



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 164

1993

**PROMULGATION OF ACT
OF PARLIAMENT**

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 33 of 1993: Land Survey Act, 1993.

ACT

To regulate the survey of land; and to provide for matters incidental thereto.

(Signed by the President on 6 December 1993)

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SCHEDULE 1

AGREEMENT RELATING TO BEACONS AND BOUNDARIES

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LAWS REPEALED

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

INTRODUCTORY PROVISIONS

Definitions.

1. In this Act, unless the context otherwise indicates -

“approve” in relation to the Surveyor-General and to a general plan or diagram, means the signing of the general plan or diagram in order to signify that the provisions of this Act have been complied with in regard to the general plan or diagram;

“board” means the survey regulations board established by section 4(1);

“deeds registry” in relation to any land, deed or document or any registration in respect of which -

(a) the Deeds Registry Act, 1937 (Act 47 of 1937) applies, means the deeds registry established by section 1 of that Act;

(b) the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976) applies, means the deeds registry established by section 2 of that Act;

“diagram” means a document, containing geometrical, numerical and verbal representations of a piece of land, line, feature or area forming the basis for registration of a real right which has been -

(a) signed by a land surveyor or a person who, before the commencement of this Act, was recognised under any law then in force as a land surveyor; or

- (b) approved or certified by the Surveyor-General or any other officer empowered under any law to approve or certify a diagram,

and includes such a document or copy of such a document prepared in the Surveyor-General's office and so approved or certified, or a document which has at any time, before the commencement of this Act, been accepted as a diagram in the deeds registry or Surveyor-General's office;

“general plan” means a plan which represents the relevant positions and dimensions of two or more pieces of land and which has been -

- (a) signed by a land surveyor or a person who, before the commencement of this Act, was recognised under any law then in force as a land surveyor, or
- (b) approved or certified as a general plan by the Surveyor-General or any other officer empowered under any law to approve or certify a general plan,

and includes such a plan or copy of such a plan prepared in the Surveyor-General's office and so approved or certified, or a plan which has at any time, before the commencement of this Act, been accepted as a general plan for registration in the deeds registry or the Surveyor-General's office;

“land surveyor” means a person whose name is entered as a professional land surveyor in the register of practitioners referred to in section 13 of the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993;

“local authority” means the council of any area declared to be a municipality, town or village under section 3 of the Local Authorities Act, 1992 (Act 23 of 1992);

“Minister” means the Minister of Lands, Resettlement and Rehabilitation;

“owner” in relation to land, means the person registered in the deeds registry as the owner of such land, and includes -

- (a) if the owner is deceased, the executor of his or her estate;
- (b) if the estate of the owner has been sequestrated, the trustee of his or her insolvent estate;
- (c) if the owner is under any legal disability, his or her legal representative;
- (d) if the owner is a company which is being wound up, the liquidator of such company;
- (e) the person in whom the ownership of land is vested by statute;
- (f) in the case of land which has been allotted, granted, sold or otherwise alienated by the State to any person, but which has not yet been transferred in such person's name, that person; and
- (g) the lessee of land held under a lease for a period of 99 years registered in the deeds registry;

“prescribed” means prescribed by regulation made under this Act;

“public place” includes a street, road, thoroughfare, square or open space shown as such on a general plan of a township or settlement, filed in the deeds registry or Surveyor-General's office, and all land (other than erven shown on such general plan) in respect of which the control is vested, to the exclusion of the owner, in a local authority or to which the owners of erven in the township have a common right;

“reference mark” means a survey mark of permanent construction placed in a township to form one of a system of such marks for the purpose of basing the survey or resurvey of land in the township thereon or connecting such survey or resurvey thereto;

“registrar” means the person in charge of the deeds registry;

“registration” in relation to any land, means a registration of a real right in or to the land in accordance with the law relating to the registration of deeds, and “registered” has a corresponding meaning;

“regulations” means regulations made under this Act;

“settlement” means group of pieces of land, or subdivisions of a piece of land, which are used or intended for use for farming or horticulture, and includes a combination of such groups, which is suitable for inclusion in one property register;

“Surveyor-General” means the Surveyor-General appointed in terms of section 2(1) or a person acting in that capacity by virtue of section 2(2);

“the court” means the High Court of Namibia or a judge thereof;

“this Act” includes the regulations;

“township” means a group of pieces of land, or subdivisions of a piece of land, which are combined with public places and are used mainly for residential, industrial, business or similar purposes, or are intended to be so used; and

“trigonometrical station” means a survey station, other than a reference mark, erected by or under the direction of the Surveyor-General and for which he or she published official co-ordinate values, and includes such other stations as may be prescribed.

CHAPTER 2

ADMINISTRATION OF ACT

Appointment of Surveyor-General.

2. (1) Subject to the Public Service Act, 1980 (Act 2 of 1980), the Minister shall appoint a person who is a land surveyor to be the Surveyor-General.

(2) When the office of the Surveyor-General becomes vacant or in any case where the Minister is satisfied that the Surveyor-General is because of illness, absence or other sufficient cause unable to perform his or her duties, the Minister may appoint a person, who is a land surveyor, to act as or in the place of the Surveyor-General until a person is appointed in terms of subsection (1) as Surveyor-General or the Surveyor-General resumes his or her duties, as the case may be.

Powers and duties of Surveyor-General.

3. (1) The Surveyor-General shall exercise the powers and perform the duties conferred on or assigned to the Surveyor-General by this Act or any other law.

(2) The Surveyor-General shall be in charge of such geodetic, topographical and cadastral surveying in Namibia as the Minister may direct, and shall, subject to this Act -

- (a) promote and control all matters affecting such surveys;
- (b) supervise and control the survey and charting of land for purposes of registration in the deeds registry;
- (c) conduct such trigonometrical, topographical, geodetic, cadastral, level, tide and other relevant survey operations as may be required;
- (d) prepare, compile and amend from time to time, as the circumstances necessitate, such maps and other documents as may be required;
- (e) determine the manner in which this Act shall be carried out;
- (f) take charge of and preserve all records pertaining to surveys of land filed and kept in the Surveyor-General's office as records of that office;

- (g) before a registration is effected in the deeds registry, examine and approve all general plans and diagrams which have been prepared in accordance with the regulations, and, when applicable, in accordance with a statutory approval in so far as the layout is concerned;
- (h) on the diagram of any piece of land -
 - (i) define the geometrical figure representing any portion of such land the transfer whereof has been registered in the deeds registry, and deduct the numerical extent of such portion;
 - (ii) define the geometrical figure representing any portion of the land for which a certificate of township title or registered title has been issued under the law relating to the registration of deeds, and deduct the numerical extent of such portion;
 - (iii) define the geometrical figure and make the necessary endorsements in respect of any servitude or lease over or on such land and which has been surveyed in accordance with this Act and registered in the deeds registry;
- (i) cancel or amend, in accordance with the provisions of any law, a general plan or diagram;
- (j) upon a request of any person and payment of such fees as may be prescribed under section 6, prepare, certify and issue a copy of -
 - (i) any diagram or other document filed in the Surveyor-General's office which is available for inspection by the public; or
 - (ii) any general plan or diagram registered in the deeds registry.

(3) Any officer employed in the Surveyor-General's office who is a land surveyor may, if delegated thereto by the Surveyor-General, do any act or thing which may be done by the Surveyor-General under this Act or any other law.

Survey regulations board.

4. (1) There is hereby established a survey regulations board which shall have the power to make regulations in relation to the matters mentioned in section 5(1).

(2) The board shall consist of -

(a) the Surveyor-General; and

(b) three other persons appointed by the Minister, of whom -

(i) one shall be an officer in the public service;

(ii) two shall be land surveyors nominated for appointment by the Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians established by section 2 of the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993.

(3) Whenever an appointment is to be made of a member referred to in subsection (2)(b)(ii), the Minister shall, in writing, request the Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians to nominate, within 30 days of receiving the request, a person or persons for the purpose of such appointment.

(4) If a nomination is not received by the Minister within the period requested, the Minister shall appoint any two land surveyors he or she thinks fit as members of the board and the persons so appointed shall be deemed to have been nominated for appointment by the Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians.

(5) The Surveyor-General shall be the chairperson of the board and, in his or her absence, such other member of the board as the members present shall elect, shall act as chairperson.

(6) The board shall meet at such times and places as the Surveyor-General may determine.

(7) Three members of the board shall form a quorum at a meeting of the board.

(8) A decision of the majority of the members present at a meeting shall be the decision of the board and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(9) A member of the board who is not in the full-time public service shall receive in respect of his or her services such allowances as the Minister, in consultation with the Minister of Finance, may determine.

Regulations.

5. (1) Subject to subsection (2), the board may make regulations in relation to -

- (a) the manner in which surveys shall be performed, and the manner and form in which the records of such surveys shall be prepared and lodged with the Surveyor-General;
- (b) the degree of accuracy to be obtained and the limit of error to be allowed in surveys and resurveys of land to establish reference and other permanent marks;
- (c) the diagrams and general plans required in connection with the registration of land in the deeds registry, the manner of preparing such diagrams and general plans, the information to be recorded thereon, and the number of such diagrams and general plans to be supplied;
- (d) the form and dimensions of beacons, reference marks, bench marks and trigonometrical stations, the materials to be used for, and the manner of, their construction or erection and their marking for identification, protection, maintenance and repair;
- (e) the procedure to be followed in arbitration proceedings under this Act and the powers and duties of arbitrators appointed under this Act;
- (f) the manner and circumstances in which cadastral and other surveys shall be based on or connected to trigonometrical stations and reference marks;

- (g) the manner of resurveying any block of land for the purpose of re-adjusting the boundaries establishing the beacons thereof, and the manner of recovering the cost of such resurveys;
- (h) the steps to be taken by the Surveyor-General to test the accuracy or correctness of surveys of which the results are recorded on diagrams which have been or are intended to be registered in the deeds registry and, in the event of such surveys being inaccurate or incorrect, to cause correct diagrams to be prepared and the relevant title deeds to be amended;
- (i) the testing of surveying instruments and of measuring tapes used in the survey of land;
- (j) the unit of measure to be used in surveys and on general plans and diagrams,

and generally as to any matter pertaining to the surveying and charting of land, and for carrying out the objects of this Act, and the circumstances in which the Surveyor-General may authorise a departure from a regulation made under paragraph (a), (b), (c), (f) or (h), when compliance with such regulation is found to be impossible or impracticable.

(2) Any regulation made under subsection (1) shall -

- (a) be subject to the approval of the Minister;
- (b) be published in the *Gazette*; and
- (c) not come into operation before at least one month after it has been published in the *Gazette*.

(3) Any regulation made under subsection (1) may in respect of any contravention thereof or any failure to comply therewith prescribe a penalty not exceeding a fine of N\$2 000.

Fees of office.

6. The Minister may, by notice in the *Gazette* -

- (a) prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the Surveyor-General's office;

- (b) in consultation with the Minister of Finance, grant exemption or partial exemption from payment of any fees so prescribed to any body established by or under any law, and specified in the notice, for the promotion of any matter which in the opinion of the Minister is in the public interest.

CHAPTER 2

DUTIES OF LAND SURVEYORS

Duties of land surveyors.

- 7. (1) A land surveyor shall -
 - (a) carry out every survey undertaken by him or her in such manner as to ensure accurate results, and in accordance with the provisions of this Act;
 - (b) be responsible to the Surveyor-General for the correctness of every survey carried out by him or her or under his or her supervision, and of every general plan and diagram which bears his or her signature;
 - (c) deposit with the Surveyor-General for the purpose of examination and filing in the Surveyor-General's office such records as may be prescribed in respect of every survey carried out by him or her for the purpose of or in connection with a registration of land in the deeds registry or the replacement of a beacon; and
 - (d) when so required by the Surveyor-General, without delay correct, in any survey carried out by him or her or in any work relating thereto, any error due to failure to comply with the provisions of this Act and take such steps as may be necessary to ensure the amendment of any diagram, general plan and title deed based on the incorrect survey and to adjust the position of any beacon which he or she has placed in accordance with such incorrect survey.

(2) Where any act in relation to a survey and field operations is required in terms of any provision of this Act to be performed under the supervision of a land surveyor, such provision shall be deemed to be complied with if such act is performed in the presence of and with the active participation by a land surveyor: Provided that the land surveyor shall not be obliged to be present or to participate when beacons are inspected which have previously been connected to or based on reference marks or (except in a township) trigonometrical stations by a person registered under the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993.

CHAPTER 3

ORIGINAL SURVEYS AND RESURVEYS

Original survey of land.

8. (1) Where a land surveyor carries out a survey of a piece of land in respect of which a title deed has been issued but no diagram has previously been registered, the land surveyor shall deliver or transmit to the Surveyor-General for examination and filing in the Surveyor-General's office -

- (a) his or her certificate that the corner points of such piece of land are defined by beacons complying with the regulations, and a minute description of each such beacon as it existed at the commencement of the survey and, if the land surveyor has rebuilt any such beacon or substituted another beacon for it, the reason therefor and a minute description of the beacon after such rebuilding or substitution;
- (b) such original records or copies thereof as may be prescribed in relation to such survey and such further proof of the accuracy of the survey and of the correct identification of the original beacons of such piece of land or of their positions as the Surveyor-General may require, and any other information which the land surveyor considers material or useful or which the Surveyor-General may require.

(2) No diagram of a piece of land referred to in subsection (1) shall be approved, unless there is lodged with the Surveyor-General -

(a) an agreement in relation to beacons and boundaries (in this section referred to as "the agreement") as far as practicable in the form set out in Schedule 1, signed by -

(i) the owner of such piece of land or such owner's duly authorised representative;

(ii) every owner of land contiguous thereto (in this section referred to as "a contiguous owner") or such owner's duly authorised representative; and

(iii) two witnesses to each signature, being persons not less than 14 years of age, one of whom may be the land surveyor who performed the survey;

(b) a certificate by the land surveyor that, to the best of his or her knowledge and belief, the boundaries of the piece of land in question have not by agreement between the owner of such piece of land and a contiguous owner been so changed as to effect a transfer of any land otherwise than in accordance with the law.

(3) Notwithstanding subsection (2) -

(a) the agreement shall not be required in respect of a beacon or boundary which is deemed to have been lawfully established under this Act or any other law or in respect of a beacon or boundary common to the piece of land in question and any unalienated State land or any land situated outside Namibia;

(b) where any contiguous land which is held by two or more owners in undivided shares, it shall be sufficient if the agreement is signed by the owners of not less than a 75% share in such land;

(c) the Surveyor-General may require that the agreement be signed by the holders of any real rights in or over the piece of land or any

contiguous land, if in the Surveyor-General's opinion such rights would be adversely affected by the position of the beacons and boundaries adopted in the survey in question.

(4) The Surveyor-General may, unless otherwise directed by an order of the court, refuse to approve a diagram of any piece of land if he or she on reasonable grounds believes that -

- (a) an area not owned by the owner of the piece of land has been included within the boundaries of the piece of land as defined in the diagram; or
- (b) the payment of any tax or duty has been or will be evaded by any registration in the deeds registry based on such diagram.

(5) If a contiguous owner fails to sign the agreement within a period of two weeks from the date on which he or she or his or her duly authorised representative is called upon to sign the agreement, the owner of the piece of land or his or her duly authorised representative shall serve on such contiguous owner or his or her duly authorised representative a notice in writing, notifying him or her that if he or she fails, within a further period of one month from the date of service of that notice to lodge with the Surveyor-General an objection to the boundaries or beacons of the piece of land as set out in the agreement, he or she shall be deemed to have agreed to such boundaries and beacons: Provided that -

- (a) if the contiguous owner is the State or is outside Namibia when so called upon to sign the agreement or so served with such notice, the periods of two weeks and one month shall be extended to two months and three months respectively; or
- (b) if the address of the contiguous owner is not readily ascertainable, the publication of the notice in two consecutive issues of the *Gazette* and once every week during two consecutive weeks in a newspaper circulating in the district or subdistrict where the piece of land is situated and approved by the Surveyor-General, shall be deemed to be a service of the notice for the purposes of this subsection.

(6) The service of the notice referred to in subsection (5) shall, subject to paragraph (b) of the proviso to that subsection, be effected by personal delivery or by registered post, and in the case of service by registered post, the date of service shall be deemed to be the date on which the letter containing the notice would in the ordinary course reach the post office from which it is to be delivered to the addressee thereof.

(7) The Surveyor-General shall, notwithstanding that the agreement has not been signed by a contiguous owner, approve the diagram if he or she is satisfied that -

- (a) a notice as required by subsection (5) has been served on such contiguous owner;
- (b) no objection to a beacon or boundary adopted in the survey of the piece of land has been lodged by any contiguous owner within the period mentioned in the notice served on him or her in terms of subsection (5); and
- (c) all other requirements of this Act have been complied with in regard to the survey of the piece of land and the diagram thereof.

(8) Where, pursuant to a notice served in terms of subsection (5), a contiguous owner who has failed to sign the agreement lodges with the Surveyor-General, within the period mentioned in the notice, an objection to any beacon or boundary adopted in the survey of the piece of land or to the diagram thereof, the Surveyor-General shall serve on every owner of land affected by the objection a notice in which the Surveyor-General -

- (a) calls upon such owner to undertake in writing, in the prescribed manner, to accept the award of an arbitrator or arbitrators, to be appointed by the Surveyor-General, as final on all matters in dispute in connection with any such beacon or boundary and in regard to the cost of or incidental to such arbitration; and
- (b) notifies the objector of the provisions of subsections (11) and (12).

(9) The Surveyor-General shall -

- (a) if the written undertaking contemplated in subsection (8)(a) is given by every owner of land affected by the objection, or in the case of joint ownership, the owner or owners of not less than a 75% share in such land, appoint an arbitrator or arbitrators to determine the matters in dispute and costs, and the resulting award shall be final; or
- (b) if such written undertaking is not given by all such owners, serve a notice to that effect on the objector and in such notice notify the objector that subsections (11) and (12) shall apply *mutatis mutandis* with effect from the date of service of the notice.

(10) Paragraph (b) of the proviso to subsection (5) and subsection (6) shall apply *mutatis mutandis* to the service of a notice referred to in subsections (8) and (9)(b).

(11) If an owner of land affected by an objection referred to in subsection (8), whether or not such owner has signed the agreement referred to in subsection (5), and whether or not such owner has lodged an objection, fails to give the written undertaking referred to in paragraph (a) of subsection (8), the objector may, within one month from the date of service upon him or her of the notice referred to in subsection (9)(b) or, if he or she was not in Namibia on that date, within three months from that date -

- (a) institute an action in the court to determine any matter in dispute; or
- (b) if the State is one of the owners affected by such objection, proceed to arbitration in respect of any such matter in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

(12) If an objector fails to institute action or to proceed to arbitration, as the case may be, within the relevant period referred to in subsection (11), he or she shall be deemed to have agreed to the beacon, boundary and diagram in question.

(13) Upon approving a diagram the Surveyor-General shall -

- (a) cause the prescribed endorsement to be made on all relevant diagrams of contiguous land to the effect that the beacons and boundaries have been acknowledged by the owners concerned; and
- (b) notify the registrar of the approval of the diagram.

(14) After a notification to the registrar in terms of subsection (13)(b), no registration of a deed of transfer of the land represented by the diagram, or of a portion thereof or of an undivided share therein, shall be effected in the deeds registry until an endorsement has been made on the title deed of the land in terms of the law relating to the registration of deeds.

Diagram of land surveyed under direction of Surveyor-General.

9. (1) Where a survey is carried out under the direction of the Surveyor-General of a piece of land in respect of which no title deed has been issued and which is not represented on a diagram registered in the deeds registry or the Surveyor-General's office, the Surveyor-General shall, subject to subsection (3) and before approving the diagram of such land, cause a notice to be published in two consecutive issues of the *Gazette* and once every week during two consecutive weeks in a newspaper circulating in the district or subdistrict where the land is situated, stating that -

- (a) a diagram of the land is lying for inspection at the Surveyor-General's office; and
- (b) if no objection by an owner of land contiguous to the land represented on the diagram is received within a period of 60 days from the date of the first publication of that notice, the diagram shall be approved by the Surveyor-General.

(2) The Surveyor-General may dispense with the publication of the notice referred to in subsection (1) if, in his or her opinion, the rights of a contiguous owner would not be adversely affected by the approval of the diagram of the piece of land in question.

(3) If, within a period of 60 days from the date of the first publication of a notice in terms of subsection (1), an

owner of land contiguous to the land represented by the diagram in question lodges with the Surveyor-General an objection to such diagram or to any beacon or boundary adopted in the survey of the land so represented, and a dispute arising from the objection cannot be settled by agreement between the parties involved, subsections (8), (9), (10), (11), (12) and (13)(a) of section 8 shall apply *mutatis mutandis*.

Rectification of title deeds after determination of boundary dispute.

10. (1) Whenever a dispute in regard to a boundary or beacon of contiguous pieces of land has been finally determined by the judgement of the court or award of an arbitrator or arbitrators, the owners of any land affected by such judgement or award, or such of them as may be specially directed by the judgement or award, shall take such steps as may be necessary, in accordance with the law relating to the registration of deeds, to cause an endorsement to be made on the existing title deed of any such land.

(2) An endorsement referred to in subsection (1) shall be based upon a diagram correctly representing the boundaries and beacons of the land as determined by the judgement or award.

(3) Any judgement or award in relation to a dispute referred to in subsection (1) shall determine in what proportions the costs of any survey for the purpose of preparing the diagram referred to in subsection (2) or otherwise giving effect to the judgement or award, and of the endorsement of any title deed, shall be borne by the owners of any land affected by such judgement or award.

(4) The Surveyor-General shall furnish the registrar with a description of any land in respect of which an endorsement on the existing title deed is required in terms of subsection (1), and thereafter no registration of such land or a portion thereof or an undivided share therein shall be effected in the deeds registry until such endorsement has been made.

Endorsement of diagrams when correct position of beacon or boundary has been determined and agreed on.

11. (1) Whenever any doubt or dispute has arisen in regard to any beacon or boundary of any piece of land of which the diagram is registered in the deeds registry, and the position of the beacon or boundary in question has been determined by survey and such position has been accepted by agreement between the owners concerned, the Surveyor-General shall cause an endorsement to be made on the relevant diagrams to the effect that the position of

the beacon or boundary has been consented to by all contiguous owners: Provided that section 8 shall *mutatis mutandis* have been complied with in regard to the beacon or boundary.

- (2) Subsection (1) shall apply also in the case of -
- (a) a beacon which is erected by a land surveyor to replace a beacon which has been destroyed or disturbed;
 - (b) a curvilinear boundary, other than a curvilinear boundary mentioned in section 27 or 28, in respect of which two or more opinions exist as to the correct position on the ground; and
 - (c) a curvilinear boundary which is ill-defined or unsatisfactory, and in respect of which the owners concerned have agreed on its substitution by a boundary of another character.

Rules for arbitrators.

12. When determining the true and correct beacons or boundaries common to two contiguous pieces of land, an arbitrator appointed under this Act shall take into consideration the circumstances of the particular case, but shall, in general, be guided by the following principles:

- (a) The original beacons of a piece of land, as erected or adopted at the original survey thereof (if any), shall be deemed to define the true boundaries of such land as granted or transferred, notwithstanding that such beacons may not correspond with the original diagram or may not include the extent of land which the title deed of the land purports to transfer.
- (b) When well-ascertained beacons have for an uninterrupted period of not less than 30 years been recognised by the parties to the dispute or their predecessors in title as the true and correct beacons, such beacons shall be deemed to be the original beacons, but no land which is clearly not included, nor intended to be included, in the title deed of a piece of land may be included in a new diagram of that piece of land, notwithstanding that it has been used or occupied for the period of prescription by the owner of such piece of land or his or her predecessors in title to the exclusion of other persons.

- (c) If any land included within the original beacons and boundaries of a grant has afterwards been included within the beacons and boundaries of a later grant, the rights to such land conferred by the older grant shall, subject to paragraph (b), prevail.

Approval of diagram of portion of unsurveyed land.

13. No diagram of a portion of an unsurveyed piece of land registered in the deeds registry shall be approved by the Surveyor-General until a survey has been carried out of the whole of such piece of land and a new title deed has been registered or the old title deed has been endorsed on the basis of the survey.

Replacing existing diagram by new diagram after resurvey.

14. (1) Whenever it is alleged by the owner, or it appears from a resurvey, that the diagram of any land registered in the deeds registry (in this section referred to as "the existing diagram") does not correctly represent any beacon or boundary or the extent of such land, the Surveyor-General may approve a new diagram prepared in accordance with a resurvey of such land: Provided that the Surveyor-General may, in the prescribed circumstances, assign to a beacon an official co-ordinate value derived from one or more surveys based on the trigonometrical system, from which no departure shall be permitted in a subsequent survey or resurvey, except in the prescribed circumstances and manner.

(2) The provisions of section 8 shall apply *mutatis mutandis* in regard to the resurvey, but it shall not be necessary to comply with such provisions in respect of a beacon or boundary if -

- (a) the numerical data relating to such beacon or boundary, as derived from the resurvey, do not differ beyond the prescribed limits from the corresponding data recorded on the existing diagram and upon which any registration has been based, and the Surveyor-General is satisfied that the resurvey has not been less accurately performed than the previous survey and that the position of such beacon or boundary adopted in both such surveys is substantially the same; or
- (b) notwithstanding any difference beyond such limits, documentary evidence is produced which, in the opinion of the Surveyor-General, is sufficient to prove that the position of such beacon or boundary is correct:

Provided that nothing contained in this subsection shall be construed as preventing an owner from complying with the provisions of section 8 in respect of a beacon or boundary which he or she requires to be lawfully established in accordance with section 26.

(3) Upon approving the new diagram, the Surveyor-General shall endorse the existing diagram as having been superseded by the new diagram and notify the registrar of such endorsement.

(4) After a notification to the registrar in terms of subsection (3), no registration of the land represented by the new diagram, or of a portion thereof or of an undivided share therein, shall be effected in the deeds registry until an endorsement has been made on the relevant title deeds in accordance with the law relating to the registration of deeds.

(5) If it appears from the resurvey that the existing diagram is correct, the Surveyor-General shall endorse on such diagram a certificate to the effect that the land represented thereby has been resurveyed and that the existing diagram has been found to be correct: Provided that the provisions of section 8 shall apply *mutatis mutandis* as if such resurvey were a survey, and if such endorsement were an approval of a diagram for the purpose of that section, and that such endorsement shall not be made unless those provisions have been complied with.

(6) Upon the endorsement by the Surveyor-General of the certificate referred to in subsection (5) the beacons and boundaries of the piece of land in question shall be deemed to have been lawfully established in accordance with section 26.

(7) The provisions of this section shall also apply to land which is represented on two or more existing diagrams and resurveyed for the purpose of obtaining a certificate of consolidated title to such land.

Resurvey of block of land
other than township.

15. (1) Whenever -

- (a) the owners of not less than one half of a section or block of land, other than a township, consisting of more than one registered piece of land, apply to the Minister for a resurvey of such section or block; and

- (b) the Surveyor-General reports that the boundaries of the several pieces of land constituting such section or block cause confusion and need re-adjustment,

the Minister may order that the section or block be resurveyed under the direction of the Surveyor-General.

(2) No beacon or boundary which is deemed to be lawfully established in accordance with section 26 shall be affected by a resurvey or other act performed under this section.

(3) Whenever in the course of a resurvey ordered under subsection (1) a dispute arises as to the boundaries of any such pieces of land, the Surveyor-General shall give notice in writing to every person who is a party to the dispute that he or she proposes to appoint an arbitrator in order to determine the dispute, and section 8(6) shall apply *mutatis mutandis* in regard to such notice.

(4) Any person referred to in subsection (3) may, if he or she was in Namibia on the date of service of the notice referred to in that subsection, within one month from that date, and if he or she was not in Namibia on that date, within three months from that date -

- (a) institute an action in the court to determine such dispute; or
- (b) if the State is a party to such dispute, proceed to arbitration in respect thereof in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

(5) Where no action or arbitration proceedings are instituted in terms of subsection (4) within the relevant period referred to in that subsection, the Surveyor-General may appoint an arbitrator to determine the dispute, and the award of such arbitrator in regard to the dispute and all costs thereof or incidental thereto shall be final.

(6) The costs of and incidental to a resurvey ordered under subsection (1) shall be defrayed from the State Revenue Fund, but the Minister may recover such costs in such manner as may be prescribed from the owners of the pieces of land in question in accordance with a schedule framed by the Surveyor-General, apportioning such costs among all the owners.

(7) Upon payment by the owner of any such piece of land of all costs due by such owner in respect of a resurvey ordered under subsection (1), the Surveyor-General shall cancel the existing diagram of such piece of land and issue to such owner a new diagram in place thereof.

(8) Subject to subsection (9), the Surveyor-General shall, before he or she approves a general plan representing such pieces of land based upon a resurvey ordered under subsection (1), cause a notice to be published in three consecutive issues of the *Gazette* and once every week during three consecutive weeks in a newspaper circulating in the district or subdistrict where the land is situated -

(a) stating that a copy of the general plan which he or she proposes to approve is lying for inspection at his or her office and the office of the magistrate of the district or subdistrict where the land is situated; and

(b) calling upon interested persons to lodge any objection to the approval of such general plan with the Surveyor-General in writing within a period of four weeks from the date of the last publication of the notice.

(9) The Surveyor-General may approve any such general plan without publishing the notice referred to in subsection (8), if -

(a) every owner of land affected by the resurvey has agreed in writing to the general plan or the beacons and boundaries adopted in the resurvey; or

(b) the general plan is in accordance with a judgement or award under subsection (4) or (5) in an action or arbitration proceedings to which every such owner was a party.

(10) If no objection is lodged with the Surveyor-General within the period of four weeks referred to in subsection (8) by any person, other than a person who was a party to an action or arbitration proceedings under subsection (4) or (5), the Surveyor-General shall approve the general plan and, by notice in the *Gazette*, announce that the general plan has been approved.

(11) If an objection is lodged with the Surveyor-General within such period of four weeks, subsections (8), (9), (10), (11) and (12) of section 8 and the proviso to section 22(3) shall apply *mutatis mutandis*.

CHAPTER 4

DIVISION SURVEYS

Division diagrams.

16. (1) Whenever the owner of a surveyed piece of land desires to divide such land and to effect separate registration of one or more portions of the land in the deeds registry, each of the portions to be so registered shall be surveyed and, subject to subsection (2), a diagram thereof shall be submitted for examination to the Surveyor-General, who shall approve every such diagram prepared in accordance with this Act.

(2) If the owner desires to effect a separate registration of the remaining extent of the piece of land it shall not be compulsory to so submit a diagram of such remaining extent.

(3) If the diagrams of two or more portions comprising the whole of the piece of land have been approved, the Surveyor-General shall notify the registrar to that effect, and thereafter no registration relating to the land comprising the remaining extent after the penultimate portion has been registered, shall be effected unless -

- (a) the Surveyor-General has consented to and effected the cancellation of the diagram of the last portion; or
- (b) the diagram of the last portion has been substituted for the existing diagram in accordance with the law relating to the registration of deeds.

(4) Upon separate registration of any such portion being effected, the Surveyor-General shall -

- (a) on the copy of the diagram of the land so divided belonging to the owner of the remaining portion; and

- (b) on the copy of such diagram registered in the deeds registry or on that filed in the office of the Surveyor-General,

define the geometrical figure representing such portion and deduct its numerical extent: Provided that in such cases as may be prescribed such definition and deduction may be made on a general plan instead of on the diagram.

Procedure on division survey.

17. Section 14(1) and (2) shall apply *mutatis mutandis* in respect of the beacons and boundaries of a portion of land surveyed in terms of section 16, and every piece of land, a beacon or boundary whereof has a bearing in the prescribed manner on such portion, shall be deemed to be contiguous to such portion for the purpose of section 8(2)(b) and (3).

Division of land abutting on sea or tidal river or lake or vlei.

18. Where the high water line of the sea or of a tidal river or a line parallel with it, or the edge of a lake or vlei, which is owned by the State, forms a boundary of any surveyed land and the owner thereof intends to divide the land and to place a beacon along or near the boundary for the purpose of effecting the division, the owner shall give notice in writing of such intention to the Surveyor-General at least 20 days before the date of commencement of the survey for the purpose of the division.

Diagram of exact fraction of land.

19. When a surveyed piece of land which is held in undivided shares is divided for the purpose of partition, the Surveyor-General may withhold his or her approval of a diagram purporting to represent an exact fraction of the total extent of the surveyed piece of land until he or she is satisfied that such total extent has been ascertained by a resurvey of the whole of such piece of land.

Reference marks.

20. (1) If the Surveyor-General is satisfied that reference marks should be established in any township, or in a defined portion thereof, to enable the positions of the corner points of all pieces of land therein to be accurately determined, he or she may order the erection and establishment by survey of such reference marks.

(2) The erection and establishment of such reference marks shall for all purposes be deemed to be part of and in continuation of the trigonometrical survey operations referred to in section 3(2): Provided that a local authority may at its own cost erect such reference marks in positions approved by the Surveyor-General.

(3) When the reference marks have been erected and surveyed, the Surveyor-General shall -

- (a) give notice thereof to the local authority concerned and furnish it with a plan showing the positions of such reference marks; and
- (b) cause a notice to be published in the *Gazette*, stating that, as from a date specified in the notice, which shall not be earlier than a date one month from the date of publication of the notice, a land surveyor shall, in surveying or subdividing land or in replacing a beacon in the township, or in a defined portion thereof, in respect of which such reference marks have been erected, base his or her survey on such reference marks as prescribed: Provided that, when the official co-ordinate values of such reference marks become available, his or her survey shall be based on such values.

(4) The owner of any property damaged by the placing of a reference mark shall be entitled to compensation for such damage.

(5) Every local authority within whose area of jurisdiction reference marks are erected in terms of this section shall be responsible for the maintenance of such reference marks to the satisfaction of the Surveyor-General, and should the local authority fail to maintain any such reference mark, the Surveyor-General may undertake any necessary work at the expense of the local authority.

(6) Subsection (5) shall also apply to a newly established local authority with respect to reference marks erected within its area of jurisdiction before its establishment.

CHAPTER 5

TOWNSHIPS

Resurvey of township.

21. (1) When the recognised boundaries of pieces of land composing a township do not conform with the boundaries represented on their respective diagrams or the general plan, the Minister may, subject to subsection (2),

cause the township or any defined portion thereof to be resurveyed and a new general plan thereof to be prepared in accordance with such resurvey.

(2) The resurvey of a township or a portion of a township falling within the area of jurisdiction of a local authority shall be carried out only upon a written application to the Minister for such resurvey by the local authority.

(3) Before a local authority applies to the Minister for a resurvey of a township or a portion of a township falling within its area of jurisdiction, the local authority shall, in consultation with the Surveyor-General, cause a notice of the intended application for resurvey to be -

- (a) published in three consecutive issues of the *Gazette* and once every week during three consecutive weeks in a newspaper circulating in the district or subdistrict where such township is situated; and
- (b) posted at a conspicuous place at the office of the local authority.

(4) If the township or portion of a township to be resurveyed does not fall within the area of jurisdiction of a local authority, the Surveyor-General shall, before the resurvey is commenced, cause a notice of the intended resurvey to be published as contemplated in subsection (3)(a), and cause the notice to be posted at a conspicuous place at the office of the magistrate of the district or subdistrict where such township is situated.

(5) Any resurvey under subsection (1) shall be based on reference marks established in terms of section 20 and shall be carried out, and the new general plan shall be prepared, under the direction of the Surveyor-General by a land surveyor appointed by the Surveyor-General or, in the case of a township or a portion of a township falling within the area of jurisdiction of a local authority, by a land surveyor appointed by the local authority, with the approval of the Surveyor-General.

(6) No beacon or boundary which is deemed to be lawfully established in accordance with section 26 shall be affected by a resurvey or any other act performed under this section.

Defrayal of costs of re-survey of township.

22. (1) In the case of the resurvey of a township or a portion of a township falling within the area of jurisdiction of a local authority, all costs of and incidental to such resurvey shall (except in respect of State land) be borne by such local authority, but such local authority may, notwithstanding anything contained in any other law, levy a special rate payable by the registered owners of land within the resurveyed area, in proportion to the value of the land (including any non-ratable land other than State land) of each such owner in order to cover such costs of the resurvey or any portion thereof.

(2) The Minister shall, after consultation with the local authority concerned, determine the costs which shall be payable by the Government in respect of State land situated in the township.

(3) For the purpose of subsection (1) "the value of the land" means the valuation of such land as shown on the main valuation roll of the local authority concerned or, in the absence of such valuation, the valuation determined by the Minister after consultation with the local authority concerned.

(4) In the case of the resurvey of a township or a portion of a township which does not fall within the area of jurisdiction of a local authority, the owners of land (including the State) in the resurveyed area shall bear all costs of and incidental to such resurvey in the proportions to be determined by the Minister.

(5) Before the resurvey of a township or a portion of a township referred to in subsection (4) is commenced the owners of land in the area to be resurveyed, other than the State, shall deposit with the Minister an amount considered by him or her to be sufficient to cover their proportionate share of the costs, but if any owner's share of the actual costs is less than the amount so deposited, the difference shall be refunded to him or her, and if such share is in excess of the amount deposited, the Minister may recover the difference from such owner by action in a competent court.

Approval of new general plan.

23. (1) The Surveyor-General shall, before he or she approves a new general plan of a township or a defined portion of a township resurveyed under section 21, cause a notice to be published in three consecutive issues of the *Gazette* and once every week during three consecutive weeks in a newspaper circulating in the district or sub-district where the resurveyed area is situated -

- (a) giving notice of his or her intention to approve a new general plan in respect of such township or such portion of a township;
- (b) stating that a copy of the new general plan is lying for inspection at his or her office and at the office of the local authority within whose area of jurisdiction such resurveyed area is situated or, if there is no local authority, at the office of the magistrate of the district or subdistrict where the area is situated; and
- (c) calling on interested persons to lodge any objection to the approval of the new general plan with the Surveyor-General in writing within a period of four weeks from the date of the last publication of the notice.

(2) If no objection is lodged within the period of four weeks, the Surveyor-General shall approve the new general plan and by notice in the *Gazette* announce that the general plan has been approved.

(3) If an objection to the new general plan is lodged within the period of four weeks, subsections (8), (9), (10), (11) and (12) of section 8 shall apply *mutatis mutandis*: Provided that the Surveyor-General may approve and make use of a general plan or general plans of such portions of the area resurveyed as are not affected by the objection, and generally may take any steps in regard to such portions as if no such objection had been lodged.

(4) On approval of a new general plan of an area resurveyed under section 21, every previous diagram or general plan, or portion of a diagram or general plan, representing the area shall be deemed to be cancelled.

New general plan super-
sedes erroneous diagrams.

24. (1) The Surveyor-General shall, on approval of a new general plan of a township or portion of a township under section 23, furnish the registrar with a list of all pieces of land shown on the general plan, and thereafter no transfer, endorsement or any other act affecting the registration of any such piece of land or a portion thereof or an undivided share therein shall be effected in the deeds registry until -

- (a) a diagram, which corresponds with the new general plan, has been lodged; and

(b) the relevant title deed has been endorsed in accordance with the diagram.

(2) The owner of a piece of land situated in an area in respect of which a new general plan has been approved who wishes to obtain a new diagram representing such piece of land, may apply to the Surveyor-General for such diagram, and shall, when so applying -

(a) furnish a certificate by the proper authority to the effect that any amount due by such owner in terms of section 22 in respect of the piece of land has been paid by him or her; and

(b) pay the appropriate fees prescribed under section 6.

(3) Upon receipt of an application in terms of subsection (2), the Surveyor-General shall cause a new diagram representing the piece of land in question to be prepared from the data recorded on the new general plan and furnish to the applicant such new diagram.

Alteration or cancellation
of general plan.

25. (1) A general plan which is filed in the Surveyor-General's office or registered in the deeds registry may be altered or amended by the Surveyor-General for the purposes of rectifying errors.

(2) Subject to subsection (3), any such general plan which represents the subdivision of land in accordance with any other law may, with the approval of the Minister, or shall, by an order of a court, and subject to such conditions as the Minister or that court considers necessary, be altered, amended or partially or totally cancelled by the Surveyor-General.

(3) If a proposed alteration, amendment or partial or total cancellation of any general plan affects a public place, the Surveyor-General shall not make such alteration, amendment or partial or total cancellation, until he or she has been notified by the relevant local authority that the provisions of the Local Authorities Act, 1992 (Act 23 of 1992) relating to the permanent closing of a public place or a portion thereof have been complied with.

(4) The Minister may, in respect of an alteration, amendment or partial or total cancellation of a general plan, delegate to a local authority any power conferred by subsection (2).

(5) When a general plan is altered, amended or partially or totally cancelled under subsection (1) or (2), the Surveyor-General shall notify the registrar thereof who shall make such alterations, amendments or endorsements to or on the relevant title deeds and registers in the deeds registry as may be necessary.

CHAPTER 6

BEACONS AND BOUNDARIES

Beacons and boundaries lawfully established.

26. (1) A beacon or boundary shall be deemed to be lawfully established when its position is in agreement -

- (a) with the position adopted in a survey or resurvey carried out in terms of this Act, provided the provisions of section 8 have been complied with in respect of the beacon or boundary;
- (b) with the position thereof adopted in a resurvey in terms of section 15 or 21 and when a general plan based on such resurvey has been approved; or
- (c) with an order of the court.

(2) Notwithstanding any law to the contrary, the Surveyor-General or registrar shall not accept for filing or registration any document which shows a beacon or boundary inconsistent with the position of a beacon or boundary deemed to be lawfully established in accordance with subsection (1).

(3) The position of any beacon or boundary deemed to be lawfully established in accordance with subsection (1) shall not be impeached or questioned in any court of law.

(4) Nothing in this section contained shall prevent the acquisition by prescription of a right to, or interest in, land.

Removal of uncertainty in description of curvilinear boundary.

27. (1) When the particular part of a physical feature, other than a river, which constitutes a curvilinear boundary of a piece of land is not described in writing and in unequivocal terms in the title deed or on the original diagram of the land, and -

- (a) the owner desires an obscurity or ambiguity regarding the description of the boundary to be removed; or
- (b) a diagram representing the whole of the piece of land or a subdivision thereof which abuts on such physical feature has been submitted for approval and the Surveyor-General considers it necessary that the obscurity or ambiguity be removed before the approval of the diagram and has called on the owner to take steps to that end,

the owner shall lodge with the Surveyor-General an agreement in relation to beacons and boundaries (in this section referred to as "the agreement") as far as practicable in the form set out in Schedule 1, setting out in clear terms, as prescribed, which part of such feature is acknowledged as being the boundary of the piece of land.

- (2) The agreement shall be -
 - (a) independent of any determination by survey of the position on the ground of the curvilinear boundary; and
 - (b) signed by -
 - (i) the owner of the piece of land or by his or her duly authorised representative;
 - (ii) subject to section 8(3)(b) and subsection (3) of this section, by every owner of land contiguous thereto and separated therefrom either wholly or in part by the physical feature (in this section referred to as "a contiguous owner") or by his or her duly authorised representative; and
 - (iii) two witnesses to each signature, being persons not less than 14 years of age.

(3) If the Surveyor-General is satisfied that no prejudice will result to a contiguous owner from the acceptance of the agreement, it shall not be necessary for such owner to sign the agreement.

(4) Subsections (5), (6) and (7) of section 8 shall apply *mutatis mutandis* in respect of the agreement.

(5) After the agreement has been signed in accordance with subsection (2) and accepted by the Surveyor-General, no diagram of the relevant piece of land or subdivision thereof shall be approved unless it is in accordance with the agreement.

(6) If a contiguous owner has failed to sign the agreement and has within the period mentioned in the notice referred to in section 8(5), as applied by subsection (4) of this section, lodged with the Surveyor-General an objection to the agreement, the matter shall be laid before a commission constituted in terms of subsection (7) for the purpose of describing the boundary in question: Provided that if the State is an objector or affected by such objection, the matter shall be determined by arbitration, and subsections (8), (9), (10), (11) and (12) of section 8 shall apply *mutatis mutandis* in respect of the agreement.

(7) The commission referred to in subsection (6) shall consist of the Permanent Secretary: Lands, Resettlement and Rehabilitation, or a person appointed in writing by him or her, the Surveyor-General, who shall be the chairperson, and the registrar.

(8) The commission shall make the necessary enquiries and furnish a description of the boundary in question in accordance with the finding of the majority of the members after due consideration of all documentary evidence available from the records in the Surveyor-General's office and the deeds registry and such other evidence, whether documentary or oral, as the commission considers relevant.

(9) The Surveyor-General shall notify the owners who are affected by the agreement by registered letter of the finding of the commission.

(10) If an owner referred to in subsection (9) -

- (a) fails to lodge a written objection against the finding of the commission with the Surveyor-General within a period of 30 days from the date of dispatch of the registered letter referred to in that subsection or, in the case of an owner who was not in Namibia on that date, within 60 days from that date; or

- (b) after having so lodged such an objection, thereafter, within a period of 30 days from the date of lodging such objection, fails to institute action to determine the matter,

such owner shall be deemed to have consented to the description of the boundary in question as determined by the commission, and thereafter such description shall not be capable of being impeached or questioned in any court of law, and no diagram shall be approved which is not in accordance with such description.

(11) If the address of any owner referred to in subsection (9) is not readily ascertainable by the Surveyor-General, the publication by the Surveyor-General of the finding of the commission by notice in two consecutive issues of the *Gazette* and once every week during two consecutive weeks in a newspaper circulating in the district or subdistrict where the property in question is situated, shall for the purposes of subsection (9) be deemed to be notification to such an owner by registered letter, and the date of the last publication of such notice shall, for the purposes of subsection (10), be deemed to be the date of dispatch of the registered letter.

(12) When the agreement has come into force in accordance with subsection (5), or a finding of the commission has become final in accordance with subsection (10), the diagram of each property affected by the agreement and filed in the Surveyor-General's office and in the deeds registry, as well as the owner's copy thereof, when available, shall be endorsed accordingly.

Land abutting on a river.

28. (1) Where a river constitutes a boundary of any piece of land such piece of land shall be deemed to extend to the middle of the river, unless -

- (a) it is stated in clear and unequivocal terms in the title deed or on the original diagram of the piece of land that a particular bank of the river constitutes such boundary;
- (b) it is stated in clear and unequivocal terms in the title deed or on the original diagram of land contiguous to such piece of land and separated therefrom by the river, that the entire river-bed forms part of such contiguous land;

- (c) the inclusion of any part of the river-bed in the piece of land would cause the boundary to fall beyond the territorial limits of Namibia;
- (d) the Surveyor-General is in possession of information indicating that the inclusion of any part of the river-bed in the piece of land would be invalid; or
- (e) an international agreement between Namibia and an adjacent country provides otherwise.

(2) On the written application of the owner of a piece of land of which a boundary is deemed to be the middle of the river in terms of subsection (1), the Surveyor-General shall endorse the diagram of the piece of land to the effect that the middle of the river is the boundary.

(3) When the Surveyor-General is satisfied that, on the ground of paragraph (a), (b), (c), (d) or (e) of subsection (1), a bank of a river constitutes the boundary of a piece of land, he or she may, on the written application of the owner of such piece of land, endorse the diagram of such piece of land to the effect that the bank of the river is the boundary.

(4) When a diagram representing a piece of land or a subdivision of a piece of land in respect of which the presumption contemplated in subsection (1) is applicable, is submitted for approval and the Surveyor-General considers it necessary that the diagram, before its approval, be endorsed in accordance with subsection (2), he or she shall call on the owner of such piece of land or such subdivision to submit a written application as contemplated in that subsection and, on receipt of such application, endorse the diagram in accordance with the provisions of that subsection.

(5) When the Surveyor-General is of the opinion that the river boundary of an existing subdivision of a piece of land coincides with a part or the whole of the river boundary of the piece of land as originally granted, he or she may, notwithstanding evidence to the contrary, give effect to an agreement lodged with him or her in terms of subsection (6) in respect of such subdivision.

(6) The owner of a subdivision to which subsection (5) relates, may lodge with the Surveyor-General an agreement, as far as practicable in the form set out in Schedule 1, setting out in clear terms, as prescribed, that the middle of the river is acknowledged as being the river boundary of that subdivision.

(7) Subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of section 27 shall apply *mutatis mutandis* in respect of such agreement.

(8) For the purpose of this section and the provisions of section 27 applied by subsection (7) -

(a) "contiguous owner" means any owner of land whose rights, in the opinion of the Surveyor-General, is likely to be affected by the acceptance of an agreement referred to in subsection (5); and

(b) "river" includes a watercourse, stream, spruit, donga or similar natural feature, whether the flow of water in it is of a perennial nature or not, and which is -

(i) indicated as a boundary of a piece of land on a diagram or general plan filed in the Surveyor-General's office or the deeds registry; or

(ii) described as a boundary of a piece of land in a title deed registered in the deeds registry.

Manner and cost of erecting a beacon for survey purposes.

29. (1) Any beacon erected for the purpose of or in consequence of a survey or resurvey of land under this Act shall be constructed with the prescribed materials and in the prescribed manner under the supervision of, and in a position determined by, a land surveyor.

(2) Subject to section 31(5), the costs of erecting any beacon, including the costs of determining its position by survey, when necessary, shall be borne by the owner of the land surveyed or resurveyed, but such owner may recover from the owner or owners of contiguous land a proportionate share of the costs of determining the position of and erecting any joint beacon.

No erection or excavation to be placed or made near trigonometrical station.

30. (1) Except with the written consent of the Surveyor-General, no person shall -

- (a) place a fence-post or fence-anchor;
- (b) place or erect a structure of any nature; or
- (c) make any excavation,

within a distance of one metre of any trigonometrical station.

(2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Repair or re-erection of a beacon or mark.

31. (1) Every owner of land shall, in accordance with the regulations, maintain in proper order and repair any beacon or mark defining a corner-point of such land, whether such beacon or mark was erected for the purpose of or in connection with a survey or resurvey of land under this Act or any repealed law.

(2) If any such beacon or mark is considered by the Surveyor-General not to be in a condition of proper order and repair or has been removed or obliterated, the Surveyor-General may, by personal delivery or by registered letter, serve a notice in writing on the owner of every piece of land of which such beacon or mark forms a corner, calling upon such owner to restore the beacon or mark to the prescribed condition or to cause it to be re-erected by a land surveyor in the prescribed manner, as the case may be, within a period of six weeks from the date of delivery or dispatch of the notice, as the case may be.

(3) If the beacon or mark is not so restored or re-erected within such period of six weeks, or such extended period as the Surveyor-General may, at the request of such owner, permit, the Surveyor-General may cause the beacon or mark to be so restored or re-erected by a land surveyor.

(4) Subject to subsection (5), the owners of the pieces of land concerned shall be liable in equal shares for the costs in respect of the repair, restoration or re-erection of

any beacon or mark carried out on the instructions of the Surveyor-General under subsection (3) and the Surveyor-General may recover from every such owner his or her share of such costs.

(5) If any damage, removal or obliteration of such a beacon or mark was caused or effected by any of such owners or an employee or representative of such owner, such owner shall be liable for all costs in respect of the repair, restoration or re-erection of such beacon or mark.

Offences and compensation in respect thereof.

32. (1) Any person who -

- (a) wilfully alters, moves, disturbs, damages or destroys a beacon, bench mark, reference mark, signal or trigonometrical station intended to be permanent and erected for the purpose of or in connection with any survey operations; or
- (b) except under the supervision of a land surveyor, erects a beacon, whether his or her intention is to alter the boundary line of a piece of land or to cause deception as to such boundary line or not,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) The removal or disturbance of any beacon, mark or signal for the purpose of erecting another beacon, mark or signal in its place shall not be a defence to an offence under subsection (1), unless a land surveyor has supervised such removal or disturbance and the erection of such other beacon, mark or signal.

(3) For the purpose of awarding compensation under section 300 of the Criminal Procedure Act, 1977 (Act 51 of 1977) in respect of any damage caused through the commission of an offence referred to in subsection (1) -

- (a) any beacon in connection with which the offence was committed shall be deemed to be the property of any owner on whose land or on a boundary of whose land such beacon was situated;

- (b) any bench mark, reference mark or trigonometrical station in connection with which the offence was committed shall be deemed to be the property of the Surveyor-General.

Authorisation for removal or disturbance of a beacon or mark.

33. Where any person who, for the purpose of carrying out any work which such person may lawfully perform, wishes any beacon or mark erected in connection with the survey of land to be removed or disturbed, the Surveyor-General may, upon an application of such person, authorise such removal or disturbance and, at the expense of the applicant, employ a land surveyor to personally effect or supervise the removal or disturbance and subsequent replacement, in accordance with the regulations, of such beacon or mark or the erection or placing of any other mark to indicate the position of the removed or disturbed beacon or mark, in such manner as the Surveyor-General may direct.

CHAPTER 7

GENERAL PLANS AND DIAGRAMS

Manner of preparing general plan or diagram.

34. A general plan or diagram submitted for approval by the Surveyor-General shall be prepared in accordance with the regulations and the numerical and other data recorded thereon shall be within the prescribed limits of consistency.

No registration of land without approved general plan or diagram.

35. (1) Subject to subsection (2), no general plan or diagram of a piece of land shall be accepted in the deeds registry in connection with any registration therein of such land, unless such general plan or diagram has been approved by the Surveyor-General.

(2) If the approval of the Surveyor-General is contingent upon any act to be subsequently performed in the deeds registry, the Surveyor-General may approve such general plan or diagram provisionally and, on the performance of that act in the deeds registry, the Surveyor-General shall finally approve the general plan or diagram when submitted to him or her.

General plan or diagram to be signed by land surveyor.

36. (1) Subject to subsection (2), no general plan or diagram shall be approved by the Surveyor-General unless it has been prepared by or under the direction of and signed by a land surveyor.

(2) The Surveyor-General may approve a general plan or diagram prepared under his or her direction from existing general plans, diagrams or survey records filed in the Surveyor-General's office or registered in the deeds registry, without the signature thereon of the land surveyor who signed such existing general plans, diagrams or survey records, if such land surveyor is not available or unreasonably refuses to sign the general plan or diagram so prepared.

Rectification of overlapping diagram.

37. (1) When the figure of the diagram of a piece of land (in this section referred to as "the overlapping diagram") overlaps the figure of the diagram of another piece of land and the Surveyor-General considers it necessary to rectify the anomaly, he or she shall give notice of such overlap to the registrar and to the owner of the land represented on the overlapping diagram, and thereafter no further registration of such land or a portion thereof or an undivided share therein shall be effected in the deeds registry until the Surveyor-General, after receipt of such data as he or she may require from the owner for the purpose, has rectified the overlapping diagram.

(2) Section 39 shall apply *mutatis mutandis* in regard to the service of the notice referred to in subsection (1).

(3) Section 40 shall apply *mutatis mutandis* in regard to the alteration of the title deed in respect of the overlapping diagram.

Diagram for consolidated title.

38. (1) The Surveyor-General may approve a diagram which -

- (a) has been compiled, without a resurvey, from two or more diagrams representing several pieces of land; and
- (b) has been prepared for the purpose of obtaining a consolidated title to the pieces of land.

(2) The several diagrams forming the component parts of a new diagram which has been prepared for the consolidation of title shall, upon the issue of the certificate of the consolidated title, be transmitted by the registrar to the Surveyor-General for cancellation.

Registrar and owner to be notified of incorrect diagram.

39. (1) If the Surveyor-General is satisfied that the diagram of a piece of land entirely fails to represent such land or misrepresents such land to such extent that damage or loss might result to any person who is or may become interested in such land, the Surveyor-General may, subject to subsection (2), give notice of such fact to the registrar and to the owner of such piece of land, and thereafter no further registration of such piece of land or a portion thereof or an undivided share therein shall be effected in the deeds registry until -

- (a) a new diagram of the land has been approved; and
- (b) the title deed thereof has been endorsed, in accordance with the new diagram, under the law relating to the registration of deeds.

(2) If the address of the owner of a piece of land referred to in subsection (1) is not readily ascertainable by the Surveyor-General, a publication of the notice referred to in that subsection in two consecutive issues of the *Gazette* and once every week during two consecutive weeks in a newspaper circulating in the district or sub-district where such piece of land is situated, shall be deemed to be sufficient notice to the owner for the purpose of subsection (1).

Correction of registered diagram.

40. (1) Subject to subsection (2), the Surveyor-General may correct any error in the numerical data, figure or wording of any diagram registered in the deeds registry.

(2) If any such correction affects the extent or designation of the land represented by the diagram, the Surveyor-General shall notify the registrar of such correction, and thereupon the registrar shall -

- (a) amend the relevant title deed and registers in the deeds registry in accordance with the corrected diagram; and
- (b) before effecting any further registration of such land or a portion thereof or an undivided share therein, likewise amend the relevant duplicate title deed of the owner of such land.

CHAPTER 8

MISCELLANEOUS PROVISIONS

Powers of Surveyor-General and land surveyors for purpose of performing functions.

41. (1) Subject to subsection (2), the Surveyor-General, a person generally or specially deputed in writing by him or her, or a land surveyor may, for the purpose of performing any function under this Act or any other law -

- (a) enter on any land with such assistants or employees, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of such function;
- (b) place or erect a permanent beacon, bench mark, reference mark or trigonometrical station, or a temporary flag, signal or other mark on such land;
- (c) make use of any natural material on which no work has been expended and, except within a township, of any water found on or in such land;
- (d) cut any vegetation growing wild in the vicinity of any such beacon, mark, trigonometrical station, flag or signal for the purpose of enabling observations to be made thereto or therefrom; and
- (e) at all reasonable hours enter a building or enclosed place.

(2) The Surveyor-General, a person deputed by him or her or a land surveyor shall, before exercising any power conferred by subsection (1), give reasonable notice to the owner or occupier of the land concerned of the intention to exercise such power except when such power is exercised in carrying out any provision of section 21.

(3) An owner or occupier affected by the exercise of any power conferred by subsection (1) shall be entitled to compensation for any damage caused to or in any building or enclosed place, and for any unreasonable damage caused to any other property of the owner or occupier, through the exercise of such a power.

(4) A person who -

- (a) in any manner prevents, obstructs or impedes the exercise of any power conferred by subsection (1); or
- (b) moves, obscures or destroys any flag, peg, signal or other mark of a temporary nature placed on any land in connection with any survey operations before the completion of such operations,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(5) The Minister may, subject to the payment of compensation in accordance with subsection (7), require from any owner of land on or near which a permanent beacon, bench mark, reference mark or trigonometrical station is situated to grant a servitude in favour of the State if in the opinion of the Minister such servitude is required for the purpose of -

- (a) the protection of any such beacon, mark or station; and
- (b) ensuring an unobstructed view to and from such beacon, mark or station or to or from any other beacon, mark or station.

(6) The Minister shall cause a servitude granted under subsection (5) to be registered against the title deed of the land in question.

(7) The costs of the registration of any servitude in terms of subsection (6) and reasonable compensation for any depreciation in the value of the servient tenement by reason of the grant of the servitude, shall be paid out of the State Revenue Fund.

Act binds State.

42. (1) This Act binds the State with respect to any land vesting in the State.

(2) For the purposes of this Act, the Minister shall have the power to exercise in respect of any land referred to in subsection (1) any power or right required or permitted to be exercised by the owner of land in terms of this Act.

Act not applicable to surveys for purposes of mines, railways and irrigation works.

43. This Act shall not apply to -

- (a) such surveys as may, in accordance with any law, be performed by mine surveyors;
- (b) surveys for purposes of railway or harbour construction or purposes incidental thereto, performed by employees of Transnamib Limited established by section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987); or
- (c) surveys performed by officers of the Ministry of Agriculture, Water and Rural Development carrying out their duties under the law relating to irrigation,

provided any such survey is not used for the purpose of effecting the registration of land in the deeds registry or the definition of a boundary of land.

Notice to Surveyor-General of application to court.

44. Before any application is made to a court for an order affecting the performance of an act in the Surveyor-General's office, the applicant shall give notice in writing to the Surveyor-General at least 21 days before the hearing of the application and the Surveyor-General may submit to that court such report thereon as he or she considers desirable.

Restriction of liability.

45. No person, including the State, shall be liable in respect of anything done or omitted in good faith and not attributable to negligence in the exercise or performance of a power or duty in terms of this Act.

Repeal of laws and savings.

46. (1) Subject to subsections (2), (3) and (4) of this section and section 31(3) of the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993, the laws specified in Schedule 2 are hereby repealed.

(2) The person who immediately before the commencement of this Act held office as Surveyor-General by virtue of section 4 of the Land Survey Act, 1927 (Act 9 of 1927), before the repeal of that Act by this Act, shall be deemed to have been appointed as Surveyor-General under section 2(1) of this Act.

(3) Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision.

(4) Any beacon or boundary which was deemed to be lawfully established immediately before the commencement of this Act by virtue of the provisions of any law repealed by subsection (1), shall be deemed to be lawfully established in accordance with section 26 of this Act.

Short title and commencement.

47. This Act shall be called the Land Survey Act, 1993, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

SCHEDULE 1

(Sections 8(2)(a), 27(1) and 28(6))

“Agreement relating to Beacons and Boundaries

We, the undersigned,

- * (a) 1. owner of * (b)
- 2. owner of
- 3. owner of
- 4. owner of
- 5. owner of

and owner of the piece of land under survey called

certify that we have inspected the beacons and boundaries common to our said properties as adopted in the survey of the last-named piece of land by (*land surveyor*).

And we declare that we agree and consent to the positions of the beacons and boundaries as represented on the figure appearing on the opposite page and consent to a diagram being prepared in accordance therewith.

| Date | Signature *(c) and *(d) | Beacons and Boundaries indicated on figure on oppo- site page and hereby agreed to *(e) | Witnesses to Signatures *(f) |
|------|----------------------------|--|---------------------------------|
| | | | 1. 2. |
| | | | 1. 2. |
| | | | 1. 2. |
| | | | 1. 2. |
| | | | 1. 2. |

***Notes:-**

- (a) Names of owners in full and in capital letters.
- (b) Names of contiguous properties.
- (c) Only one signature in each compartment.
- (d) (i) Signatures on behalf of Estates, Companies, Local Authorities, or similar bodies must be duly authenticated by attachment of letters of administration, certified copies of resolutions of Boards or Councils or other similar documents.

 (ii) Signatures on powers of attorney must be accompanied by the actual powers or certified copies.

 (iii) Original documents shall be returned after being noted on this agreement by the Surveyor-General.
- (e) Where a river forms the boundary, the left bank, right bank, or middle of the river, as the case may be, must be indicated and signed for.
- (f) Two witnesses are required to each signature, being persons not less than 14 years of age.

The page containing the figure referred to in the agreement to be headed:-

“Figure Representing Land under Survey and Common Beacons
and Boundaries of Contiguous Properties”

and at the end of the page the following note shall be made:-

“Note: This page must be signed by the land surveyor performing the survey and the beacons and boundaries must be designated on the figure so as to correspond with the beacons and boundaries agreed to on the opposite page.”.

SCHEDULE 2

LAWS REPEALED (Section 46(1))

| No. and year of law | Title |
|---------------------|---------------------------------|
| Act 9 of 1927 | Land Survey Act, 1927 |
| Act 14 of 1941 | Land Survey Amendment Act, 1941 |
| Act 52 of 1962 | Land Survey Amendment Act, 1962 |
| Act 64 of 1970 | Land Survey Amendment Act, 1970 |
| Act 52 of 1971 | Land Survey Amendment Act, 1971 |
| Act 71 of 1972 | Land Survey Amendment Act, 1972 |
| Act 23 of 1977 | Land Survey Amendment Act, 1977 |