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CONTENTS • INHOUD

No.

*Page
No. Gazette
 No.*

GENERAL NOTICE

Police, Department of

General Notice

1393 Second-Hand Goods Act (6/2009): Notice calling for public comments..... 3 32643

GENERAL NOTICE

NOTICE 1393 OF 2009

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*.

The contents of the draft regulations are for consultation purposes only at this stage and should not be regarded as reflecting any official policy or viewpoint.

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

PROPOSED SECOND-HAND GOODS REGULATIONS FOR DEALERS' ASSOCIATIONS, 2009

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—

“association” includes any alliance, federation, grouping, guild, institute, organization or union;

“constitution” includes articles of association and trust instrument,

“dealers’ association” means an association not for gain, formed in order to represent the interests of dealers, but excludes an association representing franchised dealers belonging to a single franchise;

“general dealer” means a second-hand dealer who deals primarily in goods other than controlled metal, or any wrought article, or any article or substance consisting wholly or principally of one or more of such metals; jewellery; motor vehicles or vehicles or any part or accessory thereof; tyre of any vehicle or motorcycle;

“responsible person” means a natural person contemplated in regulation 2(3) who must be nominated in writing by the dealer’s association to act on behalf of that dealer’s association;

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

Nomination of responsible person

- 2.(1) A dealer's association requiring accreditation must nominate, in writing, a natural person who is not a registered dealer or involved in the management of any registered dealer, as a responsible person to act on behalf of that dealers' association.
- (2) The responsible person contemplated in subregulation (1) must be responsible for the management, day-to-day control, direction or supervision of that dealers' association.

Manner of application

3. The responsible person contemplated in subregulation (1) must—
 - (a) obtain the appropriate application form from the office of the relevant Designated Police Officer in whose precinct the main office of the association is or will be situated;
 - (b) complete such form in black ink; and
 - (c) submit the duly completed application form together with all the documents referred to in subregulation (4), to the office of the Designated Police Officer in whose precinct the main office of the association is or will be situated.

Documents to accompany application

- 4.(1) An application form contemplated in regulation 3(c) must be accompanied by—
 - (a) the original of a resolution of the dealers' association containing the nomination of the responsible person, as referred to in subregulation (1);
 - (b) a certified copy of the identity document of each of the persons responsible for the management, day-to-day control, direction or supervision of the association, including that of the responsible person;
 - (c) documentary proof of the address of the premises from which the association will conduct its affairs;

- (d) documentary proof from the association's bankers that the requirements of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) are complied with;
 - (e) a certified copy of the founding document of that dealers' association consisting of—
 - (i) the constitution of the dealers' association if that dealers' association is a voluntary association;
 - (ii) the trust instrument of the dealers' association if that dealers' association lodged a trust instrument with the master of the High Court in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988);
 - (iii) the memorandum and articles of association of the dealers' association if that dealers' association is registered as a company not for gain in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973); or
 - (iv) any other relevant document setting out the legal character of such dealers' association.
- (2) The National Commissioner may require further information regarding—
- (a) the documents contemplated in this regulation; and
 - (b) the dealer's association, the responsible person and any person other than the responsible person who is responsible for the management, day to day control, direction or supervision of the association, as in order to establish whether the association qualifies for accreditation.
- (3) The National Commissioner may require a dealer's association applying for accreditation to submit a set of fingerprints and a certified copy of the identity document of the responsible person and any person other than the responsible person who is responsible for the management, day to day control, direction or supervision of the dealers' association.

Criteria in respect of accreditation

- 5.(1) The National Commissioner must take into account any relevant factor that reflects on the dealer's association and on every person who is responsible for the management, day to day control, direction or supervision of the association of the dealer's association, regarding—
- (a) trustworthiness and integrity;
 - (b) the capacity to perform the relevant functions in terms of section 16 of the Act;
 - (c) the capacity to advance the purposes of the Act; and
 - (d) the capacity to serve the purposes of the accreditation.
- (2) In deciding whether a dealer's association fulfils the criteria referred to in subregulation (1), the National Commissioner must take into account—
- (a) whether or not the organizational structure of the dealer's association is sufficient to perform the functions of a dealer's association;
 - (b) whether or not the dealer's association has existed or functioned for a time period, where applicable;
 - (c) the main purpose of the dealer's association and its experience in the field of trade or industry for which accreditation is applied for;
 - (d) whether or not the constitution, trust instrument or articles of association of the dealer's association, whichever is applicable, complies with the criteria in subregulation (3);
 - (e) the code of conduct or ethical code prescribed by the dealer's association to its members;
 - (f) the disciplinary code applicable to the members or employees of the dealer's association;
 - (g) the conditions that a dealer must comply with in order to become and remain a member of the dealer's association;

- (h) the classification of the members of the dealer's association into different categories;
 - (i) any organizational affiliation of the dealer's association;
 - (j) any interest or conflict of interest which may render the dealer's association unsuitable for accreditation;
 - (k) the region that the operations or functions of the dealer's association covers;
 - (l) the class of business that the dealer's association represents, including a franchised business;
 - (m) the capacity of the association to conduct frequent inspections as contemplated in section 16(c) of the Act;
 - (n) written representations by other persons in support of the application; or
 - (o) any other fact that will in the National Commissioner's opinion be relevant to ascertain the suitability for accreditation.
- (3) In order to be accredited as a dealer's association, the constitution, trust instrument or articles of association, whichever is applicable, must contain—
- (a) a description of the guidelines upon which the dealers' association classifies its members into different categories of members;
 - (b) a description of the minimum standards applicable to each of the different categories of members relating to—
 - (i) the premises from which that category of members may conduct business;
 - (ii) where applicable, the minimum requirements for equipment, information technology and software programs that must be utilized by that category of members;
 - (iii) a description of the record of transactions to be kept by that category of members;
 - (c) a description of the research and development program for its entry-level members;

- (d) a description of any training programmes for its members;
and
 - (e) the manner in which the association disseminates trade information amongst its members.
- (4) The constitution of a dealer's association must provide for a distinction between dealers who trade primarily in one or more of the various categories of goods as defined in the Act.
- (5) The National Commissioner may, after considering the application, supporting documents and all the facts pertaining to the matter, accredit a dealer's association as an association of—
 - (a) general dealers;
 - (b) auctioneers;
 - (c) jewelers;
 - (d) motor vehicle dealers;
 - (e) scrap metal dealers;
 - (f) recyclers;
 - (g) franchise holders; or
 - (h) any other type of association that would describe the main activities of members of such an association.
- (6) The National Commissioner may, in order to ensure continued compliance with the Act and these Regulations, accredit a dealers' association subject to such conditions as may be required.

Refusal to accredit

- 6.(1) The National Commissioner must refuse to accredit a dealer's association if there is reason to believe that—
- (a) the applicant does not qualify to be accredited; or
 - (b) any person who is responsible for the management, day to day control, direction or supervision of the dealers'

association, including the responsible person, is registered as a dealer in terms section 4(3) of the Act; or

- (c) any person who is responsible for the management, day-to-day control, direction or supervision of the association, including the responsible person, is disqualified to be registered as a dealer in terms of section 14 of the Act.
- (2) The National Commissioner may, on good cause shown, condone any of the grounds for refusal contemplated in subregulation (1).

Cancellation of accreditation

- 7.(1) The National Commissioner must cancel accreditation of a dealer's association if there is reason to believe that—
- (a) the dealer's association no longer qualifies to be accredited;
 - (b) failed or fails to comply with any condition of accreditation;
 - (c) is accredited on the basis of incorrect or false information; or
 - (d) failed or fails to comply with any of the provisions of the Act; or
 - (e) any person who is responsible for the management, day-to-day control, direction or supervision of the association, including the responsible person—
 - (i) is or becomes registered as a dealer in terms section 4(3) of the Act; or
 - (ii) is or becomes disqualified to be registered as a dealer in terms of section 14 of the Act.

Duties of accredited dealers' associations

- 8.(1) A dealer's association must, before accepting a dealer as a member of such association satisfy itself that—

- (a) the proposed member has good standing in the business community or the necessary potential to attain such good standing; and
 - (b) the premises from which the proposed member intends to conduct business, are suitable and adequately equipped.
 - (2) In order to perform the duties assigned to a dealer's association in terms of subregulation (1), such an association must—
 - (a) conduct an interview with the dealer concerned in order to establish whether—
 - (i) such dealer has or needs experience or training in the type of business that the dealer intends conducting;
 - (ii) such dealer has previous convictions which may influence the manner in which such dealer conducts his or her business; or
 - (ii) there is any information regarding such dealer that may negatively affect such dealer's application for membership of that association;
 - (b) inspect the premises to determine whether it complies with the applicable minimum standards set by the dealer's association, or as contemplated in regulations made under section 42(1)(h) of the Act, as the case may be.
 - (3) A dealer's association must, when accepting the dealer as a member, classify the proposed member according to—
 - (a) the class of goods that is primarily dealt with in the business;
 - (b) the class or size of the member's business, whether it be entry level, franchise, small, medium or large business; or
 - (c) any other criteria approved by the National Commissioner.
 - (4) After classification in terms of subregulation (3), the dealer's association must enter the particulars of the member into the member register contemplated in section 20(1)(a) of the Act.

- (5) A dealer's association who is accredited in terms of the Act, must, before the 31st day of December of that year and annually thereafter, submit to the National Commissioner a written report in terms of section 23(b) of the Act.
- (6) The report must contain particulars of—
- (a) registered members of the dealer's association;
 - (b) members or employees of the dealer's 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), particulars of the certificate of registration where applicable, the disciplinary transgression and the result of the disciplinary action.
 - (d) Any report contemplated in terms of section 20(1)(b) must be must be completed in black ink and submitted to the National Commissioner.

Accreditation of an Association of General Dealers

- 9.(1) No association of general dealers may accept as a member of that association —
- (a) a dealer who deals in second-hand motor vehicles;
 - (b) a recycler or other dealer who deals in controlled metals;
 - (c) an auctioneer;
 - (d) a jeweler;
 - (e) a scrap metal dealer; or
 - (f) a franchise holder.
- (2) The National Commissioner may, on good cause shown, dispense with any of the provisions of subregulation (1).

Accreditation of an Association of Motor Vehicle Dealers

10. A motor vehicle dealers' association representing second-hand motor vehicle dealers may categorize its members according to the 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.

Offences and penalties

11. Any person who –
- (1) falsely represents himself or herself or any other person or juristic person as being accredited for the purpose of the Act;
 - (2) 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
 - (3) 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,
- commits an offence and is liable to a fine or imprisonment for a period not exceeding 12 months or both such a fine and imprisonment.

Short Title

12. These Regulations shall be called the Second-Hand Goods Regulations for Dealers' Associations, 2009.
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