



**GOVERNMENT GAZETTE**  
OF THE  
**REPUBLIC OF NAMIBIA**

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**Government Notice**

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**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.

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# 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## LAWS REPEALED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

