

THE UNITED REPUBLIC OF TANZANIA



No. 11 OF 1967

I ASSENT,

Julius K. Nyerere

President

27TH APRIL, 1967

An Act to provide for the Protection of the Gemstone Industry and the Establishment of a Gemstone Marketing Department for the Purpose of encouraging and promoting the Gemstone Industry in Tanganyika

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY

1. This Act may be cited as the Gemstone Industry (Development and Protection) Act, 1967 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“advance payment” means the amount which the Director is required to pay to an authorized miner under the provisions of subsection (3) of section 16 or subsection (4) of section 17 where a gemstone is delivered to the Director for marketing;

“authorized miner” means the holder of a right or licence to prospect for gemstones, whether on his own behalf or as an agent for a corporation or partnership, or of a claim or lease to mine for gemstones granted under the Mining Ordinance; and includes any person who has, with the prior approval in writing of the Commissioner, been authorized in writing by the holder of such right, licence, claim or lease to act on his behalf for the purposes of this Act;

Cap. 123

“the Board” means the Gemstone Industry Advisory Board established under section 24;

“buy” and “sell” include barter; “to buy” includes to receive as a pledge or security and “to sell” includes to deposit as a pledge or security;

“Commissioner” means the Commissioner for Mineral Resources and includes any public officer authorized by the Commissioner to act on his behalf;

“Director” means the Director of Gemstones and includes an Assistant Director of Gemstones;

“gemstones” means such rough and uncut mineral stones of precious or semi-precious variety, other than diamonds, as the Minister may, by notice in the *Gazette*, declare to be gemstones for the purposes of this Act;

“licensed dealer” means any person who is the holder of a licence to deal in gemstones granted under the provisions of section 8;

“member” means a member of the Board and includes the chairman, the Director and the Commissioner;

“Minister” means the Minister for the time being responsible for mineral resources;

“precious stones” means such stones as are or may hereafter be included in the definition of that term as defined in the Mining Ordinance;

“prescribed gemstones” means such gemstones as are declared to be prescribed gemstones by an order made under section 17;

“royalty” means the royalty payable under the Mining Ordinance.

PART II

RESTRICTIONS ON DEALINGS IN GEMSTONES

Unlawful possession of gemstones

3. Any person, other than an authorized miner or a licensed dealer, who has any gemstone in his possession shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Unlawful disposal of gemstones

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

(2) No authorized miner shall sell or otherwise dispose of any gemstone which is not lawfully won by him or by some other authorized miner for whom he is authorized in writing to act.

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

(4) Any person contravening any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Unlawful buying of gemstones

5.—(1) No person, other than a licensed dealer, shall buy or otherwise acquire any gemstone.

(2) No licensed dealer shall buy or otherwise acquire any gemstone except from an authorized miner, another licensed dealer or the Director.

(3) Any person contravening any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

6.—(1) No person shall export from or import into Tanganyika any gemstone unless he is a licensed dealer and holds a valid permit issued by the Commissioner to so export or import gemstones. Restrictions on exports and imports of gemstones

(2) Every application for a permit under this section shall be made to the Commissioner in the prescribed manner.

(3) Subject to the provisions of this Act and any regulations made thereunder the duration, terms, conditions and limitations of a permit to export or import gemstones shall be in the discretion of the Commissioner.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years.

7. The Commissioner may issue a gemstone dealer's licence which shall authorize the holder to buy, sell or otherwise deal in, or perform any service in relation to, gemstones. Dealer's licences

8.—(1) Every application for licence under section 7 shall be made to the Commissioner in the prescribed manner. Application for grant of licence

(2) Subject to the provisions of this Act and any regulations made thereunder, the duration, terms, conditions and limitations of a dealer's licence issued under section 7 shall be in the discretion of the commissioner

(3) No licence issued under section 7 shall be transferable.

9.—(1) The Commissioner may refuse to issue any permit under section 6 or any licence under section 7 when he is of the opinion that— Grounds upon which the Commissioner may refuse permits or may revoke permits or licences

(a) it would not be in the best interests of the gemstone industry to do so;

(b) the applicant has not sufficient knowledge, facilities, experience or financial resources properly to carry on the business of a gemstone dealer;

(c) that the applicant is not a person of good character.

(2) The Commissioner may revoke any permit issued under section 6 or any dealer's licence issued under section 7 on any of the following grounds:—

(a) that the holder of such permit or licence has been convicted of an offence against this Act or has contravened or failed to comply with any of the conditions attached to the permit or licence, as the case may be;

(b) that the holder of such permit or licence has been convicted of an offence involving fraud or dishonesty.

(3) For the purposes of subsection (2) the term "holder of a permit or licence" includes—

(a) where such holder is a corporation, any director of the corporation or other officer having control of the business of the corporation; and

(b) where such holder is a partnership firm any partner of the firm or other officer of the firm having control of the business of the firm.

Appeals

10. Any person who—

- (a) being an applicant for a permit or dealer's licence, is aggrieved by the refusal of the Commissioner to issue such permit or licence; or
- (b) being a person to whom a permit or licence is issued, is aggrieved by any term, condition or limitation attached to the permit or licence; or
- (c) being the holder of a permit or dealer's licence, is aggrieved by the revocation of the same,

may, within the time and in the manner prescribed, appeal to the Minister and the Minister may, if he thinks it just to do so, reverse or vary the decision of the Commissioner.

Exemptions

11.—(1) The Minister may, by order in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Part in respect of any gemstone which is not a precious stone.

(2) Nothing in this Part shall apply to any sale or disposal of any gemstone to, or possession, purchase, acquisition, sale, disposal, export or import of any gemstone by, the Director acting in his official capacity.

(3) Nothing in this Part shall be construed as imposing any liability on any public officer in respect of any act done by him in the lawful discharge of his duties or on any agent in respect of any act done by him while acting within the scope of his authority as such agent.

(4) For the purposes of subsection (3) "agent" means a person acting under the directions of and as the agent of a police officer for any purpose connected with the lawful discharge of the duties of such police officer.

PART III

GEMSTONE MARKETING DEPARTMENT

Establishment
of the
Department

12. There shall be constituted and maintained a public department to be called the Gemstone Marketing Department.

Director of
gemstones

13.—(1) There shall be a Director of Gemstones and such number of Assistant Directors of Gemstones as the Minister may consider necessary.

(2) The Director shall be in charge of the Gemstone Marketing Department.

(3) The offices of the Director, Assistant Directors and other staff of the Gemstone Marketing Department shall be offices in the service of the United Republic

(4) The Director shall be a corporation sole by the name of the Director of Gemstones with perpetual succession and an official seal and shall be capable in law of suing and being sued in his corporate name, acquiring and disposing of any property whatsoever, whether movable or immovable, and of entering into any such contracts as may be necessary or expedient for the performance of his functions under this Act.

14. Subject to the provisions of this Act, it shall be the function of the Director—

Functions of
the Director

- (a) to market or arrange for the marketing of gemstones;
- (b) to promote the development and improvement of the gemstone industry in Tanganyika and to encourage African participation therein;
- (c) to assist authorized miners and licensed dealers to secure the most favourable arrangements for the marketing and export of gemstones;
- (d) to collect and circulate statistics and other relevant information relating to gemstones and the marketing of gemstones;
- (e) to advise authorized miners and licensed dealers on all matters affecting the gemstone industry;
- (f) to arrange for the classification and valuation of gemstones;
- (g) to encourage the establishment and development in Tanganyika of the industry of cutting, polishing and setting of gemstones; and
- (h) to encourage authorized miners to market their gemstones through the Director.

15. The Director shall, at the request of an authorized miner or licensed dealer and upon receipt of the prescribed fee, arrange for the classification and valuation of a gemstone.

Classification
and
valuation of
gemstones

16.—(1) Where a gemstone has been valued under the provisions of section 15, the authorized miner may, in writing in the prescribed form (hereafter referred to as “an authority to sell”), authorize the Director to sell the gemstone on his behalf.

Marketing of
gemstones
by Director

(2) Every authority to sell shall be irrevocable and shall constitute an authority to the Director to sell the gemstone on behalf of the authorized miner at a price not less than sixty percentum of the valuation made under section 15 or at such lesser price as the authorized miner may agree to in writing (hereinafter referred to as “the minimum price”).

(3) On receipt of the authority to sell and of the gemstone the Director shall pay to the authorized miner, out of funds provided for the purpose by Parliament, such percentage of the valuation of the gemstone made under section 15 as may be prescribed.

(4) Where the Director succeeds in effecting a sale of the gemstone at a price not less than the minimum price he shall remit the proceeds of the sale, after deducting therefrom an amount equal to the advance payment, the royalty payable in respect of the gemstone and such disbursements and fees as may be prescribed, to the authorized miner.

Compulsory
marketing of
prescribed
gemstone

17.—(1) The Minister may, by order published in the *Gazette*, declare any class of gemstones to be prescribed gemstones and every such order shall specify the date (hereinafter referred to as "the operative date") as from which such gemstones shall be prescribed gemstones.

(2) Subject to the provisions of this Act, no authorized miner shall sell any prescribed gemstone on or after the operative date save through the Director:

Provided that—

- (a) the Minister may, by order in the *Gazette*, exempt any authorized miner or class of authorized miners from the provisions of this subsection; and
- (b) the Director may, subject to such conditions as he may think fit, issue to an authorized miner a certificate exempting him from the provisions of this subsection in respect of any prescribed gemstone.

(3) Every authorized miner to whom subsection (2) applies shall deliver to the Director every prescribed gemstone he may wish to sell, other than a prescribed gemstone in respect of which a certificate is issued under paragraph (b) of the proviso to subsection (2), and the Director shall be deemed to have been granted by the authorized miner an irrevocable authority to sell the gemstone on his behalf at a price not less than sixty per centum of the valuation made under subsection (4) or at such lesser price as the authorized miner may agree to in writing (hereinafter referred to as the minimum price).

(4) On receipt of the prescribed gemstone the Director shall proceed to get the same classified and valued and shall pay to the authorized miner, out of funds provided for the purpose by Parliament, such percentage of the valuation as may be prescribed.

(5) The valuation of a gemstone made under subsection (4) shall be final and shall not be questioned in any court.

(6) Where the Director succeeds in effecting a sale of the prescribed gemstone at a price not less than the minimum price he shall remit the proceeds of the sale, after deducting therefrom an amount equal to the advance payment, the royalty payable in respect of the gemstone and such disbursements and fees as may be prescribed, to the authorized miner.

Mode of sale
and price to
be in sole
discretion of
Director

18. Where a gemstone is delivered to the Director for sale under the provisions of section 16 or section 17 the mode of sale and the price shall, subject to any regulations made in that behalf under section 33, be within the sole discretion of the Director and shall not be questioned in any court:

Provided that the Director shall not sell any gemstone at a price less than the minimum price.

Sale in
parcels

19.—(1) It shall be lawful for the Director to sell several gemstones, whether owned by the same authorized miner or different authorized miners, as a single parcel.

(2) Where several gemstones are sold as a single parcel the prices attributable to the individual gemstones shall be calculated by dividing the proceeds of the sale in proportion to the respective valuation of each gemstone.

(3) The Director shall not sell any parcel of gemstones at a price less than the total of the minimum prices of the gemstones comprising the parcel.

20.—(1) Where a gemstone is delivered to the Director by an authorized miner for sale and the Director fails to effect a sale of the same within six months of the receipt of the gemstone by him, or within such longer period as the authorized miner may consent to in writing, the Director shall, upon the authorized miner making a refund of the advance payment and paying such disbursements and fees as may be prescribed, return the gemstone to him.

Return of gemstones when Director unable to sell

(2) Where a prescribed gemstone is returned to an authorized miner under subsection (1), the Director shall issue to the authorized miner a certificate in respect of the gemstone in accordance with the provisions of paragraph (b) of the proviso to subsection (2) of section 17.

21. Any authorized miner to whom subsection (2) of section 17 applies who sells any prescribed gemstone, not being a prescribed gemstone in respect of which a certificate of exemption has been granted under paragraph (b) of the proviso to that subsection, otherwise than through the Director shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand shillings or to a term of imprisonment not exceeding three months or to both such fine and such imprisonment.

Offence to sell prescribed gemstone direct

22. The Director shall not be personally liable for any act done by him bona fide in the execution or purported execution of his duties under the provisions of this Act.

Protection of Director

23. Where the Director enters into an agreement with any buyer for the sale of a gemstone, the Director shall, as between himself and the buyer, have the same rights, and be subject to the same liabilities, as if he were the owner of the gemstone.

Director deemed to be owner as between Director and buyer

PART IV

GEMSTONE INDUSTRY ADVISORY BOARD

24. There is hereby established a Board to be known as the Gemstone Industry Advisory Board.

Establishment of the Board

25. The Board shall consist of:—

Constitution of the Board

- (a) a chairman to be appointed by the Minister;
- (b) the Director;
- (c) the Commissioner;
- (d) a member to be appointed by the Minister for the time being responsible for development planning;
- (e) not more than two members to be appointed by the Minister from amongst the authorized miners;
- (f) not more than two members to be appointed by the Minister from amongst the licensed dealers.

Functions of the Board 26. The Board shall keep the gemstone industry in Tanganyika under continuous review and shall make to the Minister such recommendations as it may think fit on matters affecting the promotion, development and improvement of the industry in Tanganyika.

Proceedings of the Board 27.—(1) The chairman may convene a meeting of the Board at such times as he shall think fit and shall, on requisition in that behalf by any three members, convene a meeting within two weeks of the receipt of such requisition.

(2) Four members shall form a quorum.

(3) Where at any meeting of the Board the chairman is absent, the members present at the meeting shall elect one of their number to be the chairman for the purpose of that meeting.

(4) The Board may regulate its own procedure.

PART V

MISCELLANEOUS

Powers of entry, search and arrest 28.—(1) It shall be lawful for the Commissioner, or any person authorized by him in writing in that behalf, or any police officer—

- (a) to enter any gemstone area and search any prospecting or open-cast mining works, buildings, premises, structures, camps, places, articles, vehicles and persons situated or found therein, for the purpose of detecting any offence under the provisions of Part II;
- (b) to 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 gemstone is unlawfully concealed or detained by or in such person or place;
- (c) at any time to seize and detain any gemstone in connection with which any offence has been committed against the provisions of Part II or in respect of which there are reasonable grounds for suspecting that such an offence has been or is being committed or any money paid or which there are reasonable grounds for suspecting to have been paid in respect of any unlawful sale, disposal, purchase or acquisition of gemstones;
- (d) to enter any premises occupied by any licensed dealer or any premises where gemstones may be stored or kept by a licensed dealer, for the purpose of detecting any offence under the provisions of Part II.

(2) In this section "gemstone area" means an area of land and every part thereof over and in respect of which any prospecting licence, claim or lease has been granted or registered for the purpose of prospecting or mining for gemstones, or which is used by any person for either of such purposes.

29. Any magistrate may, if satisfied on oath that there are reasonable grounds for believing that any gemstone in respect of which an offence against the provisions of Part II has been committed is concealed in any place, issue a warrant authorizing any police officer with his assistants at any time within one month from the date of the warrant to enter and search that place and all buildings and things thereon, using such force as may be necessary, and to seize any such gemstone found therein.

Search
warrant

30. Every person arrested and every gemstone or other property seized under the provisions of section 28 or section 29 shall, as soon as practicable, be brought before a court of competent jurisdiction.

Gemstone
seized and
persons
arrested to be
brought
before the
court

31. All offences against the provisions of Part II are hereby declared to be cognisable offences.

Offences
under Part II
to be
cognizable

32.—(1) If in any proceedings under this Act the question is in issue whether any article is or is not a gemstone, the burden of proof that such article is not a gemstone shall be on the person alleging that it is not a gemstone.

Burden of
proof

(2) A certificate purporting to be signed by the Commissioner that any article is or is not a gemstone shall be admissible in evidence without further proof in any proceedings under this Act and shall be prima facie evidence of the facts stated therein:

Provided always that the court may, if it thinks fit, and shall, if so requested by any party to any such proceedings, summon and examine or make available for cross-examination, the Commissioner who signed the certificate.

(3) In any proceedings under this Act the burden of proving that the sale, purchase, disposal, acquisition or possession of any gemstone was lawful shall be on the person alleging the same.

33. The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and without prejudice to the generality of the foregoing may make regulations—

Regulations

- (a) prescribing the forms to be used and the particulars to be furnished for any of the purposes of this Act;
- (b) prescribing fees for applications, licences, certificates, valuations, sales of gemstones by the Director, deposit of gemstones with the Director and such other matters and things for which the Minister considers it necessary to charge fees;
- (c) requiring authorized miners and licensed dealers to maintain such records and make such returns as the Minister may consider necessary;
- (d) providing for the grant of copies of licences, permits and certificates;
- (e) regulating the manner of sale of gemstones by the Director;
- (f) providing for the storage of gemstones by the Director;

- (g) providing for the recovery of the advance payment, fees and disbursements on the failure of an authorized to refund or pay the same after they have become due;
- (h) regulating the performance by the Director of any of his functions under this Act;
- (i) prescribing anything which under the provisions of this Act may be prescribed.

Revocation
and savings
G.N. 1964
No. 709

34.—The Restriction on Possession and Purchase of Gemstones Notice, 1964 is hereby revoked.

(2) Notwithstanding the revocation of the Restriction on Possession and Purchase of Gemstones Notice, 1964 any licence to purchase gemstones granted under the provisions of section 75 of the Mining Ordinance and in force immediately prior to the coming into operation of this Act shall be deemed to be a dealer's licence issued under the provisions of section 7 of this Act and shall, subject to the provisions of this Act, remain in force until the date of its expiry.

Passed in the National Assembly on the seventeenth day of April, 1967.


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Clerk of the National Assembly