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Calling for public comments.....

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GENERAL NOTICE

NOTICE 804 OF 2011

NOTICE CALLING FOR PUBLIC COMMENTS

The South African Police Service is consulting on regulations under section 41(1) 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:

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Director J A van der Walt
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PRETORIA

**PROPOSED SECOND-HAND GOODS REGULATIONS FOR
DEALERS AND RECYCLERS, 2011**

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 otherwise indicates—

“applicant” means the person applying to be registered as a dealer or recycler in terms of the Act and includes any person contemplated in section 5 of the Act;

“responsible person” means a natural person who must be nominated in writing by the dealers’ association to act on behalf of that dealers’ association;

“the Act” means the Second-Hand Goods Act, 2009 (Act No. 6 of 2008);

Application for registration

2.(1) Any person intending to apply for registration as a dealer in terms of the Act must complete and sign the relevant application form obtained from the office of the Designated Police Officer designated for the area in which the premises of that dealer is or will be situated, or the official Internet web site of the South African Police Service.

(2) The applicant must ensure that the duly completed application form together with the statement referred to in (3) and all the documents referred to in these regulations are submitted to the office of the National Commissioner.

(3) The applicant must, together with the application form, submit a statement under oath or affirmation confirming that—

- (a) applicant or any other person contemplated in section 5(d) and (e) of the Act is not disqualified from being registered as a dealer; and
- (b) applicant complies with all requirements of other legislation regulating such business or industry, including but not limited to, local-authority by-laws or any legislation regarding zoning, customs control, revenue, international trade, fire safety, communications, occupational health and safety, waste management, or environmental management.

Documents to accompany application for registration

3.(1) An application for registration contemplated in section 3 of the Act must be accompanied by—

- (a) a certified copy of the identity document of the applicant, or where applicable, every person responsible for the management or day-to-day control of the business in question, including that of each responsible person contemplated in section 2(2) of the Act;
- (b) the relevant utility account or lease agreement verifying the address of the premises to which the application relates;
- (c) documentary proof of the business' bank account;
- (d) where applicable, any founding documents verifying or founding applicant as a company, close corporation, trust, business trust, partnership or any other business form;
- (e) where applicable, a copy of any VAT certificate issued to the applicant;
- (f) a copy of applicant's fingerprints, or where more than one person are involved in the day to day management of the applicant, a copy of the fingerprints of each person so involved;
- (g) where applicable, a copy of membership certificate verifying that applicant is a current member of an accredited dealers' association;
- (h) floor plan of the premises to which the application relates;
- (i) a copy of any certificate or permit relating to the information contemplated in regulation 2(3)(b); and

- (j) any other documentation that applicant wishes to submit in support of the application.

Certificate of registration and conditions

4.(1) Upon registration, the National Commissioner may issue a certificate of registration or temporary registration, depending on the circumstances.

(2) The National Commissioner may authorize such dealer or recycler, as the case may be, to carry on business subject to one or more of the following conditions:

- (a) the dealer or recycler concerned may only carry on business in dealing in the goods or classes of goods specified on the certificate;
- (b) the dealer or recycler concerned may acquire or dispose of second-hand goods only during the business hours specified on the certificate;
- (c) the dealer or recycler concerned may only acquire second-hand goods from a person transporting such goods in a manner which does not constitute unauthorized road transportation for purposes of the Road Transportation Act, 1977 (Act No. 74 of 1977);
- (d) the dealer or recycler concerned may only transport controlled metal for purposes of acquisition or disposal thereof when such dealer or recycler is transporting such goods in a manner which does not constitute unauthorized road transportation for purposes of the Road Transportation Act, 1977 (Act No. 74 of 1977);
- (e) the dealer or recycler concerned may only acquire second-hand goods from or dispose of second-hand goods to another registered dealer or recycler; or
- (f) the dealer or recycler concerned may only acquire controlled metal when the person delivering the controlled metal does not deliver such metal in a manner which constitutes a contravention of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993).

(3) In cases where the National Commissioner is satisfied that crime trends in a station area or areas indicate that it is necessary to take further steps to combat trade in a certain types or categories of second-hand goods, authorisation to carry on business may be made subject to one or more of the following conditions:

- (a) such dealer or recycler must make a daily, weekly or monthly report to the Designated Police Officer designated for the area in which the premises from which the applicant conducts business, is situated, reporting on all transactions regarding a certain type or category of goods;
- (b) such dealer or recycler must deliver a copy of any records that must be kept in terms of the Act on a daily, weekly or monthly basis; or
- (c) such dealer or recycler may not employ any person who—
 - (i) has in the preceding five years, in the Republic or elsewhere, been sentenced to imprisonment without the option of a fine in respect of any offence of fraud, theft or corrupt activities as referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any contravention of the Corruption Act, 1992 (Act No. 94 of 1992), or the commission of any other offence of which dishonesty is an element;
 - (ii) 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 R1 000; or
 - (iii) does not permanently reside in the Republic.

Display and maintenance of certificates

5. A dealer or recycler who is a member of an accredited association must display such membership certificate in a prominent place clearly visible to the public on the premises and in proximity to the

certificate of registration which must be displayed in terms of section 15 of the Act.

Application for renewal of registration

6. (1) Any person intending to apply for renewal of registration as a dealer or recycler in terms of the Act must complete and sign the relevant application form obtained from the office of the Designated Police Officer designated for the area in which the premises of that dealer is or will be situated, or the official Internet web site of the South African Police Service.

(2) The applicant must ensure that the duly completed application form is submitted to the office of the National Commissioner.

(3) The applicant must, together with the application form, submit a statement under oath or affirmation confirming that—

(a) applicant continues to comply with the requirements of the Act and these Regulations; and

(b) applicant continues to comply with all requirements of other legislation regulating such business or industry, including but not limited to, local-authority by-laws or any legislation regarding zoning, customs control, revenue, international trade, fire safety, communications, occupational health and safety, waste management, or environmental management.

Temporary registration

7.(1) In the event that the National Commissioner is satisfied on good cause shown that—

(a) an applicant cannot meet one or more of the requirements for registration;

(b) failure to meet such requirement is not due to the applicant's fault;

(c) there is a reasonable prospect that the requirement can be rectified within a period of 12 months; and

(d) the applicant shall suffer irreparable economic harm if such applicant cannot be registered, the National Commissioner may, subject to (2), grant temporary registration to that applicant.

(2) Temporary registration must be subject to one or more of the following conditions:

(a) the applicant concerned must submit a monthly report to the Designated Police Officer designated for the area in which the premises from which the applicant conducts business is situated, reporting on his or her ability to meet the requirement or requirements contemplated in (1)(a);

(b) the applicant must apply for registration as a dealer or recycler immediately upon being in a position to meet the requirement contemplated in (1)(a);

(c) the applicant may only carry on business in dealing in the goods or classes of goods specified on the certificate;

(d) the applicant may acquire or dispose of second-hand goods only during the business hours specified on the certificate;

(e) the applicant may only acquire second-hand goods from or dispose of second-hand goods to another registered dealer or recycler;

(f) the applicant must make a daily, weekly or monthly report to the Designated Police Officer designated for the area in which the premises from which the applicant conducts business, is situated, reporting on all transactions regarding a certain type or category of goods;

(g) the applicant must deliver a copy of any records that must be kept in terms of the Act on a daily, weekly or monthly basis; or

(h) such dealer or recycler may not employ any person who—

(i) has in the preceding five years, in the Republic or elsewhere, been sentenced to imprisonment without the option of a fine in respect of any offence of fraud, theft or corrupt activities as referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any contravention of the Corruption Act, 1992 (Act No. 94 of 1992), or the commission of any other offence of which dishonesty is an element;

- (ii) 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 R1 000; or
- (iii) does not permanently reside in the Republic.

(3) In cases where the National Commissioner is satisfied that crime trends in a station area or areas indicate that it is necessary to take further steps to combat trade in a certain types or categories of second-hand goods, temporary registration may be made subject to one or more of the following conditions:

- (a) such dealer or recycler must make a daily, weekly or monthly report to the Designated Police Officer designated for the area in which the premises from which the applicant conducts business, is situated, reporting on all transactions regarding a certain type or category of goods;
- (b) such dealer or recycler must deliver a copy of any records that must be kept in terms of the Act on a daily, weekly or monthly basis,
- (c) such dealer or recycler may not employ any person who—
 - (i) has in the preceding five years, in the Republic or elsewhere, been sentenced to imprisonment without the option of a fine in respect of any offence of fraud, theft or corrupt activities as referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any contravention of the Corruption Act, 1992 (Act No. 94 of 1992), or the commission of any other offence of which dishonesty is an element;
 - (ii) 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 R1 000; or
 - (iii) does not permanently reside in the Republic.

Records by dealers

8.(1) The register contemplated in section 21(1) of the Act must essentially be in the form and contain the particulars as set out in Annexure "D" to these Regulations.

(2) Where a dealer or recycler keeps registers in an electronic format, that dealer or recycler must ensure that the software program with which such register is kept electronically, allows a police official unhindered access to the register.

(3) Where a dealer or recycler keeps registers in an electronic format and during an inspection by a police official in terms of section 28(1), the dealer, recycler, owner, employee or person in charge of the premises must —

- (a) provide the police official inspecting the register with—
 - (i) the most recent certificate contemplated in section 28(4)(b)(ii) of the Act; and
 - (ii) an electronic copy of such register which ranges from the period of the most recent inspection to the date of that inspection on a compact disk or other storage device;
- (b) comply with any reasonable request from such police official to produce a printed extract of the register reflecting the stock such dealer or recycler has on hand at the premises in question.

Report of false information or stolen goods

9.(1) A dealer or recycler making a report of false information or stolen goods in terms of section 22(1) of the Act, must retain any photographic or other evidence regarding the person providing the false information or the suspected stolen goods for submission to the police official investigating the incident or the relevant Designated Police Officer.

(2) A police member receiving a report contemplated in section 22(1) must immediately upon receiving such report make an entry into the Occurrence Book of the police station where such member is stationed and allocate a serial number to such entry.

(3) The police member must supply the person in question making the report with the serial number allocated to the relevant Occurrence Book entry, provided that the person making the report may request the police member to supply that serial number telephonically.

Application to register as recycler

10.(1) Any person intending to apply for registration as a recycler in terms of the Act must complete and sign the relevant application form obtained from the office of the Designated Police Officer designated for the area in which the premises of that dealer is or will be situated, or the official Internet web site of the South African Police Service.

(2) The applicant must ensure that the duly completed application form together with the statement referred to in (3) and all the documents referred to in regulation 9 are submitted to the office of the National Commissioner.

(3) The applicant must, together with the application form, submit a statement under oath or affirmation confirming that applicant —

- (a) is registered or in the process of being registered as a dealer;
- (b) or any other person contemplated in section 5(d) and (e) of the Act is not disqualified from being registered as a dealer or recycler; and
- (c) complies with all requirements of other legislation regulating such business or industry, including but not limited to, local-authority by-laws or any legislation regarding zoning, customs control, revenue, international trade, fire safety, communications, occupational health and safety, waste management, or ecological management.

Documents to accompany application for registration as recycler

11.(1) An application for registration as a recycler which is not lodged simultaneously with an application under section 3 of the Act, must be accompanied by—

- (a) a certified copy of the identity document of the applicant, or where applicable, every person responsible for the management or day-

to-day control of the business in question, including that of each responsible person contemplated in section 2(2) of the Act;

- (b) the relevant utility account or lease agreement verifying the address of the premises to which the application relates;
- (c) documentary proof of the business' bank account;
- (d) where applicable, any founding documents verifying or founding applicant as a company, close corporation, trust, business trust, partnership or any other business form;
- (e) where applicable, a copy of any VAT certificate issued to the applicant;
- (f) a copy of applicant's fingerprints;
- (g) copy of membership certificate verifying that applicant is a current member of an accredited dealers' association;
- (h) applicant's certificate of registration as a dealer;
- (i) any certificate or permit issued in terms of other legislation regulating such business or industry, including but not limited to local authority by-laws or any legislation regarding zoning, customs control, revenue, international trade, fire safety, communications, occupational health and safety, waste management, or environmental management; and
- (j) any other documentation that applicant wish to submit in support of the application.

Certificate of registration as a recycler and conditions

12 Upon registration, the National Commissioner may issue a certificate of registration as a recycler under regulation 4.

Manner of appeal

13.(1) Any dealer or recycler wishing to appeal against a decision contemplated in section 33(1) of the Act, must complete and sign the appeal form obtained from the office of the Designated Police Officer designated for the area in which the premises of that dealer or recycler

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

(2) The appellant must ensure that the duly completed appeal form together with the statement referred to in (3) and all documents pertaining to the matter are lodged with the office of the Minister, either by hand or by registered post within 30 days from the date of the relevant decision.

(3) The appellant must, together with the appeal form, submit a statement under oath or affirmation setting out the circumstances of the appeal and all grounds upon which the appellant rely in order to enable the Minister to reach a final decision.

Offences and penalties

14. Any person who contravenes any of these regulations as a dealer or recycler is guilty of an offence and liable on conviction to a fine or imprisonment not exceeding 12 months or both such fine or imprisonment.

Short Title

15. These Regulations shall be called the Second-Hand Goods Regulations for Dealers and Recyclers, 2011.
