

DIAMOND CUTTING (AMENDMENT) ACT, 2021

No. 14



of 2021

ARRANGEMENT OF SECTIONS

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An Act to amend the Diamond Cutting Act.

Date of Assent: 08.10.2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Diamond Cutting (Amendment) Act, 2021, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

2. The Diamond Cutting Act (hereinafter referred to as “the Act”) is amended by substituting for the words “Mining Commissioner” wherever they appear in the Act, the words “authorized officer”.

3. Section 2 of the Act is amended by —

(a) deleting the definition of the word “person”; and

(b) inserting, in its correct alphabetical order, the following definition —
““authorized officer” means any person authorized by the Minister to exercise the powers under this Act, by a notice published in the *Gazette*.”.

Short title and commencement

General amendment to Cap. 66:04

Amendment of section 2 of the Act

Amendment
of section 8
of the Act

4. Section 8 of the Act is amended by substituting for the section, the following new section —

"Issuic of
licence

8. (1) Subject to the provisions of this section, a diamond cutter's licence, in the form prescribed by the Minister, may be obtained from the Minister entitling the holder, during the duration of the licence to sort, value, cut or otherwise deal in cut, rough or uncut precious stones.

(2) A diamond cutter's licence, diamond research licence and diamond tool maker's licence shall not be granted or held by —

(a) a person who —

- (i) is under the age of 18 years,
- (ii) is a shareholder or a director of a company which has contravened this Act or any other law,
- (iii) has been adjudged or otherwise declared bankrupt, whether under the laws of Botswana or elsewhere, and has not been discharged, or
- (iv) has within a period of five years immediately preceding the date of his application for a licence, been convicted in Botswana, of a criminal offence, relating to precious or semi-precious stones industry outside Botswana, which if committed in Botswana would have been a criminal offence; or

(b) a company which —

- (i) is under liquidation or under judicial management, except where such liquidation or judicial management is part of a scheme for the reconstruction or amalgamation of such company, or
- (ii) has among its directors or shareholders any person who is disqualified in terms of paragraph (a).

(3) The Minister shall grant a diamond cutter's licence, diamond research licence or a diamond tool maker's licence to an applicant if —

- (a) the applicant has, or has secured access to, adequate financial resources and has the technical competence required;
- (b) the proposed financing plan submitted for a diamond cutter's licence, diamond research licence or a diamond tool maker's licence, as part of the feasibility study or business case, is in accordance with good financial practice; and
- (c) the applicant has not contravened the Act.

(4) A person shall not dispose of or acquire, any material interest of a licensee under this Act, without the written approval of the Minister.

(5) A person who contravenes the provisions of subsection (4) shall be guilty of an offence."

Amendment
of section 9
of the Act

5. Section 9 of the Act is amended in subsection (1), by deleting the following words appearing therein —

- (a) the word "personally"; and
- (b) the words "or a body whose nominee is licensed under this Act,".

6. Section 10 of the Act is amended by substituting for subsection (2), the following new subsection —
“(2) The Minister may direct that a licence shall not be reissued or that there shall 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 in force in terms of section 7, be cancelled.”.
- Amendment of section 10 of the Act
7. Section 11 of the Act is amended —
- (a) in subsection (1), by deleting the words “or the nominee, as the case may be,”; and
- (b) in subsection (2), by deleting the words “or nominee”.
- Amendment of section 11 of the Act
8. Section 12 of the Act is amended —
- (a) in subsection (1), by deleting the words “or, in the case of a body, require that such body should substitute a new nominee for the present nominee in accordance with the procedure laid down in section 8.”; and
- (b) by substituting for subsection (2) , the following new subsection —
“(2) A licence under subsection (1) shall not be cancelled or suspended, nor shall a renewal or such licence be refused 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 the 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 involved in or has 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 P10 000 whether in Botswana or elsewhere, if such conviction in the opinion of the Minister renders the licensee unfit to carry on the diamond cutting authorised 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.”.
- Amendment of section 12 of the Act
9. Section 15 of the Act is amended in subsection (5), by deleting the words “and be liable to a fine not exceeding P300 or to imprisonment for a term not exceeding six months, or to both,” appearing therein.
- Amendment of section 15 of the Act
10. The Act is amended by deleting section 18.
- Amendment of section 18 of the Act
11. The Act is amended by deleting section 19.
- Amendment of section 19 of the Act

- Amendment of section 25 of the Act
- 12.** The Act is amended by substituting for section 25, the following new section —
- “Notice to be posted by licensee
25. (1) Every licensee shall affix and keep affixed in a conspicuous place on the licensed premises, a copy of the licence issued to him.
- (2) Any licensee who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P10 000.”.
- Amendment of section 28 of the Act
- 13.** The Act is amended by substituting for section 28, the following new section —
- “Unauthorized erection or operation of machinery
28. Any person, other than a licensee or an employee acting in the course of his employment with a licensee, 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.”.
- Amendment of section 33 of the Act
- 14.** The Act is amended by substituting for section 33, the following new section —
- “Penalties
33. Any person who is guilty of an offence under this Act for which no penalty is provided shall be liable on conviction —
- (a) in the case of an offence referred to in section 8 (5), 13 (2), 15 (5), 17 (2), 22 (4), 23 (3) or 24 (2), to a fine not exceeding P10 000, or to imprisonment for a term not exceeding three months, or to both;
- (b) in the case of an offence referred to in section 3 (3), 14, 21 (2), 26 (2), 28, 30 or 31, to a fine not exceeding P20 000, or to imprisonment for a term not exceeding three months, or to both; and
- (c) in the case of an offence referred to in section 15 (1), (2) and (3) or 20 (2), to a fine not exceeding P50 000, or to imprisonment for a term not exceeding six months, or to both.”.
- Amendment of section 34 of the Act
- 15.** Section 34 of the Act is amended in subsection (2) by substituting for the words “P1 000 or imprisonment for a term not exceeding two years, or both”, the words “P50 000, or to imprisonment for a term not exceeding six months.”.

PASSED by the National Assembly this 12th day of August, 2021.

BARBARA N. DITHAPO,
Clerk of the National Assembly.