



LAWS OF KENYA

DIAMOND INDUSTRY PROTECTION ACT

CHAPTER 310

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CHAPTER 310

DIAMOND INDUSTRY PROTECTION ACT

ARRANGEMENT OF SECTIONS

Section

1. Short Title.
 2. Interpretation.
 3. Unlawful possession of diamonds.
 4. Payment of debts in diamonds.
 5. Unauthorized cutting and setting of diamonds prohibited.
 6. Restriction on selling diamonds.
 7. Restriction on buying diamonds.
 8. no buying or selling on Sundays or at night.
 9. Exception of transactions approved by Commissioner.
 10. Restriction on export and import of diamonds.
 11. Issue of diamond dealer's licence.
 12. Diamond register to be kept.
 13. Payment of fees and royalties.
 14. Search warrants.
 15. Stealing by Servants.
 16. Penalty for certain offences.
 17. Attempts and abetment.
 18. Burden of proof as to diamond.
 19. Powers of entry, and arrest.
 20. Power to detain diamonds sent by post.
 21. Person finding diamond to report to commissioner.
 22. *Repealed.*
 23. Rewards.
 24. Protection of officers.
 25. Offences.
 26. Regulations.
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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. 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

any diamond area and search any prospecting or opencast mining works, buildings, premises, structures, camps, places, articles, vehicles and persons situated or found therein;

- (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.]

CHAPTER 310

DIAMOND INDUSTRY PROTECTION ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. Diamond Industry Protection Regulations, 1950	17

DIAMOND INDUSTRY PROTECTION REGULATIONS, 1950

ARRANGEMENT OF REGULATIONS

PART – PRELIMINARY

Regulation

1. Citation.
2. Interpretation.

PART II – CONTROL OF DIAMOND PRODUCTION

3. Application for diamond protection area.
4. Information to be submitted with, and approval of application.
5. Establishment of diamond protection area.
6. Maintenance of diamond protection area.
7. Amendment of boundaries of diamond protection areas.
8. Disestablishment of diamond protection area.
9. Notification in the *Gazette* as to diamond protection areas.
10. Entry into diamond protection area.
11. Authorization under section 19(1) of Act.
12. Duration of authorization.
13. Commissioner may restrict or modify powers conferred by authorization.
14. Commissioner may revoke authorization.
15. Persons and vehicles to be searched without delay.
16. Persons arrested not to be detained unnecessarily.

PART III – SUPERVISION OF LABOUR

17. Labourers not to engage in mining or prospecting without supervision.
18. Temporary absence of supervisor.
19. Gravitating and sorting prohibited during temporary absence of supervisor.

PART IV – TRAFFIC IN DIAMONDS

20. Diamond dealer's licence.
21. Register of diamond dealers.
22. Export and import of diamonds.
23. Valuation of diamonds for assessment of royalty.
24. Valuation and official agency fees.
25. Diamond register to be kept.
26. Particulars to be entered within a time limit.
27. Copy of diamond register to be rendered monthly.
28. Signature of diamond register and copies thereof.
29. Storage and safe custody of diamonds.
30. Mines and police officers may require removal of diamonds to bank.

SCHEDULE

DIAMOND INDUSTRY PROTECTION REGULATIONS, 1950

[G.N.1020/1950, L.N.142/1963, L.N.649/1963, Act No. 21 of 1966, L.N.277/1969.]

REGULATIONS UNDER SECTION 26

PART – PRELIMINARY

1. Citation

These Regulations may be cited as the Diamond Industry Protection Regulations.

2. Interpretation

In these Regulation's, unless the context Otherwise requires—

“**approved valuer**” in relation to any diamonds means a valuer appointed by the Commissioner under paragraph (1) of regulation 23 for the purpose of assessing the value of the diamonds;

“**Inspector of Mines**” means an officer appointed as such under section 9 of the Mining Act (Cap. 306);

“**Warden or Assistant Warden**” means an officer appointed as such under section 9 of the Mining Act.

PART II – CONTROL OF DIAMOND PRODUCTION

3. Application for diamond protection area

The holder of any location or lease granted for the purpose of mining for diamonds, and the holder of any land held or utilized for or in connexion with such purpose, may, and if so required in writing by the Commissioner shall, within such time as may be appointed in such written requirement, submit to the Commissioner through the Warden or Assistant Warden of the mining district concerned an application for the establishment within the boundaries of such location, lease or land of one or more diamond protection areas.

4. Information to be submitted with, and approval of application

(1) Every application for the establishment of a diamond protection area shall be accompanied by a plan in triplicate drawn to a scale not smaller than 1 in 5,000 showing the area to be enclosed and its position in relation to the boundaries of the location, lease or land within which it is to be situated, the proposed method of enclosure, all places of entry and exit and such further information as the Commissioner may require.

(2) None of the following shall be included within the boundaries of any diamond protection area—

- (a) any railway, other than a mine railway, private siding or branch line;
- (b) any public road, as defined by the Public Roads and Roads of Access Act (Cap. 399);
- (c) any dwelling-house or ground lawfully occupied therewith or means of access to the dwelling-house or ground, not being the property of the holder of such diamond protection area, except with the consent of the occupier thereof.

(3) Subject to paragraph (2), the Commissioner shall have the power to require the applicant to modify or alter any or all of the details of such plan, and the applicant shall comply with every such requirement of the Commissioner.

[Subsidiary]

(4) After approval of the application by him, the Commissioner shall send written notification thereof to the applicant.

(5) After receipt of notification of the Commissioner's approval, the applicant shall forthwith, or within such period as the Commissioner may allow, establish and enclose such diamond protection area in accordance with such plan as approved by the Commissioner.

5. Establishment of diamond protection area

(1) A diamond protection area shall comprise an area completely enclosed on every side by a wall, fence or other means approved by the Commissioner; and at every point of entry to or exit from every such area there shall be—

- (a) a notice board, conspicuously displayed, on which shall be painted legibly both in English and in Kiswahili the inscription "Diamond Protection Area; Maximum penalty for unauthorized entry: 20,000 shillings or 3 years' imprisonment or both;
- (b) a gate with a secure lock, at which, during periods when it is necessary for the gate to be unlocked, there shall be stationed a guard who shall communicate the subject-matter of the notice board to persons prohibited from entering.

(2) Upon completion of the work in connexion with the establishment of a diamond protection area the applicant shall give notice thereof in writing to the Commissioner through the Warden or Assistant Warden of the mining district concerned.

(3) Upon receipt of a notice under paragraph (2), the Commissioner or any person authorized in writing in that behalf by the Commissioner shall inspect the work.

(4) If the work has been executed to his satisfaction in accordance with the approved plan, the Commissioner shall issue to the applicant a certificate of establishment of a diamond protection area in form A in the Schedule, and shall attach to the certificate a copy of the approved plan whereupon the diamond protection area shall be deemed to have been duly established as from the date of issue of the certificate.

[L.N. 277/1969.]

6. Maintenance of diamond protection area

The holder of a diamond protection area shall maintain or cause to be maintained to the satisfaction of the Commissioner every wall, fence or other means of enclosure of a diamond protection area, and every notice board, gate and lock required by paragraph (1) of regulation 5 to be provided.

7. Amendment of boundaries of diamond protection areas

(1) The holder of a diamond protection area established or deemed to have been established under these Regulations shall not make or permit to be made any alteration to the boundaries and other details pertaining to the establishment of the diamond protection area as shown on the plan attached to the certificate of establishment thereof, except in accordance with paragraph (2) or paragraph (3).

(2) The Commissioner may by notice in writing at any time require the holder of a diamond protection area to alter or amend the boundaries and other details pertaining to the establishment of the diamond protection area, and may issue directions as to the manner in which and the time within which the alterations and amendments shall be made; and if the holder fails to comply with those directions he shall be deemed to have contravened these Regulations.

(3) The holder of a diamond protection area who wishes to alter or amend the boundaries or other details pertaining to the establishment of the diamond protection area, or upon whom a notice has been served by the Commissioner under paragraph (2), shall

[Subsidiary]

forward to the Commissioner through the Warden or Assistant Warden of the mining district a plan in triplicate drawn to the same scale as the original plan, showing the alteration or amendment.

(4) After approval of the amended plan by the Commissioner and the subsequent inspection and approval by the Commissioner or an officer authorized in that behalf by him of the work executed in pursuance of that amended plan, the Commissioner shall amend the certificate of establishment of a diamond protection area issued in respect of the area under regulation 5, by endorsing on the plan attached thereto, the word "cancelled" and attaching to the certificate a copy of the amended plan on which are endorsed the words "amended plan", and shall sign and date both of the endorsements.

(5) Every variation of the boundaries of a diamond protection area shall take effect as from the date of issue of the amended certificate.

8. Disestablishment of diamond protection area

(1) The Commissioner may at any time, by notice in writing to the holder thereof, disestablish any diamond protection area.

(2) Upon receipt of a notice under paragraph (1), the holder shall forthwith remove all walls, fences, or other means whereby the diamond protection area is enclosed, and all notice boards relating thereto, and in default of so doing shall be deemed to have contravened these Regulations

(3) Where a default has occurred, the Commissioner may cause the same to be remedied, and thereupon the holder shall, in addition to any penalty incurred in respect of default, be liable to pay to the Commissioner such sum as is certified by the Commissioner to have been incurred in remedying the default.

9. Notification in the Gazette as to diamond protection areas

The Commissioner shall, by notice in the *Gazette*, notify the establishment, disestablishment and amendment of the boundaries of every diamond protection area, and the notification shall contain a description of the boundaries of such area or a reference to the plan applicable thereto deposited in the Mines and Geological Department.

10. Entry into diamond protection area

(1) Except as provided in this regulation, no person shall enter or remain upon any diamond protection area without the authority of the holder thereof, which shall be in writing or shall consist of some identification mark issued by or under the authority of such holder or by a police officer authorized in that behalf by the Commissioner of Police:

Provided that nothing in this regulation shall prevent or be construed as preventing from entering any diamond protection area any person authorized to enter such diamond protection area by virtue of an authorization given by the Commissioner under subsection (1) of section 19 of the Act.

(2) The following persons are authorized to enter and remain upon a diamond protection area at any time in the lawful execution of their duties—

- (a) the Commissioner;
- (b) the Labour Commissioner;
- (c) the Commissioner of Police;
- (d) the administrative officer for the time being in charge of the district in which the area is situated;
- (e) the Inspector of Mines, Warden or Assistant Warden of the mining district concerned;

*Diamond Industry Protection***[Subsidiary]**

- (f) the police officer authorized by the Commissioner of Police for the purposes of paragraph (1);
- (g) any driver of any motor vehicle when used for conveying any of the officers mentioned in subparagraphs (a) to (f) inclusive.

(3) The holder of a diamond protection area shall provide the persons mentioned in paragraph (2) with such means of identification as he may consider expedient, but the absence of any such means of identification shall not derogate from the powers conferred by that paragraph.

(4) Any person found within the boundaries of a lawfully established diamond protection area shall, unless he has entered such area in accordance with the provisions of this regulation, be deemed to have contravened these Regulations.

(5) Except as provided in paragraph (6), no person shall drive or bring any vehicle into a diamond protection area unless the vehicle is accompanied by one or more mines guards.

(6) Paragraph (5) shall not apply to—

- (i) any vehicle owned by the holder of the diamond protection area; or
- (ii) any vehicle used by any public officer authorized to enter a diamond protection area under paragraph (2).

(7) In paragraph (5) “**mines guard**” means a person authorized by the holder of the diamond protection area concerned to guard the same, and includes any police officer authorized to enter the area in the course of his duties.

[Act No. 21 of 1966, Sch., L.N. 142/1963, L.N. 649/1963.]

11. Authorization under section 19(1) of Act

(1) The Commissioner’s authorization to exercise the powers specified in subsection (1) of section 19 of the Act shall not be transferable, and shall, subject as hereinafter provided, be in one or other of the following forms—

- (a) in form B in the Schedule which, subject to the restrictions, if any, therein set out, shall authorize the person named therein to exercise the aforesaid powers within a diamond area; or
- (b) in form C in the Schedule which, subject to the restrictions, if any, therein set out, shall authorize the person named therein to exercise the aforesaid powers within a diamond protection area only.

(2) Every holder of an authorization issued under this regulation shall, immediately upon receipt thereof, affix his usual signature, or, if illiterate, his thumb-print, in the space provided therefor, and until this has been done the authorization shall be of no effect.

12. Duration of authorization

(1) Every authorization issued under regulation 11 shall, unless previously revoked by the Commissioner, remain in force until the 31st December next following the date of issue, or, when the holder is an employee of an authorized diamond miner, until the termination of his services with the authorized diamond miner by whom he was employed at the time the authorization was issued, whichever is the earlier.

(2) Upon the expiry or revocation of the authorization the holder thereof shall—

- (a) if he is the owner or manager of a diamond undertaking, without delay forward the same by registered post to the Commissioner; and
- (b) if he is an employee of the owner or manager, forthwith surrender the same to his employer, who shall without delay forward it by registered post to the Commissioner.

13. Commissioner may restrict or modify powers conferred by authorization

When issuing an authorization under these Regulations, and at any time during the currency thereof, the Commissioner in his discretion may by endorsement thereon, and without assigning any reason, vary, restrict or modify the powers conferred thereby, and such authorization shall thereafter be used only in accordance with such varied, restricted or modified powers.

14. Commissioner may revoke authorization

The Commissioner may at any time, without assigning any reason, revoke any authorization issued by him under subsection (1) of section 19 of the Act, and thereupon the same shall be deemed to have expired, and the provisions of paragraph (2) of regulation 12 shall apply.

15. Persons and vehicles to be searched without delay

Any person or vehicle detained for purposes of search under any authorization issued under subsection (1) of section 19 of the Act, or by any police officer, shall be searched without delay, and no person shall thereafter be detained unless arrested.

16. Persons arrested not to be detained unnecessarily

No person arrested by the holder of any authorization issued under subsection (1) of section 19 of the Act shall be detained in custody longer than is reasonably necessary for him to be removed to the nearest police station.

PART III – SUPERVISION OF LABOUR

17. Labourers not to engage in mining or prospecting without supervision

(1) No holder of any location or lease granted for the purpose of mining for diamonds, or of any land held or utilized for or in connexion with such purpose, or of any exclusive prospecting licence authorizing the holder thereof to prospect for diamonds, shall permit any labourer to engage in any mining, concentration, treatment or recover of, or prospecting for, diamonds except under his own personal supervision or that of another authorized diamond miner.

(2) No holder of a prospecting right endorsed with authority to prospect for diamonds shall permit any prospecting to be carried out under the authority of his prospecting right except in his presence and under his immediate supervision.

18. Temporary absence of supervisor

Should it become necessary for any person responsible for supervision under paragraph (1) of regulation 17 to absent himself from the labourers under his supervision, he may depute one of such labourers to exercise temporary supervision for a period not exceeding one hour, and in every such case he shall provide such labourer with a written authority stating the reasons for his absence and the time at which he left.

19. Gravitating and sorting prohibited during temporary absence of supervisor

Notwithstanding anything contained in these Regulations, no labourer temporarily supervising other labourers during the absence of the supervisor shall be permitted or shall himself permit any labourer under his charge to gravitate or sort, and no written authority shall include or be deemed to include permission or consent so to do:

Provided that the working of a machine actually employed in washing and in motion at the time of departure of such supervisor and the continuance of washing operations solely by such mechanical method may be allowed to proceed during the temporary absence of the supervisor.

[Subsidiary]

PART IV – TRAFFIC IN DIAMONDS

20. Diamond dealer's licence

(1) A diamond dealer's licence shall be in form D in the Schedule.

(2) Every licensed diamond dealer shall at all times cause his diamond dealer's licence to be displayed in a prominent position at the place of business described in the licence and to be kept available for examination at any time by the Commissioner or any person duly authorized by him under subsection (1) of section 19 of the Act, or by a police officer.

21. Register of diamond dealers

A register of licensed diamond dealers shall be kept at the office of the Commissioner and at such other offices as the Commissioner may direct, and shall be open to inspection by the public free of charge.

22. Export and import of diamonds

(1) A permit to export diamonds issued by or under the authority of the Commissioner shall be in form E in the Schedule, and may require the holder thereof to export the diamonds by registered letter or insured box post or insured parcel post, and may specify the post office or other place at which the diamonds shall be presented for export.

(2) Every permit to export diamonds shall be surrendered by the exporter at the time of export to the postmaster or customs official through whom the export is effected, and such official shall forthwith forward such export permit to the officer by whom it was issued.

(3) No holder of a permit to export diamonds shall export diamonds otherwise than in accordance with the requirements or conditions of such permit.

(4) A permit to export diamonds shall be issued only in respect of diamonds which have first been examined and weighed by or under the authority of the Commissioner and packed in a container the outer cover of which has been sealed at every opening with the seal of the Mines and Geological Department or such other seal as the Commissioner in writing may approve.

(5) A permit to export diamond shall cease to be valid as an authorization for the export of diamonds in the event of any of the seals attached to the container openings being broken prior to export.

(6) Diamonds destined for an approved valuer in the United Kingdom shall be addressed to the Crown Agents for Overseas Governments and Administrations, 4 Millbank, Westminster, London, S.W.1.

(7) A permit to import diamonds shall be in form F in the Schedule, and shall not be issued until the importer has made a declaration in form G in that Schedule before the Commissioner or such officer as the Commissioner may authorize in that behalf.

(8) Every permit to import diamonds shall be subject to the condition that upon the arrival in Kenya of the diamonds to which such permit relates the validity of such permit shall be confirmed by the Commissioner by endorsement thereon before the diamonds may be released by a Collector of Customs.

(9) For the purposes of the confirmation of a permit under paragraph (8) the permit shall be submitted to, the Commissioner through a Collector of Customs, who is required to forward the same to the Commissioner.

[Subsidiary]

(10) Upon receiving a permit to import diamonds confirmed by the Commissioner under paragraph (9) and not before a Collector of Customs shall—

- (i) endorse on the permit the date and place of importation of the diamonds to which the permit relates and his signature; and
- (ii) return the permit to the importer of the diamonds for retention by him as authorization for the possession of such diamonds; and
- (iii) release the diamonds to the importer.

(11) No permit to export diamonds which have been imported after the commencement of these Regulations shall be issued unless the permit by virtue of which the diamonds were imported has been submitted to the Commissioner or such officer as the Commissioner may authorize in that behalf and unless the Commissioner or such officer is satisfied that the diamonds to be exported are the diamonds to which the import permit relates and that there is no objection in any other respect to the re-exportation of those diamonds.

(12) If the Commissioner or such other officer is so satisfied he may issue an export permit in respect of the diamonds and—

- (i) if the diamonds to be re-exported comprise the whole of the diamonds to which the import permit relates, shall cancel and retain the import permit;
- (ii) if the diamonds to be re-exported do not comprise the whole of the diamonds to which the import permit relates, shall endorse on the import permit full particulars relating to the diamonds to be re-exported, including particulars as to the weight of the same, and shall return the import permit to the person who submitted the same.

23. Valuation of diamonds for assessment of royalty

(1) The Commissioner may appoint valuers for the purpose of assessing the value of diamonds mined within Kenya, with a view to ascertaining the amount of ad valorem royalty payable on those diamonds, and shall cause the name and address of every valuer so appointed to be published in the *Gazette*.

(2) The value of diamonds mined within Kenya for the purpose of ascertaining the amount of ad valorem royalty payable thereon—

- (a) shall, subject to paragraphs (6) and (7), be assessed at such place and by such approved valuer as the Commissioner may approve; and
- (b) shall be calculated according to the market price ruling in London for diamonds of a similar quality and size at the time of the assessment of such value.

(3) Where an approved valuer has valued any diamonds, he shall seal those diamonds at the time when he delivers the same to the producer, exporter or consignee, as the case may be.

(4) The producer, exporter or consignee of diamonds shall have the right to object to the valuation of the diamonds as assessed by an approved valuer within twenty-eight days from the date of the delivery of the diamonds to the approved valuer to that producer, exporter or consignee, as the case may be:

Provided that, no objection shall be made or entertained if the seal affixed to the diamonds by approved valuer has been removed or tampered with otherwise than in the presence of that approved valuer.

(5) Every objection under paragraph (4) shall be in writing and shall be sent to the Commissioner.

(6) If any dispute arises between the Government and the producer, exporter or consignee of any diamonds as to the correctness of the valuation given by an approved valuer, the matter shall be submitted to the arbitration of a person to be agreed upon for the purpose by the Government and the producer, exporter or consignee.

[Subsidiary]

(7) In the event of failure to reach an agreement as to the person to be appointed as arbitrator, the arbitrator shall be some person to be nominated by the President of the London Chamber of Commerce (Incorporated), and in that event the hearing and determination of the arbitration proceedings shall take place in London, England, in accordance with the law of arbitration for the time being in force, in England.

(8) Where a dispute relating to the valuation of any diamonds is submitted to an arbitrator under paragraph (6) and he assesses the value of the diamonds, the assessment so made by him shall be the value of the diamonds for the purpose of ascertaining the amount of ad valorem royalty payable thereon.

24. Valuation and official agency fees

An exporter of diamonds shall pay valuation and official agency fees at such rates as the Commissioner may from time to time specify by notice in the *Gazette*.

25. Diamond register to be kept

Every licensed diamond dealer shall keep at the place of business specified in his licence, and every holder of an exclusive prospecting licence, location or lease granted for the purpose of prospecting or mining for diamonds shall keep at an office on or near the area in respect of which the exclusive prospecting licence, location or lease is held, or as may be required by the Commissioner, a diamond register in the form H in the Schedule, and shall enter therein particulars of the matters mentioned in that form.

26. Particulars to be entered within a time limit

Subject to regulation 28, the particulars required to be entered in the diamond register—

- (a) by a licensed diamond dealer, shall be entered therein by him immediately after every receipt, dispatch or disposal by him of diamonds;
- (b) by the holder of an exclusive prospecting licence, location or lease granted for the purpose of prospecting or mining for diamonds, shall be entered therein by him within nine hours after any diamond—
 - (i) comes into his possession or under his control;
 - (ii) leaves his possession or control; and every entry so made in the diamond register shall be signed at the time of entry by the person making the same.

27. Copy of diamond register to be rendered monthly

On or before the third day of each calendar month, every licensed diamond dealer and every holder of an exclusive prospecting licence, location or lease granted for the purpose of prospecting or mining for diamonds shall forward to the Commissioner through the Warden or Assistant Warden of the mining district concerned, a true and accurate copy in duplicate of his diamond register for the preceding month; every copy shall be signed and certified to be a true copy by the licensed diamond dealer or by the holder, as the case may be.

28. Signature of diamond register and copies thereof

Where under regulation 26 or regulation 27 an entry or a copy of a register is required to be made and signed by a licensed diamond dealer or by a holder of an exclusive prospecting licence, location or lease granted for the purpose of prospecting or mining for diamonds, then—

- (a) if the licensed diamond dealer or holder is an individual, such entry or copy may be made and signed on his behalf by his lawfully constituted attorney if such attorney has been approved by the Commissioner as an authorized diamond miner;

[Subsidiary]

- (b) if the licensed diamond dealer or holder is a corporation, company or partnership the entry or copy shall be made and signed on behalf of the corporation, company or partnership by a responsible person duly appointed for the purpose by the corporation, company or partnership, and shall be countersigned by another person, who shall be a director, manager or secretary of the corporation or company or a manager, secretary or partner of the partnership, as the case may be.

29. Storage and safe custody of diamonds

- (1) Every person having possession, custody or control of any diamonds shall—
 - (a) at all times keep those diamonds in a safe and secure place accessible only to himself and to such persons as he may authorize to have access to the same; and
 - (b) ensure that those diamonds when in transit at any time any where in Kenya are transported to their destination without delay and by the most direct route.
- (2) The Commissioner may, by notice in writing to any person having possession, custody or control of any diamonds without assigning a reason therefore—
 - (a) require that person to store in such place and in such manner as may be specified in the notice all diamonds or any particular diamonds possessed or received by him or under or coming under his control;
 - (b) prohibit the storage of diamonds or any particular diamonds in such place and manner as may be specified in the notice;
 - (c) prohibit the custody of diamonds or any particular diamonds by such person or persons as may be specified in the notice.
- (3) If any requirement of a notice issued under paragraph (2) is not carried out immediately after receipt thereof by the person to whom the same is directed, that person shall be deemed to have contravened these Regulations.

30. Mines and police officers may require removal of diamonds to bank.

- (1) Any officer of the Mines and Geological Department as defined in section 2 of the Mining Act (Cap. 306), or any police officer not below the rank of Assistant Inspector may, if he considers it necessary so to do in the interests of safe custody, require any person having possession, custody, or control of any diamonds to deposit part or all of his stock of diamonds, or any particular diamond, at a bank pending its disposal.
 - (2) The nature of the contents of every parcel of diamonds deposited at a bank in accordance with this regulation shall be declared to the bank by the owner or depositor thereof at the time of deposit, and the bank shall, if so required, produce the diamond or diamonds at their premises for inspection by the officer of the Mines and Geological Department or police officer.
 - (3) Every person required under this regulation to deposit any diamonds at a bank shall comply with such requirements within such period as the officers making the requirement may specify, and if he fails so to do without reasonable excuse he shall be deemed to have contravened these Regulations.
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Diamond Industry Protection

[Subsidiary]

SCHEDULE

FORM A

(r. 5(2)(c))

[L.N. 277/1969.]

CERTIFICATE OF ESTABLISHMENT OF A DIAMOND PROTECTION AREA

It is certified that the area described in the Schedule here under has been established as a diamond protection area in accordance with the provisions of Part II of the Diamond Industry Protection Regulations, by of as from the 19

All that piece of land comprising approximately hectares, situated on* held by at in the district of as is more particularly described on registered plan No. attached hereto and thereon edged in red.

Dated the, 20

Commissioner of Mines and Geology.

* Insert registered number of mining location or lease, or Land Reference Number of title.

FORM B

(r. 11(1)(a))

[L.N. 277/1969.]

CERTIFICATE OF ESTABLISHMENT OF A DIAMOND PROTECTION AREA

The bearer [full name, stating whether Mr., Mrs. or Miss] of [full address]

*employee of [full name and address of employer] is authorized to exercise the powers [+excluding power to search female persons] specified in section 19 (1) of the Diamond Industry Protection Act, within the diamond area situated at in the administrative district of comprising [registered numbers of mining locations, leases, etc., and name of holder] and land situated within three kilometres beyond the boundaries thereof, including any diamond protection area contained within the diamond area, subject to the provisions of the Diamond Industry Protection Act and of any Regulations made thereunder for the time being in force and to the following restrictions, namely—

- (a) this authorization conveys no authority to the holder hereof to enter upon any diamond protection area or any area in respect of which any exclusive prospecting licence, location or lease has been granted, or any other land which is lawfully held by an authorized diamond miner who is not the holder of this authorization himself or his employer, or to exercise thereon any of the powers conferred by this authorization, except with the consent of such authorized diamond miner endorsed hereon.

*(b) [insert any further restrictions]

This authorization expires on the 31st December next following the date of its issue *or upon termination of the holder's employment by the employer named herein, whichever is the earlier, and shall be surrendered immediately thereafter to the Commissioner (Mines and Geology).

Diamond Industry Protection

[Subsidiary]

SCHEDULE, FORM B—continued

Dated at Nairobi on the 20

Signature (or thumb-print) of holder

Commissioner of Mines and Geology.

- * Delete if inapplicable.
+ Delete when holder of authorization is a female.

FORM C

(r. 11(1)(b))

AUTHORIZATION TO SEARCH, ARREST, ETC., WITHIN A DIAMOND PROTECTION AREA ONLY

The bearer [full name, stating whether Mr., Mrs. or Miss] of [full address] employee of [full name and address or employer] is hereby authorized to exercise the powers [+excluding power to search female persons] specified in section 19(1) of the Diamond Industry Protection Act, within the diamond protection area(s) established on [registered numbers of locations, leases, etc., and name of holder] situated at in the administrative district of subject to the provisions of the aforesaid Diamond Industry Protection Act, and of any Regulations made thereunder for the time being in force and to the following restrictions, namely—

[insert restrictions, if any]

This authorization expires on the 31st December next following the date of its issue *or upon the termination of the holder's employment by the employer named herein, whichever is the earlier, and shall be surrendered immediately thereafter to the Commissioner of Mines and Geology.

Dated at Nairobi on the , 20

Signature (or thumb-print) of holder.

Commissioner of Mines and Geology.

- * Delete if inapplicable.
+ Delete when holder of authorization is a female

FORM D

(r. 20(1))

DIAMOND DEALER'S LICENCE

Licence is granted to [full name] of [full address] to deal in, sell and purchase diamonds for the period ending the 31st December, 20.....

Diamond Industry Protection

[Subsidiary]

SCHEDULE, FORM D—continued

Business under this licence shall be transacted only at the premises situated on [state Land Reference No.] at in the district.

The licensee shall be liable for the due payment of all royalties and other prescribed fees in respect of diamonds bought, sold, received or exported by him.

Dated at on the, 20

Commissioner of Mines and Geology.

Fee, if issued on or before 30th June - Sh. 100.

Fee, if issued after 30th June - Sh. 60.

Note - This licence must be displayed in a prominent position at the place of business described herein.

FORM E Deleted by Act No. 17 of 2006, s. 25

FORM F Deleted by Act No. 17 of 2006, s. 25

FORM G

(r. 22(5))

DECLARATION OF IMPORTATION OF DIAMONDS

To: The Commissioner of Mines and Geology (or other authorized officer)

I [full name] of [address]

do solemnly and sincerely declare as follows—

- 1. I am in possession of and [or] desire to import [number] rough and uncut diamond[s] weighing metric carats [give total value and general description of diamonds, and weight, value and detailed description of each diamond weighing ten metric carats or over].
2. Importation will be made at [name of Customs station at which entry is to be made]
3. The said diamond[s] is [are] my own property [or as may be] and will be used for [state purpose]
4. I obtained [shall obtain] the said diamond[s] from [state place, name of person and date] And I make this declaration conscientiously believing the same to be true.

Signature of Declarant

Dated at on the, 20

Before me:

Commissioner of Mines and Geology [or other authorized officer]

(r. 25)

SCHEDULE—continued

FORM H

[L.N. 142/1963.]

Entries in this Register must be made within the period prescribed in the regulation 26		DIAMOND REGISTER		A certified true copy of this Register must be forwarded in duplicate to the Commissioner (Mines and Geology) through the Warden or Assistant Warden of the mining district concerned on or before the third day of the succeeding month (reg. 27)							
Diamond Register for the month of, 20.....		Diamond Register for the month of, 20.....		District							
Name and address of exclusive Prospecting Licence - Location - Leaseholder or Diamond Dealer		This part is for <i>Diamond Dealers only</i> Diamond's dealer licence No. In respect of premises at.....		District							
RECEIPTS											
(a) Date recovered or received	(b) Recovered or received from (see Note (1))	(c) Diamonds 10 carats and over	(d) Diamonds less than 10 carats	(e) Total weight (c+ d)	(f) Signature(s) of person(s) making entry (see Note (2))	(g) Date sold, dispatched or disposed of	(h) Sold dispatched, or disposed of to insert name and address)	(i) Export permit (if exported)	(j) Diamonds less than 10 carats and over	(k) Diamonds 10 carats and over	(l) Total weight of parcel (j + k)
		No. weight	No. weight					No. weight	No. weight		
		Carats	Carats	Carats				Carats	Carats	Carats	Carats
Brought forward											
Total for Month											
SALES, DISPATCHES, ETC.											

Diamond Industry Protection

[Subsidiary]

SCHEDULE—continued

NOTES

SUMMARY

CERTIFICATE

- (1) Diamond dealers to insert name and address of person from whom received: holders of mining titles to insert registered number of exclusive prospecting licence location or lease from which diamonds were recovered.
- (2) In the case of a corporation, company or partnership, each entry in this register must be signed by two persons, one of whom shall be a director or responsible manager, secretary or partner of such corporation, or partnership (reg. 28(b)).
 carats
 Brought forward
 Total receipt (e)
 Total dispatches (l)
 Carried forward

It is certified that this is a full and accurate record of all diamonds recovered, received, sold, dispatched or otherwise disposed of by me/us during the month, and that they were acquired as shown and in a legal and bonafide manner.

..... *(Title)
 20
 *(Title)

.....
Signatures

* See Note(2)