

DIAMOND CUTTING ACT, 1979

No. 25



of 1979

ARRANGMENT OF SECTIONS

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An Act to regulate the cutting, sawing, cleaving and polishing of rough and uncut diamonds and for other matters incidental thereto or connected therewith

Date of Assent: 10.9.79.

Date of Commencement: 19.9.79.

ENACTED by the Parliament of Botswana

PART I *Preliminary*

Citation
Inter-
pretation

1. This Act may be cited as the Diamond Cutting Act, 1979.
2. In this Act, unless the context otherwise requires, —
 - “Mining Commissioner” means any person for the time being holding the public office of Mining Commissioner;
 - “cut” includes sawing, cleaving, polishing or bruting of rough or uncut diamond or any operation which alters any rough or uncut diamond, and “diamond cutting” shall be construed accordingly;
 - “cut diamond” means a diamond on which the operation known as cutting has been completed;
 - “crushed diamond” means any part of a diamond which has been subjected to any of the operations of crushing;
 - “diamond dust” means dust resulting from any of the operations of diamond cutting or diamond crushing;
 - “fragment” means a part of a diamond separated from the main stone in the course of diamond cutting and of so irregular a shape and small a size as to be unsuitable for cutting;
 - “licence” means a licence issued under this Act;
 - “licensee” means a person to whom a licence has been issued;
 - “partly manufactured diamond” means a diamond stone which has been subjected to one or more of the operations of diamond cutting, but not to the extent sufficient for it to be regarded in the diamond cutting industry as a fully cut and polished diamond;
 - “person” means a natural person;
 - “polished diamond” means a diamond which has been completely polished in accordance with the requisites of its class as recognized in the diamond cutting industry;

“rough or uncut diamond” means a diamond which has not been subjected to any of the operations of diamond cutting or altered in any other manner, and includes a crushed diamond, diamond dust, fragment or partly manufactured diamond, diamond powder and any rough or uncut synthetic diamond;
“unpolished diamond” means any diamond other than a polished diamond, and includes a partly manufactured diamond, fragment, diamond dust and a rough or uncut diamond.

PART II *Licensing of cutting operations*

3. (1) No person shall cut any rough or uncut diamond unless he is — Control of diamond cutting

- (a) the holder of an appropriate licence prescribed by section 4; or
- (b) an employee acting in the course of his employment with the holder of such a licence.

(2) Any person whose licence has been suspended under any provision of this Act shall during the period of such suspension be deemed not to be the holder of a licence.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

4. Licences which may be issued under this Act shall be — Classification of licences

- (a) a diamond cutter’s licence which shall entitle the licensee to carry on diamond cutting for purposes of business or trade;
- (b) a diamond research licence which shall entitle the licensee to conduct research into the physical properties of diamonds, the uses to which diamonds can be put and cognate matters, but shall not entitle the licensee to carry on diamond cutting for purposes of business or trade; or
- (c) a diamond toolmaker’s licence which shall entitle the licensee to set rough or uncut diamonds, not suitable for polishing, in tools or implements, or to crush or alter such diamonds for that purpose or for purposes of trade.

5. (1) A licence shall be issued for such period as the Minister may determine. Duration of licences and fees payable

(2) There shall be due and payable to the Government by every holder of a licence an annual charge in such amount as the Minister may determine or as may be prescribed.

(3) The annual charge under subsection (2) shall be payable on the issue of a licence and thereafter annually on the anniversary thereof until the termination of such licence.

6. (1) An application for a licence shall be made to the Minister in the prescribed form. Application for licences

(2) An applicant shall, in addition to completing an application form in accordance with subsection (1), furnish such other particulars in connexion with his application as the Minister may require.

Grant or refusal of applications for licences

(3) The Minister may cause such investigation to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to decide whether or not to grant a licence.

7. (1) Subject to the provisions of this Act, and after considering an application for a licence, the Minister may issue a licence in a prescribed form on such terms and conditions as he may in each case determine, including in particular —

(a) a condition requiring the applicant to agree to the Government or a person nominated on behalf of the Government acquiring or having an option to acquire an interest in the operations to be carried out under the licence; and

(b) conditions concerning the cutting of diamonds, disposal or sale of the product of the cutting operations.

(2) The Minister shall cause the applicant to be notified of his decision on such application and, if the grant of a licence is approved, the notification shall include the terms and conditions, if any, upon which the licence will be issued.

Issue of licence to a partnership, company or association of persons

8. (1) In the case of a partnership, company or association of persons, whether incorporated or not (hereinafter referred to as "bodies" or individually as "a body"), the licence shall be issued to one or more natural persons nominated by that partnership, company or association of persons and approved by the Minister.

(2) If any person ceases to be associated with a body, such body shall forthwith apply to the Minister for the name of a new nominee to be substituted for that of the former nominee.

(3) On such application being made in accordance with subsection (2) the Minister may, if he considers the new nominee suitable, cause the substitution of the name of the new nominee in the licence for that of the former nominee, subject to a fresh recognizance entered into by the new nominee in the manner provided by section 11 being furnished.

(4) If the substitution of the name of a new nominee is not accepted by the Minister as is provided in this section within 3 months after the date on which a former nominee ceased to be associated with a body, the licence shall lapse unless the Minister otherwise directs:

Provided that such body may propose other nominees until a nominee is acceptable to the Minister or the 3 months' period expires, whichever occurs first.

(5) No person shall dispose of and no person shall acquire, directly or indirectly, any interest in a body whose nominee is licensed under this Act, without the approval of the Minister, which approval shall not be unreasonably withheld.

(6) Any person or body contravening the provisions of subsection (2) or (5) shall be guilty of an offence:

Transfer of licence

9. (1) If during the currency of a licence the licensee is, for any reason deemed sufficient by the Minister, unable personally to

carry on or to supervise the diamond cutting operations in respect of which the licence was issued, such licence shall lapse unless the Minister has, on application by the licensee or a body whose nominee is licensed under this Act, authorized by endorsement on the licence any other person whom the Minister deems fit to carry on such diamond cutting operations for the unexpired term of such licence or for any lesser period, subject to the last-mentioned person furnishing a fresh recognizance in the manner provided by section 11.

(2) Any person to whom a licence has been transferred in terms of subsection (1) shall for the purposes of this Act be deemed to be the licensee for the unexpired term of such licence, or for such lesser period.

10. (1) Subject to the provisions of this Act, any person to whom a licence has been issued under this Act shall be issued with a new licence if such person —

Renewal of licences

(a) applies to the Minister for a new licence within 30 days before the expiry of the licence so issued; and

(b) pays such an amount as the Minister may determine or as may be prescribed.

(2) The Minister may direct —

(a) that there be attached to a new licence any conditions which he may deem fit, either in addition to or in substitution for any conditions imposed in respect of the previous or existing licence, or that any condition so imposed, or any restriction, undertaking, qualification or any condition in force in terms of section 7, be cancelled; or

(b) in the case of a body whose nominee is licensed under this Act, that a new licence be not issued in the name of any person in whose name the previous or existing licence was issued or in the name of any other person not considered suitable by the Minister:

Provided that such body may be allowed to substitute a new nominee in accordance with the procedure laid down in section 8.

11. (1) Subject to subsection (2), no licence shall be issued unless the applicant or the nominee, as the case may be, has, together with one or more sufficient sureties, entered into a recognizance in the form and manner and on conditions and for amounts as the Minister may determine or as may be prescribed.

Recognizance

(2) The Minister may exempt any applicant or nominee from any or all of the provisions of subsection (1) where, in his opinion, special circumstances exist justifying such an exemption.

12. (1) Subject to subsection (2), the Minister may cancel a licence forthwith, suspend a licence for a specified period or refuse to renew a licence or, in the case of a body, require that such body

Cancellation, suspension and renewal of licences

should substitute a new nominee for the present nominee in accordance with the procedure laid down in section 8.

(2) No such licence shall be cancelled, suspended or renewal of such licence refused or a requirement for the substitution of a new nominee made unless the Minister is satisfied that the licensee —

- (a) is or has at any time either before or after the commencement of this Act been engaged in illicit trade in diamonds or other precious stones in contravention of this Act or any other law relating to precious stones whether in Botswana or elsewhere, or is suspected of assisting or having assisted in such trade either in Botswana or elsewhere;
- (b) has been convicted of any offence of which dishonesty is an element and sentenced to a term of imprisonment exceeding 14 days without the option of a fine or to a fine exceeding P100 whether in Botswana or elsewhere, if such conviction in the opinion of the Minister renders the licensee unfit to carry on the diamond cutting authorized by the licence issued to the licensee;
- (c) has failed or is unable to comply with any of the provisions of this Act; or
- (d) has failed to comply with any condition imposed in respect of the licence issued to such licensee or renewal thereof.

Return of cancelled or suspended licence

13. (1) Any licence which has been cancelled or suspended under any provision of this Act shall be returned by the person to whom it was issued to the Minister within 7 days or such other period as the Minister may stipulate after the Minister has requested its return in writing for such action as the Minister may deem fit.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

PART III *Provisions relating to licensed premises, export, etc.*

Acquisition of rough or uncut diamonds by licensee

14. Any licensee who buys or in any manner receives or acquires any rough or uncut diamond —

- (a) for a purpose other than the diamond cutting authorized by the licence issued to him; or
- (b) from any person who is not in lawful possession of such diamond in accordance with Botswana laws,

shall be guilty of an offence.

Cutting in licensed premises

15. (1) No licensee shall carry on diamond cutting elsewhere than on the premises described in the licence issued to him or premises of which the address has been endorsed on that licence under the provisions of section 16.

(2) No licensee shall in any way receive or acquire any unpolished diamond elsewhere than on such premises, or in the office or place of business of any producer of diamonds or any dealer or in such other place as the Minister may approve or as may be prescribed.

(3) Except as is otherwise provided, no licensee shall keep any unpolished diamond received or acquired by him elsewhere than—

(a) on the premises described or endorsed in the licence issued to him;

(b) in a safe deposit vault maintained by a bank; or

(c) at such other place as the Minister may approve.

(4) Every licensee shall affix and keep affixed in some conspicuous place on the outside of and over or at the side of the outer door of such premises his full name and, in the case of a body whose nominee is licensed under this Act, such licensee shall, in addition, affix the name, style or title of such a body and after such name, style or title a description in English and Setswana indicating that such licensee is a licensed diamond cutter, a licensed diamond research worker or a licensed diamond toolmaker, as the circumstances may require, and these particulars shall be printed in such a manner as may be prescribed.

(5) Any licensee who contravenes the provisions of subsection (4) shall be guilty of an offence and be liable to a fine of P300 and to imprisonment for 6 months.

16. If the removal or extension of a licensee's place of business or work premises other than those in respect of which his licence was issued becomes necessary during the currency of the licence, the Minister may, on application made by the licensee to the Minister, endorse on the licence the address at which such other premises are situated.

Removal or extension of licensee's place of business or work

17. (1) Whenever a licensee purchases or receives any unpolished diamond for alteration on behalf of any other person, he shall complete a note of sale and purchase, or of delivery and receipt, as the circumstances may require, in the prescribed form and the licensee shall retain such note in his place of business for such period as may be prescribed.

Notes of sale, purchase, delivery and receipt

(2) Any licensee who contravenes the provisions of this section shall be guilty of an offence.

18. Any licensee who, without the authority of the Minister, recuts or alters any cut or polished diamond received or acquired by him from any person shall be guilty of an offence.

Alteration of cut or polished diamonds

19. (1) Subject to subsections (2) and (3), in order that a regular supply of rough or uncut diamonds of such classes, qualities and descriptions as may be required by any licensee may be secured by that licensee, the Minister may from time to time by written notice to any producer of diamonds (hereinafter in this section called "the producer"), or dealer, require the producer or dealer to make available for sale to any such licensee at the office or place of business or work of the producer or dealer, as the case may be, during a period specified in the notice, such classes, qualities and description of diamonds as the Minister may by the said notice fix and determine.

Securing regular supply of diamonds for diamond cutting

(2) Where it is the custom of the trade, the Minister shall direct that diamonds made available for sale to any licensee in accordance with subsection (1) shall be taken in a series, which shall be made up according to the value of the diamonds required by the licensee.

(3) No notice shall be given by the Minister to any producer or dealer under subsection (1) unless the Minister is satisfied that the licensee has been unable by agreement with that producer or dealer to acquire, on terms and conditions deemed by the Minister to be reasonable, a regular supply of diamonds of such classes, qualities and descriptions as will enable the licensee to carry on without interruption the diamond cutting operations authorized by his licence.

(4) The Minister shall in such notice also fix and determine terms and conditions of sale in accordance with subsections (6) and (7), and the purchase price shall be paid against delivery of the diamonds.

(5) The producer or dealer, as the case may be, shall on the written demand of any such licensee sell to him diamonds in accordance with the terms of the said notice and notwithstanding that by so selling the producer or dealer shall not fulfil an agreement to sell diamonds to any other person.

(6) The terms and conditions of sale fixed by the Minister by the notice mentioned in subsection (1) shall prescribe that the prices to be paid by the licensee to the producer or dealer, as the case may be, for the diamonds to be supplied in terms of that notice shall be in accordance with the current market price of those diamonds, arrived at on the basis of the prices obtained by the producer or paid by the dealer.

(7) The terms and conditions of sale fixed by the Minister by the notice mentioned in subsection (1) shall also include provisions as to —

- (a) the proof to be adduced as to the prices obtained by the producer or the prices paid by the dealer and the manner in which the prices of the diamonds to be sold to the licensee were determined;
- (b) the manner in which all questions and disputes which may arise between the licensee and the producer or dealer, as the case may be, in regard to such sale shall be finally settled; and
- (c) fair and equitable arrangements between the licensee and the producer or dealer, as the case may be, in respect of any matter arising under this Act in regard to such sale.

(8) Any such producer or dealer who refuses, on the written demand of a licensee made in terms of subsection (5), to sell diamonds to the licensee in accordance with the terms of a notice under subsection (1) shall be guilty of an offence.

(9) For the purposes of this section —

- (a) "dealer" shall include a purchaser of such diamond; and

(b) "series" means an assortment of diamonds made up according to shape, quality, colour and size.

20. (1) No licensee shall export or sell, deliver or dispose of unpolished diamonds (other than such diamonds set in tools or implements or crushed or altered under authority of a diamond toolmaker's licence) except under such terms and conditions as may be determined by the Minister or as may be prescribed.

Export, sale, delivery or disposal of unpolished diamonds

(2) Any licensee who contravenes the provisions of this section shall be guilty of an offence.

21. (1) No person shall export any cut or polished diamonds which are not set in jewellery, tools or implements unless —

Export of cut or polished diamonds

(a) such diamonds have been exhibited to and sealed for export in the presence of the Mining Commissioner or his representative in such manner as the Mining Commissioner may approve; and

(b) such person is able to furnish to the Mining Commissioner on request a satisfactory account of his possession of such diamonds.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

22. (1) Every licensee shall at all times keep a true and correct daily record, in the prescribed form, of such particulars of all his dealings in diamonds and of all his diamond cutting operations, as may be prescribed:

Records to be kept by licensees

Provided that the Mining Commissioner may authorize the destruction of any records which have been in existence for not less than 5 years.

(2) Every licensee shall, whenever so required, produce such record for inspection by the Mining Commissioner or any person authorized by the Mining Commissioner.

(3) Every licensee shall within 14 days after the expiration of every month forward to the Mining Commissioner a true copy of all entries in such record for the previous month, together with a solemn declaration testifying to the correctness thereof.

(4) Any licensee who contravenes the provisions of this section shall be guilty of an offence.

23. (1) No licensee shall employ in diamond cutting any person who has not been approved by the Minister.

Approval of employees by Minister

(2) Subject to subsection (3), the Minister may refuse to approve the employment of any person in accordance with subsection (1) or direct that an employee should be suspended for a specified period or that he should be dismissed if such applicant or employee —

(a) has been convicted of any offence whether in Botswana or elsewhere which in the opinion of the Minister renders such applicant or employee unfit to be employed or continue to be employed by a licensee in diamond cutting operations;

(b) habitually associates with any person suspected by the Minister of contravening any law relating to the possession

or disposal of diamonds or precious stones either in Botswana or elsewhere; or

(c) has failed or is unable to comply with any provisions of this Act with which it is his duty to comply.

(3) Any licensee who contravenes the provisions of subsection (1) or refuses to comply with the directives of the Minister shall be guilty of an offence.

Records of diamonds handled by employees

24. (1) Every licensee shall keep a true and correct daily record, in the form and manner as may be prescribed, of all diamonds handed to and returned by each of his employees:

Provided that the Mining Commissioner may authorize the destruction of any records which have been in existence for not less than 5 years.

(2) Any licensee who contravenes the provisions of this section shall be guilty of an offence.

Notices to be posted by a licensee

25. (1) Every licensee shall affix and keep affixed in some conspicuous place on the licensed premises —

(a) a copy of the licence issued to him; and

(b) a list of the persons employed in the licensed premises.

(2) Any licensee who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P3 000 and to imprisonment for 6 months.

Search by police

26. (1) Notwithstanding anything contained in any other written law, a police officer may at all reasonable times enter upon and search any licensed premises and may require from the licensee the production of, and may inspect and make copies of and extracts from, any record required to be kept under this Act, and may ask for the production of, and inspect, any diamonds in the possession or under the control of the licensee, and may require from the licensee or any employee or other person in his employ any information relating to such record and such diamonds or any other diamonds received by the licensee.

(2) Any person who —

(a) refuses or fails to comply to the best of his ability with any requirement made by a police officer in the exercise of his powers under this section;

(b) refuses or fails to answer to the best of his ability any question which a police officer in the exercise of his powers under this section has put to him; or

(c) hinders or obstructs a police officer in the exercise of his powers under this section;

shall be guilty of an offence.

Power of certain persons to enter upon licensed premises, etc.

27. (1) An authorized officer may, at all reasonable times, enter upon any licensed premises for the purpose of —

(a) generally inspecting any such premises;

(b) ascertaining whether the provisions of this Act are being complied with;

- (c) giving directions and taking steps to enforce any provisions of this Act; and
 - (d) obtaining such information as he may deem necessary.
- (2) For the purposes of this section “authorized officer” means the Mining Commissioner or his subordinate officers or any other person authorized in writing by the Minister.

PART IV Miscellaneous

28. Any person (other than a licensee, a body whose nominee is licensed under this Act or an employee acting in the course of his employment with such licensee or body) who erects or operates any machine designed or adapted for diamond cutting without having obtained written permission from the Minister to do so shall be guilty of an offence. Unauthorized erection or operation of machinery

29. (1) The holder of every licence issued under this Act or the body whose nominee is licensed under this Act shall, in the conduct of the operations under such licence, and in the purchase, construction and installation of facilities, give preference, to the maximum extent possible consistent with safety, efficiency and economy, to – Preference for Botswana products, etc.

- (a) materials and products made in Botswana; and
- (b) service agencies located in Botswana and owned by Botswana citizens or bodies corporate established under the Companies Act.

Cap. 42:01

(2) The holder of a licence issued under this Act or the body whose nominee is licensed under this Act shall, in the operations, conduct training programmes in consultation with the Minister for the benefit of employees so that such employees may qualify for advancement.

30. Any person who in any application made under this Act knowingly makes or causes to be made a statement which is false in a material particular shall be guilty of an offence. False statements

31. Any person who knowingly makes or causes to be made or connives at the making of any false entry in any record required to be kept under this Act or who prevents the making of correct entries therein shall be guilty of an offence. Falsifying records

32. No public officer or other authorized officer shall be liable for anything done or omitted to be done *bona fide* in the performance or purported performance of any function vested in or delegated to him by or under this Act. Indemnity of officers, etc.

33. Any person who is guilty of an offence under this Act for which no penalty is provided shall be liable on conviction – Penalties

- (a) in the case of an offence referred to in section 8(6), 13(2), 17(2); 22(4), 23(3), 24(2), 26(2), 30 or 31, to a fine of P500 and to imprisonment for a period of one year;
- (b) in the case of an offence referred to in section 18, 21(2) or 28, to a fine of P1 000 and to imprisonment for a period of 2 years; and

(c) in the case of an offence referred to in section 3(3), 14, 19 (8) or 20 (2), or of a contravention of section 15 (1), (2) and (3), to a fine of P2 000 and to imprisonment for a period of 5 years.

Regulations

34. (1) The Minister may make regulations for the better carrying into effect of this Act and in particular and without prejudice to the generality of the foregoing may provide for the following matters or purposes —

- (a) maintenance of discipline and the good order and well being of the diamond cutting industry;
- (b) the forms in licences;
- (c) the form of any application to be made under this Act;
- (d) the form of any notice to be issued or published under this Act;
- (e) the form of and conditions attaching to any licence provided for in this Act;
- (f) the form of any endorsement to be made on a licence under this Act;
- (g) any matter incidental to the cancellation or suspension of a licence;
- (h) the returns to be furnished by licensees;
- (i) such other returns as may be found necessary or expedient for the purposes of this Act; and
- (j) prescribing anything which in terms of this Act is to or may be prescribed.

(2) A regulation made under the provisions of subsection (1) may provide for a fine for the contravention thereof of P1 000 and imprisonment for 2 years.

Amendment
to section
2 of
Cap. 43:01

35. Section 2 (3) of the Industrial Development Act is amended by adding at the end thereof the new paragraph following —

“(f) any diamond cutting licensed under the Diamond Cutting Act, 1979.”

PASSED by the National Assembly this 16th day of August, 1979.

I.P. GONTSE,
Clerk of the National Assembly.