

**PROCLAMATION***by the**President of the Republic of South Africa***No. 1, 2012****PARTIAL COMMENCEMENT OF THE SECOND-HAND GOODS ACT, 2009 (ACT NO. 6 OF 2009)**

In terms of section 45 of the Second-Hand Goods Act, 2009, (Act No. 6 of 2009), I hereby fix 16 January 2012, as the date on which the maximum period of imprisonment provided for in Schedule 3 to the Act, in respect of sections 22 (1) and 25 (4) of the Act, shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria, on this 9th day of January Two thousand and twelve.

**PRESIDENT****By Order of the President-in-Cabinet** **E N MTHETHWA****MINISTER OF THE CABINET**

**PROCLAMATION**

*by the*  
**President of the Republic of South Africa**

**No. 68, 2011****PARTIAL COMMENCEMENT OF THE SECOND-HAND GOODS ACT, 2009 (ACT NO. 6 OF 2009)**

In terms of section 45 of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009), I hereby fix 10 December 2011 as the date on which the definition of "controlled metal"; sections 16 to 20; 22(1); 25(4)(b); 25(4)(c); 32(1)(l); 32(1)(o); 32(2); 32(3) and Schedule 2 of the said Act shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at Durban this 02th day of December Two thousand and eleven.

**PRESIDENT**

By Order of the President -in -Cabinet

**E N MTHETHWA  
MINISTER OF THE CABINET**



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 526 Cape Town

1 April 2009

**No. 32087**

## THE PRESIDENCY

No. 392

1 April 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 6 of 2009: Second-Hand Goods Act, 2009.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

## SCHEDULE 2

## CONTROLLED METALS

## SCHEDULE 3

## OFFENCES AND PENALTIES

## SCHEDULE 4

5

## LAWS REPEALED

## CHAPTER 1

## INTERPRETATION AND APPLICATION OF ACT

## Definitions

1. (1) In this Act, unless the context indicates otherwise— 10
- “**accreditation**” means accreditation by the National Commissioner in terms of section 17;
- “**acquire**” means acquire by any means, and includes importing into the Republic;
- “**antique**” means goods representing a previous era in human society and which are collected or desirable because of age, rarity, condition, utility or other unique features; 15
- “**business trust**” means a trust created for the purposes of making a profit through the combination of capital contributed by the beneficiaries of the trust and through the administration or management of the capital by trustees or a person acting on behalf of those trustees, for the benefit of the beneficiaries; 20
- “**certificate**” means a certificate of registration issued and in force under this Act, and includes any amendment thereof;
- “**charity organisation**” means a voluntary organisation established for charitable purposes, that carries on a business in dealing in second-hand goods and that acquires such second-hand goods by way of donation; 25
- “**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);
- “**communication equipment**” means any wireless mobile communication equipment with IMEI capable of using SIM, including cellular telephones, telephones and two-way radios, and includes accessories of such equipment; 30
- “**controlled metal**” means any metal contemplated in Schedule 2;
- “**dealer**” means a person who carries on a business of dealing in second-hand goods, and includes a scrap metal dealer and a pawnbroker; 35
- “**dealers’ association**” means an association of dealers formed in order to represent the interests of dealers;
- “**deal in**” includes acquire and dispose of;
- “**Designated Police Officer**” means any police official to whom the National Commissioner delegates any function in terms of section 38(2); 40
- “**dispose of**” means dispose of by any means, and includes exporting out of the Republic;
- “**goods**” means any of the goods specified in Schedule 1, but does not include firearms or ammunition as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000) or clothing; 45
- “**household and office equipment**” includes communication equipment, electric and electronic equipment and appliances, electronic software, furniture, gardening equipment, tools, books, valuables, clothing and works of art;
- “**IMEI**” means the International Mobile Equipment Identity that uniquely identifies mobile communication equipment; 50

either personally or through an agent approved by the National Commissioner in writing.

(b) For the period pending the appointment of such executor, curator, administrator, trustee or liquidator, the person managing the affairs of the dealer concerned must, for the purposes of this subsection, be regarded as being such a dealer's executor, curator, administrator, trustee or liquidator, as the case may be. 5

### Temporary registration

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

(a) for such period as may be prescribed; and 10

(b) subject to prescribed conditions.

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

### Disqualification

14. (1) A person is disqualified from being registered as a dealer if such person— 15

(a) 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; 20

(b) has in the preceding 10 years been convicted of an offence in terms of this Act or the previous Act, irrespective of the sentence imposed, and was within five years after the conviction again convicted of an offence in terms of any of the said Acts and sentenced to a fine exceeding R1 000; 25

(c) is an unrehabilitated insolvent;

(d) is under 18 years;

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

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

(2) A company, corporation, partnership or trust may not be registered if a person who is disqualified to hold a certificate in terms of subsection (1)(a), (b), (c), (d), or (f)— 30

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

(b) is a partner in that partnership; or

(c) is a beneficiary under that trust.

(3) For the purposes of subsection (1)(a) and (b), "preceding" means preceding the date of the application in question. 35

### Display and maintenance of certificates

15. Where a certificate has been issued in terms of this Act, the original certificate must be—

(a) displayed in a prominent place clearly visible to the public on the premises for which such certificate has been issued; and 40

(b) maintained in such a state that it can be produced undamaged and in a legible condition.

## CHAPTER 3

### ACCREDITATION

45

#### Functions of accredited dealers' associations

16. An accredited dealers' association must—

(a) establish its members in different categories of dealers taking into account the classes of second-hand goods that the members are dealing in;

- (b) establish and maintain minimum legal and ethical standards with regard to its members, and may establish different standards with regard to the different categories of dealers, which may not be of a lower standard than is required under this Act;
- (c) inspect any business practice, registers, stock and business premises of its members; 5
- (d) make recommendations to the National Commissioner in support of applications for registration;
- (e) assist its members with research and development regarding matters of interest; and 10
- (f) advise the National Commissioner, when requested to do so by the National Commissioner, on industry standards and technological developments in the industry which may affect the application of this Act.

### Accreditation

17. (1) The National Commissioner may accredit a dealers' association in the prescribed manner. 15

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

- (3) These criteria must, amongst other things, include criteria relating to— 20
  - (a) trustworthiness and integrity;
  - (b) capacity to perform functions in terms of this Act; and
  - (c) capacity to advance the purposes of this Act.

### Refusal to accredit

18. (1) The National Commissioner must refuse to accredit a dealers' association if the dealers' association concerned has not complied with all the requirements for accreditation. 25

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

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

(3) The National Commissioner must notify the dealers' association in writing of any decision taken under this section and state the reasons for and the date on which the decision takes effect in such notice. 35

### Cancellation of accreditation

19. (1) The National Commissioner may cancel an accreditation if there is non-compliance by the dealers' association concerned with any criterion for accreditation. 40

(2) The National Commissioner must, before cancelling an accreditation—

- (a) give the dealers' association 30 days' notice in writing to submit written representations as to why the National Commissioner should not cancel accreditation; and 45
- (b) duly consider 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 50

20. (1) Every accredited association must—

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

(2) Section 28 applies with the necessary changes in respect of an association. 55

## CHAPTER 4

## DEALERS

**Records by dealers**

~~21. (1) Unless otherwise provided in this Act, a dealer must keep a register in the prescribed form and record in the register the prescribed particulars regarding every acquisition or disposal of second hand goods.~~ 5

~~(2) The particulars must at least include—~~

~~(a) particulars in respect of the identity of the person from whom the second hand goods are acquired, including—~~

~~(i) the person's full names, contact address and contact telephone number;~~ 10

~~(ii) the manner in which the person's identity was verified; and~~

~~(iii) the person's identity number.~~

~~(b) a description of the second hand goods and serial number or distinguishing mark or feature of the second hand goods;~~ 15

~~(c) the purchase price paid by the dealer;~~

~~(d) the number assigned to the second hand goods by the dealer;~~

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

~~(f) the date and time of the transaction, the date on which the second hand goods were sold or an account of how and when the second hand goods were otherwise disposed of.~~ 20

~~(3) If the certificate of registration in question is issued with a condition which requires separate registers, such separate registers must be kept in respect of the acquisition and disposal of different classes of second hand goods.~~ 25

~~(4) A person acquiring second hand goods from, or disposing of goods to, a dealer, must furnish such dealer with his or her full name, physical address and an original identity document or passport as proof of his or her identity.~~

~~(5) A dealer must obtain and keep a copy of the identity document or passport contemplated in subsection (4).~~ 30

~~(6) A dealer must retain a register contemplated in subsection (1) and copies of the documents contemplated in subsection (4) for a period of not less than five years, calculated from the date of the relevant transaction.~~

~~(7) Every entry in a register in respect of an acquisition or disposal of second hand goods must be made contemporaneously with the acquisition or disposal in question.~~ 35

**False information and stolen goods**

~~22. (1) If a dealer suspects, or on reasonable grounds should suspect, that—~~

~~(a) any name, address or document furnished to the dealer is false;~~

~~(b) goods or goods for pawn, as the case may be, offered to such a dealer are stolen goods; or~~ 40

~~(c) the appearance or aspects of an item offered to such dealer has been tampered with or there was an attempt to alter the appearance or aspects thereof in order to conceal the identity of the item,~~

~~such dealer must immediately report the matter to a police official on duty at the police station in whose area the dealer carries on business.~~ 45

~~(2) Upon receipt of a report referred to in subsection (1), the police official involved must take down the report in the prescribed manner and immediately provide the person who made the report with the prescribed acknowledgement of receipt.~~

~~(3) A person required to make a report in terms of subsection (1) concerning a suspicion that any other person intends to commit or has committed an offence in terms of this Act, may not continue with and carry out any transaction to which such a suspicion relates.~~ 50

~~(4) The police official taking down a report contemplated in subsection (2), must immediately provide the designated police officer with a copy of such report, together~~

~~(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.~~

~~(4) No person may—~~

~~(a) have in his or her possession any apparatus which can be used for the recycling of any controlled metal or any article or substance containing any controlled metal, unless—~~ 5

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

~~(ii) in the case of precious metals, such a person is authorised to possess and recycle precious metals under the Precious Metals Act, 2005 (Act No. 37 of 2005), or any other applicable legislation;~~ 10

~~(b) acquire or dispose of any cable consisting of controlled metal of which the cover has been burnt, unless the seller thereof is able to provide a reasonable explanation for the burnt cover, and only after the matter has been reported to a police official in the manner contemplated in section 22(1)(a); or~~ 15

~~(c) be in possession of any cable consisting of controlled metal of which the cover has been burnt, unless such person is able to provide a reasonable explanation for the burnt cover.~~

~~(5) If a recycler suspects, or on reasonable grounds should suspect, that the appearance or aspects of any scrap metal offered to him or her has been tampered with or there was an attempt to alter the appearance or aspects thereof in order to conceal the identity of the scrap metal, such recycler must make a report contemplated in section 22(1)(c) which applies with the changes required by the context.~~ 20

## CHAPTER 7

### COMMUNICATION EQUIPMENT

25

#### Communication equipment records

~~26. (1) Subject to section 21 and any other applicable law, a dealer dealing in second-hand communication equipment must also record in the prescribed register the particulars regarding every acquisition or disposal of communication equipment contemplated in subsection (2).~~ 30

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

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

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

~~(c) any other distinguishing mark or feature, including any serial number.~~ 35

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

~~(a) full name;~~

~~(b) physical address; and~~

~~(c) original identity document or passport as proof of his or her identity.~~ 40

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

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

## CHAPTER 8

45

### POWERS OF POLICE OFFICIAL

#### Identification by police official

~~27. A police official, prior to exercising any power in terms of this Chapter, must identify himself or herself to the dealer, owner, employee or person in charge of the premises in question, and must produce his or her appointment certificate issued by the National Commissioner.~~ 50



~~(5) A police official may without a warrant enter upon any premises and search for, seize and remove anything contemplated 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 in the manner contemplated in Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which applies with the changes required by the context.~~

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

### **Warrant**

~~30. (1) A warrant to enter, search, seize and seal off premises must be issued by a magistrate or a judge of the High Court who has jurisdiction in the area in which the premises in question are situated, if it appears from information on oath or affirmation that there are reasonable grounds to believe that a provision of this Act has been or is being contravened.~~

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

~~(a) the premises which may be entered and which of the acts mentioned in section 29(1) may be performed by the police official;~~

~~(b) the period for which the premises may be sealed off for purposes of section 29(1)(f), which may not exceed seven days; and~~

~~(c) whether the warrant authorises 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 other 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**

~~31. (1) The Minister may by notice in the *Gazette*, either generally or subject to such conditions as may be specified in the notice, extend the powers contemplated in this Chapter to any person employed by a public entity contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), or any other statutory body if that person is a peace officer contemplated in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).~~

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

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

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

## **CHAPTER 9**

### **GENERAL PROVISIONS**

#### **Offences and penalties**

~~32. (1) A person who—~~

~~(a) fails to comply with section 2(1);~~

~~(b) fails to apply for registration of all premises in terms of section 3(2);~~

- ~~(e) furnishes false information in support of an application in terms of section 4;~~  
~~(d) furnishes false information in support of an application in terms of section 5;~~  
~~(e) contravenes or fails to comply with the prescribed certificate or the conditions specified on such prescribed certificate by—~~  
~~(i) dealing in classes of goods other than those specified on the certificate of registration; 5~~  
~~(ii) conducting business from premises other than those specified on the certificate of registration; or~~  
~~(iii) conducting business in a manner other than specified on the certificate of registration; 10~~  
~~(f) contravenes or fails to comply with section 8(1) or (4);~~  
~~(g) contravenes or fails to comply with section 10(2) or (6);~~  
~~(h) fails to renew registration in terms of section 11(1) and who continues to conduct the business of a dealer;~~  
~~(i) fails to surrender or transfers a certificate other than in the manner prescribed in section 12; 15~~  
~~(j) contravenes or fails to comply with section 15;~~  
~~(k) contravenes or fails to comply with section 21(1), (3), (4), (5), (6), or (7);~~  
~~(l) contravenes or fails to comply with section 22(1) or (3);~~  
~~(m) contravenes or fails to comply with section 23; 20~~  
~~(n) contravenes or fails to comply with section 24(1), (3), (4) or (5);~~  
~~(o) contravenes or fails to comply with section 25(1), (4) or (5);~~  
~~(p) contravenes or fails to comply with section 26(1), (3), (4) or (5);~~  
~~(q) as a dealer contravenes or fails to comply with section 28;~~  
~~(r) contravenes or fails to comply with section 37; or 25~~  
~~(s) contravenes or fails to comply with section 43(1), (2) or (3);~~

is guilty of an offence.

(2) Any person convicted of a contravention of or a failure to comply with any section mentioned in Column 1 of Schedule 3, may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Schedule opposite the number of that section, or to both a fine and such imprisonment. 30

(3) A court may 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 30 days or both a fine and such imprisonment for each day on which such contravention continued; 35~~  
~~(b) suspend or cancel any exemption granted in terms of this Act;~~  
~~(c) suspend or cancel any registration; and~~  
~~(d) order that the second-hand goods that formed the subject of the charge against that person, be forfeited to the State. 40~~

### Appeals

~~33. (1) A dealer who is aggrieved by any decision taken by the National Commissioner in terms of this Act may, in the prescribed manner, appeal to the Minister against that decision.~~

- ~~(2) The Minister may— 45~~  
~~(a) confirm, set aside or amend the decision taken by the National Commissioner;~~  
~~or~~  
~~(b) make such order with regard thereto as may be fair and practicable.~~

### Lodging of applications and notices

~~34. An application or notice contemplated in this Act must be lodged with the Designated Police Officer in whose station precinct the dealer, as the case may be, carries on business or stores any second-hand goods or intends to carry on business or intends to store any second-hand goods. 50~~

**SCHEDULE 1**  
(Section 1)

**GOODS**

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

**SCHEDULE 2**  
(Section 1)

25

**CONTROLLED METALS**

Copper, aluminium, zinc, chrome, lead, white metal, nickel, tungsten, tin, ferrovanadium, ferrosilicon, ferrochrome, brass, bronze, cobalt and precious metals as defined in the Precious Metals Act, 2005 (Act No. 27 of 2005), or any article consisting wholly or principally of any of those metals.	30
--	----

**SCHEDULE 3**  
**OFFENCES AND PENALTIES**

*(Section 32)*

Section	Maximum period of imprisonment	
2(1)	10 years	5
3(2)	10 years	
4	10 years	
5	10 years	
8(1) or (4)	Three years	10
10(2) or (6)	Three years	
11	Three years	
12	Three years	
15	Three years	
21(1)	10 years	15
21(3), (4), (5), (6) or (7)	Five years	
22(1) or (3)	10 years	
23	10 years	
24(1)	10 years	
24(3), (4) or (5)	Five years	20
25(1), (4) or (5)	10 years	
26(1), (3) or (5)	10 years	
28	10 years	
37	Three years	
43(1), (2) or (3)	Three years	25

**SCHEDULE 4**

**LAWS REPEALED**

*(Section 44)*

No. and year	Short title	Extent of repeal	
Act No. 23 of 1955	Second-hand Goods Act, 1955	The whole	30
Act No. 50 of 1956	General Law Amendment Act, 1956	Section 21	
Act No. 68 of 1957	General Law Amendment Act, 1957	Sections 43 and 44	
Act No. 18 of 1978	Second-hand Goods Amendment Act, 1978	The whole	35
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdictions of Courts Act, 1996	Section 7	