



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 526 Cape Town

16 April 2009

No. 32136

THE PRESIDENCY

No. 425

16 April 2009

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

No. 73 of 2008: National Conventional Arms Control Amendment Act, 2008.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 14 April 2009.)

ACT

To amend the National Conventional Arms Control Act, 2002, so as to alter certain definitions and to insert others; to ensure proper compliance and accountability in trade and possession in controlled items; to expand the functions of the National Conventional Arms Control Committee relating to the regulation of assistance or service in a country of armed conflict; to provide for matters connected with the work and conduct of the Committee and its secretariat; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 41 of 2002

1. Section 1 of the National Conventional Arms Control Act, 2002 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion before the definition of “**brokering services**” of the following definition:
- “**‘armed conflict’** means armed conflict as defined in the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act;”;
- (b) by the substitution for the definition of “**brokering services**” of the following definition:
- “**‘brokering services’** means—
- (a) acting as an agent in negotiating or arranging a contract, purchase, sale or transfer of **[conventional arms]** controlled items for a commission, advantage or cause, whether financially or otherwise;
- (b) acting as an agent in negotiating or arranging a contract for the provision of services for a commission, advantage or cause, whether financially or otherwise;
- (c) facilitating the transfer of documentation, payment, transportation or freight forwarding, or any combination of the aforementioned, in respect of any transaction relating to buying, selling or transfer of **[conventional arms]** controlled items; and

- (d) acting as intermediary between any manufacturer or **[supplier]** provider of **[conventional arms or provider of services]** controlled items, and any buyer or recipient thereof;”;
- (c) by the substitution for the definition of **“competent authority”** of the following definition: 5
- “**‘competent authority’** means **[the Minister, the Chairperson of the Committee or]** the Committee, or any subcommittee to which, or any member of the Committee, a subcommittee or the secretariat, or any inspector of the Inspectorate, to whom, a power has been delegated or a duty has been assigned in terms of section 11;”;
- (d) by the substitution for the definition of **“contracting”** of the following definition: 10
- “**‘contracting’** means the entering into a commitment by a person to engage in trade in **[conventional arms]** controlled items, whether it is done in exchange for currency or any other commodity or to advance a cause;”;
- (e) by the deletion of the definition of **“conventional arms”**;
- (f) by the insertion after the definition of **“contracting”** of the following definition: 15
- “**‘controlled items’** means controlled items specified in a notice published by the Committee in the *Gazette* in terms of section 27(3);”;
- (g) by the substitution for the definition of **“convey”** of the following definition: 20
- “**‘convey’**, in relation to **[conventional arms]** controlled items, means to transport **[conventional arms]** controlled items through or over the territory of the Republic, its territorial waters or its airspace to any other place or destination outside the Republic, whether or not such **[conventional arms]** controlled items are off-loaded, and “conveyance” must be interpreted accordingly;”;
- (h) by the insertion after the definition of **“Department”** of the following definition: 30
- “**‘domestic transfer’** means a transfer of ownership of controlled items from one person to another within the Republic;”;
- (i) by the deletion of the definition of **“dual-use goods”**;
- (j) by the substitution for the definition of **“export”** of the following definition: 35
- “**‘export’**, in relation to **[conventional arms]** controlled items, means the transfer of **[conventional arms]** controlled items from the Republic to any place outside the Republic by any person, and “exportation” must be interpreted accordingly;”;
- (k) by the substitution for the definition of **“import”** of the following definition: 40
- “**‘import’**, in relation to **[conventional arms]** controlled items, means to bring **[conventional arms]** these items into any part of the Republic, irrespective of whether it is done in exchange for currency or any other commodity, and “importation” must be interpreted accordingly;”;
- (l) by the substitution for the definition of **“manufacture”** of the following definition: 45
- “**‘manufacture’**, in relation to **[conventional arms]** controlled items, includes the design, development, production and assembly thereof, and “manufacturing” must be interpreted accordingly;”;
- (m) by the substitution for the definition of **“marketing”** of the following definition: 50
- “**‘marketing’**, in relation to **[conventional arms]** controlled items, includes the promotion of **[conventional arms]** controlled items, and any negotiations, offer, tender advertising, shows, exhibitions or giving of information relating to **[conventional arms]** controlled items, and “market” when used as a verb must be interpreted accordingly;”;

- (n) by the substitution for the definition of “**permit**” of the following definition:
 “ ‘**permit**’ means [an armaments development and manufacturing permit, a marketing permit, a contracting permit, an export permit, an import permit, or a conveyance permit authorised in terms of section 14(2)] a permit contemplated in section 14;”;
- (o) by the insertion after the definition of “**prescribe**” of the following definition:
 “ ‘**Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act**’ means the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict, 2006 (Act No. 27 of 2006);”;
- (p) by the deletion of the definition of “**record**”;
- (q) by the substitution for the definition of “**re-export**” of the following definition:
 “ ‘**re-export**’, in relation to [conventional arms] controlled items, means to export imported [conventional arms] controlled items, or to cause [imported conventional arms] these imported items to be exported to any place other than that from which they were originally imported, whether or not it is done in exchange for currency or any other commodity, and “re-exportation” must be interpreted accordingly;”;
- (r) by the substitution for the definition of “**Secretary**” of the following definition:
 “ ‘**Secretary**’ means the Secretary for Defence appointed in terms of section [7B of the Defence Act, 1957 (Act No. 44 of 1957)] 7 of the Defence Act, 2002 (Act No. 42 of 2002);”;
- (s) by the deletion of the definition of “**services**”;
- (t) by the substitution for the definition of “**technology**” of the following definition:
 “ ‘**technology**’ includes any technique, expertise or know-how that can be utilised in the design, development, manufacture, upgrading, refurbishment or maintenance of [conventional arms] controlled items;”;
- (u) by the substitution for the definition of “**trade in conventional arms**” of the following definition:
 “ ‘**trade in [conventional arms] controlled items**’ includes—
 (a) any activity relating to the manufacturing, marketing, contracting, exportation, re-exportation, importation or conveyance of [conventional arms] controlled items;
 (b) [the renderings of brokering services] domestic transfers such as sale, takeover, letting, lending, donation or transfer within the Republic; and
 (c) the rendering of services.”.

Amendment of section 3 of Act 41 of 2002

2. Section 3 of the principal Act is hereby amended by the substitution for paragraphs (a), (b), (c) and (d) of the following paragraphs, respectively:

- “(a) implement Government policy and applicable legislation regarding trade in [conventional arms in] or possession of controlled items, prohibition of mercenary activity and rendering of certain assistance or services in a country of armed conflict in order to establish, apply and ensure a legitimate, effective and transparent control process in and for the Republic, which—
 (i) conforms to international law and the guiding principles and criteria contained in section 15 and in section 9 of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act; and
 (ii) is applicable to the control and regulation of trade in [conventional arms] or possession of controlled items, and to the regulation of the rendering of certain assistance or services in a country of armed conflict;”

- (b) protect the economic and national security interests of the Republic by ensuring adequate control of trade in **[conventional arms]** controlled items and rendering of certain assistance or services in a country of armed conflict in accordance with the policy referred to in paragraph (a); **[and]**
- (c) foster national and international confidence in the Committee's procedures for control over trade in **[conventional arms]** controlled items and rendering of certain assistance or services in a country of armed conflict; and
- (d) fulfil any obligation imposed under the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act."

Amendment of section 4 of Act 41 of 2002

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3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) The Committee must—

- (a) establish processes and structures necessary for effective control of trade in **[conventional arms]** and possession of controlled items; 15
- (aA) establish processes and structures necessary for effective regulation of the rendering of certain assistance or services in a country of armed conflict in accordance with section 3 of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act; 20
- (b) establish guidelines, structures and processes necessary for the scrutiny and assessment of an application for the issue of a permit under this Act and the Prohibition of Mercenary Activities and Regulation of Rendering of Certain Activities in Country of Armed Conflict Act; 25
- (c) where necessary, liaise with relevant Government agencies regarding the enforcement of this Act and the Prohibition of Mercenary Activities and Regulation of Rendering of Certain Activities in Country of Armed Conflict Act;
- (d) authorise or refuse the issue of any permit contemplated in section 14; 30
- (dA) grant or refuse an application for authorisation as contemplated in section 7 of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act;
- (e) ensure that the conditions under which a permit is issued, are complied with; 35
- (f) keep a register in the prescribed form of persons involved in trade in **[conventional arms]** and possession of controlled items;
- (g) keep a register of every permit issued; and
- (h) issue reports as specified in section 23." 40

- (b) by the substitution for subsection (2) of the following subsection:

"(2) The Committee may—

- (a) inside or outside the Republic, conduct any investigation into, inspection of and research in connection with any trade in **[conventional arms]** and possession of controlled items; 45
- (b) consult with the Minister with regard to any aspect that falls within the powers of the Minister in terms of this Act;
- (c) evaluate and comment on trade in **[conventional arms]** and possession of controlled items;
- (d) make recommendations to the Cabinet concerning the control of trade in **[conventional arms]** and possession of controlled items; and 50
- (e) direct any subcommittee to make information which it has in its possession available to the Committee, the Cabinet, Parliament or any committee of Parliament." 55