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REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 150

1999

**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. 12 of 1999: Motor Vehicle Theft Act, 1999.

ACT

To amend the law relating to the theft of motor vehicles and motor vehicle parts and to provide for matters incidental thereto.

(Signed by the President on 6 July 1999)

ARRANGEMENT OF SECTIONS

Section

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

Definitions

1. In this Act, unless the context otherwise indicates -
"builder" means any person who manufactures or assembles motor vehicles in whole or in part from used components for the purpose of sale or disposal otherwise commercially;

“clearance certificate” means a certificate issued by the police confirming the lawful owner of a specific motor vehicle;

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“dealing in”, in relation to a motor vehicle or motor vehicle part, includes performing any act in connection with the manufacture, assembly, supply, sale, disposal, purchase, acquisition or receiving in Namibia, or the importation into or exportation out of Namibia, of a motor vehicle or motor vehicle part;

“identification mark” means any mark (other than a registration mark) made or placed, for the purpose of identification, on a motor vehicle in such manner as to be as far as possible indelible, and includes any mark which is cast, engraved, etched or printed onto a motor vehicle for that purpose;

“importer” means any person who imports new or used motor vehicles or motor vehicle parts into Namibia for the purpose of sale or disposal otherwise commercially;

“manufacturer” means any person who manufactures or assembles new motor vehicles for the purpose of sale or disposal otherwise commercially;

“member of the police” means a member of the Namibian Police Force as defined in section 1 of the Police Act;

“Minister” means the Minister of Home Affairs;

“motor dealer” means any person who is engaged in the business of dealing in motor vehicles or motor vehicle parts, or both, and includes -

- (a) a manufacturer;
- (b) a builder;
- (c) an importer;
- (d) a repairer of motor vehicles;
- (e) a panelbeater of motor vehicles; and
- (f) in relation to a scrapyards for motor vehicles or motor vehicle parts, or both, the owner of such scrapyards;

“motor vehicle” means any self-propelled vehicle, and includes -

- (a) a caravan;
- (b) a motor cycle;
- (c) a motor quadrucycle;
- (d) a motor tricycle;
- (e) a trailer; and
- (f) a vehicle the tare of which exceeds 30 kilograms and having pedals and an engine

or an electric motor as an integral part thereof or attached thereto and that can be propelled by means of such pedals, engine or motor, or both such pedals and engine or motor, but does not include -

- (i) a pedestrian-controlled vehicle propelled by electrical power derived from storage batteries; or
- (ii) a vehicle the tare of which is less than 230 kilograms and which is specially designed and constructed, and not merely adapted, for the use of a person suffering from a physical defect or disability and is used solely by such person;

“motor vehicle key” means any instrument which is used for the purpose of setting the machinery of a motor vehicle in motion;

“motor vehicle part” means any of the parts of a motor vehicle, and includes the engine and chassis thereof;

“police” means the Namibian Police Force established by section 2 of the Police Act;

“Police Act” means the Police Act, 1990 (Act No. 19 of 1990);

“possession” includes custody;

“registration mark” means a registration mark prescribed in accordance with the provisions of Chapter 3 of the Road Traffic and Transport Act;

“regulation” means a regulation made under section 24;

“Road Traffic and Transport Act” means the Road Traffic and Transport Act, 1999;

“sell” includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale, or to exchange or to dispose of for any consideration whatever, or to transmit, convey or deliver in pursuance of such sale, exchange or disposal, and “sale”, “seller”, “selling” and “sold” shall have a corresponding meaning;

“tamper”, in relation to any engine number, chassis number, registration number, registration mark or identification mark, includes to add anything to or to remove anything from any such number or mark;

“this Act” includes the regulations made thereunder;

“vehicle” means a device designed or adapted principally to travel on wheels or crawler tracks, but does not include a device designed to move exclusively on rails.

Failure to give satisfactory account of possession of motor vehicle or motor vehicle part

2. Any person who is found in possession of a motor vehicle or a motor vehicle part in regard to which there is reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence.

Absence of reasonable cause for believing motor vehicle or motor vehicle part properly acquired

3. (1) Any person who in any manner, otherwise than at a public sale,

acquires or receives into his or her possession from any other person a stolen motor vehicle or a stolen motor vehicle part without having reasonable cause, proof of which shall be on such first-mentioned person, for believing at the time of such acquisition or receipt that such motor vehicle or motor vehicle part is the property of the person from whom he or she acquires or receives it or that such person has been duly authorized by the owner thereof to deal with it or dispose of it, shall be guilty of an offence.

- (2) In this section "public sale" means a sale effected -
- (a) at any public market; or
 - (b) by any motor dealer during the hours when his or her business may in terms of any law remain open for the transaction of business; or
 - (c) by an auctioneer at a public auction; or
 - (d) in pursuance of an order of a competent court.

Prohibition of dealing in stolen motor vehicles or motor vehicle parts

4. (1) No person shall, either as principal or as agent, engage in the business of -

- (a) selling -
 - (i) stolen motor vehicles or stolen motor vehicle parts; or
 - (ii) any motor vehicle the engine number, chassis number, registration number or registration mark or any identification mark of which has been falsified or counterfeited, or substituted, altered, defaced, obliterated or mutilated or tampered with in any other way without the written consent of a registering authority; or
- (b) dealing in any other manner in stolen motor vehicles or stolen motor vehicle parts or in any motor vehicle referred to in subparagraph (ii) of paragraph (a).

(2) Any person who contravenes a provision of subsection (1), shall be guilty of an offence.

(3) In this section -

"business" includes any undertaking or activity which has for its object the acquisition of gain by any person;

"registering authority" means a registering authority appointed under section 10 of the Road Traffic and Transport Act.

Report by motor dealers

5. (1) Any motor dealer or any manager, employee or agent of a motor dealer's business who discovers or has reasonable grounds to suspect that, with respect to a motor vehicle or a motor vehicle engine received by or delivered to him or her in the course of such business -

- (a) the engine number, chassis number, registration number or registration mark of, or any identification mark on, such motor vehicle; or
- (b) the number of such motor vehicle engine; or
- (c) any certificate, licence or other document issued in terms of this Act, or any other law relating to the registration and licensing of motor vehicles, in regard to such motor vehicle,

has been falsified or counterfeited, or substituted, altered, defaced, obliterated or mutilated or tampered with in any other way, shall forthwith report the matter to the police at the nearest police station.

(2) Any person who fails to comply with a provision of subsection (1), shall be guilty of an offence.

Disposal, purchase or sale of motor vehicles

6. (1) Subject to the provisions of subsection (2), any person who -
- (a) sells, transfers or otherwise disposes of a motor vehicle and who, at the time of such sale, transfer or disposal, fails to furnish to the purchaser of the motor vehicle, or to the person to whom the motor vehicle is transferred or delivered, a document effecting such sale, transfer or disposal (hereinafter in this section referred to as a document of identification), stating -
 - (i) the full name and address of such first-mentioned person and, if the motor vehicle is sold, transferred or disposed of on behalf of some other person, also the name and address of such other person;
 - (ii) the full name and address of the person to whom the motor vehicle is sold, transferred or disposed of;
 - (iii) full particulars in regard to the motor vehicle being sold, transferred or disposed of, including the engine number, chassis number and registration number thereof;
 - (iv) the date on which the motor vehicle is sold, transferred or disposed of, and the terms and conditions of such sale, transfer or disposal; and
 - (v) such other information as may be prescribed by regulation; or
 - (b) purchases, receives or accepts delivery of a motor vehicle and who, at the time of such purchase, receipt or delivery, does not demand and receive from the seller of the motor vehicle, or from the transferor or deliverer of the motor vehicle, a document of identification,

shall be guilty of an offence.

- (2) No -
- (a) motor dealer who sells, transfers or otherwise disposes of a motor vehicle; or
 - (b) person who purchases, receives or accepts delivery of a motor vehicle from a motor dealer,

need comply with the provisions of subsection (1), if such motor dealer issues to such person, and such person receives from such motor dealer, a declaration or certificate specifying such motor dealer's name and his or her place of business and stating or certifying, as the case may be, that such person has by virtue of such sale, transfer or disposal lawfully acquired or received into his or her possession the motor vehicle in question.

- (3) Every person who purchases a motor vehicle shall -
- (a) in the case of a motor vehicle purchased in Namibia, if a clearance certificate has not been produced to him or her at the time of such purchase, present the motor vehicle, together with the document of identification or the declaration or certificate contemplated in subsections (1) and (2), respectively, to a member of the police within three days of the date of such purchase for verification by the police; or
- (b) in the case of a motor vehicle purchased outside Namibia and imported into Namibia -
- (i) produce such document of identification or such declaration or certificate to the Controller of Customs and Excise, as defined in section 1 of the Customs and Excise Act, 1998 (Act No. 20 of 1998), at the port of entry into Namibia for endorsement by such Controller; and
- (ii) within three days of the date of such importation, present the motor vehicle, together with such endorsed document of identification or declaration or certificate, to a member of the police for verification by the police,

and, if so verified, the police shall issue a clearance certificate to such person.

- (4) Any person who -
- (a) sells, transfers or otherwise disposes of a motor vehicle and who, for the purposes of this section, prepares or issues a false document of identification, or a false declaration or certificate, in connection with such sale, transfer or disposal knowing such document of identification or such declaration or certificate to be false in any material respect or not believing it to be true; or
- (b) purchases a motor vehicle and who fails to present the motor vehicle, together with the required document of identification or declaration or certificate, to a member of the police in accordance with the provisions of subsection (3)(a) or (b), as the case may be, for verification by the police,

shall be guilty of an offence.

- (5) (a) A document of identification or a declaration or certificate contemplated in subsections (1) and (2), respectively, shall, if the motor vehicle being sold, transferred or disposed of is not registered in Namibia in terms of any law relating to the registration and licensing of motor vehicles, be supported by a clearance certificate or similar document issued by any competent authority of the country where the motor vehicle is registered at the time of such sale, transfer or disposal.

(b) In the event of non-compliance with the requirement under paragraph (a) -

- (i) a document of identification required in terms of subsection (1) to be furnished by and to be received from any person who sells, transfers or otherwise disposes of a motor vehicle; or
- (ii) a declaration or certificate permitted under subsection (2) to be issued by and to be received from a motor dealer in place of such document of identification,

shall (if not supported by such clearance certificate or similar document) be deemed to have not been so furnished or issued, as the case may be, and to have not been so received.

Unlawful acts in relation to motor vehicle, registration mark, identification mark or motor vehicle key

7. (1) No person other than a manufacturer or builder of motor vehicles shall manufacture or cut, or cause to be manufactured or cut, any registration mark or identification mark or any motor vehicle key unless such person is in receipt of a certified copy of -

- (a) the identity document of the person requesting any such mark or such key; and
- (b) either the registration certificate or the clearance certificate issued in regard to the motor vehicle in question.

(2) Any person who, in accordance with the provisions of subsection (1), manufactures or cuts, or causes to be manufactured or cut, any registration mark or identification mark or any motor vehicle key shall keep proper record, or cause proper record to be kept, of every registration mark and identification mark and every motor vehicle key so manufactured or cut.

(3) A member of the police may at any time demand an inspection of a record kept in terms of subsection (2), and on such demand the person keeping such record shall produce it for inspection to the member of the police making the demand.

(4) No person shall without the written consent of the owner of a motor vehicle or any other person lawfully in charge thereof or without reasonable cause respray or repaint such motor vehicle or any part thereof.

(5) Any person who -

- (a) contravenes or fails to comply with a provision of subsection (1), (2) or (4); or
- (b) fails to comply with any demand made under subsection (3),

shall be guilty of an offence.

Search, seizure and arrest

8. (1) Notwithstanding anything to the contrary in any other law contained, but without derogating from any power conferred by section 14(4) and (5) of the Police

Act, any member of the police may, in the performance of the functions referred to in section 13 of that Act, whenever such member has reasonable grounds for believing that any person is driving or is in possession or control of a motor vehicle which has been stolen, and where delay in obtaining a warrant to search such motor vehicle or to enter any premises for the purpose of searching such motor vehicle carries with it the danger of prejudicing the objects of the search, and if -

- (a) such search is related to the objectives of this Act;
- (b) such search is not excessively intrusive in the light of the offence; and
- (c) such person is informed of the objectives of the search,

without warrant -

- (i) search such motor vehicle or, if such motor vehicle is on or in any premises, enter such premises for the purpose of searching such motor vehicle; and
- (ii) arrest any person found driving or in possession or control of such motor vehicle and seize such motor vehicle,

and shall as soon as possible bring or remove such person and the motor vehicle so seized to a police station or charge office, as the case may be.

(2) For the purpose of exercising the powers conferred by subsection (1), a member of the police may at any time and at any place in Namibia by means of an appropriate indication or direction or in any other manner order the driver of a motor vehicle to bring such motor vehicle to a stop.

(3) Notwithstanding anything to the contrary in any other law contained, any member of the police may, in the performance of the functions referred to in section 13 of the Police Act, whenever such member has reasonable grounds for believing that any person is in possession of a motor vehicle part which has been stolen, and where delay in obtaining a warrant to search such person or any container or premises for the purpose of seizing such motor vehicle part carries with it the danger of prejudicing the objects of the search, and if -

- (a) such search is related to the objectives of this Act;
- (b) such search is not excessively intrusive in the light of the offence; and
- (c) such person is informed of the objectives of the search,

without warrant -

- (i) search such person or any container or premises; and
- (ii) arrest any person found in possession of such motor vehicle part and seize such motor vehicle part,

and shall as soon as possible bring or convey such person and the motor vehicle part so seized to a police station or charge office, as the case may be.

- (4) (a) The provisions of the Criminal Procedure Act with regard to the disposal of an article referred to in section 20 of that Act and seized under

the provisions of that Act, shall apply *mutatis mutandis* in respect of the disposal of a motor vehicle or motor vehicle part seized under subsections (1) and (3), respectively, of this section.

- (b) If a motor vehicle so seized is forfeited to the State in terms of the provisions of the Criminal Procedure Act referred to in paragraph (a), it shall, subject to those provisions, be dealt with in accordance with the provisions of subsections (1)(a) and (3) of section 10 of this Act as if such motor vehicle were an unclaimed motor vehicle, except that paragraph (b) of the said subsection (3), in so far as it relates to the forfeiture to the State of an unclaimed motor vehicle, shall not apply in respect of a motor vehicle previously forfeited to the State in terms of any of those first-mentioned provisions.

(5) To the extent that the provisions of subsections (1) and (3) authorize the interference with a person's fundamental right to privacy or the deprivation of the personal liberty of such person by conducting a search or making an arrest under those provisions, as the case may be, such interference or deprivation shall be authorized only -

- (a) in the case of such interference, on the grounds of the prevention of crime and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution; or
- (b) in the case of such deprivation, on the grounds of the procedures established under this section pursuant to the provisions of Article 7 of the said Constitution.
- (6) Any person who -
- (a) obstructs, hinders, opposes, resists or interferes with a member of the police in the performance of his or her duties or the exercise of his or her powers under this Act; or
- (b) without just cause refuses or fails to comply with a requirement by a member of the police under this Act; or
- (c) makes any false statement or representation, or furnishes any false information, to a member of the police knowing such statement, representation or information to be false or misleading in any material respect or not believing it to be true,

shall be guilty of an offence.

Proceeds of criminal activity

9. (1) If a magistrate or judge, upon information on oath, is satisfied that there are reasonable grounds for believing that a person being investigated by the police for an offence under this Act, or for an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, has benefited or may have benefited from any criminal activity carried on by him or her, the magistrate or judge may issue the police with an order -

- (a) authorizing any member of the police -
- (i) to enter at any reasonable time any premises for the purpose of searching such premises for any proceeds of such criminal activity; and

- (ii) to seize any property, or any part thereof, which was derived directly or indirectly or may have so derived as a result of the carrying on of such criminal activity;
 - (b) directing, with regard to any proceeds of such criminal activity -
 - (i) any person to disclose to any member of the police information relating to the location or identification thereof;
 - (ii) any bank or other financial institution to release to any member of the police accounts relating thereto;
 - (c) prohibiting any person, subject to such conditions and exceptions as may be specified in that order, from dealing in any manner with any property to which that order relates.
- (2) (a) Any person affected by an order issued under subsection (1) may at any time apply to the court which made such order for the variation or rescission of such order.
- (b) If it deems it necessary in the interests of justice, the court hearing an application under paragraph (a) may vary or rescind the order to which the application relates.
- (3) Whenever a person is convicted of an offence under this Act, or of an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, involving the carrying on by the convicted person of a criminal activity, the court may, on the application of the public prosecutor, enquire into any benefit which the convicted person may have derived from such criminal activity and, if the court finds that the convicted person has so benefited, the court may, in addition to any sentence which it may impose on the convicted person in respect of the offence, declare, subject to the provisions of subsection (7), the property, or any part thereof -
- (a) which directly or indirectly represents in the convicted person's hands the property which he or she received or obtained in connection with such criminal activity; and
 - (b) which was seized under subsection (1)(a)(ii) or is in the possession or under the control of the convicted person,
- or the convicted person's rights in any such property, to be forfeited to the State.
- (4) A court convicting a person may, when passing sentence, indicate that it will hold an enquiry contemplated in subsection (3) at a later stage, if it is satisfied that such enquiry will unreasonably delay the proceedings in sentencing the convicted person.
- (5) No application referred to in subsection (3) shall be made without the written authority of the Prosecutor-General.
- (6) A court before which proceedings under this section are pending may, in order to make a declaration of forfeiture under subsection (3) -
- (a) refer to the evidence and proceedings at the trial;
 - (b) hear such further evidence, whether by affidavit or orally, as the court may deem fit.

- (7) (a) A court shall not make a declaration of forfeiture under subsection (3) unless it has afforded all persons claiming to have any interest in the property in question an opportunity to make representations to it in connection with the making of such declaration.
- (b) The court shall, having regard to the representations made to it under paragraph (a), enquire into and, subject to the provisions of paragraph (c), determine any such interest.
- (c) A declaration of forfeiture shall not affect any interest which any person other than the convicted person may have in the property in question, if such first-mentioned person proves -
- (i) that he or she acquired the interest in that property in good faith and for consideration, whether in cash or otherwise; and
 - (ii) that the circumstances under which he or she acquired the interest in that property were not of such a nature that he or she could reasonably have been expected to have suspected that it was or formed part of the proceeds of a criminal activity.
- (8) Property forfeited to the State under subsection (3) shall be dealt with in accordance with the directions of the court which made the declaration of forfeiture.
- (9) Any person aggrieved by a determination made by the court under subsection (7)(b), may appeal against such determination as if it were a conviction by the court making such determination, and that appeal may be heard, either separately or jointly, with an appeal against the conviction as a result of which the declaration of forfeiture was made under subsection (3), or against a sentence imposed as a result of such conviction.
- (10) Any person who, having been duly served with an order under paragraph (c) of subsection (1), fails to comply with any provision of that order, shall be guilty of an offence.
- (11) To the extent that the provisions of subsection (1) authorize the interference with a person's fundamental right to privacy by conducting a search under those provisions, such interference shall be authorized only on the grounds of the prevention of crime and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.
- (12) For the purposes of this section, a person has benefited from criminal activity if he or she at any time, whether before or after the commencement of this Act, received or obtained any payment or other reward in connection with any criminal activity carried on by him or her.
- (13) In this section -
- “criminal activity” means any activity relating to the manufacture, assembly, supply, sale, disposal, purchase, acquisition or receiving in Namibia, or the importation into or exportation out of Namibia, of stolen motor vehicles or stolen motor vehicle parts, or any other fraudulent activity relating to stolen motor vehicles or stolen motor vehicle parts;

“interest” includes any right;

“proceeds”, in relation to a criminal activity, means any property, or any part thereof, which was derived directly or indirectly as a result of the carrying on of such criminal activity, and includes any property representing property so derived;

“property” means money or any other movable, immovable, corporeal or incorporeal thing, and includes any interest therein and all proceeds thereof.

Unclaimed motor vehicles

10. (1) Any motor vehicle -
- (a) seized by a member of the police in accordance with the provisions of this Act and of which the owner is not known to or cannot be traced by the police; or
 - (b) found abandoned by a member of the police on any public road or in or on any public place or premises and to which -
 - (i) no registration number or, in the opinion of such member, a false registration number is affixed; or
 - (ii) no other number or anything else is affixed which may serve to identify its owner,

may be removed to the nearest or any other convenient police station for the purpose of being taken into custody by the police.

(2) If a motor vehicle retained in police custody under subsection (1) has not been previously claimed by its owner, which claim shall be supported by satisfactory proof of ownership and all relevant documents, such motor vehicle shall, if it is not required for the purposes of any criminal proceedings (including an order of court), be dealt with in accordance with the provisions of subsection (3).

(3) The Inspector-General of Police shall, as and when he or she considers it necessary, cause to be published twice at an interval of not less than one month in the *Gazette*, and similarly in at least two newspapers circulating in Namibia, a notice containing -

- (a) particulars of all seized and abandoned motor vehicles retained in police custody under subsection (1), or, where such particulars are not available, a fair description of such motor vehicles; and
- (b) a warning to the effect that if any of such motor vehicles remain unclaimed by their respective owners after the expiry of a reasonable period specified in such notice, but not being less than two months calculated from the date of publication of such last notice, they shall be forfeited to the State and be sold by public auction.

(4) Any motor vehicle seized by a member of the police or taken into custody by the police before the commencement of this Act, because it is reasonably suspected to have been stolen or because its owner is not known to or cannot be traced by the police, shall, if it is not required for the purposes of any criminal proceedings (including an order of court), within one month after such commencement or within six months of the motor vehicle being so seized or taken into custody, whichever is the longer period, be dealt with in accordance with the provisions of subsection (3) as if such motor vehicle were taken into police custody under subsection (1).

(5) In this section -

“owner”, in relation to a motor vehicle, means the person who is lawfully entitled to such motor vehicle;

“public road” means a public road as defined in section 1 of the Road Traffic and Transport Act.

Malicious arrest and search

11. (1) Any person who, purporting to act under this Act, wrongfully and maliciously or without probable cause arrests, or seizes the property of or under the control of, any other person or effects any search, shall be guilty of an offence.

(2) Nothing in this section contained shall be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest.

Conspiracy and inducing another person to commit offence

12. Any person who -

- (a) conspires with any other person to aid or procure the commission of or to commit; or
- (b) incites, instigates, commands or procures any other person to commit,

an offence under this Act, or an offence at common law involving the theft of a motor vehicle or motor vehicle part, shall be guilty of an offence and on conviction be liable to the penalties to which a person convicted of actually committing that offence would be liable.

Competent verdicts

13. (1) Any person who is charged with the theft of a motor vehicle or motor vehicle part may be found guilty of -

- (a) the theft of or an attempt to commit the theft of such motor vehicle or motor vehicle part; or
- (b) receiving such motor vehicle or motor vehicle part knowing the same to have been stolen; or
- (c) inciting, instigating, commanding or procuring or conspiring with another person -
 - (i) to steal such motor vehicle or motor vehicle part; or
 - (ii) to receive such motor vehicle or motor vehicle part; or
- (d) knowingly disposing of, or knowingly assisting in the disposal of, a motor vehicle or motor vehicle part which has been stolen or which has been received with knowledge of it having been stolen; or
- (e) contravening section 2 or 3(1).

(2) Any person charged with the theft of a motor vehicle or motor vehicle part belonging to a particular person may be found guilty of any of the offences mentioned in subsection (1), notwithstanding the fact that the prosecution has failed to prove that such motor vehicle or motor vehicle part actually did belong to such particular person.

Act applicable in all cases where charge is one of theft of motor vehicle or motor vehicle part

14. The provisions of this Act shall apply in every case where an accused is indicted, summoned or charged in respect of the theft of a motor vehicle or motor vehicle part, notwithstanding the fact that this Act is not referred to in the indictment, summons or charge.

Penalties for certain offences under this Act

15. (1) Any person who is convicted of an offence under this Act shall, subject to the provisions of subsections (2), (4) and (5), be liable -

- (a) in the case of an offence referred to in section 5, 6(1) or (4), 7, 8(6) or 11(1), to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment;
- (b) in the case of an offence referred to in section 2 where such offence relates to a motor vehicle part only, to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (c) in the case of an offence referred to in section 2 where such offence relates to a motor vehicle, notwithstanding anything to the contrary in any other law contained -
 - (i) on a first conviction, to imprisonment for a period of not less than five years without the option of a fine;
 - (ii) on a second or subsequent conviction, to imprisonment for a period of not less than seven years without the option of a fine:

Provided that, where for the purpose of or in connection with the commission of such offence violence or a threat of violence is used, the penalty on any conviction shall be -

- (aa) where such violence or threat of violence does not involve the use of a fire-arm or other dangerous weapon, imprisonment for a period of not less than ten years without the option of a fine;
- (bb) where such violence or threat of violence involves the use of a fire-arm or other dangerous weapon, imprisonment for a period of not less than twelve years without the option of a fine;
- (d) in the case of an offence referred to in section 3(1) or 9(10), to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (e) in the case of an offence referred to in section 4, to a fine of not less than N\$60 000 or to imprisonment for a period of not less than ten years.

(2) If a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in paragraph (c) or (e) of subsection (1), it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.

(3) On a conviction for an offence under section 4, the court, in addition to any sentence which it may impose on the convicted person in respect of the offence, shall, if the convicted person is a motor dealer, cancel or suspend for such period as the court may determine, but not being less than two years, any licence, permit, certificate or other authority to trade as such held by the convicted person.

(4) A sentence of imprisonment imposed in respect of an offence under section 2, 3(1) or 4, or an additional sentence of imprisonment imposed under section 18(1)(b) in respect of non-compliance with an order of compensation, shall, notwithstanding anything to the contrary in any other law contained, not run concurrently with any other sentences of imprisonment imposed on the convicted person, or with any part of such sentences.

(5) Notwithstanding anything to the contrary in any other law contained, no person shall on a third and each subsequent conviction for an offence under this Act be dealt with under section 297 of the Criminal Procedure Act, if such person was at the time of the commission of that offence eighteen years of age or older.

(6) In this section "dangerous weapon" includes any object which is likely to cause serious bodily harm.

Penalties for certain other offences relating to theft of motor vehicle or motor vehicle part

16. (1) Any person who is convicted by a court of an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13 shall, subject to the provisions of subsection (2), be liable to the penalties prescribed in -

- (a) paragraph (b) of subsection (1) of section 15, in the case where such offence relates to a motor vehicle part only; and
- (b) paragraph (c) of subsection (1) of section 15, in the case where such offence relates to a motor vehicle,

as if such person were convicted of an offence under section 2.

(2) If a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in paragraph (c) of subsection (1) of section 15, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.

(3) The provisions of subsections (4) and (5) of section 15 shall apply *mutatis mutandis* in respect of an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13.

Suspension or cancellation of driving licences

17. (1) Where a person who is the holder of a driving licence is convicted by a court of an offence mentioned in paragraph (a), (b), (c), (d) or (e) of subsection (1) of section 13 involving the theft of a motor vehicle, the court shall, apart from imposing a sentence, issue an order -

- (a) suspending every driving licence held by such person for a period equal to twice the period of imprisonment imposed on him or her in respect of the offence, calculated from the date of sentence, in the case of a first or second conviction; or
- (b) cancelling every driving licence held by such person and declaring him or her to be disqualified from obtaining a driving licence for any class of motor vehicle while such cancellation or disqualification remains in force, in the case of a third or subsequent conviction.
- (2) If a person convicted of an offence referred to in subsection (1) is not the holder of a driving licence, the court, apart from imposing a sentence, shall declare such person to be disqualified from obtaining a learner's licence or driving licence for any of the periods contemplated in paragraph (a) or (b) of subsection (1), whichever may be applicable, calculated from the date of sentence.
- (3) If a court convicting any person of an offence referred to in subsection (1) is satisfied that circumstances exist which do not justify the suspension or cancellation or the disqualification contemplated in subsections (1) and (2), respectively, the court may, notwithstanding the provisions of those subsections, order that the suspension, cancellation or disqualification shall not take effect, or that the suspension or disqualification shall be for such shorter period as the court may deem fit.
- (4) A court convicting any person of an offence referred to in subsection (1) shall, before imposing sentence, bring the provisions of subsection (1) or (2), as the case may be, and of subsection (3) to the notice of such person.
- (5) An order issued by a court in terms of paragraph (a) or (b) of subsection (1) shall apply with respect to every driving licence held by the convicted person and the particulars of the conviction and sentence and of the order issued shall be endorsed by the registrar or clerk of the court on every such licence.
- (6) The endorsement of a driving licence in terms of subsection (5) may be postponed by the court issuing the order until any appeal against the conviction or sentence, or both, has been disposed of.
- (7) The provisions of section 52 of the Road Traffic and Transport Act shall apply *mutatis mutandis* in respect of the suspension or cancellation of a driving licence.
- (8) Any person -
- (a) who pursuant to -
- (i) an order issued in terms of subsection (1), is disqualified from holding or obtaining a driving licence; or
- (ii) a declaration made in terms of subsection (2), is disqualified from obtaining a learner's licence or driving licence,
- and who obtains or attempts to obtain a learner's licence or driving licence while any such suspension, cancellation or disqualification remains in force; or
- (b) who obtains or attempts to obtain a learner's licence or driving licence for or on behalf of a person who has been disqualified, as contemplated in paragraph (a)(i) or (ii), from holding or obtaining any such licence,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(9) In this section -

“driving licence” means a driving licence as defined in section 1 of the Road Traffic and Transport Act;

“learner’s licence” means a learner’s licence as defined in section 1 of the Road Traffic and Transport Act.

Orders of compensation

18. (1) Where, on a conviction for an offence under this Act or for an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, it is proved that any person has suffered loss or damage as a result of the offence, the court may, notwithstanding anything to the contrary in any other law contained but subject to the provisions of subsection (2), in addition to any sentence which it may impose on the convicted person in respect of the offence -

- (a) order the convicted person to pay compensation for such loss or damage to the person who has suffered it; and
- (b) in default of payment, impose on the convicted person against whom such order of compensation has been made an additional sentence of imprisonment for a period not exceeding three years.

(2) An order of compensation made under subsection (1) shall, notwithstanding the provisions of paragraph (a) of the proviso to subsection (1) of section 300 of the Criminal Procedure Act, be for such amount as the court may consider appropriate, but not exceeding the sum of the actual loss or damage suffered and loss or damage arising from or in connection with or attributable to the offence in respect of which such order is made.

(3) Where more than one person is convicted jointly of an offence referred to in subsection (1), an order of compensation contemplated in paragraph (a) of that subsection may be made against any one of the convicted persons, or against them all, or against any number of them, jointly and severally.

Previous conviction

19. On a conviction for an offence under this Act, a previous conviction for a similar offence under any other law shall be deemed to be a previous conviction under this Act.

Presumptions

20. (1) Where in any prosecution for an offence under this Act, or for an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, relating to the theft of a motor vehicle it is proved that a person was found in possession of, or acquired or received into his or her possession from any other person, a motor vehicle the engine number, chassis number, registration number or registration mark or any identification mark of which has been falsified or counterfeited, or substituted, altered, defaced, obliterated or mutilated or tampered with in any other way, it shall, in the absence

of evidence to the contrary, be presumed that such person knew that any such act has been committed in respect of such number or mark with intent to steal such motor vehicle.

(2) Where in any prosecution for an offence under this Act, or for an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, relating to the theft of a motor vehicle it is proved that a person was found in possession of, or acquired or received into his or her possession from any other person, a motor vehicle which has been imported into Namibia in contravention of any law relating to the importation into Namibia of motor vehicles, it shall, in the absence of evidence to the contrary, be presumed that such person knew that such motor vehicle has been so imported into Namibia with intent to steal such motor vehicle.

(3) The provisions of subsections (1) and (2) shall, in so far as they can be applied, apply *mutatis mutandis* in respect of motor vehicle parts.

Proof of certain facts

21. In any criminal proceedings at which an accused is charged with an offence under this Act, or with an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, any statement, entry, record or information in or on any book, register, document or computer storage medium kept by or on behalf of the accused shall be admissible in evidence as an admission of the facts in or on such statement, entry, record or information by the person who made, entered, recorded or stored it, unless it is proved that such statement, entry, record or information was not made, entered, recorded or stored by such person within the scope of his or her functions.

Evidence of previous conviction on charge relating to stolen motor vehicle or motor vehicle part

22. Where in any criminal proceedings at which an accused is charged with an offence under this Act, or with an offence mentioned in paragraph (a), (b), (c) or (d) of subsection (1) of section 13, it is proved that a stolen motor vehicle or stolen motor vehicle part was found in the possession of the accused, evidence may at any stage of the proceedings be given that the accused was, within the five years immediately preceding the date on which he or she first appeared in court in respect of such charge, convicted of an offence involving the possession or acquisition of stolen property, and such evidence may be taken into consideration for the purpose of proving that the accused knew that the motor vehicle or motor vehicle part found in his or her possession was a stolen motor vehicle or motor vehicle part: Provided that not less than three days' notice in writing shall be given to the accused that it is intended to adduce evidence of such previous conviction.

Jurisdiction of magistrates' courts

23. Notwithstanding anything to the contrary in any other law contained -

- (a) a magistrate's court shall have jurisdiction to impose any penalty or additional penalty provided for in this Act, even though that penalty may, either alone or together with any additional penalty imposed by such court, exceed the punitive jurisdiction of such court; and
- (b) a magistrate's court or regional court shall have jurisdiction to make any order under section 18, even though the amount payable under that order may exceed the jurisdiction of any such court.

Regulations

24. The Minister may make regulations not inconsistent with the provisions of this Act with regard to any matter which the Minister may deem necessary or expedient to prescribe in order to achieve or promote the objects of this Act or to effectively administer this Act.

Application of sections 36 and 37 of General Law Amendment Act, 1955, to motor vehicles and motor vehicle parts

25. Notwithstanding anything to the contrary contained in sections 36 and 37 of the General Law Amendment Act, 1955 (Act No. 62 of 1955), the provisions of those sections shall not apply in respect of motor vehicles and motor vehicle parts.

Cases not yet finalized

26. Any criminal case relating to the theft of a motor vehicle or motor vehicle part which commenced under any other law before the date of commencement of this Act, and any appeal, application or proceedings in or in connection with such a case, shall be continued and concluded as if this Act had not been passed.

Short title and commencement

27. This Act shall be called the Motor Vehicle Theft Act, 1999, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.
