



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notices

MINISTRY OF MINES AND ENERGY

No. 83 2000

COMMENCEMENT OF THE DIAMOND ACT, 1999

Under section 81 of the Diamond Act, 1999 (Act No. 13 of 1999), I hereby determine that the Act shall come into operation on 1 April 2000.

JESAYA NYAMU
MINISTER OF MINES AND ENERGY Windhoek, 1 March 2000

MINISTRY OF MINES AND ENERGY

No. 84 2000

DIAMOND REGULATIONS

The Minister of Mines and Energy has under section 69 of the Diamond Act, 1999 (Act 13 of 1999), made the regulations contained in the Schedule, which shall come into effect on 1 April 2000.

SCHEDULE

Definitions

1. In these regulations "the Act" means the Diamond Act, 1999 (Act 13 of

1999), and any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it.

Application for licence

2. An application for a licence in terms of section 16 of the Act shall be substantially in the form as set out in Form 1 of Annexure A.

Issue of licence

3. A licence issued in terms of section 17 of the Act shall be issued substantially in the form as set out in Form 2 of Annexure A.

Fees for licences

4. (1) An application for a licence in terms of section 16 of the Act shall be accompanied by a non-refundable fee as set out in Annexure B.

(2) The fee payable in respect of the issue of a diamond cutting licence, a diamond tool-making licence or a diamond research licence shall be a fee as set out in Annexure B, payable not later than the date of issue thereof, and annually thereafter not later than the anniversary of the date of issue.

(3) The fee payable in respect of the issue of a diamond dealer's licence shall be a fee as set out in Annexure B, payable not later than the date of issue thereof, and annually thereafter not later than the anniversary of the date of issue.

Application for permit

5. (1) An application in terms of section 28 of the Act for a permit referred to in section 27(a),(b),(c),(d),(e),(f),(g),(h),(i) or (j) of the Act shall be substantially in the form as set out in Form 3 of Annexure A.

(2) An application in terms of section 28 of the Act for a permit referred to in section 27(k) of the Act shall be substantially in the form as set out in Form 4 of Annexure A.

Issue of permit

6. (1) A permit referred to in section 27(a), (b),(c),(d),(e),(f),(g),(h),(i) or (j) and issued in terms of section 29 of the Act shall be issued substantially in the form as set out in Form 5 of Annexure A.

(2) A permit referred to in section 27(k) and issued in terms of section 29 of the Act shall be issued substantially in the form as set out in Form 6 of Annexure A.

(3) Unless the Minister otherwise determines, a permit referred to in section 27(k) shall automatically expire-

- (a) if the holder thereof is convicted of any offence under this Act;
- (b) if the holder thereof is convicted of any offence in respect of any high value mineral or any controlled mineral as defined in the Minerals (Prospecting and Mining) Act;
- (c) if the holder thereof is in Namibia or elsewhere under any law convicted of theft, fraud, forgery, uttering, robbery, perjury, housebreaking with intent to commit a crime, bribery or an attempt to commit any of these offences, or any other offence involving dishonesty, or any offence relating to the unlawful dealing in or possession of ivory or rhinoceros horns;
- (d) if the holder thereof is elsewhere than in Namibia convicted under any law of any offence relating to the unlawful dealing in or possession of diamonds;

- (e) at the same time as any work permit or temporary residence permit, as the case may be, issued to the holder thereof under the laws of Namibia expires, unless such permit is simultaneously replaced by another valid work permit or temporary residence permit, or a permanent residence permit, or Namibian citizenship;
- (f) if any condition endorsed on such permit in terms of section 29(2) of the Act is not complied with.
- (4) When a permit referred to in section 27(k) of the Act expires for any reason referred to in sub-regulation (3) the holder of such permit shall within a period of seven days or within such longer period as the Minister may determine on good cause shown, leave the restricted area for which it was issued.

Fees for permits

7. An application in terms of section 28 of the Act for a permit referred to in section 27(a),(b),(c),(d),(e),(f),(g),(h),(i) or (j) of the Act shall be accompanied by a non-refundable fee as set out in Annexure B.

Certificate of approval of premises

8. (1) A certificate of approval of premises on which unpolished diamonds may be sold or disposed of as referred to in section 38(1)(c) and issued in terms of section 39(4) of the Act shall be issued substantially in the form as set out in Form 7 of Annexure A.

(2) A certificate of approval of premises on which unpolished diamonds may be received or purchased as referred to in section 38(2)(c) and issued in terms of section 39(4) of the Act shall be issued substantially in the form as set out in Form 8 of Annexure A.

(3) A certificate of approval of premises on which unpolished diamonds may be processed, or on which research or tests in connection with unpolished diamonds may be conducted, as referred to in section 40(1)(b) and issued in terms of section 41(2), read with section 39 of the Act, shall be issued substantially in the form as set out in Form 9 of Annexure A.

Application for registration of authorized representative

9. An application for the registration of any person as an authorized representative in terms of section 43(1) of the Act shall be substantially in the form as set out in Form 10 of Annexure A.

Issue of certificate of registration as authorized representative

10. A certificate of registration as an authorized representative issued in terms of section 43(9) of the Act shall be issued substantially in the form as set out in Form 11 of Annexure A.

Registers in respect of unpolished diamonds

11. (1) The following registers shall be kept in terms of section 46(1) of the Act:

- (a) A producer, contractor sub-contractor, holder of an exclusive prospecting licence and holder of a non-exclusive prospecting licence shall keep a register of unpolished diamonds won, recovered, received, transported, sold, disposed of or exported substantially in the form as set out in Form 12 of Annexure A;

- (b) a dealer shall keep a register of unpolished diamonds purchased, imported, received or disposed of substantially in the form as set out in Form 13 of Annexure A;
- (c) a cutter shall keep a register of unpolished diamonds purchased, imported, received, processed or disposed of substantially in the form as set out in Form 14 of Annexure A;
- (d) a tool-maker shall keep a register of unpolished diamonds purchased, received, processed or disposed of substantially in the form as set out in Form 15 of Annexure A;
- (e) a researcher shall keep a register of unpolished diamonds purchased, received, processed or disposed of substantially in the form as set out in Form 16 of Annexure A.

(2) A register referred to in subregulation (1) shall be kept in numerical and chronological order and shall with respect to each calendar month contain the particulars set out in the relevant form referred to in that subregulation, which particulars shall be recorded in handwritten form.

(3) Except where otherwise provided for by the relevant security plan approved under section 50 of the Act, a producer, contractor, sub-contractor, holder of an exclusive prospecting licence or licensee shall keep a separate register referred to in sub-regulation (1) at every place specified in terms of regulation 16(1)(g) where diamonds are kept.

(4) A holder of a non-exclusive prospecting licence shall keep a separate register referred to in sub-regulation (1) at every place where unpolished diamonds are kept.

Notes of receipt or purchase in respect of unpolished diamonds

12. The note of receipt or purchase referred to in section 47(1) of the Act shall be completed substantially in the form as set out in Form 17 of Annexure A.

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

13. (1) Whenever any person is required to perform a security check on an employee or a natural person in terms of section 48(1)(a) of the Act, he or she shall-

- (a) obtain a certificate of conduct from the Namibian Police Force;
- (b) obtain a certified copy of the following documents in respect of that employee or natural person:
 - (i) passport;
 - (ii) identity document;
 - (iii) temporary or permanent residence permit, as the case may be;
 - (iv) work permit;
- (c) if the employee is not a Namibian citizen, or a permanent resident in Namibia, obtain a document, issued by a competent authority of the country of which that employee or natural person is a citizen, stating whether that employee or natural person has been convicted of any offence in that country or any other country and giving particulars of the nature of and the sentence imposed for any offence;
- (d) retain all documents obtained for the purposes of a security check for a period of at least three years from the date on which the employee or natural person has ceased to be engaged in the activity or operation for which the security check has been performed, or for a period of at least three years from the date on which the security check is completed, whichever date is the later of the two.

(2) If the documents referred to in sub-regulation (1) indicate that the employee or natural person-

- (a) has been convicted of any offence under this Act or the Diamond Industry Protection Proclamation, 1939 (Proclamation No. 17 of 1939);
- (b) has been convicted of any offence in respect of any high value mineral or any controlled mineral as defined in the Minerals (Prospecting and Mining) Act;
- (c) has in Namibia or elsewhere under any law been convicted of theft, fraud, forgery, uttering, robbery, perjury, housebreaking with intent to commit a crime, bribery or an attempt to commit any of these offences, or any other offence involving dishonesty, or any offence relating to the unlawful dealing in or possession of ivory or rhinoceros horns;
- (d) has elsewhere than in Namibia been convicted under any law of any offence relating to the unlawful dealing in or possession of diamonds;
- (e) has any charge or investigation relating to any offence mentioned in paragraph (a),(b),(c) or (d) pending against him or her,

that employee or natural person shall not be suitable to be engaged in any activity or operation referred to in section 48(1).

(3) An employee or natural person engaged in any activity or operation referred to in section 48(1) shall immediately inform the relevant producer, holder of an exclusive prospecting licence or licensee of any conviction referred to in sub-regulation 2(a),(b),(c) or (d) or of the fact that any charge or investigation referred to in sub-regulation 2(e) is pending against him or her.

(4) Any employee or natural person who contravenes or fails to comply with a provision of sub-regulation (3) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$50 000-00 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Records of employees, contractors and sub-contractors

14. (1) Every person, being a producer, contractor, sub-contractor, holder of an exclusive or non-exclusive prospecting licence or a licensee shall record in writing -

- (a) the names, identity numbers and/or passport numbers of all employees, contractors and sub-contractors employed or engaged or contracted by that person;
- (b) particulars of all employees discharged by that person for dishonesty;
- (c) particulars of all contractors or sub-contractors engaged or contracted by that person whose approval in terms of section 49 of the Act has been revoked.

(2) The record referred to in sub-regulation (1)(a) shall be kept for a period of at least three years from the date on which any employee, contractor or sub-contractor has ceased to be an employee, contractor or sub-contractor, as the case may be.

(3) The record referred to in sub-regulation (1)(b) and (c) shall be kept for a period of at least three years after the date on which such record was made.

Documents required by persons who carry or transport unpolished diamonds

15. (1) Except where otherwise provided for by the relevant security plan approved under section 50 of the Act, any person who carries or transports any unpolished diamonds outside a restricted area or from any restricted area to another restricted area, as the case may be, shall have in his or her possession-

- (a) an original document, issued, signed and dated by the producer, contractor, sub-contractor, holder of an exclusive prospecting licence or a non-exclusive prospecting licence, licensee or permit holder, as the case may be, for or on behalf of whom the unpolished diamonds are carried or transported on his or her own letterhead, stating -
 - (i) the name and identity or passport number of the person carrying or transporting the unpolished diamonds;
 - (ii) the origin, destination, number and weight of the unpolished diamonds;
 - (iii) the date of the intended carriage or transport of the unpolished diamonds;
 - (iv) the period of time which would probably be required to carry or transport the unpolished diamonds to their destination;
 - (v) the route by which the unpolished diamonds should be carried or transported, which shall be the shortest possible route which would be reasonable to follow;
 - (vi) the specific instruction to the carrier or transporter regarding the precise destination of the unpolished diamonds; and
- (b) his or her identity document or passport.

(2) Any person who permits the carrying or transport of an unpolished diamond and who fails to provide a document as required in sub-regulation (1) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$50 000-00 or to imprisonment not exceeding one year or to both such fine and such imprisonment.

(3) Any person who carries or transports any unpolished diamond without the documents referred to in sub-regulation (1) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$50 000-00 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(4) Any person who without good cause fails to follow the route or instructions referred to in sub-regulation (1)(v) or (vi), shall be guilty of an offence and liable on conviction to a fine not exceeding N\$50 000-00 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(5) A copy of the original document referred to in sub-regulation (1)(a) shall be kept by the person who issued it for a period of at least three years.

(6) Upon delivery of the unpolished diamonds the original document referred to in sub-regulation (1)(a) shall be signed and dated by the person to whom the diamonds are delivered and retained by that person for a period of at least three years.

(7) Any person who contravenes or fails to comply with the provisions of sub-regulations (5) or (6) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$25 000-00 or to imprisonment for a period of six months or to both such fine and such imprisonment.

Security plan

16. (1) A security plan referred to in section 50 of the Act shall contain full particulars specifying:

- (a) the policy and procedures to be applied and followed with respect to employees involved in offences under the Act or in any way connected to unpolished diamonds;
- (b) the systems of surveillance and control of activities on the business premises, other approved premises and in the relevant restricted area or areas covered by such plan;

- (c) the systems and procedures to be followed to safeguard any unpolished diamonds;
 - (d) access of persons to unpolished diamonds and to the premises or area covered by the security plan;
 - (e) the manner in which and method by which unpolished diamonds, diamondiferous concentrate or sand, soil, clay, gravel, stone or any mineral is or are to be moved on or from the premises or area covered by the security plan to any other place;
 - (f) systems and procedures regarding the control of movement of employees and other persons on the premises or in the area covered by the security plan;
 - (g) each location inside or outside the premises or area covered by the security plan where unpolished diamonds shall be kept and the security arrangements at such locations;
 - (h) the person responsible for the execution and enforcement of the security plan;
 - (i) in the case of a producer, contractor or sub-contractor, the security arrangements at the place where mining occurs and at every stage of the recovery process until the final intended product is recovered;
 - (j) the storage of any diamondiferous concentrate, sand, soil, clay, gravel, stone or minerals;
 - (k) the security arrangements at places where bulk sampling is being carried on;
 - (l) the systems and procedures to be followed during the transport of any unpolished diamonds, as well as in the case of an exception referred to in regulation 15(1), particulars regarding the documentation that should be kept;
 - (m) in the case of an exception referred to in regulation 11(3), alternative arrangement with regard to the keeping of registers or records relating to unpolished diamonds;
 - (n) any other matter which the Minister may require.
- (2) Any holder of an exclusive prospecting licence shall be required to submit a security plan within thirty days after the first diamond was won or recovered by such holder or after bulk sampling has commenced.

(3) Whenever any material changes occur regarding the matters which are required to be covered by a security plan, or in the scope of the activities giving rise to such plan, such plan shall be amended accordingly subject to the provisions of section 50(6) of the Act.

Records to be kept by cutter

17. (1) A cutter shall, in respect of each unpolished diamond purchased, received, imported, exported, sold or disposed of, record in writing a description of such diamond, which description shall contain particulars of the weight, value, shape, colour and clarity of such diamond, unless such cutter is, on good cause shown, exempted in writing by the Commissioner from keeping records of any of the prescribed particulars.

(2) A cutter shall, in respect of each diamond processed by that cutter, promptly record in writing a description of such diamond after it has been processed, which description shall contain particulars of the weight, value, cut, colour and clarity of such diamond.

(3) The records referred to in sub-regulations (1) and (2) shall be kept for a period of at least three years, in such a manner that such records are ready and suitable for inspection at the request of a diamond inspector or police official exercising his or her powers under the Act.

(4) Any person who contravenes or fails to comply with the provisions of this regulation shall be guilty of an offence and liable on conviction to a fine not exceeding N\$100 000-00 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Registration of diamond prospecting or mining vessels

18. Every producer, holder of an exclusive prospecting licence, contractor or sub-contractor who is required to register a vessel as a diamond prospecting or mining vessel in terms of section 57(1) of the Act shall complete and submit to the Commissioner a document substantially in the form as set out in Form 18 of Annexure A.

Export of polished diamonds

19. (1) Any person who intends to export from Namibia any polished diamonds of a total weight of 10 carats or more shall notify the Minister, as required by section 64(1) of the Act, of that fact, by completing and delivering a notification substantially in the form as set out in Form 19 of Annexure A within the period required by that section.

(2) For the purposes of this regulation, delivery shall not be regarded to have taken place unless the Minister has acknowledged receipt in writing of the document referred to in sub-regulation (1).

Search of animals

20. Any search in terms of sections 66 or 67 of the Act may include a search of any animal.

ANNEUXURE B FEES

TYPE OF FEE	FEES PAYABLE N\$
1. Application for license in terms of section 16 of Act (regulation 4(1))	500-00
2. Issue of diamond cutting license, diamond tool-making license or diamond research license (regulation 4(2))	1 500-00
3. Issue of diamond dealer's license (regulation 4(3))	10 000-00
4. Application for permit referred to in section 27(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of the Act (regulation 7)	250-00