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The Precious Stones Order 1970

Order No. 24 of 1970

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ORDER NO. 24 OF 1970

THE PRECIOUS STONES ORDER 1970

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ORDER NO. 24 OF 1970

Precious Stones Order 1970

ORDER

To regulate the trade in precious stones and for related matters.

Made by the Council of Ministers

CHAPTER I

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|----------------|--|
| Citation | 1. This Order may be cited as the Precious Stones Order 1970. |
| Interpretation | <p>2. In this Order, unless the context otherwise requires —</p> <p>“accredited agent” in relation to a producer means the agent of such producer approved in writing as such agent by the Commissioner;</p> <p>“bank” means a Commercial or Merchant bank incorporated in Lesotho, or a recognised branch in Lesotho of a commercial or merchant bank incorporated elsewhere;</p> <p>“Board” means the Diamond Cutting Industry Board appointed under section 43;</p> <p>“certificate of registration” means a certificate issued under section 74;</p> <p>“Commissioner” means the Commissioner of Mines or any officer of the public service designated to perform the functions of the Commissioner;</p> <p>“cut diamond” means a diamond on which the operation known as cutting has been completed;</p> <p>“crushed diamond” means any part of a diamond which has been subjected to any of the operations of crushing;</p> <p>“diamond cutting” includes any of the operations for which a licence is required in terms of section 53;</p> <p>“diamond dust” means dust resulting from any of the operations of diamond cutting or diamond crushing;</p> <p>“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 cleaving, sawing, cutting or polishing;</p> <p>“holder” in relation to a licence means a person or a partnership, company or association of persons to whom or to which a licence has been issued, and includes, in the case of such a partnership, company or association of persons, any natural person referred to in section 58;</p> <p>“immovable property” shall have the meaning assigned thereto by the Deeds Registry Act 1967;</p> <p>“licence” means a licence issued under this Order;</p> |

"licensee" means a person or a partnership, company or association of persons to whom or to which a licence has been issued;

"licensed dealer" means the holder of a current diamond dealer's licence issued in terms of section 8;

"partly manufactured diamond" means a precious stone which has been subject to one or more of the operations of precious stone cutting, but not to the extent sufficient for it to be regarded in the diamond cutting industry as a polished precious diamond;

"police officer" means any member of the Lesotho Mounted Police of or above the rank of Sergeant or any member of the Lesotho Mounted Police authorized thereto in writing by the Commissioner of Police;

"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;

"precious stones" shall have the meaning assigned thereto by the Mining Rights Act 1967;

"prospecting right" means a right conferred on the holder of a prospecting lease or permit granted under the Mining Rights Act 1967;

"producer" means the holder of an existing grant, mining licence or lease (which grant, licence or lease permits mining for diamonds) or a prospecting permit or prospecting lease which permits prospecting for diamonds, who has registered himself with the Commissioner in terms of section 3 (1) as a producer of diamonds;

"register", used as a verb, means to register in the Deeds Registry established under section 3 of the Deeds Registry Act 1967;

"registered employee" means the holder of a valid certificate of registration issued under section 74 and includes a person who is under the provisions of that section deemed to be a registered employee;

"registrar" has the meaning assigned to it in the Deeds Registry Act 1967;

"Regulations" means regulations made by the Minister under powers conferred on him by this Order;

"rough or uncut diamond" means a diamond which has not been subjected to any of the operations of diamond cutting, and includes a crushed diamond, diamond dust, fragment or partly manufactured diamond, diamond powder and any rough or uncut synthetic diamond;

"this Order" includes any notice, rule or regulation issued or made thereunder;

"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.

Duties of holder of prospecting right

3. (1) Before embarking upon any prospecting or mining for precious stones the holder of a mineral title shall register himself with the Commissioner in such manner as may be prescribed. Such registration shall not extend beyond the ambit of the holder's title.

(2) The holder of a prospecting right who has discovered precious stones shall forthwith give written notice of his discovery to the Commissioner, and shall thereafter transmit to the Commissioner, within 7 days after the last day of every month, or at such shorter interval as the Commissioner may in writing direct, a declaration in the form prescribed in the Regulations setting forth the weight and estimated value of the precious stones found, the weight and price received for such precious stones as may have been sold during the month to which the declaration relates, the extent of the ground worked, the number of persons employed by him during the month and such other information as may be prescribed.

(3) A copy of any such declaration together with such precious stones referred to therein as have not yet been sold, shall also be produced to the Commissioner for inspection.

(4) Any such holder who fails to comply with any provision of this section or in any declaration under subsection (1) makes a statement which is false in any material particular knowing the same to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding 1 year.

(1) Any person who wilfully places or deposits or is an offence the Minister may declare forfeited any rights which may have accrued to such holder under this Order or the Mining Rights Act 1967, in respect of the discovery of precious stones on the land in question or any rights that may have been granted to him in consequence of any such false declaration.

Penalty for making false declaration of discovery of precious stones

4. Any person who makes any declaration of discovery of precious stones under section 3 well knowing that the precious stones declared to have been found were by himself or by some other person placed or deposited in or on the place or in the soil or rock dug out or removed from the place in which the declarant was prospecting, or who makes a declaration of precious stones well knowing that the said precious stones were not found or discovered at, on or near the place where they were declared to have been found or discovered, shall be guilty of an offence and liable on conviction to a fine of R2,000 or to imprisonment for a period not exceeding four years, or to both such fine and imprisonment, and all rights acquired by him in consequence of any such declaration of discovery shall lapse.

Placing of precious stones in places where not naturally found

5. (1) Any person who wilfully places or deposits or is accessory to the wilful placing or depositing of any precious stones in any place, with intent to persuade or induce any person to make a declaration of discovery of precious stones or to create the impression that precious stones occur in payable quantities in any

place where precious stones have been or may be declared to have been found, shall be guilty of an offence and liable on conviction to imprisonment for seven years, and all rights which may have been acquired by him in respect of such place shall lapse.

(2) Wherever in any charge in respect of an offence under subsection (1) the accused is proved to have placed or deposited or to have been accessory to the placing or depositing of precious stones in any place where the finding thereof would be likely to lead any person to make a declaration of the finding of the same or would tend to mislead any person, the accused shall, unless the contrary is proved, be deemed to have placed or deposited such precious stones in such place with the intent mentioned in that subsection.

CHAPTER II—DEALING IN DIAMONDS

6. (1) Save as is otherwise provided in this Order, no person shall —
- (a) buy, deal in or receive by way of barter, pledge or otherwise, either as principal or agent, any rough or uncut diamond, unless —
- (i) he has been duly licensed or authorized in terms of this Order to deal in rough or uncut diamonds as buyer or seller;
- (ii) he holds a diamond cutter's licence, diamond research licence or diamond toolmaker's licence issued under this Order and concludes the transaction in accordance with the provisions of this Order; or
- (iii) he is a banker in Lesotho;
- (b) sell or offer or expose for sale, barter, pledge or otherwise, or for the purpose of trade dispose of or deliver, either as principal or agent, and no person shall give, in satisfaction or discharge of a debt or any part thereof, any rough or uncut diamond, unless —
- (i) he is a person exempted under paragraph (a), and, if he is the holder of a licence referred to in subparagraph (ii) of that paragraph, concludes the transaction in accordance with the provisions of this Order;
- (ii) he is a producer of precious stones;
- (iii) such rough or uncut diamond has been won or recovered by him from land on which he is lawfully prospecting for precious stones under the authority of a current permit, licence, lease, agreement or other authority granted or entered into under this Order or any other law;
- (iv) he is the duly accredited and registered agent of any person excepted under subparagraph (ii) or (iii) of this paragraph;

Prohibition on unlawful dealings in and possession of rough or uncut diamonds

- (v) such rough or uncut diamond being a synthetic diamond, has been manufactured by him; or
- (vi) he is otherwise authorized under this Order or any other law to sell or otherwise dispose of such rough or uncut diamond;
- (c) have in his possession, power or control any rough or uncut diamond unless --
 - (i) he is a person exempted under paragraph (a) or (b);
 - (ii) he is authorized under this Order to be in possession of such rough or uncut diamond;
 - (iii) he is in possession of such rough or uncut diamond in fulfilment of a contract of service with any such exempted person; or
 - (iv) he has come into possession of such rough or uncut diamond in a lawful manner.

(2) For the purpose of this section any diamond in the course of transmission by post or otherwise shall, whilst it is within the boundaries of Lesotho, be deemed to be in the possession, power or control of the person by whom or on whose behalf it was dispatched.

(3) The provisions of paragraph (b) of subsection (1) shall not be construed as authorizing the sale, disposal or delivery of any rough or uncut diamond by any person referred to in that paragraph unless he is the lawful owner of such diamond or is lawfully in possession thereof.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R10,000 or imprisonment for a period not exceeding fifteen years or both such fine and such imprisonment.

Prohibition
against
purchase
from or sale
to unautho-
rized
persons

7. (1) No person exempted under paragraph (a) of subsection (1) of section 6 shall buy or receive by way of barter pledge or otherwise any rough or uncut diamond from any person not authorized under paragraph (b) of that subsection to dispose thereof, and no person so authorized shall sell or offer or expose for sale, barter, pledge or otherwise or dispose of or deliver any rough or uncut diamond to any person not authorized under the said paragraph (a) or any other provision of this Order to buy or receive such rough or uncut diamond:

Provided that, anything contained in section 6 and this section notwithstanding, it shall be lawful for the legal representative of a producer or of a deceased licensed dealer, within the period of three months from the date of the death of the deceased (or such longer time as the Minister in a particular case may allow), to sell any rough or uncut diamond which, at the time of and immediately prior to the death of the deceased, was lawfully in his possession, and for a licensed dealer, within that period, to buy such rough or uncut diamond.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (4) of section 6.

8. (1) (i) Subject to the provisions of this section, a diamond dealer's licence in the form prescribed, entitling the holder during the currency of the licence to deal in rough or uncut diamonds as buyer, seller, importer or exporter, may, subject to the provisions of this Order, be obtained by any person of or over the age of twenty-one years from the Commissioner.

Issue of
diamond
dealers'
licences

(ii) Every application for a diamond dealer's licence shall be made in the form prescribed by the Regulations.

(2) The Commissioner may refuse to issue a diamond dealer's licence if he is satisfied —

- (i) that the applicant is not a fit and proper person to hold the licence applied for;
- (ii) that the applicant's knowledge of diamonds is not sufficient to enable him to carry on the business of a diamond dealer in a satisfactory manner;
- (iii) that there is a sufficient number of persons carrying on such business in Lesotho; or
- (iv) that for any other reason the issue to the applicant of the licence applied for is not warranted or is undesirable.

(3) Whenever any application under subsection (2) is refused, the Commissioner shall in writing notify the applicant of his decision but need not give any reasons for such refusal, and the applicant may, if he is dissatisfied with such decision, within thirty days of the date of receipt of such notification appeal to the Minister who may dismiss the appeal or direct the Commissioner to issue to the appellant the document applied for, and whose decision shall be final.

(4) Before any diamond dealer's licence is issued to any person there shall be lodged with the Commissioner a recognizance in the form prescribed, entered into by such person and one or more sufficient sureties, which recognizance shall be for an amount specified in the Regulations and shall be subject to such conditions as may be set forth in such form. Every such recognizance shall be entered into before the resident magistrate of Maseru and for the duration of the licence applied for:

Provided that the recognizance shall remain enforceable according to the terms thereof for a further period of two years in respect of any offence committed by the holder of the licence under this Order during the currency of the licence to which the recognizance relates.

(5) A diamond dealer's licence shall be issued for a year on payment of a fee to be prescribed by the Minister by notice in the Gazette.

(6) Any such licence shall expire on the thirty-first day of December of the year in respect of which it is issued.

Licences
deemed to be
licences
under this
Order

9. Every diamond dealer's licence issued under a law repealed by this Order and current at the commencement thereof shall be deemed to be a licence issued under this Order.

False
statement
by applicant
for licence
or permit

10. (1) Any person who in connection with any application for a licence or permit under this Order, makes or causes to be made a statement which is false in any material particular, unless he believed on reasonable grounds at the time such statement was made that it was true, shall be guilty of an offence and liable on conviction to a fine of R1,000, or to imprisonment for a period of 2 years or to both such fine and such imprisonment.

(2) Any such licence or permit issued to a person convicted under the provisions of subsection (1) shall upon such conviction become null and void.

No dealings
allowed
between
sunset and
sunrise, or on
Sundays or
Public
Holidays

11. (1) No person shall buy, deal in or receive by way of barter, pledge or otherwise, or sell or offer or expose for sale, barter, pledge or otherwise, or in any way for the purpose of trade dispose of or deliver, either as principal or agent, any rough or uncut diamond between sunset and sunrise or on any Sunday or any Public Holiday.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Licensed
dealer to
have place
of business
and dealings
to be con-
fined to such
place

12. (1) Every licensed dealer shall have an office or place of business the situation whereof shall be described in his licence or endorsed thereon in accordance with the provisions of section 13.

(2) Before issuing any document as provided in subsection (1) of section 8 to any applicant for a diamond dealer's licence, the Commissioner shall satisfy himself that the applicant's business premises are suitable and that their construction, and their situation as regards locality or place, will not render difficult any such supervision and control as are required to be exercised by the Commissioner in order to ensure that the provisions of this Order are complied with.

(3) A licensed dealer shall affix in some conspicuous place on the outside of and over or at the side of the outer door of his business premises, his full name or, where two or more such dealers carry on business in partnership, the name or style of the partnership, and after any such name or style the words "Licensed Diamond Dealer" or "Licensed Diamond Dealers", in the English and Sesotho languages as the circumstances may require, such name or style and the said words to be printed in capital letters at least 2 inches in height and to be plainly visible and legible.

(4) Subject to the succeeding provisions of this section and the provisions of section 14, no licensed dealer shall buy,

offer to buy, sell, offer or expose for sale, deal in or receive by way of barter, pledge or otherwise or view or request any person to sell or in any way dispose of any rough or uncut diamond elsewhere than in the premises the situation whereof is described in his diamond dealer's licence or premises of which the situation has been endorsed on that licence in accordance with the provisions of section 13.

(5) When any transaction as is contemplated by subsection (4) is negotiated between 2 holders of diamond dealer's licences such transaction may be concluded in the premises of either the purchaser or the seller.

(6) Any licensed dealer may assist any other licensed dealer in any transaction mentioned in subsection (4), provided such transaction is negotiated in the premises of such other dealer.

(7) No licensed dealer shall in any manner induce or attempt to induce any person in possession of rough or uncut diamonds to enter such dealer's premises for the purpose of viewing or entering into any transaction in respect of such diamonds.

(8) No person shall place or be concerned in placing, or shall knowingly permit to be affixed, to any premises other than those of a licensed dealer, a sign of the type referred to in subsection (3) of this section or any imitation of such sign.

(9) No licensed dealer shall allow any holder of a diamond cutter's licence issued under this Order or any other law, or, except with the consent in writing of the Commissioner, any other person who is not the holder of a diamond dealer's licence to assist such dealer in any transaction which he may conclude in terms of his licence.

(10) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable on a first conviction to a fine not exceeding R200 or to imprisonment for a period not exceeding 6 months and on a second or subsequent conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding 1 year or to both such fine and such imprisonment.

13. If the removal of any licensed dealer's place of business to premises other than those in respect of which his licence was issued becomes necessary or desirable during the currency of the licence, or if such dealer desires to carry on business in any additional premises, the Commissioner may, upon application made to him by such dealer, and after he has satisfied himself as provided in subsection (2) of section 12, in writing endorse on the licence the situation of the new or additional premises.

Removal or extension of licensed dealer's place of business

14. (1) No producer or accredited agent of a producer or holder of a permit under this Order authorizing the sale or disposal of rough or uncut diamonds shall sell or offer or expose for sale or dispose of by way of barter, pledge or otherwise any rough or uncut diamond elsewhere than in the business premises of a

Where certain persons may sell or dispose of diamonds

person who is in terms of this Order entitled to buy rough or uncut diamonds:

Provided that the Commissioner may upon application made to him in writing authorize any producer or his accredited agent to offer or expose for sale at such other premises and subject to such conditions as are specified in the authorization, any rough or uncut diamond in the lawful possession of such producer or agent.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to the penalties set forth in section 12.

Notes of
sale and
purchase

15. (1) Whenever any licensed dealer or banker buys or sells any rough or uncut diamond the parties to the transaction shall immediately upon the completion thereof complete, in triplicate, a note of sale and purchase in the form prescribed.

(2) Such notes of sale and purchase shall —

(a) be provided by the purchaser, be kept by him in book form and be used in numerical and chronological order;

(b) reflect the date of the transaction and the names of the parties thereto;

(c) set forth the total weight of the diamond in question and the total price paid therefor;

(d) specify the weight and value in respect of every diamond —

(i) of which the weight is not under ten carats; or

(ii) of which the value is not under R200; and

(e) be certified as correct by the parties to the transaction.

(3) Upon completion of the note of sale and purchase the licensed dealer shall —

(a) retain one duplicate original thereof for a period of at least 2 years;

(b) deliver one duplicate original to the seller, and

(c) submit the original to the Commissioner within 7 days after the last day of the month in which the note was issued or any other day which may be approved by the Commissioner.

(4) Any person to whom the provisions of this section apply shall produce and exhibit or deliver the duplicate originals of such notes of sale and purchase and produce for inspection any rough or uncut diamond still in his possession when requested to do so by the Commissioner or any police officer.

(5) The provisions of this section shall not apply in connection with any transaction in respect of which a note of sale and purchase under section 68 is required to be completed.

(6) Any person who contravenes or fails to comply with the provisions of this section or who signs any note of sale and purchase under this section which is false in any material particular

shall be guilty of an offence and liable on conviction to the penalties set forth in section 10.

16. (1) Every licensed dealer or manufacturer of synthetic diamonds, and every producer or accredited agent of a producer shall keep or cause to be kept a true and correct register in the form prescribed in which shall be entered —

Persons dealing in rough or uncut diamonds to keep register of transactions

- (a) details of all rough or uncut diamonds won or recovered, manufactured, purchased, sold, received, exported or imported by him, and the date of each event, and, in the case of purchases, sales, exports or imports, the name of the seller, purchaser, consignee or consignor;
- (b) the weight and value of every rough or uncut diamond —
 - (i) of which the weight is not under ten carats; or
 - (ii) of which the value is not under R200, won or recovered, purchased, sold, received, exported or imported by him;
- (c) the total price received or paid for all the rough or uncut diamonds sold to or purchased from any particular person at any one time; and
- (d) such further particulars as shall be required according to such form:

Provided that the Commissioner may in his discretion exempt any person from compliance with paragraph (b) in respect of such classes of diamonds as may be specified in the exemption.

(2) Every such entry shall be in ink and shall be made —

- (a) in the case of a licensed dealer within seven days; and
- (b) in the case of any other person, within twenty-four hours, after the occurrence of the event recorded.

(3) Every person required by this section to keep such register shall —

- (a) within seven days after the end of every month of the year forward to the Commissioner a true copy of all entries in the register for the previous month together with a solemn declaration testifying to the correctness thereof;
- (b) whenever such register is required to be exhibited in any court, produce and deliver such register on the written order of a police officer;
- (c) produce the register for inspection together with any rough or uncut diamonds in his possession when requested to do so by any such police officer, or by the Commissioner; and
- (d) retain the register for a period of at least two years subsequent to the occurrence of any event therein recorded in terms of subsection (1)

(4) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable on conviction to the penalties prescribed in section 12.

Sales tax

17. (1) There shall be paid sales tax on the value of every diamond found in Lesotho and exported therefrom.

(2) The rate of the sales tax shall be fifteen per centum of the value of the diamond or such other amount as the Minister may from time to time by regulation prescribe.

(3) The sales tax shall be paid to the Commissioner on behalf of the Government by the licensed exporter who proposes to export the diamond at or prior to the time at which it is registered for export.

(4) (i) The value referred to in subsection (2) of this section shall be the true market value which shall be determined by the Commissioner.

(ii) For the purpose of assisting him to determine the true market value the Commissioner may consult a diamond valuator.

Deferment
of payment
of sales tax

18. Subject to such conditions as he may determine the Commissioner may authorize the deferment of payment of the sales tax for a period not exceeding 6 months from the date of export when he is satisfied that a diamond is being exported solely for the purpose of exhibition or display and may be returned to Lesotho or, where the diamond is of unusual size or value, is being exported in an endeavour to find a purchaser and, if any such diamond is returned to Lesotho, it not having in the meantime been dealt with, the Commissioner may decide that no sales tax thereon shall be payable.

Exporter to
furnish
statement to
Commis-
sioner

19. (1) A person who desires to export a diamond shall furnish to the Commissioner a statement in the form prescribed, provided that, until such regulations are promulgated, the form in use as at the date of the coming into effect of this Order shall be used.

(2) No person shall —

(a) export any diamond without first having furnished the statement referred to in subsection (1);

(b) for the purpose of evading payment of the sales tax, or of paying an amount less than he is liable to pay, make or furnish, or procure or connive in the making or furnishing of, any false or inaccurate statement, return or account, or deliberately undervalue a diamond;

(c) any person who fails to comply with the provisions of this section shall be guilty of an offence and liable on conviction to a fine of R1,000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment

20. Notwithstanding anything to the contrary in any law contained, no registration fee shall be payable in respect of the export of any diamond.

Registration fee not payable on export of diamonds

21. (1) Any person who brings or imports any rough or uncut diamond into Lesotho from any place outside Lesotho shall, not later than the first business day following the date on which such diamond is so brought in or imported, register such diamond and pay a registration fee of $2\frac{1}{2}\%$ of the value thereof at the office of the Commissioner.

Diamonds brought or imported into Lesotho to be registered

(2) Such registration shall be in the form prescribed and such form shall set forth the particulars which shall be furnished by such person.

(3) Any person who fails to comply with the provisions of this section shall be guilty of an offence and liable on conviction to the penalties set forth in section 6.

22. (1) No person shall export from Lesotho any particular diamond unless he is a licensed dealer or producer or an accredited agent of such producer who holds a permit to export that diamond. The Commissioner may in the prescribed form, issue or refuse to issue, with or without assigning a reason, a permit to export a diamond.

Permits for export of diamonds

(2) The Minister may by notice in the Gazette give directions, either generally or in respect of a specific case, for the control, restriction and regulation of the import and export of diamonds, and for matters connected therewith.

23. (1) The Commissioner, any public officer designated for that purpose by the Commissioner or any member of the Lesotho Mounted Police may without warrant —

Powers of Police to search for rough or uncut diamonds

(a) at all times enter upon and examine and search any place or premises, and may at any time stop and search and examine any vehicle (or any part thereof) conveying or suspected to be conveying rough or uncut diamonds, and may —

(i) seal, mark or otherwise secure any package or container found in such place, premises or vehicle;

(ii) take an account of all rough or uncut diamonds found in such place, premises or vehicle;

(b) force access to or open any place, premises, vehicle, package or container which is locked if the keys thereof are not produced upon his demand;

(c) search or cause to be searched any person whom he has reason to believe has rough or uncut diamonds secreted about his person or in his possession:

Provided that any such search shall be exercised with due regard to privacy and that a female shall not be searched by any person other than a female;

(d) board, search and freely remain on any vessel or train, or board and search any aircraft on which rough or

uncut diamonds are being or are suspected to be conveyed;

- (e) arrest any person found upon or within a mining area whose presence there is unlawful, and any person whom the Commissioner, the designated public officer or member of the Lesotho Mounted Police (as the case may be) has reasonable grounds for believing, is or has been involved in any offence against any of the provisions of this Order or the regulations;
- (f) search, and for such purpose and for as long as may reasonably be necessary, detain any person or thing whenever the Commissioner, the designated public officer or member of the Lesotho Mounted Police (as the case may be) has reasonable grounds for believing that a diamond is unlawfully in the possession of such person or is unlawfully in or upon such thing.

(2) Only such force as, in the particular circumstances, is necessary to give effect to the provisions of this Order shall be used in the exercise of the powers conferred by this section.

Powers of
Police concern-
ing
parcels and
packages
containing
diamonds
transmitted
by post

24. (1) Notwithstanding anything in any other law contained, any police officer in charge of any investigation in connection with suspected unlawful traffic in rough or uncut diamonds, may stop or cause to be stopped either during transit or otherwise any parcel or package which is being or has been transmitted through the post and in respect of which he has good cause to believe that it contains rough or uncut diamonds.

(2) Where any such parcel or package has been so stopped the police officer concerned shall, by notice in writing served personally upon the person by whom such parcel or package was despatched, call upon such person to attend either personally or by an agent duly authorized by that person in writing, at the time and place specified in such notice for the purpose of being present at the opening and examination of the parcel or package, and thereupon at the time and place appointed in such notice such police officer shall open and examine the parcel or package for the purpose of determining its contents.

(3) If it appears, to the satisfaction of the police officer, upon the opening and examination of the package, that the transmission thereof is not unlawful, he shall forthwith release it for onward transmission.

(4) Whenever in the course of any search conducted under the powers conferred by section 23, or the opening of any parcel or package under section 24, the person who conducts such search or opens such parcel or package may seize and take any rough or uncut diamond and any article or thing in which it is contained if he suspects upon reasonable grounds that such rough or uncut diamond is the subject of or connected with an offence against any of the provisions of this Order, and may, for the purpose of its safe custody during the detention thereof, lodge it in some suitable place.

(5) A judge or magistrate may make an order as to the disposal or forfeiture of a precious stone or package detained by a police officer under the provisions of this section.

25. The Minister may, if after enquiry he is satisfied that any licensed dealer ---

Powers of
Minister to
cancel
diamond
dealers'
licences

- (a) is or has been or is on reasonable grounds suspected of being or having been engaged in illicit trade in rough or uncut diamonds or unwrought precious metal in contravention of this Order or any other law;
- (b) has been convicted of any offence and sentenced to any term of imprisonment without the option of a fine or to a fine of or exceeding R100;
- (c) associated with undesirable or suspected persons; or
- (d) is for any other reason not a fit and proper person to hold a diamond dealer's licence,

by notice in writing addressed to such dealer cancel his diamond dealer's licence as from a date to be specified in the notice which shall not be less than 1 month from the date of the notice.

26. (1) Any person who by chance finds or picks up any rough or uncut diamond at any place other than one in respect of which he or his employer holds a mineral title relating to precious stones, shall forthwith take and deliver such diamond to the Commissioner or the person in charge of the nearest station of the police.

Diamonds
found or
picked up
by chance
to be
delivered to
police in
certain cir-
cumstances

(2) Upon receipt of such diamond by a person in charge of a police station, such person in charge shall forthwith give a receipt therefor on the prescribed form and shall, within 3 days, transmit that diamond to the Commissioner who shall, if he is satisfied as to the ownership of the diamond, deliver it to the owner thereof, or may if he is not so satisfied cause a notice to be published in the Gazette calling upon any person who may be the owner of that diamond or entitled to be in possession thereof to his ownership or right of possession.

(3) If within a period of twenty-one days of the date of publication of such notice no person has furnished such proof to the satisfaction of the Commissioner, he shall cause the diamond in question to be sold and the proceeds thereof to be paid into the Consolidated Fund:

Provided that a sum calculated at two-thirds of the amount realised by the sale shall be paid to the person by whom the diamond was picked up or found.

(4) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to the penalties set forth in section 10.

Placing
diamond in
possession
or premises
of person to
secure
conviction

27. Any person who maliciously places any rough or uncut diamond in the possession or on the premises of any other person, with intent that such other person shall be convicted of an offence under any provision of this Order, shall be guilty of an offence and liable on conviction to a fine not exceeding R1,000 or to a period of imprisonment not exceeding 2 years or to both such fine and such imprisonment.

Accessory
before or
after the
fact

28. Any accessory, either before or after the fact, to any offence mentioned in the Order shall be liable to be charged and dealt with in all respects as if he were a principal offender, and any person who attempts to commit any offence shall be deemed to have actually committed the offence and shall be liable on conviction to the penalties prescribed for the offence which he has attempted to commit.

Burden of
proof in
proceedings

29. Whenever in any proceedings against any person under this Order —

(a) it is necessary to ascertain whether he is or was the holder of any licence, or authority or otherwise entitled to be in possession of or authorized to buy, sell, deal in, receive or dispose of rough or uncut diamonds; or

(b) such person contends that any article or substance, the subject of the proceedings, is not a rough or uncut diamond,

the burden of proving that he is or was the holder of such licence, or authority or that he is or was otherwise entitled or authorized as aforesaid, or that such article or substance is not a rough or uncut diamond, as the case may be, shall be upon such person.

Suspension
of licence
or permit in
case of
conviction

30. The Court convicting any person of any offence under this Order may, if such person is at the time of his conviction the holder of any licence under this Order, suspend such licence for such period as the court may determine.

Disposal of
diamonds in
case of
conviction
and for-
feiture of
moneys etc.
in certain
circum-
stances

31. (1) On the conviction of any person under any provision of this Order, the court convicting him may in its discretion order that any rough or uncut diamond in respect of which such person is so convicted be delivered to the owner thereof (if the court is satisfied as to the ownership) or, if the court is not so satisfied, declare such diamond to be forfeited to the State.

(2) Whenever any member or agent of the police has transferred possession of any rough or uncut diamond to any person upon payment or delivery by such person to such member or agent of an amount in money or other consideration, property or security, and such person is subsequently in connection with such transaction convicted of an offence under this Order, such money or consideration, property or security shall, notwithstanding anything in any law contained, be forfeited to the State.

Regulations
for pre-
vention of
illicit deal-
ing or theft

32. The Minister may, by regulation or otherwise make such arrangements as he deems necessary and desirable for the better prevention of the theft of or illicit dealing or trading in or unlawful possession of rough or uncut diamonds.

CHAPTER III—DIAMOND PROTECTION AND SECURITY
AREAS

33. (1) The Minister may by notice in the *Gazette* declare areas of land to be Diamond Protection Areas, and define the boundaries of such areas.

Declaration
of diamond
protection
areas and
rules there-
for

(2) (i) No person shall enter or be upon a Diamond Protection Area unless he is duly authorized thereto in writing by the Commissioner, and no person shall dig in such area unless he is in possession of a valid licence to do so.

(ii) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding 1 year or to both such fine and such imprisonment.

(3) Subject to the provisions of the Mining Rights Act 1967 the Minister may make, in respect of such areas, regulations for the better protection of the diamond industry in Lesotho and without derogating from the generality of the foregoing powers, such regulations may deal with all or any of the following matters—

- (a) the residence of persons in such areas;
- (b) the removal of persons from such areas;
- (c) the issue and the prohibition or restriction of the issue trading licences in such areas;
- (d) the powers of arrest which may be exercised in respect of any person suspected of having committed an offence under any regulation made under this section;
- (e) the removal and exclusion from such areas of any person whom the Minister shall deem for the better protection of the diamond industry in Lesotho so to remove and exclude.

(4) It shall be lawful for the Minister to apply any or all of such regulations or such of them as may be applicable with or without modifications or conditions to all Diamond Protection Areas or to any specified part or parts thereof.

(5) The Minister may prescribe a penalty of R500 or imprisonment for a period of 1 year, or both such fine and such imprisonment, for the breach of any regulation made under this section.

34. (1) The Minister may by notice in the *Gazette* declare —

Diamond
security
areas

- (a) any mining area; or
- (b) any area on which prospecting operations are taking place,
to be a Diamond Security Area.

(2) No person may enter or remain within a Diamond Security Area unless he is in possession of a valid permit in the prescribed form authorizing him to do so.

(3) Such permit may be issued by such person as may be designated by the Minister by notice in the Gazette, and, in issuing such permit, such person shall comply with such directions as may be given in the matter by the Commissioner.

(4) The issue of a permit may be refused without reason given.

(5) Any person who enters or remains in a Diamond Security Area in contravention of the provisions of this section shall be guilty of an offence and liable to imprisonment for a period of 12 months.

CHAPTER IV—MISCELLANEOUS

Search of
persons and
things

35. (1) Every person lawfully carrying out prospecting or mining operations in respect of diamonds shall have the right to search or cause to be searched —

- (a) any person, whether employed in connection with such operations or not, on any land upon which the operations are being conducted, or within any mining or residential area connected with such operations or any area in respect of which any rights under the Mining Rights Act 1967 are held for the purposes of such operations, or in any building or structure erected upon such land or within any such area; and
- (b) any vehicle in the possession of or any article worn by or in possession of any such person.

(2) A search in terms of subsection (1) may include the dismantling or taking apart of any such vehicle or article, save that any such search of a person shall be carried out with strict regard to decency and shall, in the case of a female, be made by a female only.

(3) Any person who contravenes or fails to comply with the provisions of this section or who refuses to be searched as aforesaid or who obstructs or hinders any authorized person in the exercise of his powers or the performance of his duties conducted under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period of 1 year.

Powers of
entry on
land

36. (1) Any person holding the office of Commissioner and any officer or employee in the public service duly authorized in writing by a person so holding office or by the Minister, may enter upon any land for the purpose of carrying out any powers or duties conferred or imposed upon him by this Order or any other law or assigned to him by the Minister or a person so holding office.

(2) Any person entering on any land under this section shall be entitled to take with him thereon such persons, vehicles, appliances, instruments and materials as may be necessary for the purpose of carrying out his powers and duties, and shall be entitled to the use on the land so entered of such water and dead wood as may be necessary for himself and the persons with him.

(3) Any person who prevents any such entry or wilfully obstructs or hinders any person so authorized in the exercise of his powers or the performance of his duties under this Order or any other law, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding 1 year.

37. (1) Any notice, order or other document required by this Order to be served upon any person shall be deemed to have been duly served if it has been delivered to such person personally or sent by registered post to his last known postal or business address or ordinary residence, or, where service in any manner aforesaid is for any reason impracticable, if it has been published in the Gazette.

Service of notices and other documents

(2) A notice, order or other document which, purporting to be lawfully made, is issued in good faith under this Order shall be valid according to the terms thereof, notwithstanding any want of form or lack of authority on the part of any person to issue or authenticate it, provided the authority be subsequently conferred upon such person.

38. (1) Every person who is required by this Order to hold any licence, permission, certificate, permit or other document shall produce such licence, permission, certificate, permit, or other document at the request of the Commissioner, a police officer or any person duly authorized thereto by the Commissioner.

Production of licences etc. on demand

(2) Any person who fails to comply with any request referred to in subsection (1) may be arrested without warrant and shall be guilty of an offence and liable on conviction to a fine not exceeding R100 or to imprisonment for a period not exceeding 3 months.

39. The Minister may delegate to the Commissioner or any other officer in the Public Service any of the powers conferred upon him by this Order save the power to make regulations.

Minister may delegate

40. Any person who when required by or under this Order to give any notice or disclose any fact to the Commissioner or any other officer, makes default in complying with such requirements shall be guilty of an offence and liable on conviction, where no other penalty is expressly provided, to a fine not exceeding R200 or to imprisonment for a period not exceeding 6 months.

Offence to withhold information

41. The Minister may by notice to any producer determine a date after which that producer shall not sell or dispose of or export diamonds save through the agency of such person (being a licensed dealer in diamonds) as may be specified in the notice,

Minister's power to limit and control output and disposal of diamonds

provided that this section will not apply in the event of the Government having entered into or entering into any agreement to the contrary with any person or body of persons.

Minister's powers to make regulations in addition to any other regulation making powers conferred by this Order

42. (1) The Minister may make regulations which are not inconsistent with this Order in regard to any matter in respect of which it is specifically provided in this Order that they are to be dealt with or prescribed by regulation and generally in regard to any matter which he considers necessary or expedient to prescribe in order that the purposes of this Order may be achieved and may in particular, but without prejudice to the generality of the foregoing, provide for the following, namely —

- (a) the powers, functions and duties of any officer or employee appointed under this Order,
- (b) the form of any application capable of being made under this Order and of any consent, document or authorization of whatever nature required to be submitted with such application, and the information or particulars which shall accompany the application;
- (c) the form of, the conditions attached to, and the issue, renewal or cancellation of any permit, licence, certificate or permission or any authorization, right or document of whatever nature capable of being issued, granted or renewed under the provisions of this Order;
- (d) the form of any register or other record required to be kept under or for the purposes of this Order;
- (e) the form of any notice to be given or published under this Order;
- (f) the prevention of or safeguarding against illicit or dishonest trade in diamonds, and the searching of persons, places and things;
- (g) the circumstances and conditions under which rough and uncut diamonds may be exported from or imported into Lesotho and prohibiting the export or import of such diamonds other than in the manner prescribed.

(2) Different regulations may be made for different areas.

(3) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R500 or imprisonment for a period not exceeding 1 year or to both such fine and imprisonment.

CHAPTER V—DIAMOND CUTTING

Appointment of Diamond Cutting Industry Board

43. (1) There shall be established a board, to be known as the Diamond Cutting Industry Board.

(2) The Board shall consist of the following persons or their respective representatives —

- (i) The Commissioner of Mines who, or whose representative, shall be the chairman.

- (ii) The Commissioner for Commerce and Industry.
- (iii) Secretary to the Cabinet.
- (iv) Public officer responsible for finance.
- (v) Managing Director, Lesotho National Development Corporation.

- (3) (a) The Board may with the approval of the Minister co-opt one or more persons to act as members of the Board in an advisory capacity for such period as the Minister may think fit.
- (b) The provisions of this Order shall apply in respect of any person so co-opted in the same manner as in the case of any other member of the Board, but no such person shall have the right to vote at any meeting of the Board.
- (c) Any person so co-opted who is not in the full-time employment of the State, shall in respect of his services receive such remuneration and allowances as the Minister may determine.

44. The functions of the Board shall be —

Functions of
the Board

- (a) to consider and report to the Minister on applications for, and any matter relating to, licences; and
- (b) to investigate and advise the Minister as to any matter relating to diamond cutting and the diamond cutting industry which he may refer to it.

45. (1) The first meeting of the Board shall be held at such time and place as the chairman thereof may determine, and all subsequent meetings shall, subject to the provision of subsection (2), be held at such times and places as the Board may from time to time fix.

Meetings and
quorum

(2) The chairman of the Board may at any time call a special meeting of the Board to be held at such time and place as he may direct.

(3) The chairman or his representative shall preside at all meetings of the Board.

(4) A majority of all the members of the Board shall form a quorum for any meeting of the Board.

(5) The decision of a majority of the members of the Board present at any meeting thereof shall constitute a decision of the Board, and in the event of an equality of votes the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

46. The provisions of sections 4, 5, 6, 7, 8 and 9 of the Commissions Powers Proclamation of 1955 shall *mutatis mutandis* apply with reference to the Board

Application
of Procla-
mation 99 of
1955

47. (1) No person who is or has been a member of the Board or any person co-opted under section 43 shall disclose to

Secrecy of
information

any other person, except in the performance of his duties or for the purpose of a report of the Board or as a witness in a court of law, any information acquired by him in the course of his duties as such member or officer.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R200 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Board to
advise
Minister

48. The Board shall advise and make recommendations to the Minister in regard to matters relating to the maintenance of discipline in, and the good order and well-being of, the diamond cutting industry.

Regulations

49. (1) The Minister may, after consultation with the Board, make regulations for the maintenance of discipline in and the good order and well-being of the diamond cutting industry.

(2) Any such regulations shall be published in the Gazette.

(3) Any such regulations may impose such duties and obligations, and confer such rights and powers, on licensees and registered employees as the Minister may consider necessary to give effect to the objects of such regulations.

Inspection
of licensee's
premises

50. For the purposes of an enquiry under subsection (1) of section 51 the Commissioner may at any time cause an inspection to be carried out at any licensee's premises referred to in section 66 by an officer in the public service.

Action on
contraven-
tion of
regulations

51. (1) If, after enquiry, the Commissioner is satisfied that a licensee or a registered employee has contravened or failed to comply with any regulation made in terms of section 49 he may, by notice in writing direct the attention of that licensee or registered employee thereto and may by that notice, warn that licensee or registered employee against a recurrence of the contravention or failure or, as the case may be, call upon that licensee or registered employee to discontinue within a period specified in such notice, the conduct giving rise to the contravention or failure to comply with that regulation.

(2) If, after having received such notice, the licensee or registered employee again contravenes or fails to comply with the regulation or fails to discontinue the said conduct within the specified period, the Commissioner shall report the matter to the Board which may, if it is satisfied that such regulation has been so contravened or not complied with or, as the case may be, that such conduct has not been discontinued within the specified period, cancel the licence issued to the licensee or suspend it for a specified period, or direct the Commissioner to cancel the certificate of registration issued to that employee or to suspend it for a specified period, and the Commissioner shall forthwith cancel or suspend the said certificate of registration in accordance with the Board's direction.

52. (1) No person shall cut, saw, cleave, polish or in any way alter any rough or uncut diamond unless he is — Control of diamond cutting

(a) the holder of the appropriate licence prescribed by section 53; or

(b) a registered 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 Order shall during the period of such suspension be deemed not to be the holder of a licence.

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

53. (1) A diamond cutter's licence shall entitle the licensee to carry on diamond cutting for purposes of business or trade. Classification of licences

(2) A diamond research licence 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.

(3) A diamond toolmaker's licence 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.

54. A licence shall be issued for a year, subject to payment of a fee to be prescribed by the Minister by notice in the Gazette. Any such licence shall expire on the thirty-first day of December of the year in respect of which it is issued. Duration of licences, and fees payable

Provided that in the case of an application for a new licence under the provisions of section 60 the previous licence held by such applicant shall remain in force pending a decision on such applicant's application for a new licence.

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

(2) An applicant shall furnish such particulars in connection with his application as the Board may require.

56. (1) After considering an application for a licence, the Board shall grant or refuse the same and need not give reasons. Grant or refusal of applications for licences

(2) In granting an application the Board may impose such condition as it thinks fit.

(3) The grant or refusal of an application shall be notified in writing to the applicant by the Commissioner.

57. (1) Whenever an application for a licence is granted by the Board such licence shall be issued by the Commissioner on the prescribed form, who shall endorse thereon such conditions as the Board may impose, together with a statement of the situation of premises in respect of which the licence is issued. Issue of licences

(2) Every licence shall be made out in duplicate, of which a copy shall be retained by the Commissioner and the original handed to the licensee.

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

58. (1) In the case of a partnership, company or association of persons the licence shall be issued to such partnership, company or association of persons in the name of one or more natural persons nominated by that partnership, company or association of persons and approved by the Board.

(2) If such natural person ceases, or where there is more than one such person, all such persons cease, to be associated with the licensee, the licensee shall forthwith apply to the Board for the name or names of a new nominee or new nominees to be substituted for that of the former nominee or nominees.

(3) On such application being made the Board may, if it considers the new nominee or nominees suitable, authorize the Commissioner to substitute the name or names of the new nominees in the licence for that of the former nominee or nominees, subject to a fresh recognizance or recognizances, entered into by the new nominee or nominees in the manner provided by section 61 being furnished.

(4) If the substitution of the name of a new nominee is not authorized as in this section provided within 3 months after the date on which a former nominee or the last of several former nominees ceased to be associated with the licensee, the licence shall lapse unless the Board otherwise directs.

(5) Any licensee who contravenes or fails to comply with the provisions of subsection (2) shall be guilty of an offence.

Transfer of
licence

59. (1) If during the currency of a licence issued to a licensee other than a partnership, company or association of persons, the licensee is, for any reason deemed sufficient by the Board, unable personally to carry on or to supervise the diamond cutting in respect of which the licence was issued, such licence shall lapse unless the Board has, on application by the licensee, authorized by endorsement on the licence any other natural person whom the Board deems fit, to carry on such diamond cutting 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 61.

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

Renewal of
licences

60. (1) Subject to the provisions of this Order, any natural person, partnership, company or association of persons to whom or to which a licence has been issued under this Order shall be entitled to a new licence if such person, partnership, company or association of persons —

(a) applies to the Board for a new licence within 14 days after the termination of the licence so issued; and

(b) pays an amount to be prescribed by the Minister by notice in the *Gazette*.

(2) The Board may direct —

(a) that there be attached to a new licence any conditions that it 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 57, be cancelled;

(b) in the case of a partnership, company or association of persons, 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 Board.

61. No licence shall be issued unless the applicant for such licence (or, if the applicant is a partnership, company or association of persons, every natural person referred to in section 58) has, together with one or more sufficient sureties, entered into a recognizance in the form and manner and on conditions and for amounts prescribed. Recognizance

62. A licence may be cancelled or suspended for a specified period by the Board: Cancellation and suspension of licences

Provided that no such licence shall be cancelled or suspended unless the Board, after enquiry, is satisfied that the licensee —

(a) is or has at any time either before or after the commencement of this Order been engaged in illicit trade in diamonds or precious metals in contravention of this Order or any other law, or is suspected of assisting or of having assisted in such trade;

(b) has been convicted of any offence and sentenced to a term of imprisonment exceeding fourteen days without the option of a fine or to a fine exceeding R100, if such conviction in the opinion of the Board unfits the licensee to carry on the diamond cutting authorized by the license issued to such licensee;

(c) has failed or is unable to comply with any of the provisions of this Order;

(d) has failed to comply with any condition imposed in respect of the licence issued to such licensee; or

(e) holds the licence, in the case of a licence issued to a partnership, company or association of persons, in the name of a person who, subsequent to the issue of that licence, became subject to any of the disqualifications mentioned in the preceding paragraphs.

63. (1) Any licence which has been cancelled under any provision of this Order shall be returned by the person to whom Return of cancelled licence

it was issued to the Commissioner within seven days after the Commissioner has in writing requested its return.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Notice to be published regarding licences

64. The Commissioner shall cause particulars of the issue, expiration, lapsing, transfer, cancellation or suspension of every licence to be published in the Gazette.

Acquisition of rough or uncut diamonds by licensee

65. 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,

shall be guilty of an offence.

Provisions regarding licensed premises

66. (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 58.

(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 Commissioner may approve or as may be prescribed.

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

- (a) on such premises; or
- (b) in a safe deposit vault maintained by a bank; or
- (c) at such other place as the Commissioner 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 or, in the case of a licensee which is a partnership, company or association of persons, its name, style or title, and after such name, style or title a description in English and Sesotho indicating that such licensee is a licensed diamond cutter, a licensed diamond research worker or a licensed diamond toolmaker, as the circumstances may require.

(5) Such name, style or title and such description, shall be in printed capital letters at least two inches in height and plainly visible and legible.

(6) Any licensee who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence.

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

67. If the removal or extension of a licensee's place of business or work to premises other than those in respect of which his licence was issued becomes necessary during the currency of the licence, the Commissioner may, on application made by the

licensee to the Board, endorse on the licence the address at which such other premises are situated.

68. (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.

Notes of sale, purchase, delivery and receipt

(2) The licensee shall retain such note in his place of business for a period of at least one year.

(3) Any licensee who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

69. Any licensee who, without the authority of the Commissioner, 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

70. (1) 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 (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:

Provisions for securing a regular supply of diamonds for diamond cutting

Provided that whenever it is the custom of the trade, the Minister shall direct that such diamonds shall be taken in a series, which shall be made up according to the value of the diamonds required by the licensee:

Provided further that no such notice shall be given by the Minister to any producer or dealer 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.

(2) The Minister shall in such notice also fix and determine terms and conditions of sale in accordance with subsections (4) and (5), and the purchase price shall be paid against delivery of the diamonds.

(3) 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 their terms of the said notice and notwithstanding that by so selling the producer or dealer will be unable to fulfil an agreement to sell diamonds to any other person.

(4) 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:

Provided that in the latter case five per centum may be added.

(5) 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 Order in regard to such sale.

(6) Any such producer or dealer who refuses, on the written demand of a licensee made in terms of subsection (3), to sell diamonds to the licensee in accordance with the terms of a notice under subsection (1) shall be guilty of an offence.

(7) For the purposes of this section —

- (a) "series" means an assortment of diamonds made up according to shape, quality, colour and size; and
- (b) "dealer" shall include a purchaser of such diamonds.

Export, sale,
delivery or
disposal of
unpolished
diamonds

71. (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):

Provided that, on the authority of a permit in the prescribed form, issued by the Commissioner, a licensee may —

- (a) sell, deliver or dispose of such diamonds to another licensee, or to a dealer; or
- (b) export fragments, crushed diamonds or diamond dust resulting from the diamond cutting conducted under the licence issued to him on obtaining in respect of such fragments, crushed diamonds or diamond dust a certificate of valuation by the Commissioner or a Valuator appointed by him.

(2) All fragments, crushed diamonds and diamond dust referred to in paragraph (b) of subsection (1) —

- (a) shall be deemed to be diamonds for the purposes of this Order; and
- (b) shall be packed and sealed for export in the manner prescribed.

(3) Any licensee who contravenes or fails to comply with any provision of this section shall be guilty of an offence.

72. (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 Commissioner; and

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

(2) The provisions of paragraph (b) of subsection (2) of section 71 shall apply in respect of the export of such diamonds.

(3) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

73. (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

(2) Every licensee shall retain such record for a period of two years subsequent to the occurrence of any event therein recorded in terms of subsection (1).

(3) Every licensee shall, whenever so required, produce such record for inspection by the Commissioner.

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

(5) Any licensee who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

74. (1) No licensee shall employ in diamond cutting any person who is not a registered employee.

Registration
of employees

(2) On an application for registration made to him in the prescribed form and manner by an employee, or an intended employee, as the case may be, in diamond cutting, the Commissioner shall, subject to the provisions of subsection (3), issue to such employee or intended employee a certificate of registration in the prescribed form.

(3) The issue of such a certificate may be refused, and a certificate issued under this section may be cancelled, or suspended for a specified period, by the Commissioner if the applicant for registration, or registered employee, as the case may be —

(a) has been convicted of any offence which in the opinion of the Commissioner unfits such applicant or employee to be employed by a licensee in diamond cutting;

(b) habitually associates with any person suspected by the Commissioner of contravening any law relating to the possession or disposal of diamonds or precious metals; or

(c) has failed or is unable to comply with any provision of this Order with which it is his duty to comply:

Provided that such applicant or registered employee shall have a right of appeal against such refusal, cancellation or suspension, as the case may be, to the Minister, whose decision on any such appeal shall be final.

(4) If a certificate of registration which has been issued to a person under this section is suspended under any provision of this Order, that person shall during the period of suspension be deemed not to be the holder of a certificate of registration.

(5) Any licensee who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Surrender
of certificate
of registra-
tion

75. Subject to the proviso to subsection (3) of section 74, every person whose certificate of registration has been cancelled under any provision of this Order shall return that certificate of registration to the Commissioner within seven days after being requested in writing by the Commissioner to do so.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Records to
be kept by
licensees
and regi-
stered
employees

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

(2) Every registered employee in the employ of a licensee shall keep a true and correct daily record, in the form and manner prescribed, of all diamonds received from and returned by him to the licensee.

(3) Every licensee shall preserve the records referred to in subsections (1) and (2) for a period of one year subsequent to the date of any entry therein made, and shall whenever so required, produce such records for inspection by the Commissioner.

(4) Any licensee or registered employee who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

Notices to
be posted by
a licensee

77. (1) Every licensee shall affix and keep affixed in some conspicuous place on his premises referred to in section 72 —

- (a) a copy of the licence issued to him; and
- (b) a list of the registered employees in his employ.

(2) Any licensee who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Inspection
by police

78. (1) A police officer may at all reasonable hours enter upon and inspect any licensee's 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 Order, 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 registered 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; or
 - (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.

79. Any person, other than a licensee or a registered 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 Commissioner to do so, shall be guilty of an offence.

Unauthorized
erection or
operation of
machinery

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

False
statements

81. 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 Order or any regulations made thereunder or who prevents the making of correct entries therein, shall be guilty of an offence.

Falsifying
records

82. Any person who is guilty of an offence under this Order shall, where no penalty is specially prescribed for such offence, be liable on conviction —

Penalties

- (a) in the case of an offence referred to in subsection (2) of section 75, or subsection (2) of section 77, or of a contravention of or failure to comply with the provisions of subsection (4) or (5) of section 66 to a fine not exceeding R200 or to imprisonment for a period not exceeding 6 months;
- (b) in the case of an offence referred to in subsection (5) of section 58 to a fine not exceeding R500 or to imprisonment for a period not exceeding 1 year;
- (c) in the case of an offence referred to in subsection (2) of section 63 or subsection (3) of section 68 to a fine not exceeding R500 or to imprisonment for a period not exceeding one year;
- (d) in the case of an offence referred to in subsection (5) of section 73, subsection (5) of section 74, subsection (4) of section 76, subsection (2) of section 78, section 80 or section 81, to a fine not exceeding R500 or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine or to both such fine and such imprisonment;
- (e) in the case of an offence referred to in section 69, subsection (3) of section 72, or section 79, to a fine not

exceeding R1,000 or to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment; and

- (f) in the case of an offence referred to in subsection (3) of section 52, section 65, subsection (6) of section 70 or subsection (3) of section 71, or of a contravention of or failure to comply with subsections (1), (2) and (3) of section 66, to a fine not exceeding R2,000 or to imprisonment for a period not exceeding five years or to such imprisonment without the option of a fine or to both such fine and imprisonment.

Regulations

83. (1) The Minister may make regulations as to —

- (a) the procedure to be observed at meetings of the board and of the committee;
- (b) the forms of licences;
- (c) the form of any application to be made under this Order;
- (d) the form of any notice to be issued or published under this Order;
- (e) the form of and conditions attaching to any certificate, permit, permission or authorization provided for in this Order;
- (f) the form of any endorsement to be made on a licence under this Order;
- (g) any matter incidental to the cancellation or suspension of a licence or certificate of registration;
- (h) the returns to be furnished by licensees;
- (i) such other returns as may be found necessary or expedient for the purposes of this Order;
- (j) any matter which by this Order is required or permitted to be prescribed by regulation; and
- (k) generally, any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Order may be achieved, the generality of the powers conferred by this paragraph not being limited by the provisions of the preceding paragraphs.

(2) Such regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R200 or imprisonment for a period not exceeding six months.

Repeal of laws

84. The laws specified in the first column of the Schedule to this Order as from time to time amended are further amended or repealed, as the case may be, in the places specified in the second column thereof in the manner and to the extent indicated in the third column thereof.

SCHEDULE

| | | |
|-------------------------------|---|---|
| <p>Mining Rights Act 1967</p> | <p>Section 14 (1)</p> | <p>Delete the words "mineral title" and substitute the following therefor — "mineral title in respect of minerals of the same kind."</p> |
| | <p>Section 15</p> | <p>Delete the words "any land already held under a mineral title" and substitute the following therefor — "any land already held under a mineral title in respect of minerals of the same kind, and"</p> |
| | <p>Section 21 as amended by section 2 of the Mining Rights (Amendment) Act 1968</p> | <p>Amend — (a) the heading to this section by deleting the following words therefrom — "ROUGH OR UNCUT PRECIOUS STONES OR"; (b) in subsection (1) delete the whole of paragraph (a) and substitute the following therefor — "(a) "Producer" means the holder of an existing grant, mining licence, or mining lease (which grant, licence or lease permits mining for precious minerals), who has registered himself with the police in terms of subsection (2) as producer of precious minerals."; (c) subsection (1) (c) by deleting the words "or in rough or uncut precious stones or both"; (d) subsection (2) (a) by deleting the words "or precious stones;"</p> |

| | | |
|--|--------------------------|--|
| <p>(e) by deleting subsection (3) (c) and (3) (d); (f) subsection (4) by deleting the words "or precious stones as the case may be" and the words "or precious stones"; (g) subsection (5) (a) by deleting the words "rough or uncut precious stones, or in"; (h) subsection (5) (b) by deleting the word "of precious stones or" and the words "dealer in precious stones or"; (i) subsection (6) by deleting the words "rough or uncut precious stones or" wherever they occur in that subsection;</p> | | <p>(e) by deleting subsection (3) (c) and (3) (d); (f) subsection (4) by deleting the words "or precious stones as the case may be" and the words "or precious stones"; (g) subsection (5) (a) by deleting the words "rough or uncut precious stones, or in"; (h) subsection (5) (b) by deleting the word "of precious stones or" and the words "dealer in precious stones or"; (i) subsection (6) by deleting the words "rough or uncut precious stones or" wherever they occur in that subsection;</p> |
| <p>Delete both section in their entirety;</p> | <p>Section 22 and 23</p> | <p>Section 27 (3) (aA) as inserted by section 2 (h) of the Mining Rights (Amendment) Act 1968</p> |
| <p>The whole withdrawn from operation in Lesotho.</p> | | <p>The Diamond Trade Act (No. 14 of 1885) of the Cape of Good Hope</p> |

Thus done by the Council of Ministers at Maseru

Leabua Jonathan,
Tona-Kholo.