



LAWS OF KENYA

DIAMOND INDUSTRY PROTECTION ACT

CHAPTER 310

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CHAPTER 310

DIAMOND INDUSTRY PROTECTION ACT

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CHAPTER 310

DIAMOND INDUSTRY PROTECTION ACT

[Date of assent: 4th June, 1949.]

[Date of commencement: 4th June, 1949.]

An Act of Parliament to provide for the protection of the diamond industry

[Act No. 5 of 1949, Act No. 9 of 1952, L.N. 342/1956, L.N. 343/1956, L.N. 172/1960, L.N. 173/1960, Act No. 21 of 1961, L.N. 2/1964, L.N. 236/1964, Act No. 21 of 1966, Act No. 12 of 1970, Act No. 13 of 1988, Act No. 17 of 2006.]

1. Short title

This Act may be cited as the Diamond Industry Protection Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**authorized diamond miner**” means the holder, under the Mining Act (Cap. 306), of a prospecting right, endorsed by the Commissioner, for diamonds, or of an exclusive prospecting licence for precious stones, or a special licence for precious stones, or of a precious stones lode location or a precious stones alluvial location, of which the certificate of registration has been endorsed by the Commissioner, or of a mining lease for diamonds, or any person authorized in writing by the holder of such right, location or lease to act on his behalf for the purposes of this Act, provided that such authorization has been previously communicated to and approved in writing by the Commissioner;

“**buy**” includes barter, and includes receive as a pledge or security;

“**Commissioner**” means the Commissioner of Mines and Geology;

“**diamond**” means any rough and uncut diamond;

“**diamond area**” means an area or part thereof in respect of which an exclusive prospecting licence, special licence, location or lease has been granted or registered under the Mining Act for the purpose of prospecting or mining for diamonds and includes—

- (a) the area of any right of occupancy granted to the holder of that licence, location or lease for the purpose of his prospecting or mining operations; and
- (b) the area extending to a distance of three kilometres beyond the boundaries of the location, lease or right of occupancy;

“**diamond protection area**” means an area established as such in pursuance of regulations made under section 26;

“**licensed diamond dealer**” means the holder of a diamond dealer’s licence, issued under this Act;

“**sell**” includes barter, and includes deposit as a pledge or security.

[Act No. 9 of 1952, s. 2, L.N.236/1964, Act No. 12 of 1970, Fourth Sch.]

3. Unlawful possession of diamonds

(1) If a diamond is found in the possession, power or control of any person, that person shall, unless he proves that he obtained it lawfully, be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding ten years, or to both.

(2) Any diamond in the course of transmission through the post, either within Kenya or from Kenya to a place outside Kenya, shall while within Kenya be deemed for the purpose of this section to be in the possession of the person who dispatched that diamond by post.

[Act No. 12 of 1970, Fourth Sch.]

4. Payment of debts in diamonds

No person shall pay or satisfy a debt by means of diamonds:

Provided that this section shall not prevent an authorized diamond miner from satisfying a debt, due from him to a licensed diamond dealer, by means of diamonds.

5. Unauthorized cutting and setting of diamonds prohibited

No person shall cut, polish or break, or alter in any manner the shape of, any diamond, or shall set any diamond in any form of tool or other setting, except with the written authority of the Commissioner and in accordance with such conditions as the Commissioner may impose and the Commissioner may refuse to grant the authority without assigning any reason therefor.

6. Restriction on selling of diamonds

(1) No person, other than an authorized diamond miner or a licensed diamond dealer, shall sell or otherwise dispose of any diamond.

(2) No authorized diamond miner shall sell or otherwise dispose of a diamond which is not lawfully won by him or by some other authorized diamond miner for whom he is authorized in writing to act for the purpose of the sale or disposal.

(3) No licensed diamond dealer shall sell or otherwise dispose of a diamond, except on behalf of an authorized diamond miner or another licensed diamond dealer, or unless the diamond has been obtained from an authorized diamond miner or another licensed diamond dealer.

(4) No authorized diamond miner or licensed diamond dealer shall sell or otherwise dispose of any diamond to any person residing in Kenya other than a licensed diamond dealer.

(5) Any person contravening any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding fifteen years or to both.

[Act No. 12 of 1970, Fourth Sch.]

7. Restriction on buying diamonds

(1) No person, other than a licensed diamond dealer, shall buy or otherwise acquire, except by lawful mining, any diamonds.

(2) No licensed diamond dealer shall buy or otherwise acquire any diamond except from an authorized diamond miner or another licensed diamond dealer.

(3) Any person contravening any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding fifteen years or to both.

[Act No. 12 of 1970, Fourth Sch.]

8. No buying or selling on Sundays or at night

No person shall buy or sell any diamond on a Sunday or between the hours of six o'clock in the evening of any day and six o'clock in the morning of the following day.

9. Exceptions of transactions approved by Commissioner

Sections 4 to 8, both inclusive, shall not apply to any transaction which has previously been approved in writing by the Commissioner, if all the conditions attached to that approval are observed in the transaction.

10. Restriction on export and import of diamonds

(1) No person shall export or import any diamond unless he holds a permit so to do issued, in the prescribed form, by the Commissioner, who may at any time, without assigning a reason, refuse to issue the permit.

(2) The Commissioner may delegate to any other person, authority to issue or refuse the issue of any permit required under subsection (1).

(3) Every permit issued under subsection (1) shall be valid for such period and shall be subject to such conditions as may be prescribed or as may be specified therein.

(4) Except when in transmission by post, no diamond shall be carried by lake or coastwise by sea in Kenya or shall be shipped or taken aboard any aircraft in Kenya unless particulars thereof have previously been declared to a Collector of Customs in the manner required by him.

11. Issue of diamond dealer's licence

(1) A diamond dealer's licence in the prescribed form may be issued by the Commissioner and shall expire on the thirty-first day of December following the date of issue.

(2) The fee for a licence shall be ten thousand shillings.

(3) The Commissioner may, subject to a right of appeal to the Minister, without assigning a reason, refuse to issue any licence or revoke any licence.

(4) A licensed diamond dealer shall not buy, sell or store any diamond, except on such premises as are prescribed or specified in his licence.

(5) Every licensed diamond dealer shall have affixed outside his premises a sign bearing his name and the words "Licensed Diamond Dealer", in a conspicuous place and in legible lettering, and a dealer who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine not exceeding five hundred shillings for a first offence and five thousand shillings for each subsequent offence:

Provided that the provisions of this subsection shall not apply to any person lawfully entitled to carry on the business of a banker.

(6) The Commissioner shall, before issuing a licence under this section, require the applicant therefor to supply evidence of his financial stability, and to provide security, by way of bond or cash deposit as the Commissioner shall require, for the due payment of any prescribed fees or royalties which may become payable by such dealer in the course of his business under this Act.

[L.N.342/1956, L.N 172/1960, Act No. 13 of 1988, Sch.]

12. Diamond register to be kept

Every licensed diamond dealer, and every holder of an exclusive prospecting licence, location or lease granted under the provisions of the Mining Act (Cap. 306) for the purpose of prospecting or mining for diamonds, shall keep, in such form and manner as may be prescribed, a book known as a diamond register, in which shall be entered such particulars in such manner as may be prescribed, and shall render monthly to the Commissioner, in such form and manner as may be prescribed, a copy of all entries in such diamond register for the previous month.

13. Payment of fees and royalties

(1) Every licensed diamond dealer shall be liable for the due payment of all prescribed fees and of all royalties prescribed under the Mining Act (Cap. 306) which may be due in respect of any diamonds bought, sold, received or exported by him, and, if so required by the Commissioner, shall give security to the satisfaction of the Commissioner for the due payment of all the fees and royalties.

(2) Subject to any agreement to the contrary, a licensed diamond dealer who pays any fee or royalty in respect of any diamonds may recover or retain the amount from the person on whose behalf he sold or exported such diamonds or from whom he received them.

14. Search warrant

(1) Any magistrate who has reason to suspect that any diamond with respect to which an offence under this Act or any regulations made thereunder has been committed is concealed in any place may issue a warrant authorizing a police officer, at any time within one month from the date of the warrant, to enter and search the place and all buildings and things therein, using such force as may be necessary for that purpose, and to seize any diamond and arrest any person found therein.

(2) Any person arrested and any diamond seized under the authority of a warrant shall, as soon as possible, be brought before a court of competent jurisdiction, to be dealt with according to law.

15. Stealing by servants

(1) Any person employed as a clerk or servant who steals any diamond the property of or in the lawful possession of his employer or conceals or retains the diamond with intent to convert the same to his own use shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding fifteen years or to both; and any person inducing any other person employed as a clerk or servant to commit the offence shall be guilty of an offence and liable to the same punishment.

(2) Any diamond found in the possession of any person who is, at the time when the diamond is found in his possession, or was within three months previously, employed as a clerk or servant by a licensed diamond dealer, or authorized diamond miner, shall, unless the contrary be proved, be deemed to be the property of the employer and may be seized and taken possession of by that employer.

16. Penalty for certain offences

(1) Any person who contravenes any of the provisions of this Act or of any regulations made thereunder for the contravention of which no penalty is specially imposed, or who fails without reasonable excuse to comply with any lawful requirement thereunder, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.

(2) In any case where a person has been convicted of an offence against this Act or against any regulations made thereunder, the court may, if it thinks fit, declare that any diamond with respect to which the offence was committed shall be forfeited, if there is no known person, other than the person convicted, who, in the opinion of the court, is entitled thereto.

17. Attempts and abetment

Any person who attempts to commit or abets an offence under this Act or any regulations made thereunder shall himself be guilty of an offence under this Act and liable to the same punishment as provided for that offence.

18. Burden of proof as to diamond

(1) If for the purposes of this Act or any regulations made thereunder, the question is in issue as to whether any article is or is not a diamond, the burden of proof that that article is or is not a diamond shall be on the person who alleges such to be the case; and, in the absence of the proof, the article shall be deemed to be a diamond.

(2) A certificate purporting to be signed by or under the authority of the Commissioner that any article is or is not a diamond shall be admissible in evidence without further regulations made thereunder, and shall be *prima facie* evidence of the facts stated therein:

Provided that the court may summon as a witness the officer who signed the certificate.

19. Powers of entry, and arrest

(1) The Commissioner and any person duly authorized by him in writing in that behalf and any police officer arrest, may, subject, in the case of a person authorized by the Commissioner, to any restrictions upon the powers contained in such authorization, and, in the case of a police officer, to the provision of subsection (5), without warrant—

- (a) for the purpose of preventing the commission of any offence under this Act or any regulations made thereunder or of discovering and prosecuting persons who have committed any such offence, enter

- (b) stop and search, and detain for the purpose of searching, any person, vehicle, vessel and aircraft on or at any highway, street, road, public place, railway, wharf, landing-stage, aerodrome or landing-ground, whenever there is reasonable ground to suspect that any diamond is unlawfully concealed or detained by or on such person or in such place, and for such purpose may enter any such place;
- (c) arrest any person who has been or is concerned in any of the offences described in sections 3, 4, 5, 6, 7, 8, 10, 11 and 15, or against whom a reasonable complaint has been made or credible information has been received, or where a reasonable suspicion exists of his having been so concerned;
- (d) arrest any person found within a diamond protection area whose presence therein is unlawful;
- (e) at any time seize and detain any diamond in connexion with which any offence has been committed under this Act or any regulations made thereunder, or in respect of which there are reasonable grounds for suspecting that such an offence has been or is being committed:

Provided that a diamond so seized shall as soon as possible be deposited with an administrative officer of the district in which the seizure occurred;

- (f) between six o'clock in the morning and six o'clock in the evening, enter any premises or place in which diamonds are stored or kept and require the owner or occupier thereof, or the manager, agent or representative of the owner or occupier, or other person for the time being in charge of the diamonds, forthwith to produce for inspection all diamonds in his possession or under his control and the diamond register and all records pertaining thereto, and may make extracts from that register or record and require the owner or occupier or his manager, agent, representative or other person for the time being in charge of the diamonds to weigh in his presence any or all of the diamonds so produced, and may himself weigh the diamonds.

(2) Where any diamond is deposited under paragraph (e) of subsection (1), the administrative officer concerned shall, unless the ownership thereof is determined in the course of criminal proceedings taken in connexion with the seizure of such diamonds, proceed as provided by section 21 in the case of found diamonds so deposited.

(3) All such force may be used as is reasonably necessary for the purpose of exercising any of the powers conferred by subsection (1), but the power to search persons shall be exercised with due regard to privacy, and no female shall be searched except by a female and in the presence of females only.

(4) Every person arrested under subsection (1) shall be brought before a court of competent jurisdiction as soon as is practicable.

(5) The powers conferred by paragraphs (a) and (f) of subsection (1) shall not be exercised by any police officer below the rank of Inspector.

(6) Notwithstanding anything contained in sections 85 to 88, both inclusive, of the Criminal Procedure Code (Cap. 75), the Commissioner or any officer duly authorized by him in writing in that behalf may conduct or assist in conducting a prosecution before any subordinate court for any offence under this Act or any regulations made thereunder.

20. Power to detain diamonds sent by post

(1) A police officer of or above the rank of Inspector who has reasonable cause to believe that an article is being dispatched by post containing diamonds in connexion with which an offence under this Act or any regulations made thereunder has been committed may stop or cause the article to be stopped at any post office in Kenya either during transit or otherwise.

(2) If the person who has dispatched the article referred to in subsection (1) be ascertained and is in Kenya, the police officer shall thereupon, by notice in writing personally served upon that person, require him to attend, either personally or by an agent duly authorized by him in writing, at the post office at which the article is detained and at a time which shall be specified, and which shall allow reasonable opportunity for his attendance or that of that agent, in order that he or the agent may be present at the opening and examination of the article.

(3) At the time and place specified in a notice under subsection (2) the police officer shall open the article in the presence of the person for the time being in charge of the post office, and if such person or such agent attends, in the presence of such person or such agent, and shall, after examination, either release the article for transmission through the post or require the same to be detained pending an order of a magistrate holding a subordinate court of the first or second class for the disposal thereof.

(4) If the person who dispatched the article cannot be ascertained or is not in Kenya, the police officer may at any time open the article in the post office at which it is detained in the presence of the person for the time being in charge of the post office, and may examine the same, and shall, after examination, either release the article for transmission through the post or require the same to be detained pending an order of a magistrate holding a subordinate court of the first or second class for the disposal thereof.

21. Person finding diamond to report to Commissioner

(1) Any person who discovers any diamond without an apparent owner, or on any land not held by him under a location or lease granted for the purpose of mining for diamonds or in respect of which he does not hold a right or a licence to prospect for diamonds thereon or thereunder, shall forthwith report the discovery to the Commissioner, and shall deliver the diamond to the Commissioner, who shall forthwith cause it to be deposited with an administrative officer of the district in which the diamond was discovered.

(2) The administrative officer with whom a diamond is deposited shall advertise the discovery in one issue of the *Gazette*, and, unless within three months from the date when the advertisement appears any person proves, to the

satisfaction of a magistrate holding a subordinate court of the first class his title to the diamond and that he was not concerned in any offence in connexion therewith, the magistrate shall declare the same to be forfeited:

Provided that the administrative officer may, in the absence of any person proving his title to the diamond, in the manner provided in this subsection, and after giving full consideration to such representations as the finder of the diamond and the Commissioner, or an officer appointed by him in that behalf, may make, and to such other evidence regarding the matter as may be adduced by other persons, sell the diamond and pay to the finder a portion of the net proceeds of the sale, not exceeding one-half, after deducting from the gross proceeds the costs of realization and such royalties as may be prescribed under any Act for the time being in force.

(3) Every sale of a diamond under subsection (2) shall be conducted in such manner as may be prescribed.

22. Repealed by Act No. 17 of 2006, s. 24.

23. Rewards

(1) Any person, other than a person in the service of the Government, who gives to the police information leading to any other person being prosecuted to conviction for an offence under this Act or any regulations made thereunder may, at the discretion and upon the written authority of the Commissioner of Police, be paid out of moneys provided by Parliament a monetary reward of such amount, not exceeding one-third of the proceeds derived from the sale of any diamond which the court convicting such person may have declared to be forfeited under subsection (2) of section 16.

(2) Nothing in this section shall confer on any person any right in law to a monetary reward.

[Act No. 9 of 1952, s. 3, Act No. 21 of 1961, Sch., Act No. 21 of 1966, Sch.]

24. Protection of officers

Where any civil or criminal proceeding is brought to trial against any officer on account of any act done by him in the purported exercise of any of the powers conferred upon him by section 19, and a judgment is given thereupon against the defendant, then, if the court certifies that there was probable cause for such act, the plaintiff shall not be entitled to any damages nor to any costs, and the defendant shall not be liable to any punishment.

25. Offences

Subject to the provisions of the Criminal Procedure Code (Cap. 75), any offence under this Act or any regulations made thereunder shall be triable by a subordinate court of the first class.

26. Regulations

(1) The Minister may make regulations prescribing anything which is to be or may be prescribed under this Act, and generally for better carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, the regulations may—

- (a) provide for the establishment, maintenance, control and disestablishment of diamond protection areas; require the boundaries of those areas to be demarcated and notified to the public in the prescribed manner; and prohibit and restrict the entry of unauthorized persons therein:

Provided that no diamond protection area shall include any dwelling-house or ground lawfully occupied therewith unless the consent of the occupiers has been first obtained;

- (b) regulate the issue and withdrawal of authorization to exercise the powers provided in subsection (1) of section 19;
- (c) confer on such persons as may be specified and to the extent specified therein powers of search and arrest of persons, vehicles and aircraft and search of buildings, places and articles within the boundaries of a diamond area;
- (d) prescribe the place and manner in which diamonds shall be stored or kept and the persons who shall be responsible for the safe custody of diamonds;
- (e) provide for the registration of diamonds and the submission of returns;
- (f) provide for the valuation of diamonds and the payment of valuation and official agency fees;
- (g) provide for the supervision of labour engaged in prospecting and mining for diamonds and in operations ancillary thereto, for the purpose of preventing the theft of diamonds, and prescribe the maximum number of labourers who may be supervised by a single supervisor.

[G.N. 343/1956, L.N.173/1960.]
