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GENERAL NOTICE

NOTICE 1116 OF 2010

NOTICE CALLING FOR PUBLIC COMMENTS

The South African Police Service is consulting on regulations under section 41(1)(c) of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009), with a view to submitting draft regulations to the Minister of Police for consideration when the Act comes into operation.

The proposed Notice hereunder has been drafted for consultation purposes. An invitation is hereby extended to any person, or private or public institution that may have an interest to comment on the draft notice, within 30 days from the date of publication of this *Gazette*.

Comments must be in writing and directed to:

Postal address:

Director J A van der Walt
Legal Support: Crime Operations
South African Police Service
Private Bag X94
PRETORIA
0001

Street Address

Room No. 36
3rd Floor
Presidia Building
255 Pretorius Street
Cr. Paul Kruger and Pretorius Street
PRETORIA

E-mail address

vanderwaltja@saps.org.za

**PROPOSED SECOND-HAND GOODS REGULATIONS FOR
ACCREDITATION OF DEALERS' ASSOCIATIONS, 2010**

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context indicates otherwise—

“application form” means the relevant application form published on the Internet web site of the South African Police Service from time to time;

“association” means dealers’ association and includes any body corporate;

“constitution” includes the founding or constitutive documents of an association, the constitutional documents of a company and the trust instrument of a trust;

“responsible person” means the responsible person contemplated in regulation *two*; and

“the Act” means the Second-Hand Goods Act, 2009 (Act No. 6 of 2009);

Nomination of responsible person

2. An association requiring accreditation must nominate, in writing, at least one natural person who is not disqualified in terms of the Act, to act as a responsible person on behalf of that association.

Qualification for nomination

3. The responsible person must, in order to qualify for nomination, be responsible for the management or day-to-day control of that association.

Application for condonation

4. A responsible person who is disqualified under section 14 of the Act and who wishes to apply for condonation of that disqualification in terms of section 39, must submit a statement under oath to the National Commissioner in which that person sets out—
- (a) all grounds on which he or she is disqualified; and
 - (b) sufficient information to satisfy the National Commissioner that—
 - (i) there is good cause to grant condonation; and
 - (ii) condonation will not detrimentally affect that association’s capacity to perform its functions under the Act.

Application for accreditation

5. The responsible person must—
- (a) ensure that the relevant application form is obtained from the office of the Designated Police Officer designated for the area in which the main

office of the association is or will be situated, or the official Internet web site of the South African Police Service.

- (b) complete and sign such application form; and
- (c) ensure that the duly completed application form together with all the documents referred to in regulation *six*, is submitted to the office of the National Commissioner.

Documents to accompany application

- 6.(1) An application contemplated in regulation *five* must be accompanied by—
 - (a) the original resolution of the association containing the nomination of each responsible person;
 - (b) a certified copy of the identity document of every person responsible for the management or day-to-day control of the association, including that of each responsible person;
 - (c) documentary proof of the address of the premises from which the association will conduct its affairs;
 - (d) documentary proof of the association's bank account; and
 - (e) the constitution of the association.
- (2) The National Commissioner may by notice to a responsible person require further information regarding—
 - (a) the documents contemplated in this regulation;
 - (b) the association, any person who is responsible for the management or day to day control of that dealers' association, including each responsible person; or
 - (c) factors that relate to any criteria in respect of accreditation.

Application of criteria in respect of accreditation

- 7.(1) The National Commissioner must, when issuing an accreditation of an association, apply the criteria set out in these regulations.

Criteria in respect of the application

- 8.(1) An application must demonstrate that—
 - (a) the organizational structure of that association is capable of performing the functions of an association; and
 - (b) the constitution of that association complies with the requirements of regulation *nine*.
- (2) An application must describe—
 - (a) the field of trade or industry in which that association represents dealers;
 - (b) the main purpose of that association and its experience in the field of trade or industry in respect of which it was established;
 - (c) any affiliation of the association to relevant national or international organisations;
 - (d) any interest or conflict of interest which may render that association unsuitable for accreditation;
 - (e) the region where that association operates or functions;

- (f) the time period for which that association has existed or functioned as an association;
 - (g) where applicable, the criteria upon which that association intends to classify its members into different categories; and
 - (h) documents in support of any criteria related to the factors listed in this regulation.
- (3) An application must contain—
 - (a) written representations by members, other persons or associations in support of the application;
 - (b) a description of the basic elements of any research and development program that association may have for its members;
 - (c) a description of the basic elements of any training programmes may have or recommend for its members;
 - (d) a description of the manner in which that association lawfully disseminates general industry information amongst its members; or
 - (e) any other information that may in the opinion of that association be relevant to ascertain the suitability for accreditation.
- (4) The National Commissioner may, in order to establish whether an association applying for accreditation fulfills the criteria—
 - (a) require a set of fingerprints of each responsible person and any person other than a responsible person who is responsible for the management or day to day control of that association; and
 - (b) consider the capacity of that association to verify whether or not a member complies with its conditions of membership.

Criteria in respect of constitution

- 9. The constitution of an association must contain—
 - (a) an acceptable code of conduct, ethical code or code of good practice that binds its members and employees;
 - (b) a disciplinary code applicable to members of that association which allows for cancellation of membership as a result of misconduct;
 - (c) a disciplinary code applicable to employees of that association which allows for termination of employment as a result of misconduct;
 - (d) the minimum standards contemplated in these regulations that a dealer must comply with in order to become and remain a member of that association;
 - (e) clear guidelines to prevent contravention of competition laws; and
 - (f) where applicable—
 - (i) minimum entry level requirements; and
 - (ii) the factors upon which that association categorises its members.

Minimum standards relating to membership

- 10. Where applicable, minimum standards contemplated in these regulations must consist of the association's own standards pertaining to—
 - (a) the type and lay-out of premises from which members or categories of members may conduct business;

- (b) minimum requirements for equipment, information technology and software programs that must be utilized by members;
- (c) a description of the record of transactions to be kept by members; and
- (d) particulars of the manner in which records must be kept.

Accreditation

- 11.(1) The National Commissioner may, after considering the application, supporting documents and all the facts pertaining to the matter, accredit an association as an association of—
- (a) general dealers;
 - (b) auctioneers;
 - (c) jewellers;
 - (d) motor vehicle dealers;
 - (e) scrap metal dealers;
 - (f) recyclers;
 - (g) franchisors; or
 - (h) dealers of any other description that describes the main activities of members of that association.
- (2) For purposes of subregulation (1)—
- (a) **“general dealer”** means a dealer who deals in a majority of the goods specified in Annexure 1;
 - (b) **“jeweller”** means a dealer who deals in jewellery, and includes a recycler of precious metals as defined in the Precious Metals Act, 2005 (Act No. 27 of 2005).
 - (c) **“franchisor”** means a juristic person who owns the overall rights and trademarks of a company and allows its franchisees to use these rights and trademarks to do business as dealers.
- (3) The National Commissioner may, in order to ensure continued compliance with the Act and these regulations, accredit an association subject to such conditions as may be required.

Membership

- 12.(1) An association must, before accepting a dealer as a member of that association satisfy itself that the application of that dealer—
- (a) shows compliance with the minimum requirements for membership or displays the necessary potential to comply with such minimum standards; and
 - (b) shows that the premises from which the dealer intends to conduct business comply with the minimum standards of the dealers’ association or that the dealer displays the necessary potential to equip the premises within a reasonable period to comply with such minimum standards.
- (2) In order to satisfy itself that a dealer complies with subregulation (1), an association must obtain from that dealer—
- (a) sufficient information to enable that association to establish whether that dealer has or needs experience or training in the type of business that person intends conducting; and

- (b) a statement under oath in which that dealer states that he or she is not disqualified from registering as a dealer; and
- (c) sufficient information pertaining to the premises to enable that association to establish whether the premises comply with—
 - (i) the applicable legal requirements pertaining to premises used in that particular field of trade or industry; and
 - (ii) the applicable minimum standards as set by that association.

Categorisation

- 13.(1) Where applicable, an association must, when accepting a dealer as a member, categorise that dealer according to its own rules regarding—
 - (a) the class of goods that is primarily dealt with by that dealer;
 - (b) the class or size of the dealer's business, whether it be entry level, small, medium or large business; or
 - (c) any other criteria determined by the association.
- (2) After classification in terms of subregulation (1), the association must enter the particulars of the member into its member register.

Members of an association of general dealers

- 14.(1) No association of general dealers may accept as a member of that association—
 - (a) a dealer who deals primarily in vehicles or goods relating to vehicles;
 - (b) a recycler or other dealer who deals primarily in controlled metals;
 - (c) a jeweller who deals exclusively in jewellery; or
 - (d) a scrap metal dealer who deals primarily in scrap metal.
- (2) The National Commissioner may, on good cause shown, dispense with any of the provisions of subregulation (1).

Members of an association of motor vehicle dealers

- 15. An association of motor vehicle dealers may categorize its members according to the primary business of the registered dealer in question, relative to the motor vehicle industry, including but not limited to motor vehicle dealers, motor cycle dealers, motor vehicle part dealers, motor body repairers, panel beaters and re-manufacturers.

Members of an association of franchisors

- 16.(1) An association of franchisors must consist of more than one franchisor who are not part of the same business entity.
- (2) No association of franchisors may accept as a member of that association any juristic person who is not a *bona fide* franchisor with at least five franchised dealers.
- (3) An association of franchisors must ensure that each of the franchised dealers represented by a franchisor comply with the provisions of regulation 12 before that dealer is accepted as a member of that association.

Date of submission of annual report

- 17.(1) An association who is accredited in terms of the Act, must submit the report contemplated in section 20(1)(b) of the Act annually before the end of each financial year.
- (2) An association wishing to submit the report annually on or before a date other than contemplated in subregulation (1), may apply in writing to the National Commissioner citing reasons why that report should be submitted on another date.
- (3) Upon being satisfied that sufficient grounds exist for that association to submit the report on or before that date, the National Commissioner may notify that association accordingly.

Information to be contained in annual report

18. The report must contain particulars of—
 - (a) members of the association;
 - (b) members or employees of the association who had been the subject of disciplinary action involving a contravention or failure to comply with a provision of the Act or any condition of accreditation;
 - (c) the full names and the identification number of a person contemplated in paragraph (b) and, where applicable, particulars of the misconduct and the result of the disciplinary action.

Offences and penalties

19. Any person who –
 - (a) falsely states that any person is accredited for the purpose of the Act;
 - (b) supplies particulars, information or answers in an application for accreditation knowing it to be false, incorrect or misleading or not believing them to be correct; or
 - (c) supplies particulars, information or answers in a form or report required under these regulations knowing it to be false, incorrect or misleading or not believing them to be correct—is guilty of an offence and is liable to a fine or imprisonment for a period not exceeding 12 months or both such a fine and imprisonment.

Administrative justice

20. Any Designated Police Officer taking an administrative decision in terms of these regulations which may detrimentally affect the rights of a person, must—
 - (a) immediately when the decision is made, record in writing the reasons for the decision;
 - (b) append his or her signature, together with the date, to the reasons; and
 - (c) without delay notify the person concerned in writing of the decision stating the reasons referred to in subregulation (a) as well as the rank, initials and surname of the decision-maker and the date and place where the decision was taken.

Submission of documents and official address

- 21.(1) Any application, notice or other document contemplated in these regulations that must be submitted to the National Commissioner, must be in writing and sent to:
- (a) The National Commissioner: South African Police Service, Private Bag X94 Pretoria, 0001; or
 - (b) accreditation@saps.org.za
- (2) Where a person completes, signs or submits any application, notice or other document contemplated in these regulations in an electronic format, that person must ensure that all requirements of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) are met.

Short Title

22. These Regulations shall be called the Second-Hand Goods Regulations for Accreditation of Dealers' Associations, 2010.

ANNEXURE 1

Jewellery, including unwrought precious metal as defined in the Precious Metals Act, 2005 (Act No. 27 of 2005).
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.
Tyres of any vehicle or motorcycle.
Communication equipment or any part or accessory thereof.
Photographic or optical instruments or any part or accessory thereof.
Antique goods.
Sporting equipment.
Valuables.
Books.
Shop-fitting equipment.