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VAN SUIDWES-AFRIKA

OFFICIAL GAZETTE

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AG. PROKLAMASIE

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PROKLAMASIE

van die

ADMINISTRATEUR-GENERAAL VIR DIE GEBIED SUIDWES-AFRIKA

(Deur die Staatspresident goedgekeur op 22 FEBRUARIE 1990)

No. AG. 7 1990

WYSIGING VAN DIE PROKLAMASIE OP DIE BESKERMING VAN DIE DIAMANTNYWERHEID 1939 (PROKLAMASIE 17 VAN 1939)

Kragtens die bevoegdheid my verleen by Proklamasie 181 van 19 Augustus 1977, maak ek hierby die wette in die Bylae vervat.

L.A. Pienaar
Administrateur-generaal — Windhoek, 7 Maart 1990

PROCLAMATION

by the

ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA

(Approved by the State President on 22 FEBRUARY 1990)

No. AG. 7 1990

AMENDMENT OF THE DIAMOND INDUSTRY PROTECTION PROCLAMATION, 1939 (PROCLAMATION 17 OF 1939)

Under the powers vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the Schedule.

L.A. Pienaar
Administrator-General — Windhoek, 7 March 1990

BYLAE

Wysiging van artikel 1 van Proklamasie 17 van 1939, soos gewysig deur artikel 2 van Proklamasie 17 van 1941, artikel 1 van Ordonnansie 30 van 1955 en artikel 1 van Wet 24 van 1982

1. Artikel 1 van die Proklamasie op die Beskerming van die Diamantnywerheid 1939 (hierna die Hoofproklamasie genoem) word hierby gewysig –

(a) deur die omskrywing van "kleim" deur die volgende omskrywing te vervang:

"sluit 'kleim' in 'n kleim, 'n toekenningsgebied en 'n myngebied soos onderskeidelik omskryf in artikel 1 van die Ordonnansie op Myne, Bedrywe en Minerale 1968 (Ordonnansie 20 van 1968);";

(b) deur die omskryswing van "kleimhouer" deur die volgende omskrywing te vervang:

"sluit 'kleimhouer' in 'n kleimhouer, 'n houer van 'n toekenningsgebied en 'n eienaar van 'n myngebied soos onderskeidelik omskryf in artikel 1 van die Ordonnansie op Myne, Bedrywe en Minerale 1968 (Ordonnansie 20 van 1968);";

(c) deur in die omskrywing van "diamantbewaringsafdeling" na die woord "kleim" die volgende woorde in te voeg:

"of enige ander perseel wat deur die kleimhouer in verband met sy besigheid gebruik word"; en

(d) deur die omskrywing van "produsent" deur die volgende omskrywing te vervang:

"beteken 'produsent' enige persoon wat ingevolge die Ordonnansie op Myne, Bedrywe en Minerale 1968 (Ordonnansie 20 van 1968) geregtig is om diamante te win of te vind;".

SCHEDULE

Amendment of section 1 of Proclamation 17 of 1939, as amended by section 2 of Proclamation 17 of 1941, section 1 of Ordinance 30 of 1955 and section 1 of Act 24 of 1982

1. Section 1 of the Diamond Industry Protection Proclamation, 1939 (hereinafter referred to as the principal Proclamation), is hereby amended –

(a) by the substitution for the definition of "claim" of the following definition:

" 'claim' shall include a claim, grant area and mining area as defined in section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), respectively;";

(b) by the substitution for the definition of "claimholder" of the following definition:

" 'claimholder' shall include a holder of a claim, a holder of a grant area and an owner of a mining area as defined in section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), respectively;";

(c) by the insertion in the definition of "Diamond Security Department", after the word "claim", of the following words:

"or any other premises used by the claimholder in connection with his business"; and

(d) by the substitution for the definition of "producer" of the following definition:

" 'producer' means any person who is in terms of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), entitled to win or find diamonds;".

Wysiging van artikel 17 van Proklamasie 17 van 1939, soos vervang deur artikel 3 van Ordonnansie 30 van 1955 en gewysig deur artikel 7 van Wet 24 van 1982

2. Artikel 17 van die Hoofproklamasie word hierby gewysig –

(a) deur die voorbehoudsbepaling by subartikel (1) te skrap;

(b) deur die volgende subartikels na subartikel (1) in te voeg:

"(1*bis*) 'n Diamantbewaarder kan op enige kleim van die kleimhouer by wie hy in diens is, of op enige ander perseel wat deur sodanige kleimhouer in verband met sy besigheid gebruik word –

(a) enige persoon, hetsy in diens van sodanige kleimhouer of nie; of

(b) enige voertuig of artikel in die besit of bewaring of onder die beheer van so 'n persoon,

sonder 'n lasbrief deursoek of laat deursoek.

(1*ter*) By die toepassing van subartikel (1) en (1*bis*) sluit 'deursoek' deursoeking by wyse van 'n X-straalapparaat in en, met betrekking tot 'n ding, ook 'aftakel' en 'uitmekaar haal' "; en

(c) deur subartikel (3) te skrap.

Amendment of section 17 of Proclamation 17 of 1939, as substituted by section 3 of Ordinance 30 of 1955 and amended by section 7 of Act 24 of 1982

2. Section 17 of the principal Proclamation is hereby amended –

(a) by the deletion of the proviso to subsection (1);

(b) by the insertion after subsection (1) of the following subsections:

"(1*bis*) A diamond security officer may, on any claim of the claimholder by whom he is employed or on any other premises used by such claimholder in connection with his business, search or cause to be searched without a warrant –

(a) any person, whether employed by such claimholder or not; and

(b) any vehicle or article in the possession or custody or under the control of such person.

(1*ter*) For the purposes of subsections (1) and (1*bis*) 'search' shall include search by means of an X-ray apparatus and, in relation to any thing, also to 'dismantle' or to 'take apart'."; and

(c) by the deletion of subsection (3).

*Wysiging van artikel 19*bis *van Proklamsie 17 van 1939, soos ingevoeg deur artikel 4 van Ordonnansie 30 van 1955 en gewysig deur artikel 9 van Wet 24 van 1982*

3. Artikel 19*bis* van die Hoofproklamasie word hierby gewysig deur in subartikel (1) na die woord "kleim" die woorde "of enige ander perseel wat in verband met sy besigheid gebruik word," in te voeg.

*Amendment of section 19*bis *of Proclamation 17 of 1939, as inserted by section 4 of Ordinance 30 of 1955 and amended by section 9 of Act 24 of 1982*

3. Section 19*bis* of the principal Proclamation is hereby amended by the insertion in subsection (1) after the word "claim" of the words "or any other premises used by the claimholder in connection with his business,".

Wysiging van artikel 28 van Proklamasie 17 van 1939, soos gewysig deur artikel 4 van Wet 15 van 1980

4. Artikel 28 van die Hoofproklamasie word hierby gewysig –

(a) deur paragraaf (b) deur die volgende paragraaf te vervang:

"(b) enige diamante koop, in verband daarmee sake doen of dit by wyse van ruil, pand of op 'n dergelike wyse verkry, of"; en

(b) deur die uitdrukking "twintig duisend rand" deur die bedrag "R200 000" te vervang.

Wysiging van artikel 33 van Proklamasie 17 van 1939

5. Artikel 33 van die Hoofproklamasie word hierby gewysig deur die uitdrukking "twintig duisend rand" deur die bedrag "R200 000" te vervang.

*Invoeging van artikel 34*ter *in Proklamasie 17 van 1939*

6. Die volgende artikel word hierby in die Hoofproklamasie na artikel 34*bis* ingevoeg:

"34*ter.* (1) Ondanks andersluidende bepalings van 'n ander wet word enige geld of goed wat 'n persoon aan 'n lid of verteenwoordiger van die Suidwes-Afrikaanse Polisie betaal of gelewer het na aanleiding van 'n ooreenkoms vir die lewering of verkryging van diamante, by die skuldigbevinding van daardie persoon aan 'n misdryf ingevolge hierdie Proklamasie in verband met so 'n ooreenkoms aan die Staat verbeur.

(2) (a) 'n Verbeuring ingevolge subartikel (1) doen nie afbreuk aan 'n reg wat iemand anders as die veroordeelde op die goed wat verbeur is, het nie indien hy die hof oortuig –

Amendment of section 28 of Proclamation 17 of 1939, as amended by section 4 of Act 15 of 1980

4. Section 28 of the principal Proclamation is hereby amended –

(a) by the substitution for paragraph (b) of the following paragraph:

"(b) buys, deals in, by way of barter, pledge or in a like manner obtains, or"; and

(b) by the substitution for the expression "twenty thousand rand" of the amount "R200 000".

Amendment of section 33 of Proclamation 17 of 1939

5. Section 33 of the principal Proclamation is hereby amended by the substitution for the expression "twenty thousand rand" of the amount "R200 000".

*Insertion of section 34*ter *in Proclamation 17 of 1939*

6. The follwing section is hereby inserted in the principal Proclamation after section 34bis:

"34*ter.* (1) Notwithstanding anything to the contrary in any other law contained, any money or property which a person has paid or delivered to a member or agent of the South West African Police in pursuance of an agreement for the delivery or acquisition of diamonds, shall upon the conviction of that person of an offence under this Proclamation in connection with such an agreement be forfeited to the State.

(2) (a) A forfeiture in terms of subsection (1) shall not affect any right which any person other than the convicted person may have to the property forfeited if he satisfies the court –

(i) dat hy nie geweet het dat bedoelde goed vir die doel van of in verband met die pleging van die betrokke misdryf gebruik is of sou word nie; of

(ii) dat hy sodanige gebruik nie kon verhoed nie.

(b) Paragraaf (a) is nie van toepassing nie op enige geld wat aldus verbeur is.

(3) Artikel 35(4) van die Strafproseswet, 1977 (Wet 51 van 1977), is *mutatis mutandis* ten opsigte van 'n reg bedoel in subartikel (2) van toepassing, en by sodanige toepassing word –

(a) 'n verwysing in genoemde artikel 35(4) na die hof uitgelê as 'n verwysing na die hof wat die persoon bedoel in subartikel (1) skuldig bevind het; en

(b) 'n verwysing in genoemde artikel 35(4) na 'n verbeurdverklaring uitgelê as 'n verwysing na 'n verbeuring ingevolge subartikel (1).".

Kort titel

7. Hierdie Proklamasie heet die Wysigingsproklamasie op die Beskerming van die Diamantnywerheid, 1990.

(i) that he did not know that such property was being used or would be used for the purpose of or in connection with the commission of the offence in question; or

(ii) that he could not prevent such use.

(b) Paragraph (a) shall not apply to any money so forfeited.

(3) The provisions of section 35(4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply in respect of a right referred to in subsection (2), and for the purposes of such application –

(a) a reference in the said section 35(4) to the court shall be construed as a reference to the court which has convicted the person referred to in subsection (1); and

(b) a reference in the said section 35(4) to a declaration of forfeiture shall be construed as a reference to a forfeiture in terms of subsection (1).".

Short title

7. This Proclamation shall be called the Diamond Industry Protection Amendment Proclamation, 1990.

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