

REPUBLIC OF SOUTH AFRICA

SECOND-HAND GOODS BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 30559 of 14 December 2007)
(The English text is the official text of the Bill)*

(MINISTER OF SAFETY AND SECURITY)

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BILL

To regulate the business of dealers in second-hand goods and pawnbrokers, in order to limit trade in stolen goods; to promote ethical standards in the second-hand goods trade; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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LAWS REPEALED

CHAPTER 1

INTERPRETATION AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise— 10
- “**accreditation**” means accreditation by the National Commissioner in terms of section 18;
- “**acquire**” means acquire by any means, and includes importing into the Republic;
- “**business trust**” means a trust created for the purposes of making a profit through the combination of capital contributed by the beneficiaries of the trust and through the administration or management of the capital by trustees or a person acting on behalf of those trustees, for the benefit of the beneficiaries; 15
- “**certificate**” means a certificate of registration issued and in force under this Act, and includes any amendment thereof;
- “**close corporation**” means a close corporation within the meaning of the Close Corporations Act, 1984 (Act No. 69 of 1984); 20
- “**company**” means a company within the meaning of the Companies Act, 1973 (Act No. 61 of 1973);
- “**communication equipment**” means any wireless mobile communication equipment with IMEI capable of using SIM, including cellular telephones, 25 telephones and two-way radios, and includes accessories of such equipment;
- “**controlled metal**” means any metal contemplated in Schedule 2;
- “**dealer**” means a person who carries on a business of dealing in second-hand goods, and includes a scrap metal dealer and a pawnbroker;
- “**dealers’ association**” means an association of dealers formed in order to represent the interests of dealers; 30
- “**deal in**” includes acquire and dispose of;
- “**Designated Police Officer**” means any police official to whom the National Commissioner delegates any function in terms of section 39(2);
- “**dispose of**” means dispose of by any means, and includes exporting out of the Republic; 35
- “**goods**” means any of the goods specified in Schedule 1, but does not include firearms or ammunition as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000);
- “**household and office equipment**” includes communication equipment, electric and electronic equipment and appliances, electronic software, furniture, gardening equipment, tools, books, valuables, clothing and works of art; 40
- “**IMEI**” means the International Mobile Equipment Identity that uniquely identifies mobile communication equipment;
- “**Minister**” means the Minister of Safety and Security; 45
- “**National Commissioner**” means the National Commissioner of the South African Police Service, appointed by the President under section 207(1) of the Constitution of the Republic of South Africa, 1996;
- “**pawnbroker**” means a person who—
- (a) engages in the business of lending or advancing money on the deposit or 50 pledge of goods; or

- (b) lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security;
- “pawned goods”** means any movable goods subject to a pledge;
- “person”** includes a trust and a business trust;
- “police official”** means a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- “premises”** includes land, any building, structure, vehicle, conveyance, ship, boat or aircraft;
- “precious metals”** means precious metals as defined in the Precious Metals Act, 2005 (Act No. 37 of 2005);
- “prescribe”** means prescribe by regulation made in terms of section 42;
- “previous Act”** means the Second-Hand Goods Act, 1955 (Act No. 23 of 1955);
- “recycle”** means to melt, smelt, granulate, shred, dismantle, sort, grade, cut or prepare, either by hand or by the use of specialised plant, machinery and equipment, for use by consuming works such as foundries, mills, smelters, refiners and manufacturers;
- “registers”** means registers prescribed in terms of this Act, and includes a print-out of registers kept electronically;
- “second-hand goods”** means goods which have been in use by a person other than the manufacturer or producer thereof or a person dealing therewith for such manufacture or producer in the course of business;
- “scrap metal”** includes any used, broken, worn out, defaced or partly manufactured goods made wholly or partly of non-ferrous or ferrous metal, lead or zinc or any substance of metallic waste or dye made of any of the materials commonly known as hard metals or of cemented or sintered metallic carbides;
- “scrap metal dealer”** means a person who carries on a business that consists wholly or partly of the buying or selling of scrap metal;
- “SIM”** means Subscriber Identity Module;
- “Subscriber Identity Module”** means an independent, electronically activated device designed for use in conjunction with the use of mobile, including cellular or satellite communication, equipment, to enable the user of the equipment to receive and transmit indirect communications by providing access to telecommunication systems and enabling such telecommunication systems to identify the particular subscriber identity module and its installed information;
- “this Act”** includes any regulations made in terms of section 42.
- (2) The Minister may by notice in the *Gazette*—
- (a) add any other article or substance to Schedule 1 or 2;
- (b) determine that specific sections of this Act do not apply to certain types or categories of goods mentioned in Schedule 1 or 2.

Application of Act and Promotion of Administrative Justice Act, 2000

2. (1) This Act does not apply to—
- (a) any second-hand goods sold or disposed of by way of public auction authorised by a warrant of execution under a judgment or order of a court of law; or
- (b) any dealer who is a member of an accredited association to the extent that the Minister by notice in the *Gazette* exempts members of such an association from any or all of the provisions of this Act.
- (2) The Minister may only exempt members of associations that are accredited by the National Commissioner and capable of introducing adequate levels of self-regulation in order to achieve the objects of this Act.
- (3) Any administrative process conducted, or decision taken, in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act.

CHAPTER 2

REGISTRATION

Obligation to register

3. (1) Every person who carries on a business as a dealer must be registered.
- (2) A person other than a natural person may only be registered if a natural person, who is not disqualified in terms of this Act to be registered, is appointed to manage, and be responsible for, the business of the dealer, as the case may be. 5
- (3) A person contemplated in subsection (2) is subject to the same obligations and liabilities as the registered dealer, as the case may be.
- (4) A person who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment. 10

Application for registration

4. (1) (a) An application for registration must be made to the National Commissioner and must be accompanied by the prescribed documents. 15
- (b) The National Commissioner may require the applicant to provide further information necessary for processing the application.
- (2) If an applicant intends to conduct business from more than one premises, or where goods are stored on additional premises, such applicant must apply for registration for each of those premises. 20
- (3) Subject to section 15, the National Commissioner may, after consideration of the application and upon the applicant complying with all the requirements, register the applicant as a dealer.
- (4) A person who fails to apply for registration of all premises in terms of subsection (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment. 25

Information on application by natural person

5. (1) An application by a natural person must be on the prescribed form and accompanied by two photographs of the applicant and must include the following information: 30
- (a) The applicant's full name, residential address and identity number;
- (b) the name under which the applicant carries on business;
- (c) the street addresses of all the premises the applicant intends to use or uses for business purposes;
- (d) the postal address, if any, used by the applicant for business purposes; and 35
- (e) any other prescribed information.
- (2) The National Commissioner may require the applicant to furnish additional information or particulars, and may require that the applicant's fingerprints be taken.
- (3) A person who furnishes false information in support of an application in terms of this section is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment. 40

Information on application by person other than natural person

6. (1) An application by a person other than a natural person must include the following information:
- (a) The applicant's name and, where applicable, registration number of the company, close corporation or trust; 45
- (b) the registered address of the applicant;
- (c) the street addresses of all the premises that the applicant intends to use or uses for business purposes;
- (d) the full name and identity number of every person involved in the management of the applicant; 50
- (e) the full name and identity number of every partner in the partnership, in the case of a partnership; and

(f) any other prescribed information.

(2) The National Commissioner may require a natural person involved in the management of the applicant, including the person contemplated in section 3(2), to furnish additional information or particulars and may require that the person's fingerprints be taken. 5

(3) A person who furnishes false information in support of an application in terms of this section is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

Refusal to register

7. (1) If a dealer fails to comply with the requirements for an application, the National Commissioner must refuse the application and inform the dealer of that fact. 10

(2) Before refusing the application, the National Commissioner must—

(a) give the dealer written notice of the National Commissioner's intention to refuse the application;

(b) give the dealer 30 days to submit written representations as to why the National Commissioner should not make the intended decision; and 15

(c) duly consider any such representations and the facts pertaining to the matter.

(3) The National Commissioner must notify the dealer in writing of any decision taken under this section and state the reasons for and the date on which the decision takes effect in such notice. 20

Effect of registration

8. (1) Where a dealer is registered in accordance with section 4(3), the National Commissioner must issue the prescribed certificate of registration to a dealer, authorising the dealer to carry on business—

(a) in respect of the classes of goods specified on the certificate; 25

(b) on the premises specified on the certificate; and

(c) subject to such of the prescribed conditions as the National Commissioner may impose.

(2) The National Commissioner must issue a certificate for each premises on which the dealer may conduct business. 30

(3) If a person other than a natural person carries on business as a dealer, the certificate must be issued in the name of the person contemplated in section 3(2).

(4) Registration does not exempt a dealer from having to comply with the provisions of any other law.

(5) Registration remains valid for a period of five years from the date the certificate is issued. 35

(6) A person who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

Application for amendment of certificate 40

9. (1) The holder of a certificate of registration must notify the National Commissioner in writing within 30 days if—

(a) there is any change with regard to any information that was submitted in respect of the application for registration;

(b) there is a change in the control or ownership of the dealer; or 45

(c) there is any change that impacts on the ability of the dealer to meet all or any of the requirements for its registration in terms of this Act.

(2) The National Commissioner must, after consideration of the notice contemplated in subsection (1) and upon being satisfied that the holder of the certificate still complies with all the requirements of this Act, amend the certificate of registration. 50

(3) The National Commissioner must issue an amended certificate of registration, reflecting all changes, to the dealer.

(4) Upon receipt of the amended certificate, the dealer must immediately hand all previous certificates relating to the registration to the police official handing over the amended certificate. 55

(5) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment.

Limitation or variation of conditions by National Commissioner

10. (1) The National Commissioner may limit or vary any or all of the conditions of registration if there is a change in the circumstances of a registered dealer requiring a limitation or variation. 5

(2) Before limiting or varying any of the conditions, the National Commissioner must—

(a) give the dealer written notice of his or her intention to limit or vary the conditions of registration; 10

(b) give the dealer 30 days to submit written representations as to why the National Commissioner should not limit or vary the conditions of registration; and

(c) duly consider any such representations and the facts pertaining to the matter. 15

(3) The National Commissioner must notify the dealer in writing of any decision taken under this section and state the reasons for and the date on which the decision takes effect in such notice.

Termination and cancellation of registration

11. (1) Registration in terms of this Chapter terminates— 20

(a) upon the expiry of the period referred to in section 8(5), unless it is renewed in terms of section 12;

(b) in the event that the dealer stops trading or is unable to carry on business in terms of this Act or any other law; or

(c) upon cancellation in terms of subsection (3). 25

(2) If a dealer stops trading or is unable to carry on business in terms of this Act or any other law contemplated in subsection (1)(b), such dealer must immediately notify the National Commissioner.

(3) The National Commissioner must cancel the registration of a dealer if the registered dealer— 30

(a) fails to comply with any condition of registration;

(b) is registered on the basis of incorrect or false information;

(c) is convicted of an offence of which dishonesty is an element; or

(d) fails to comply with any of the provisions of this Act.

(4) Before cancelling the registration of a dealer, the National Commissioner must— 35

(a) give the dealer written notice of the intention to cancel;

(b) give the dealer 30 days to submit written representations as to why his or her registration should not be cancelled; and

(c) duly consider any such representations and the facts pertaining to the matter.

(5) The National Commissioner must notify the dealer in writing of any decision taken under this section and state the reasons for and the date on which cancellation takes effect in such notice. 40

(6) A dealer whose registration has terminated must immediately—

(a) hand all certificates relating to the registration to the police official serving the notice contemplated in subsection (5); or 45

(b) return all certificates to the National Commissioner in the event of termination contemplated in subsection (1)(a) or (b).

(7) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment. 50

Renewal of registration

12. (1) A registered dealer who intends to renew registration must apply for renewal not more than 180 days and at least 90 days before the date of termination of registration.

(2) An application for renewal of registration must be made to the National Commissioner in the prescribed manner. 55

(3) An application for the renewal of registration may only be granted if the dealer shows that he or she has continued to comply with the requirements of registration in terms of this Act.

(4) If an application for the renewal of registration has been lodged within the period provided for in subsection (1), registration remains valid until the application is decided. 5

(5) A person failing to renew registration in terms of subsection (1) and who continues to conduct the business of a dealer, is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment.

Transfer of certificate 10

13. (1) Subject to subsection (2), a certificate issued in terms of this Act may not be transferred.

(2) A registered dealer who wishes to transfer the business to which the registration relates, may only transfer such business to another registered dealer.

(3) The certificate of the dealer transferring the business must be surrendered to the National Commissioner upon the issue of a new certificate. 15

(4) (a) If a registered dealer dies, is declared by any court to be incapable of managing his or her own affairs or becomes mentally ill as contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002), or if the estate of such dealer is sequestrated or if such dealer is liquidated, the executor, curator, administrator, trustee or liquidator of such person, as the case may be, may, subject to any law relating to deceased estates, mental health or insolvency, during the currency of the certificate of registration and without formal transfer of the certificate, conduct the business in question on such premises, either personally or through an agent approved by the National Commissioner in writing. 20
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(b) For the period pending the appointment of such executor, curator, administrator, trustee or liquidator, the person managing the affairs of the dealer concerned must, for the purposes of this subsection, be regarded as being such a dealer's executor, curator, administrator, trustee or liquidator, as the case may be.

(5) A person who fails to surrender or transfers a certificate other than in the manner prescribed in this section, is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment. 30

Temporary registration

14. (1) Subject to section 15, the National Commissioner may grant temporary registration to a person— 35

(a) for such period as may be prescribed; and

(b) subject to prescribed conditions.

(2) The National Commissioner may at any time withdraw temporary registration if any condition contemplated in subsection (1)(b) is not complied with.

Disqualification 40

15. (1) A person is disqualified from being registered if such person—

(a) has in the preceding three years, in the Republic or elsewhere, been sentenced to imprisonment without the option of a fine;

(b) has in the preceding 10 years been convicted of an offence in terms of this Act or the previous Act, irrespective of the sentence imposed, and was within five years after the conviction again convicted of an offence in terms of any of the said Acts and sentenced to a fine exceeding R200; 45

(c) is an unrehabilitated insolvent;

(d) is under 18 years;

(e) does not permanently reside in the Republic; or 50

(f) is by virtue of any other law disqualified from carrying on a business.

(2) If a person who is disqualified to hold a certificate in terms of subsection (1)—

(a) has an interest in a company, close corporation or trust;

(b) is a partner in a partnership; or

(c) is a beneficiary under a trust, that company, corporation, partnership or trust may not be registered. 55

(3) For the purposes of subsection (1)(a) and (b), “preceding” means preceding the date of the application in question.

Display and maintenance of certificates

16. (1) Where a certificate has been issued in terms of this Act, the original certificate must be— 5

- (a) displayed in a prominent place clearly visible to the public on each of the premises for which a certificate has been issued; and
- (b) maintained in such a state that it can be produced undamaged and in a legible condition.

(2) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment. 10

CHAPTER 3

ACCREDITATION

Functions of accredited dealers’ associations 15

17. An accredited dealers’ association must—

- (a) establish its members in different categories of dealers taking into account the classes of goods that the members are dealing in;
- (b) establish and maintain minimum legal and ethical standards with regard to its members, and may establish different standards with regard to the different 20 categories of dealers;
- (c) inspect business premises of its members;
- (d) make recommendations to the National Commissioner in support of applications for registration;
- (e) assist its members with research and development regarding matters of 25 interest; and
- (f) advise the National Commissioner, when requested to do so by the National Commissioner, on industry standards and technological developments in the industry which may affect the application of this Act.

Accreditation 30

18. (1) The National Commissioner may accredit a dealers’ association in the prescribed manner.

(2) Different criteria may be prescribed in respect of the accreditation of different types of associations, which the National Commissioner must apply when issuing an accreditation. 35

(3) These criteria must, amongst other things, include criteria relating to—

- (a) trustworthiness and integrity;
- (b) capacity to perform functions in terms of this Act; and
- (c) capacity to advance the purposes of this Act.

Refusal to accredit 40

19. (1) The National Commissioner must refuse to accredit a dealers’ association if the dealers’ association concerned has not complied with all the requirements for accreditation.

(2) Before refusing to accredit a dealer’s association, the National Commissioner must— 45

- (a) give the dealers’ association written notice of the National Commissioner’s intention to refuse the accreditation;
- (b) give the dealers’ association 30 days to submit written representations as to why the National Commissioner should not make the intended decision; and
- (c) duly consider any such representations and the facts pertaining to the matter. 50

(3) The National Commissioner must notify the dealers’ association in writing of any decision taken under this section and state the reasons for and the date on which the decision takes effect in such notice.

Cancellation of accreditation

- 20.** (1) The National Commissioner may cancel an accreditation if there is non-compliance by the dealers' association concerned with any criterion for accreditation.
- (2) The National Commissioner must, before cancelling an accreditation— 5
- (a) give the dealers' association 30 days' notice in writing to submit written representations as to why the National Commissioner should not cancel accreditation; and
- (b) duly consider any representations received, and all the facts pertaining to the matter. 10
- (3) The National Commissioner must notify the dealers' association in writing of any decision taken under this section.

Member registers

- 21.** Every accredited association must—
- (a) keep a register of all members in the prescribed form; and 15
- (b) submit an annual report to the National Commissioner containing such information as may be prescribed.

CHAPTER 4**DEALERS****Records by dealers** 20

- 22.** (1) Unless otherwise provided in this Act, a dealer must keep a register in the prescribed form and record in the register the prescribed particulars regarding every acquisition or disposal of goods.
- (2) The particulars must at least include— 25
- (a) particulars in respect of the identity of the person from whom the goods are acquired, including—
- (i) the person's full names, contact address and contact telephone number;
- (ii) the manner in which the person's identity was verified; and 30
- (iii) the person's identity number.
- (b) a description of the goods and serial number or distinguishing mark or feature of the goods;
- (c) the purchase price paid by the dealer;
- (d) the number assigned to the goods by the dealer;
- (e) the name and signature of the person who conducted the transaction on behalf of the dealer; and 35
- (f) the date and time of the transaction, the date on which the goods were sold or an account of how and when the goods were otherwise disposed of.
- (3) If the certificate of registration in question is issued with requires separate registers, such separate registers must be kept in respect of the acquisition and disposal of different classes of second-hand goods. 40
- (4) A person acquiring goods from, or disposing of goods to, a dealer, must furnish such dealer with his or her full name, physical address and an original identity document or passport as proof of his or her identity.
- (5) A dealer must obtain and keep a copy of the identity document or passport 45 contemplated in subsection (4).
- (6) A dealer must retain a register contemplated in subsection (1) and copies of the documents contemplated in subsection (4) for a period of not less than five years, calculated from the date of the relevant transaction.
- (7) Every entry in a register in respect of an acquisition or disposal of goods must be made contemporaneously with the acquisition or disposal in question. 50
- (8) Where a dealer keeps registers electronically, printouts must be made on a daily basis and retained subject to subsection (6).
- (9) (a) A person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 10 years or 55 to both a fine and such imprisonment.

(b) A person who contravenes or fails to comply with subsection (3), (4), (5), (6), (7) or (8) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

False information and stolen goods

- 23.** (1) If a dealer suspects that— 5
- (a) any name, address or document furnished to the dealer is false;
 - (b) goods or goods for pawn, as the case may be, offered to such a dealer are stolen goods; or
 - (c) the appearance or aspects of an item offered to such dealer has been tampered with or there was an attempt to alter the appearance or aspects thereof in order to conceal the identity of the item, 10

such dealer must immediately report the matter to a police official on duty at the police station in whose area the dealer carries on business.

(2) The police official must note the report in an occurrence book and provide the dealer with the serial number of the note in the occurrence book. 15

(3) A person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 10 years or to both a fine and such imprisonment.

Restrictions on dealers and pawnbrokers

- 24.** (1) No dealer may— 20
- (a) acquire or accept in pawn goods from any person under the age of 18;
 - (b) store goods elsewhere than on the premises for which a certificate has been issued in terms of this Act;
 - (c) take into his or her possession goods unless he or she is convinced on reasonable grounds that the seller of the goods is the owner or titleholder thereof or is duly authorised to dispose thereof; 25
 - (d) deliver goods acquired by him or her to a person or change the form or alter the appearance thereof until after the expiration date of a period of seven days from the date of acquisition thereof; or
 - (e) accept in pawn any firearms or ammunition as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000). 30

(2) During the period contemplated in subsection (1)(d) or during any period that any pawned goods are subject to a pledge, the articles must be kept separate from all other goods of the same or similar kind and description.

(3) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ten years or to both a fine and such imprisonment. 35

CHAPTER 5

MOTOR VEHICLES

Motor vehicle records 40

25. (1) Subject to section 22, a dealer dealing in second-hand motor vehicles must also record in the prescribed register the particulars regarding every acquisition or disposal of a motor vehicle contemplated in subsection (2).

- (2) The particulars contemplated in subsection (1) are— 45
- (a) the vehicle identification number (VIN), and the chassis and engine number;
 - (b) the odometer reading;
 - (c) the exterior and trim colour; and
 - (d) any distinguishing mark or feature, such as microdot particulars.

(3) A person acquiring or disposing of a motor vehicle from or to a dealer must furnish such dealer with— 50

- (a) his or her full name;
- (b) his or her physical address;
- (c) his or her original identity document or passport as proof of his or her identity; and
- (d) proof of registration or deregistration of the motor vehicle. 55

(4) A dealer must obtain and keep a copy of the identity document or passport contemplated in subsection (3) and must obtain and keep proof of registration or deregistration, as the case may be, contemplated in that subsection.

(5) A dealer must retain the copies contemplated in subsection (4) for a period of not less than five years, calculated from the date of the relevant transaction. 5

(6) (a) A person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ten years or to both a fine and such imprisonment.

(b) A person who contravenes or fails to comply with subsection (3), (4) or (5) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 10 five years or to both a fine and such imprisonment.

CHAPTER 6

CONTROLLED METALS

Obligation to register as recycler

26. (1) Every dealer who engages in the business of recycling any controlled metal, must apply to be registered as a recycler, in addition to having to be registered in terms of section 3. 15

(2) An application for registration must be made to the National Commissioner and must be accompanied by the prescribed documents.

(3) The National Commissioner must, after consideration of the application and upon being satisfied that the applicant complies with all the requirements, register the applicant as a recycler and issue the prescribed certificate. 20

(4) No person may have in his or her possession any apparatus which can be used for the recycling of any controlled metal or any article or substance containing any controlled metal, unless— 25

(a) such person is registered as a recycler; or

(b) in the case of precious metals, such a person is authorised to possess and recycle precious metals under the Precious Metals Act, 2005 (Act No. 37 of 2005), or any other applicable legislation.

(5) A person who contravenes or fails to comply with subsection (1) or (4) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ten years or to both a fine and such imprisonment. 30

CHAPTER 7

COMMUNICATION EQUIPMENT

Communication equipment records 35

27. (1) Subject to section 22 and any other applicable law, a dealer dealing in second-hand communication equipment must also record in the prescribed register the particulars regarding every acquisition or disposal of communication equipment contemplated in subsection (2).

(2) The particulars contemplated in subsection (1) are— 40

(a) a description of the communication equipment, including the make and model;

(b) the communication equipment's IMEI number, where applicable; and

(c) any other distinguishing mark or feature, including any serial number.

(3) A person acquiring communication equipment from or disposing of communication equipment to a dealer, must furnish such dealer, with his or her— 45

(a) full name;

(b) physical address; and

(c) original identity document or passport as proof of his or her identity.

(4) A dealer must obtain and keep a copy of the identity document or passport contemplated in subsection (3). 50

(5) A dealer must retain copies contemplated in subsection (4) for a period of not less than five years, calculated from the date of the relevant transaction.

(6) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ten years or to both a fine and such imprisonment.

CHAPTER 8

POWERS OF POLICE OFFICIAL

5

Identification by police official

28. A police official, prior to exercising any power in terms of this Chapter, must identify himself or herself to the dealer, owner, employee or person in charge of the premises in question, and must produce his or her appointment certificate.

Routine inspections

10

29. (1) A police official may, during times when business activity in respect of second-hand goods is taking place, enter the premises of any registered dealer in order to investigate compliance with this Act and require the dealer, owner, an employee or the person in control of the premises to—

- (a) produce the certificate of registration relating to that premises for inspection; 15
- (b) produce any register, record, book or other document relating to the goods in or on the premises for inspection or for the purposes of obtaining copies thereof or extracts therefrom;
- (c) produce any goods found in or on such premises for examination; or
- (d) explain any entry or absence of any entry in any register, book, record or document found therein or thereon. 20

(2) If, upon any inspection, a police official discovers that any method of dealing, recording of transactions in registers or storage that is being used is in contravention of this Act, the police official may demand immediate discontinuation of the method in order to ensure compliance with the Act. 25

(3) The dealer, owner, employee or person in charge of premises contemplated in subsection (1) must assist the police official in the performance of his or her functions under this Act.

(4) On each occasion when a police official inspects a register in terms of subsection (1)(b), such police official must sign his or her name immediately after the last entry in that register, and append his or her number and rank and the date on which the inspection was conducted. 30

(5) A dealer who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding ten years or to both a fine and such imprisonment. 35

Entry, search, seizure and seal-off

30. (1) A police official, on the authority of a warrant issued in terms of section 31, may—

- (a) enter any premises specified in that warrant;
- (b) direct the person in control of or any person employed at the premises to— 40
 - (i) disclose any register, record, book, other document or information that pertains to the investigation and is in the possession or under the control of that person; and
 - (ii) render such assistance as the police official requires in order to enable such police official to perform his or her functions under this Act; 45

(c) inspect any register, record, book or other document and make copies thereof or excerpts therefrom;

(d) examine any goods or other articles found on the premises;

(e) against the issue of a written receipt, seize records, books, documents or electronic data-storing devices that may be used as evidence of a contravention of any provision of this Act; and 50

(f) seal or seal off the premises at, on or in which second-hand goods are found, in order to prevent a person from conducting business in contravention of this Act.

(2) A police official may not enter upon or search any premises without audibly demanding admission to the premises and giving notice of the purpose of the entry, unless such police official is, on reasonable grounds, of the opinion that such demand and notification will defeat the purpose of the search.

(3) A police official contemplated in subsection (1) may use such force as may reasonably be necessary to overcome resistance to the entry or search. 5

(4) Any entry and search in terms of subsection (1) may only be executed by day, unless the execution thereof by night is reasonable and justifiable.

(5) A police official may without a warrant enter upon any premises and search for, seize and remove anything contemplated in subsection (1) if— 10

(a) the person who is competent to do so consents to such entry, search, seizure and removal; or

(b) there are reasonable grounds to believe that—

(i) a warrant would be issued to the police official if he or she applied for such warrant; and 15

(ii) the delay in obtaining such warrant would defeat the purpose of the search.

(6) Any goods seized in terms of this section must be dealt with in the manner contemplated in Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which applies with the changes required by the context. 20

(7) A person from whom any book, record or document has been taken may, at his or her own expense and under supervision of a police official, make copies thereof or excerpts therefrom.

Warrant

31. (1) A warrant to enter, search, seize and seal off premises must be issued by a magistrate or a judge of the High Court who has jurisdiction in the area in which the premises in question are situated, if it appears from information on oath or affirmation that there are reasonable grounds to believe that a provision of this Act has been or is being contravened. 25

(2) A warrant issued under this section must specify— 30

(a) the premises which may be entered and which of the acts mentioned in section 30(1) may be performed by the police official;

(b) the period for which the premises may be sealed off for purposes of section 30(1)(f), which may not exceed seven days; and

(c) whether the warrant authorises execution by night. 35

(3) A warrant contemplated in this section remains in force until—

(a) it has been executed;

(b) it is cancelled by the person who issued it, or if such person is not available, by any other person with similar authority;

(c) one month from the date of its issue; or 40

(d) the purpose for which the warrant was issued no longer exists, whichever occurs first.

Extension of powers

32. (1) The Minister may by notice in the *Gazette*, either generally or subject to such conditions as may be specified in the notice, extend the powers contemplated in this Chapter to any person employed by a public entity contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), or any other statutory body if that person is a peace officer contemplated in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 45

(2) The notice contemplated in subsection (1) must set out— 50

(a) the extent to and the conditions under which such powers are extended to such person; and

(b) the directives that are applicable to such person in the exercise of such powers.

CHAPTER 9

GENERAL PROVISIONS

Penalties

- 33.** A court convicting any person of an offence under this Act may, in addition to any other penalty imposed in respect of that offence— 5
- (a) impose an additional fine or imprisonment for a period not exceeding 30 days or to both a fine and such imprisonment for every day on which the offence continues;
 - (b) suspend or cancel any exemption granted in terms of this Act;
 - (c) suspend or cancel any registration in terms of this Act; or 10
 - (d) order that the second-hand goods that formed the subject of the charge against that person, be forfeited to the State.

Appeals

- 34.** (1) A dealer who is aggrieved by any decision taken by the National Commissioner in terms of this Act may, in the prescribed manner, appeal to the Minister 15 against that decision.
- (2) The Minister may—
- (a) confirm, set aside or amend the decision taken by the National Commissioner; or
 - (b) make such order with regard thereto as may be fair and practicable. 20

Lodging of applications and notices

- 35.** An application or notice contemplated in this Act must be lodged with the Designated Police Officer in whose station precinct the dealer, as the case may be, carries on business or stores any second-hand goods or intends to carry on business or intends to store any second-hand goods. 25

Service of documents

- 36.** (1) The manner of service of a notice or other document to be served on or given to a person in terms of this Act may be prescribed.
- (2) This section does not apply to notices or other documents served or given during the course of any proceedings in a court of law. 30

Return of service

- 37.** A document that is signed by a police official indicating that the service was effected in accordance with section 36(1) is, upon production in a court, *prima facie* evidence of service of the document.

Defaced, lost or stolen certificates 35

- 38.** (1) If a certificate issued in terms of this Act is lost or stolen, the holder of the certificate must inform the National Commissioner within 30 days of the discovery of the loss or theft.
- (2) If a certificate issued in terms of this Act is defaced, lost or stolen, the holder of the certificate must within 30 days of the discovery of the defacement, loss or theft apply to the National Commissioner in the prescribed manner for a copy of the certificate. 40
- (3) A person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment.

Delegation 45

- 39.** (1) The Minister may in writing delegate any function conferred upon the Minister under this Act, except a function referred to in section 34 or 42, to the National Commissioner or any other police official.

(2) The National Commissioner may in writing delegate any function conferred upon him or her by this Act to any official in the service of the State or employed by a statutory body.

(3) An official to whom a function has been delegated in terms of subsection (2) must perform the function subject to the control and directions of the National Commissioner. 5

Extension of time

40. The National Commissioner may extend any period contemplated in this Act on good cause shown.

Jurisdiction of magistrates' courts

41. Notwithstanding any law to the contrary, a magistrate's court has jurisdiction to impose any penalty provided for in this Act. 10

Regulations

- 42.** (1) The Minister may make regulations regarding—
- (a) any matter that in terms of this Act may or must be prescribed;
 - (b) the form and manner in which an application required under this Act must be made; 15
 - (c) all matters related to accreditation, including but not limited to—
 - (i) the requirements regarding the business form of the dealers' association;
 - (ii) the recommended code of conduct for each type of dealers' association; 20
 - (iii) the recommended disciplinary code for each type of dealers' association; and
 - (iv) guidelines for a fee structure;
 - (d) standard conditions to which registration is subject; 25
 - (e) conditions or exemptions with regard to dealing in different classes or kinds of second-hand goods;
 - (f) conditions or exemptions with regard to members of accredited associations;
 - (g) conditions with regard to dealing on different premises;
 - (h) the lay-out of registered premises with regard to different goods or classes of goods; 30
 - (i) the format of a certificate which may be issued under this Act;
 - (j) the withdrawal or amendment of accreditation, registration or a certificate;
 - (k) the format of any notice contemplated in this Act;
 - (l) after consultation with the Minister of Finance, fees payable for accreditation, applications for registration or certificates; 35
 - (m) the format and content of any registers;
 - (n) the information to be furnished by dealers to consumers;
 - (o) the times during which dealers may acquire and dispose of second-hand goods; and 40
 - (p) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation and administration of this Act.

(2) The Minister may make different regulations for different categories or classes of— 45

- (a) associations and dealers; and
- (b) second-hand goods or premises.

(3) A regulation made under subsection (1) may provide for a penalty, for any contravention thereof or for a failure to comply therewith, of a fine or imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 50

CHAPTER 10

Transitional provisions

43. (1) (a) Any person who, immediately before the commencement of this Act, carried on business as a dealer must, within three months of the date of such commencement, apply for registration in terms of section 4. 5

(b) If an application for registration has been lodged before the end of the period provided for in paragraph (a), the dealer concerned may continue carrying on the business in question, subject to subsections (2) and (3), until the application is decided.

(2) A person contemplated in subsection (1) must enter into a transitional register all the second-hand goods or pawned goods, as the case may be, held by such person for such business purposes until his or her application in terms of section 4 is decided. 10

(3) An entry referred to in subsection (2) must set out a full description of the second-hand goods in question, indicating the quantity and colour thereof, identification marks and any other distinguishing features thereon and, in the case of controlled metal, its description and weight and the value thereof as estimated by the dealer concerned. 15

(4) A Designated Police Officer or a police official authorised by the Designated Police Officer must endorse the last entry in the transitional register and on each page thereof of every dealer that applies for registration in terms of subsection (1).

(5) Any person who contravenes or fails to comply with this section is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both a fine and such imprisonment. 20

Repeal of laws

44. The laws mentioned in the second column to Schedule 3 are hereby repealed to the extent set out in the third column of that Schedule.

Short title and commencement 25

45. This Act is called the Second-Hand Goods Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1**GOODS**

| | |
|---|----|
| Jewellery, including unwrought precious metal as defined in the Precious Metals Act, 2005 (Act No. 27 of 2005). | 5 |
| Agricultural implements, including tractors, ploughs and harvesters or any part or accessory thereof. | |
| Bicycles or any part or accessory thereof. | |
| Household and office equipment. | |
| Factory equipment and machinery or any part or accessory thereof. | 10 |
| Tyres of any vehicle or motorcycle. | |
| Communication equipment or any part or accessory thereof. | |
| Photographic or optical instruments or any part or accessory thereof. | |
| Any controlled metal, or any wrought article, or any article or substance consisting wholly or principally of one or more of such metals. | 15 |
| Antique goods. | |
| Motor vehicle or any part or accessory thereof. | |
| Vehicles or any part or accessory thereof. | |
| Sporting equipment. | |
| Clothing. | 20 |
| Valuables. | |
| Books. | |

SCHEDULE 2**CONTROLLED METALS**

| | |
|--|----|
| Copper, aluminium, zinc, chrome, lead, white metal, nickel, tungsten, tin, ferrovanadium, ferrosilicon, ferrochrome, brass, bronze and precious metals as defined in the Precious Metals Act, 2005 (Act No. 27 of 2005), or any article consisting wholly or principally of any of those metals. | 25 |
|--|----|

SCHEDULE 3**LAWS REPEALED***(Section 44)*

| No. and year | Short title | Extent of repeal | |
|---------------------|--|-------------------------|----|
| Act No. 23 of 1955 | Second-hand Goods Act, 1955 | The whole | 5 |
| Act No. 50 of 1956 | General Law Amendment Act, 1956 | Section 21 | |
| Act No. 68 of 1957 | General Law Amendment Act, 1957 | Sections 43 and 44 | |
| Act No. 18 of 1978 | Second-hand Goods Amendment Act, 1978 | The whole | 10 |
| Act No. 88 of 1996 | Abolition of Restrictions on the Jurisdictions of Courts Act, 1996 | Section 7 | |

MEMORANDUM ON THE OBJECTS OF THE SECOND-HAND GOODS BILL, 2008

1. BACKGROUND

The Second-Hand Goods Act, 1955 (Act No. 23 of 1955) (the Act), at present regulates the second-hand industry and provides for a legislative framework within which dealers in second-hand goods must operate. The drafters of the Act could not have foreseen the major developments in technology since 1956, especially with regard to electronic equipment. It is insufficient to amend the Act, as the principles on which the Act are founded must be reviewed in order to address industry concerns, facilitate policing and contribute towards government policy. The draft Second-Hand Goods Bill, 2005, was published by Notice 1937 of 2005 in the *Gazette* on 28 October 2005 for comment. All comments received were considered. Government and the organised portion of the industry are keen to establish a legal framework that will limit the possibility of diffusing stolen goods through the marketplace. The structure of the Bill allows the Minister to adapt the regulatory environment for each of the industry segments in order to ensure fair and effective implementation measures. Dealers who are members of accredited associations may be exempted from provisions that are effectively addressed through self-regulation or other legal provisions. Non-participating dealers must comply with all provisions. Accredited dealers' associations will therefore play a supportive role in policing the Bill through inspections and self-regulation.

2. OBJECTS

The objects of the Bill are to regulate the business of dealers in second-hand goods and pawnbrokers and to promote ethical standards in the second-hand goods trade.

3. BODIES CONSULTED

The draft Second-Hand Goods Bill, 2005, was published on 28 October 2005 by way of Notice 1937 of 2005 in the *Gazette* for comment. Comments were received from the following public and private bodies: Barloworld Ltd; MRA; Metropolitan Police Services SA; Scrap Metal Dealers; Bowman Gilfillan Attorneys; Iscor Ltd; Edward Nathan & Friedland Attorneys; RMI; NADA; MDI; Vodacom (Pty) Ltd; Cash Converters; Senwes Ltd; SAPS; Eurotrade Metals Africa; RASA; AIWO; Wesbank; ITAC; Cash Crusaders; Ford NDC; DamRail Pty Ltd; Mangaung Municipality; KPMG; VWSA and SHDP. Most of these comments will be incorporated into the regulations, being the logical level of application. Industry associations were consulted extensively on this. The published draft Bill was tabled in the ITC of NEDLAC and Government, Labour and Business agreed upon the principles contained in the Bill. No areas of disagreement were defined, while some drafting aspects were noted for referral to the Chief State Law Adviser.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the South African Police Service are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by the provisions of section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within functional areas listed in Schedule 4 to the Constitution, namely "Trade" and "Consumer protection".

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.

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