the penalties to which a person convicted of actually committing that offence would be liable.

(2) Any person who -

(a) aids another person in committing; or

(b) conspires with any other person to aid or procure the commission of or to commit; or

(c) incites, instigates, commands or procures any other person to commit,

an offence under this Act shall be guilty of an offence and on conviction be liable to the penalties to which a person convicted of actually committing that offence would be liable.

Documentary evidence

76. In any criminal proceedings at which an accused is charged with an offence under this Act, any document which purports to be a licence, permit, certificate or other authority issued or obtained in terms of this Act, or a copy of such licence, permit, certificate or authority certified as a true copy by a person who purports to be the Commissioner, shall on its mere production at such proceedings be admissible in evidence and be prima facie proof of the particulars contained therein.

Forfeiture

77. (1) Notwithstanding anything to the contrary in any other law contained, any money or property which a person has paid or delivered to a member or an agent of the Namibian Police Force in pursuance of an agreement for the delivery or acquisition of unpolished diamonds, shall upon the conviction of such person of an offence under this Act in connection with such an agreement be forfeited to the State.

(2) (a) A forfeiture in terms of subsection (1) shall not affect any right which any person other than the convicted person may have to the property forfeited, if he or she satisfies the court concerned -

(i) that he or she did not know that such property was being used or would be used for the purpose of or in connection with the commission of the offence in question; or

(ii) that he or she could not prevent such use.

(b) Paragraph (a) shall not apply in respect of any money forfeited in terms of subsection (1).

(3) The provisions of section 35(4) of the Criminal Procedure Act shall *mutatis mutandis* apply in respect of a right referred to in subsection (2) of this section, and for the purposes of such application -

(a) a reference in the said section 35(4) to the court shall be construed as a reference to the court which has convicted the person referred to in subsection (1) of this section; and

(b) a reference in the said section 35(4) to a declaration of forfeiture shall be construed as a forfeiture in terms of subsection (1) of this section.

Jurisdiction of magistrates' courts in respect of punishments

78. Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any penalty provided for in this Act.

Delegation of powers

79. (1) The Minister may, subject to such conditions as he or she may determine, delegate any power, excluding the power to make regulations under section 69 or to publish notices in the *Gazette* under section 13(1), 52(2)(f) or 65(2), conferred upon him or her by or under this Act to any staff member of the Ministry or to any police official attached to that branch of the Namibian Police Force charged with the protection of diamonds.

(2) Any staff member or police official to whom a power has been delegated under subsection (1) may, with the prior written approval of the Minister, delegate that power to any other person to whom the Minister could have delegated that power.

(3) The Permanent Secretary may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to a staff member of the Ministry.

(4) A delegation under subsections (1) and (3) shall not divest the Minister or the Permanent Secretary, as the case may be, of the power so delegated.

Repeal of laws, and savings

80. (1) Subject to the provisions of this section, the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Subject to the provisions of subsection (4), anything done by virtue of a provision repealed by subsection (1) and which is permitted or required to be done in terms of a provision of this Act, shall be deemed to have been done in terms of the last-mentioned provision.

(3) Subject to the other provisions of this Act, anything which is required to be done by virtue of a provision of this Act and which was not previously required to be done by virtue of a provision repealed by subsection (1), shall be done within a period of 60 days after the commencement of this Act: Provided that the Minister may, within the said period of 60 days, on good cause shown by the person concerned extend such period in writing.

(4) Any licence or permit deemed to have been issued in terms of a provision of this Act and which is valid at the commencement of this Act, shall remain in force for a period of 60 days after such commencement or until the expiry of such licence or permit, whichever may occur first: Provided that the Minister may, within the said period of 60 days, on good cause shown by the holder of such licence or permit extend such period in writing.

(5) At the commencement of this Act the assets, liabilities, rights and obligations of the Diamond Board for Namibia referred to in section 3(1) of the Diamond Industry Protection Proclamation, 1939 (Proclamation No. 17 of 1939), shall vest in the Board.

(6) Any reference in any other law or any document to the Diamond Industry Protection Proclamation, 1939 (Proclamation No. 17 of 1939), or any amendment thereof, shall be construed as a reference to this Act.

Short title and commencement

81. This Act shall be called the Diamond Act, 1999, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

SCHEDULE
(Section 80(1))
LAWS REPEALED

Proclamation No. 17 of 1939	Diamond Industry Protection Proclamation, 1939	The repeal of the whole
Proclamation No. 25 of 1939	Diamond Industry Protection (Proclamation No. 17 of 1939) Amendment Proclamation, 1939	The repeal of the whole
Proclamation No. 17 of 1941	Diamond Industry Protection Amendment Proclamation, 1941	The repeal of the whole
Proclamation No. 37 of 1941	Diamond Industry Protection (Proclamation No. 17 of 1939) Further Amendment Proclamation, 1941	The repeal of the whole
Proclamation No. 7 of 1950	Diamond Industry Protection (Proclamation No. 17 of 1939) Amendment Proclamation, 1950	The repeal of the whole
Ordinance No. 30 of 1955	Diamond Industry Protection Proclamation (Proclamation No. 17 of 1939) Amendment Ordinance, 1955	The repeal of the whole
Ordinance No. 43 of 1957	Diamond Industry Protection Proclamation Amendment Ordinance 1957	The repeal of the whole
Ordinance No. 13 of 1958	Diamond Industry Protection Proclamation Amendment Ordinance 1958	The repeal of the whole
Ordinance No. 25 of 1958	Diamond Industry Protection Proclamation Further Amendment Ordinance 1958	The repeal of the whole
Ordinance No. 31 of 1959	Diamond Industry Protection Proclamation Amendment Ordinance, 1959	The repeal of the whole
Ordinance No. 12 of 1961	Diamond Industry Protection Proclamation Amendment Ordinance, 1961	The repeal of the whole
Ordinance No. 16 of 1967	Diamond Industry Protection Proclamation Amendment Ordinance, 1967	The repeal of the whole
Ordinance No. 4 of 1969	Diamond Industry Protection Amendment Ordinance, 1969	The repeal of the whole
Proclamation No. R.88 of 1969	Diamond Industry Protection (Proclamation No. 17 of 1939) Amendment Ordinance, 1969	The repeal of the whole
Act No. 3 of 1975	South west Africa Diamond Industry Protection Amendment Act, 1975	The repeal of the whole
Act No. 15 of 1980	Diamond Industry Protection Amendment Act, 1980	The repeal of the whole
Act no. 24 of 1982	Diamond Industry Protection Amendment Act, 1982	The repeal of the whole
Proclamation No. AG.7 of 1990	Diamond Industry Protection Amendment Proclamation, 1990	The repeal of the whole
Act No. 21 of 1995	Diamond Taxation Proclamation Repeal Act, 1995	The repeal of sections 2 and 3

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