

## GENERAL NOTICE

### NOTICE 1937 OF 2005

The draft Second Hand Goods Bill, 2005 is hereby published for general information and comment from interested parties. Comment must reach the Department before 5 December 2005 at the following address:

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## **DRAFT SECOND HAND GOODS BILL, 2005**

**To regulate the business of pawnbrokers and dealers in second-hand goods, to limit the trade in stolen goods, to promote ethical standards in the second-hand goods trade, and to provide for matters incidental thereto.**

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**DEFINITIONS**

**Definitions**

**1.** In this Act, unless the context otherwise indicates -

**"accreditation"** means to be accepted by the National Commissioner as a dealers' association

**"acquire"** means acquiring in any way and includes importing into South Africa;

**"business trust"** means a trust created for the purpose 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 the trustees, for the benefit of the beneficiaries;

**"certificate"** means a certificate of registration referred to in this Act together with all conditions, amendments and endorsements;

**"charity"** means any business carried on by a charitable, religious, educational, cultural or agricultural association, organization or institution of a public nature, if all profits derived from the business are devoted entirely to the purpose of that or any other such association, organization or institution;

**"close corporation"** means a close corporation within the meaning of the Close Corporations Act, 1984 (Act No. 69 of 1984);

**"company"** means a company within the meaning of the Companies Act, 1973 (Act No. 61 of 1973);

**"deal in"** includes acquire, dispose of or the conducting of business therein;

**"dealer"** means a person who carries on a business of dealing in goods, and includes a scrap metal dealer;

**"dealers' association"** means an association of dealers formed in order to represent the interests of dealers;

**"dispose of"** means dispose of in any way and includes exporting out of South Africa;

**"goods"** means any of the goods specified in the Second Schedule but excludes firearms as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000) and unwrought precious metal as defined in the Precious Metals Bill, 2005 ;

**"household and office equipment"** means any goods normally used in an office or household including but not limited to communication equipment, electric and electronic equipment, electronic software, furniture, gardening equipment, tools and works of art;

**"IMEI"** means the International Mobile Equipment Identity that uniquely identifies mobile communication equipment;

**"Minister"** means the Minister for Safety and Security;

**"National Commissioner"** means the National Commissioner of the South African Police Service;

**"non-ferrous and ferrous metals"** means the non-ferrous and ferrous metals specified in the Third Schedule;

**"pawned goods"** means any movable goods subject to a pledge;

**"pawner"** means a person who delivers or offers moveable goods for pawn to a pawnbroker;

**"pawnbroker"** means a person who -

- (i) engages in the business of lending or advancing money on the deposit or pledge of goods;
- (ii) lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security; or a partnership; or
- (iii) carries on a business of taking goods in pawn.

**"person"** includes 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"** means any land, building or structure, or any vehicle, conveyance, ship, boat or aircraft; or any part thereof from which business is conducted;

**"precious metals"** means precious metals as defined in the Precious Metals Bill, 2005;

**"prescribe"** means prescribe by Regulation;

**"previous Act"** means the Second-Hand Goods Act, 1955 (Act No. 23 of 1955);

**"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 manufacturer 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, copper, tin, aluminium brass or zinc or any substance of metallic waste or die 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 which consists wholly or partly of the buying or selling of scrap metal, whether the scrap metal sold is in the form in which it was acquired or otherwise, but excludes any person who carries on a business where scrap metal is bought as materials for the manufacture of other articles and such metal is not sold except as a by product of such manufacturer or as surplus materials bought by not required for such manufacture;

**"SIM"** means Subscriber Identity Module

**"Station Commissioner"** means a police official in charge of a police station;

**"Subscriber Identity Module"** means an independent, electronically activated device designed for use in conjunction with the use of mobile 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 the Regulations;

## **CHAPTER 1**

### **REGISTRATION**

#### **Obligation to register**

2. (1) Every person who engages in business as a second-hand dealer must be registered unless the person is exempted in terms of this Act.

(2) A person other than a natural person may not be registered unless a natural person, who is not disqualified in terms of this Act to be registered, is appointed to manage and be responsible for its business.

(3) A person managing and responsible for a business to which registration relate, is subject to the same obligations and liabilities as the registered dealer.

#### **Application for Registration**

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

(b) The National Commissioner may require the applicant to provide further information necessary for the processing of 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 the premises.

(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 dealer.

**Application by natural person**

**4.** (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:

- (a) the applicant's full name, residential address, and identity number;
- (b) the name under which the applicant engages in business;
- (c) the street address of the premises that the applicant intends to use or uses for business purposes and the street address of every other such premises;
- (d) the postal address (if any) used by the applicant for business purposes;
- (e) if the individual is in partnership, the full name and identity number of every partner in the partnership; and
- (f) any other prescribed information.

(2) The National Commissioner may require the applicant to furnish all or any of the prescribed information and particulars including any fingerprint, palm-print or footprint

**Application by a person other than a natural person**

**5.** (1) The prescribed application by a person other than a natural person must include the following information:

- (a) the applicant's name and, where applicable, the registration number;
- (b) the registered address of the applicant;
- (c) the street address of the premises that the applicant intends to use or uses for business purposes and the street address of every other such premises;
- (d) the full name and identity number of every person involved in the management of the applicant;
- (e) any other prescribed information.

(2) The National Commissioner may require any natural person involved in the management of the applicant, including the person appointed in terms of section 2(2),

to furnish all or any of the prescribed information and particulars including any fingerprint, palm-print or footprint.

### **Refusal to register**

6. (1) If the National Commissioner is not satisfied that all the requirements for an application have been met, he or she must refuse the application and inform the applicant accordingly.

(2) If the National Commissioner refuses a person's application for registration, such person is not entitled to lodge another application for registration within 12 months after the refusal or outcome of the appeal, whatever the case may be.

(3) If the National Commissioner is satisfied that there are special circumstances in a particular case, he or she may permit a person to lodge a written application within 12 months after the refusal.

### **Effect of registration**

7. (1) The National Commissioner must issue the prescribed certificate of registration to a dealer, authorizing the dealer -

- (a) to deal in the classes of goods specified on the certificate;
- (b) on the premises specified on the certificate; and
- (c) subject to such conditions that he or she may deem necessary.

(2) 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 appointed in terms of section 2(2).

(3) Registration does not exempt a dealer from the requirements of any other legislation.

(4) Registration remains valid for a period of five years from the date the certificate was issued.

**Application for amendment of certificate**

8. (1) When any information contained in the application for registration changes, an application must immediately be made to the National Commissioner in the prescribed manner for amendment of the certificate of registration.

(2) The National Commissioner must, after consideration of the application and upon being satisfied that the applicant complies with all the requirements, amend the certificate of registration.

**Imposition, limitation or variation of conditions by the National Commissioner**

9. (1) If the National Commissioner has reasonable grounds to believe that there is a change in -

- (a) the circumstances of a registered dealer;
- (b) the classes of goods; or
- (c) the physical address of the relevant business premises

he or she may impose, limit or vary any or all of the conditions of registration.

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

- (a) give the dealer written notice of his or her intention to impose, limit or vary the conditions of registration;
- (b) give the dealer 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.

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

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

(5) 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.

### **Termination of registration**

**10.** Registration in terms of this Chapter terminates -

- (a) upon the expiry of the relevant period contemplated in section 7(4), unless renewed in terms of section 12;
- (b) in the event of the dealer becoming unable to carry on business in terms of this or any other Act; or
- (c) upon deregistration.

### **Deregistration**

**11.** (1) If the National Commissioner has reasonable grounds to believe that a registered dealer -

- (a) failed or fails to comply with any condition of registration;
- (b) was registered on the basis of incorrect or false information;
- (c) was convicted of an offence of which dishonesty is an element;
- (d) failed or fails to comply with any of the provisions of this Act; or
- (e) did not or no longer qualifies to be registered,

he or she must give notice to the dealer of his or her intention to deregister such dealer.

(2) Before deregistering a dealer, the National Commissioner must -

- (a) give the dealer written notice of his or her intention to deregister;

- (b) give the dealer 30 days to submit written representations as to why he or she should not be deregistered; and
- (c) duly consider any such representations.

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

(4) Upon receipt of the notice of deregistration, the dealer must immediately hand all certificates relating to the registration to the police official serving the notice.

### **Renewal of registration**

**12.** (1) A registered dealer who intends to renew registration must apply to the National Commissioner for renewal 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 as if it were a new application in terms of section 4 or 5.

(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.

### **Transfer of certificate**

**13.** (1) A certificate issued in terms of this Act, may not be transferred.

- (2) A registered dealer who intends to transfer the business to which registration relates, may only transfer such business to -
- (a) another registered dealer; or
  - (b) the executor, trustee or other administrator of the estate of such dealer.
- (3) The certificate of the dealer transferring the business must be surrendered to the National Commissioner upon issue of the new certificate.

### **Temporary registration**

- 14.** (1) The National Commissioner may grant temporary registration to a person -
- (a) for such period as he or she may determine; and
  - (b) subject to the conditions imposed by him or her.
- (2) The National Commissioner may at any time withdraw temporary registration if any condition contemplated in subsection (1)(b) is not complied with.

### **Disqualifications**

- 15.** (1) A person is disqualified from being registered if he or she -
- (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 ten 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 was then sentenced to a fine exceeding R200;
  - (c) is an unrehabilitated insolvent;
  - (d) is under 18 years;
  - (e) does not permanently reside in the Republic;

- (f) is the spouse or partner of a person contemplated in paragraph (a), (b) or (c);  
or
- (g) any person who by reason of other legislation, may not carry on a business.

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

- (a) has a controlling interest in a company, close corporation or trust;
- (b) is a partner in a partnership; or
- (c) is the main beneficiary under a trust,

that company, corporation, partnership or trust may not be registered.

(3) In the application of paragraph (a) and (b) of subsection (1), "preceding" means preceding the date of the application concerned.

### **Condonation**

**16.** The National Commissioner may condone any disqualification under section 15 if.

- (a) the disqualified person applies in the prescribed manner for condonation; and
- (b) the National Commissioner is of the opinion that the disqualification does not render the person unsuitable to be registered as a dealer; or
- (c) the sentence has been set aside by a competent court or such a person has received a grant of amnesty or a free pardon.

### **Display and maintenance of certificates**

**17.** (1) Where a certificate has been issued in terms of this Act, the certificate must be displayed in a place clearly visible to the public, on each of the premises for which the certificate has been issued.



(2) Where a certificate has been issued in terms of this Act, the certificate must be maintained in such a state that it can be produced undamaged and in a legible condition.

## **CHAPTER 2**

### **ACCREDITATION**

#### **Functions of accredited dealers' associations**

**18.** (1) The functions of an accredited dealers' association are to -

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

#### **Accreditation**

**19.** The National Commissioner may accredit a dealers' association in accordance with such regulations as may be prescribed.

**Different types of accreditation**

**20.** (1) Separate sets of criteria in respect of the accreditation of different types of associations, which the National Commissioner must apply when issuing an accreditation, may be prescribed.

(2) These criteria must include criteria relating to -

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

**Refusal to accredit**

**21.** (1) If the National Commissioner is not satisfied that all the requirements for accreditation have been met, he or she must refuse to accredit the dealers' association and notify the association accordingly in writing.

(2) If the National Commissioner refuses to accredit a dealers' association, that association is not entitled to be accredited within 12 months after the refusal, unless the dealers' association can satisfy the National Commissioner that the reasons for refusal to accredit do no longer exist.

**Cancellation of accreditation**

**22.** (1) The National Commissioner may cancel an accreditation if there is non-compliance with any criterion for accreditation.

(2) The National Commissioner may only cancel accreditation if he or she has -

- (a) given 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 considered any representations received, and all the facts pertaining to the matter.

(3) The National Commissioner must notify the dealers' association in writing of any decision taken under this section.

### **Member registers**

**23.** Every accredited association must

- (a) keep a register of all members in the prescribed format; and
- (b) submit an annual report to the National Commissioner which contains such information as may be prescribed.

## **CHAPTER 3**

### **GENERAL PROVISIONS RELATING TO DEALERS**

#### **Records by dealers**

**24.** (1) Unless otherwise provided for in this Act, a dealer or pawnbroker must keep a register in the prescribed format and record the prescribed particulars regarding every acquisition or disposal of goods.

(2) For purposes of subsection (1) the particulars may include -

(a) the identity of the person from whom the article is acquired, which must include-

- (i) the person's full name, contact address, and contact telephone number;
- (ii) the manner in which the person's identity was verified; and
- (iii) the person's identity number.

(b) a description of the article and its serial number or other unique identifier;

(c) the purchase price paid by the dealer;

(d) the number assigned by the dealer to the article;

(e) the name and signature of the person who conducted the transaction on behalf of the dealer;

- (f) the date of the transaction; the date on which the article was sold or an account of how and when the article was otherwise disposed of, and
- (g) any other prescribed information.

(3) If the certificate of registration is issued with such a condition, separate registers must be kept in respect of -

- (a) acquisition and disposal of second-hand goods; and
- (b) different classes of second-hand goods.

(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 the original of an identity document, or passport as proof of his or her identity .

(5) A dealer must obtain a copy of the identity document or passport referred to in subsection (4).

(6) A dealer must retain a register referred to in subsection (1) and a copy of the documents referred to in subsection (4), for a period 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 .

(8) Where a dealer keeps registers electronically, printouts must be made on a daily basis and retained subject to the provisions of subsection (6).

#### **False information and stolen goods**

**25.** (1) If a dealer or pawnbroker suspects or there are grounds on which a dealer or pawnbroker should suspect that-

- (a) any name, address or document furnished to him or her is false or falsified;

(b) goods or goods for pawn, as the case may be, offered to him or her are stolen goods; or

(c) the appearance or aspects of an item 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;

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

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

### **Restrictions on dealers**

**26.** (1) No dealer may -

(a) acquire goods from any person suspected of, or where there are grounds on which he or she should suspect, that the person is under the age of 16 years;

(b) store goods, as the case may be, elsewhere than on the premises for which a certificate has been issued in terms this Act;

(c) take into his or her possession goods before he or she has convinced himself or herself on reasonable grounds that the seller of the items is the owner and or titleholder thereof or duly authorized to dispose thereof, or

(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.

(2) During the period contemplated in paragraph (d) of subsection (1), the articles or goods must be kept separate from all other goods of the same or similar kind and description.

## **CHAPTER 4**

### **PROVISIONS RELATING TO PAWNBROKERS**

#### **Records by pawnbrokers**

**27.** (1) A pawnbroker must keep the prescribed register in respect of all goods taken in pawn by him or her.

(2) A person pawning goods must furnish the pawnbroker with his or her full name, physical address and the original of an identity document, or passport as proof of his or her identity.

(3) A pawnbroker must obtain a copy of the identity document or passport referred to in subsection (2).

(4) A pawnbroker must retain a register referred to in subsection (1) and a copy of a document referred to in subsection (2), for five years calculated from the date of the transaction.

(5) An entry to be made under subsection (1) in respect of any goods taken in pawn or disposed of by a pawnbroker must be made contemporaneously

#### **Restrictions on pawnbrokers**

**28.** (1) No pawnbroker may -

(a) accept in pawn goods from any person suspected of, or where there are grounds on which he or she should suspect, that the person is under the age of 16 years;

(b) store pawned goods elsewhere than on the premises for which a certificate has been issued in terms this Act;

(c) take into his or her possession pawned goods before he or she has convinced himself or herself on reasonable grounds that the pawner of the items is the owner and or titleholder thereof or duly authorized to dispose thereof; or

(d) accept in pawn any firearms as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000).

(2) During the period that any pawned goods are subject to a pawn agreement, such goods must be kept separate from all other goods of the same or similar kind and description.

## **CHAPTER 5**

### **PROVISIONS RELATING TO MOTOR VEHICLES**

#### **Motor Vehicle Records**

**29.** (1) Subject to the provisions of section 24(2) a dealer or pawnbroker dealing in second-hand motor vehicles must keep a register in the prescribed format and record the prescribed particulars regarding every acquisition or disposal of motor vehicles .

(2) For purposes of subsection (1) the particulars must include -

- (a) the vehicle's VIN/chassis and engine number;
- (b) the odometer reading;
- (c) exterior and trim colour;
- (d) any unique identifier, such as microdot particulars; and
- (e) any other prescribed information.

(3) A person acquiring a motor vehicle from a dealer must furnish such dealer with -

- (a) his or her full name;
- (b) physical address; and
- (c) the original of an identity document, or passport as proof of his or her identity.

- (4) A person disposing of a motor vehicle to a dealer must furnish such dealer with -
- (a) his or her full name;
  - (b) physical address;
  - (c) the original of an identity document, or passport as proof of his or her identity;  
and
  - (d) proof of registration or deregistration.
- (5) A dealer must obtain a copy of every identity document or passport referred to in subsections (3) and (4), and proof of registration or deregistration.
- (6) A dealer must retain a copy of the proof of registration or deregistration referred to in subsection (5), for a period not less than five years calculated from the date of the relevant transaction.

## **CHAPTER 6**

### **PROVISIONS RELATING TO CONTROLLED METALS**

#### **Definitions**

**30.** In this Chapter, unless the context otherwise indicates -

**"controlled metals"** means the metals set out in the Fourth Schedule;

**"recycle"** means to melt, smelt, granulate, shred, dismantle, sort, grade, cut, prepare and bale controlled metals, 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.



**Obligation to register as recycler**

**31.** (1) Every dealer who engages in business as a recycler must be registered as a recycler.

(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.

**Offences relating to recycling**

**32.** (1) No dealer or pawnbroker may recycle or cause to be recycled any controlled metal or any article or substance containing controlled metal, unless registered in terms of this Chapter.

(2) No dealer or pawnbroker may have in his or her possession any apparatus which can be used for the recycling of controlled metal or any such article or substance, unless -

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

(b) in the case of precious metals, such a person is authorized under other legislation .

**CHAPTER 7****PROVISIONS RELATING TO COMMUNICATION EQUIPMENT****Definitions**

33. In this Chapter, unless the context otherwise indicates -

**"communication equipment"** means any wireless mobile communication equipment with IMEI capable of using SIM, including but not limited to cellular telephones , telephones, two-way radios, and accessories thereof.

### **Communication Equipment Records**

**34.** (1) Subject to the provisions of section 24(2) a dealer or pawnbroker dealing in second-hand communication equipment must keep a register in the prescribed format and record the prescribed particulars regarding every acquisition or disposal of communication equipment.

(2) For purposes of subsection (1) the particulars must include -

- (a) a description of the communication equipment, including the make and model;
- (b) the communication equipment's IMEI number;
- (c) any other unique identifier, such as serial number;
- (d) any other prescribed information.

(3) A person acquiring communication equipment from or disposing of communication equipment to a dealer must furnish such dealer with -

- (a) his or her full name;
- (b) physical address; and
- (c) the original of an identity document, or passport as proof of his or her identity.

(4) A dealer must obtain a copy of every identity document or passport referred to in subsection (3).

(5) A dealer must retain a copy of the proof of registration or deregistration referred to in subsection (4), for a period not less than five years calculated from the date of the relevant transaction.

**Offences relating to communication equipment**

**35.** (1) Any person who without written authorization from the manufacturer of communication equipment or SIM equipment

- (a) modifies, tampers with, alters, reconfigures, or interferes with the IMEI of any communication equipment, or any SIM, or any part thereof;
- (b) reverse engineers, decompiles, disassembles, or interferes with the software installed in any communication equipment or any SIM, by the manufacture thereof;
- (c) is in possession of any software that allows a person to modify, tamper with, alter, reconfigure or interfere with the IMEI of any communication equipment, or any SIM, or any part thereof;
- (d) allows any other person to perform any of the acts referred to in paragraph (a), (b), or (c),

is guilty of an offence.

**CHAPTER 8****PROVISIONS RELATING TO AUCTIONEERS****Application of Act to Public Auctions**

**36.** The provisions of this Act shall not apply to any second hand goods sold or disposed of by way of public auction authorized by a warrant of execution under a judgment or order of a court of law.

**CHAPTER 9****POWERS OF POLICE****Inspections**

**37.** (1) A police official may during times when business activity in respect of second - hand goods is taking place, enter such premises in order to -

- (a) investigate compliance with this Act;
- (b) require the owner, an employee or another person in control of the premises to-
  - (i) produce the certificate of registration relating to that premises for inspection;
  - (ii) produce any register, record, book or other document relating to goods in or on the premises for inspection or for the purposes of obtaining copies thereof or extracts there from;
  - (iii) produce any goods found in or on such premises for examination; or
  - (iv) explain any entry or absence of any entry in any register, book, record or document found therein or thereon.

(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 to ensure compliance with the Act.

(3) A dealer, pawnbroker, owner, employee or person in charge of premises referred to in subsection (1), must assist a police official as may be required, for the performance of his or her functions under this Act.

(4) On each occasion when a police official inspects a register as contemplated in subsection (1)(b), he or she must sign his or her name immediately after the last entry in that register, and append his or her number, rank and the date.

#### **Entry and search of premises**

**38.** (1) A police official, on the authority of a warrant issued in terms of section 39 may-

- (a) enter any premises where he or she has reason to believe that any provision of this Act has been or is being contravened in order to obtain evidence; or
- (b) enter premises upon which there are or upon which he or she has a reasonable suspicion that there are second-hand goods; and

(c) direct the person in control of or any person employed at the premises -

- (i) to deliver any register, record, book or other document that pertains to the investigation and is in the possession or under the control of that person;
- (ii) to furnish such information as he or she has with regard to the matter; or
- (iii) to render such assistance as the police official requires in order to enable him or her to perform his or her functions under this Act;

(d) inspect any register, record, book, other document and make copies thereof or excerpts there from;

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

(f) 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

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

(2) A police official may not enter upon or search any premises until he or she has audibly demanded admission to the premises and has given notice of the purpose of his or her entry, unless he or she is, on reasonable grounds, of the opinion that such demand and notification will defeat the purpose of the search .

(3) A police official, on the authority of a warrant issued in terms of section 39, may use such force as may reasonably be necessary to overcome resistance to his or her entry or search.

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

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

- (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
- (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 as contemplated in Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

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

#### **Warrant to search, seize and seal off**

39. (1) A warrant referred to in this chapter must be issued by a magistrate or a judge of the High Court, who has jurisdiction in the area where the premises in question are situated, if it appears from information on oath or solemn declaration that there are reasonable grounds to believe that a provision of this Act has been or is being contravened.

(2) A warrant issued under this section must specify –

- (a) which of the acts mentioned in section 38(1), may be performed by the police official;
- (b) the period for which the premises may be sealed off for purposes of section 38(1)(g), provided that such period may not exceed seven days; and
- (c) whether the warrant authorizes execution by night.

(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 person with similar authority;

- (c) one month from the date of its issue; or
- (d) the purpose for which the warrant was issued no longer exists ,

whichever occurs first.

### **Extension of powers**

**40.** 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 statutory body and may in like manner amend or repeal any such notice.

### **Identification by police official**

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

## **CHAPTER 10 OFFENCES AND PENALTIES**

### **Offences and penalties**

**42.** A person is guilty of an offence if he or she contravenes or fails to comply with any provision of this Act.

### **Offences relating to registration**

**43.** (1) It is an offence to -

- (a) furnish false information in support of any application in terms of this Act;

- (b) engage in business as a second-hand dealer, pawnbroker or recycler without being registered;
- (c) conduct business from premises not specified on the certificate;
- (d) conduct business from premises other than the premises specified on the certificate;
- (e) deal in classes of goods otherwise than those specified on the certificate;
- (f) fail to comply with any condition of registration;
- (g) transfer a certificate or allow another person to deal in the name of the person specified on the certificate;
- (h) fail to apply for amendment when the information submitted in support of the application for registration changes;
- (i) fail to hand all certificates relating to the registration to the police official handing over the amended, terminated, deregistered certificate;
- (j) fail to renew registration in accordance with the provisions of section 12(1);
- (k) fail to surrender any certificate to the National Commissioner upon issue of any the new certificate;
- (l) fail or refuse to display the certificate in a place clearly visible to the public;
- (m) fail or refuse to display the certificate on each of the premises for which it was issued; or
- (n) fails to maintain the certificate in such a state that it can be produced undamaged and in a legible condition.

#### **Offences relating to registers and documents**

**44. (1)** It is an offence to -

- (a) fail to keep any of the prescribed registers;
- (b) fail to record any or all of the prescribed particulars regarding -
  - (i) every acquisition of goods;
  - (ii) disposal of goods; or
  - (iii) pawn transaction;



- (c) fail to comply with a condition of the certificate of registration by not keeping separate registers in respect of-
  - (i) acquisition and disposal of second-hand goods; or
  - (ii) different classes of second-hand goods;
- (d) fail to obtain a copy of the identity document or passport referred to in subsection 24(5) or 27(3);
- (e) fail to obtain a copy of the proof of registration or deregistration in the case of acquisition or disposal of a motor vehicle;
- (f) Fail to retain
  - (i) a prescribed register; or
  - (ii) a copy of the documents referred to in section 24(5) or 27(3)for a period not less than five years calculated from the date of the relevant transaction;
- (g) fail to make an entry in a prescribed register contemporaneously;
- (h) fail to make printouts on a daily basis where registers are kept electronically

#### **Offences relating to dealers, pawnbrokers and recyclers**

#### **45. (1) It is an offence to -**

- (a) fail or refuse to immediately report a suspicion that -
  - (i) any name, address or document furnished to him or her is suspected to be false;
  - (ii) goods or goods for pawn, as the case may be, offered to him or her are suspected to be stolen goods; or
  - (iii) the appearance or aspects of an item 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;

to a police official on duty at the police station in whose area he or she carries on business.

(b) acquire goods from any person suspected of, or where there are grounds on which he or she should suspect, that the person is under the age of 16 years;

(c) store goods elsewhere than on the premises for which a certificate has been issued in terms this Act;

(d) take into his or her possession goods before he or she has convinced himself or herself on reasonable grounds that the seller of the items is -

- (i) the owner and or titleholder thereof; or
- (ii) duly authorized to dispose thereof

(e) deliver goods acquired by him or her to a person before the expiration date of a period of seven days from the date of acquisition thereof .

(f) change the form or alter the appearance thereof before the expiration date of a period of seven days from the date of acquisition thereof

(g) fail to keep articles or goods that may not legally be disposed of, separate from all other goods of the same or similar kind and description.

(h) accept in pawn goods from any person suspected of, or where there are grounds on which he or she should suspect, that the person is under the age of 16 years ;

(i) take into his or her possession pawned goods before he or she has convinced himself or herself on reasonable grounds that the pawner of the items is the owner and or titleholder thereof or duly authorized to dispose thereof; or

(j) accept in pawn any firearms as defined in the Firearms Control Act, 2000 (Act No 60 of 2000).

- (k) recycle or cause to be recycled any controlled metal or any article or substance containing controlled metal, without being registered as a recycler;
- (l) possess any apparatus which can be used for the recycling of controlled metal or any such article or substance without being registered as a recycler or otherwise authorized under other legislation.
- (m) fail to notify the National Commissioner in writing within 30 days if -
  - (i) there is any change with regard to information submitted in respect of the application for registration;
  - (ii) the dealer or pawnbroker stops trading;
  - (iii) there is a change in the control or ownership of the dealer or pawnbroker;
  - (iv) new directors, managing members or trustees have been appointed; or
  - (v) there is any change having an impact on the ability of the dealer or pawnbroker to meet all or any of the requirements for its registration in terms of this Act.
- (n) fail to inform the National Commissioner of the loss or theft of a certificate, within 30 days or as soon as reasonably possible after discovery of the loss or theft.
- (o) fail to apply to the National Commissioner for a copy of a certificate of registration when the certificate of registration is defaced, lost or stolen within 30 days of the discovery of the defacement, loss or theft
- (p) while unregistered, had on or near his or her premises any signboard or notice purporting that he or she is registered
- (q) while unregistered, occupies or controls premises containing second-hand goods so displayed as to cause a reasonable suspicion that business is being carried on as a dealer
- (r) have on his or her premises more second-hand goods than is reasonably required for his or her personal use or for the use of a person residing thereon,

- (s) fail to furnish a dealer or pawnbroker with
  - (i) a full name;
  - (ii) physical address;
  - (iii) the original of an identity document, or passport; or
  - (iv) proof of registration or deregistration.

while acquiring goods from that dealer or pawnbroker, disposing of goods to a dealer or pawning goods.

### **Offences relating to inspections**

**46.** (1) It is an offence to-

- (a) fail or refuse to produce the certificate of registration for inspection ;
- (b) fail or refuse to produce any register, record, book or other document relating to goods in or on the premises for inspection or for the purposes of obtaining copies thereof or extracts there from ;
- (c) fail or refuse to produce any goods found in or on such premises, for examination;
- (d) fail or refuse to explain any entry or absence of any entry in any register, book , record or document found in or on the premises ;
- (e) fail or refuse to immediately discontinue any method of dealing, recording of transactions in registers or storage used in contravention of this Act , when ordered to do so by a police official;
- (f) fail, refuse to assist or hinder a police official in the performance of his or her functions under this Act.

## **Penalties**

**47.** (1) A regulation may provide for a fine or penalty for any contravention thereof or failure to comply therewith, of a fine or imprisonment for a period not exceeding twelve (12) months, or both a fine and imprisonment.

(2) A person convicted of an offence mentioned in column 1 of the First Schedule, may be sentenced to a fine or imprisonment for a period not exceeding the period mentioned in column 2 of that Schedule opposite the number of that section, or both.

(3) A court must, where applicable, in addition to any other penalty imposed upon conviction of a person of any of the offences under this Act -

- (a) in the event of a continuing contravention, impose a further fine or imprisonment for a period of thirty (30) days or both for each day on which such contravention continued;
- (b) suspend or cancel any exemption granted in terms of this Act;
- (c) suspend or cancel any registration; or
- (d) order that the second-hand goods which formed the subject of the charge against that person, be forfeited to the State.

## **CHAPTER 11 REGULATIONS**

### **Regulations**

**48.** (1) The Minister may make regulations regarding -

- (a) any matter which in terms of this Act is required or permitted to be prescribed;

- (b) the form and manner in which an application required under this Act must be made;
- (c) all matters related to accreditation;
- (d) standard conditions to which registration shall be subject;
- (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 regards to different goods or classes of goods;
- (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 a notice contemplated in this Act ;
- (l) fees payable for accreditation, applications for registration or certificates;
- (m) the format and content of any registers;
- (n) the information to be furnished by dealers and pawnbrokers to consumers or prospective consumers;
- (o) the times during which dealers and pawnbrokers may acquire and dispose of second-hand goods; and
- (p) any matter which is necessary or expedient to prescribe for the

attainment or better attainment of the objects of this Act.

(2) Different regulations may be made in terms of subsection (1) with reference to different categories or classes of associations, dealers or pawnbrokers, second-hand goods or classes of goods or premises.

## **CHAPTER 12**

### **GENERAL PROVISIONS**

#### **Application of Act**

**49.** The Minister may -

- (a) on conditions as he or she may deem fit, by notice in writing addressed to a person, exempt such person from any or all of the provisions of the Act for a period of one (1) year, and may in like manner amend or repeal any such notice;
- (b) by notice in the Gazette, either generally or subject to such conditions as may be specified in the notice, -
  - (i) exclude from the operation of any or all of the provisions of this Act any second-hand goods or any class of such goods or any class of business;
  - (ii) declare any article or substance to be second-hand goods for the purposes of this Act or such parts of this Act as may be specified in such notice, and may in like manner amend or repeal any such notice.

#### **Appeals**

**50.** (1) A dealer or pawnbroker who is aggrieved by an administrative decision taken in terms of this Act may, in the prescribed manner, appeal to the Minister 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 he or she may deem expedient.

#### **Lodging of applications and notices**

**51.** An application or notice contemplated in this Act must be lodged with the Station Commissioner in whose station precinct the applicant, dealer or pawnbroker, 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.

#### **Service of documents**

**52.** (1) The manner of services 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.

#### **Return of service**

**53.** A document purporting to be signed by a police official indicating that the service was effected in accordance with section 52(1) by the person who has signed the document, is upon production in a court, prima facie evidence of service of the document.

#### **Notification of change of circumstances**

**54.** A registered dealer or pawnbroker must notify the National Commissioner in writing within 30 days if-

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



- (b) the dealer or pawnbroker stops trading;
- (c) there is a change in the control or ownership of the dealer or pawnbroker;
- (d) new directors, managing members or trustees have been appointed; or
- (e) there is any change having an impact on the ability of the dealer or pawnbroker to meet all or any of the requirements for its registration in terms of this Act.

#### **Defaced, lost or stolen certificates**

55. (1) If a certificate issued in terms of this Act is lost or stolen, the holder of the certificate must inform the National Commissioner of such loss or theft within 30 days or as soon as reasonably possible after 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 form, for a copy of the certificate.

#### **Delegation of powers and assignment of duties**

56. (1) The Minister may, in writing, authorize the National Commissioner or any other police official, to exercise such power or perform such duty, except the powers referred to in sections 48 and 50.

(2) The National Commissioner may in writing delegate any power conferred on him or her and assign any duty imposed on him or her by or under this Act to any official in the service of the state or a statutory body.

(2) An official to whom a power has been delegated or a duty has been assigned in terms of subsection (2) must exercise the power or perform the duty subject to the control and directions of the National Commissioner.

#### **Extension of time**

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

#### **Jurisdiction of the magistrates' courts**

**58.** A magistrates' court shall have jurisdiction to impose any penalty provided for under this Act.

#### **Transitional provisions**

**59.** (1) A person who immediately prior to the date of commencement of this Act carried on a business as a dealer or pawnbroker must, within a period of 90 days from commencement, 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 during the period from the date of commencement of this Act and up to and including the last day of the said period or extended period as the case may be .

(2) An entry referred to in subsection (1) 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 non-ferrous and precious metal, its description and weight and the value thereof as estimated by the dealer or pawnbroker concerned.

(3) The Station Commissioner or the police official authorised by him or her must endorse the last entry in such register and on each page thereof .

(4) From the date of commencement of this Act the provisions of this Act shall apply to-

- (a) a dealer or pawnbroker who disposes of second-hand goods referred to in subsection (1), or
- (b) a pawnbroker who redeems a pawn agreement or otherwise disposes of pawned goods in terms of subsection (2).

(5) A person referred to in subsection (1) who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and on conviction be liable to a fine or imprisonment not exceeding 3 years imprisonment or both such fine and imprisonment.

### **Repeal**

**60.** The Second-hand Goods Act, 1955 (Act No. 23 of 1955), is hereby repealed.

### **Short title and commencement**

**61.** This Act is called the Second Hand Goods Act 2005 and comes into operation on a date determined by the President by proclamation in the Gazette.

**SCHEDULE 1**  
**PENALTIES**

<b>SECTION</b>	<b>MAXIMUM PERIOD OF IMPRISONMENT</b>
43(1)(h); 43(1)(i); 43(1)(k); 43(1)(n); 45(1)(m)(i); 45(1)(m)(ii); 45(1)(m)(iii); 45(1)(m)(iv); 45(1)(m)(v); 45(1)(n); 45(1)(o);	Three years imprisonment
43(1)(c); 43(1)(d); 43(1)(e); 43(1)(f); 43(1)(g); 43(1)(j); 43(1)(l); 43(1)(m); 44(1)(b)(i); 44(1)(b)(ii); 44(1)(b)(iii); 44(1)(c)(i); 44(1)(c)(ii); 44(1)(d); 44(1)(f)(i); 44(1)(f)(ii); 44(1)(g); 44(1)(h); 45(1)(e); 45(1)(f); 45(1)(g); 45(1)(p); 45(1)(q); 45(1)(r); 45(1)(s)(i); 45(1)(s)(ii); 45(1)(s)(iii); 45(1)(s)(iv); 46(1)(a); 46(1)(d);	Five years imprisonment
32(1); 32(2); 35(1)(a); 35(1)(b); 35(1)(c); 35(1)(d); 43(1)(a); 43(1)(b); 44(1)(a); 44(1)(e); 45(1)(a)(i); 45(1)(a)(ii); 45(1)(a)(iii); 45(1)(b); 45(1)(c); 45(1)(d)(i); 45(1)(d)(i); 45(1)(h); 45(1)(i); 45(1)(j); 45(1)(k); 45(1)(l); 46(1)(b); 46(1)(c); 46(1)(c); 46(1)(f)	Ten years imprisonment

## **SCHEDULE 2**

### **GOODS**

#### **GOODS**

jewellery including unwrought precious metal as defined in the Mining Rights Act 1967 (Act No. 20 of 1967);  
agricultural implement including but not limited to tractors, plows and harvesters or any part or accessory thereof;  
bicycle or any part or accessory thereof;  
office or household equipment;  
factory equipment and machinery or any part or accessory thereof;  
tyre of any vehicle or motorcycle;  
communication equipment or any part or accessory thereof;  
any non-ferrous, ferrous or precious metal, or any wrought article, or any article or substance consisting wholly or principally of one or more of such metals;  
any antique goods;  
any vehicle or any part or accessory thereof;  
any sporting equipment; and  
any other article or substance which the Minister may under section 49(b)(ii) declare to be goods for the purposes of this Act;

**SCHEDULE 3**  
**NON-FERROUS AND FERROUS METALS**

**NON-FERROUS AND FERROUS METALS**

copper, aluminium, zinc, chrome, lead, white metal, nickel, tungsten, tin, ferrovanadium, ferrosilicon, ferrochrome, brass, bronze, or articles consisting wholly or principally of these metals; any other article or substance which the Minister may under section 49(b)(ii) declare to be goods for the purposes of this Act

**SCHEDULE 4**  
**CONTROLLED METALS**

**CONTROLLED METALS**

copper, aluminium, zinc, chrome, lead, white metal, nickel, tungsten, tin, ferrovanadium, ferrosilicon, ferrochrome, brass, bronze, precious metals as defined in the precious Metals Act, 2006, or articles consisting wholly or principally of these metals; any other article or substance which the Minister may under section 49(b)(ii) declare to be goods for the purposes of this Act;