

ANNEXURE 'A'**COMMENTS ON THE NATIONAL CONVENTIONAL ARMS CONTROL
AMENDMENT BILL****1. GENERAL COMMENTS**

- 1.1 The introduction of the generic term "controlled items" is welcomed, as it simplifies the wording of the Bill. The necessary differentiation between different classes of controlled items must be made in the publication of lists of controlled items in the *Government Gazette*, in order to allow for different levels of control of these items.
- 1.2 A new concept in the Bill is the control of the possession of controlled items. However, this is not consequently introduced, as in a number of instances (addressed below) reference is only made to "trade in controlled items", instead of "possession of or trade in controlled items". Is the intention to also control the possession of controlled items by the SANDF and the SAPS.
- 1.3 The concept of "programme approval" providing for multiple export and import permits is a positive development that will remove an administrative burden from both Directorate Conventional Arms Control and the industry, and will expedite transfers.

2. SPECIFIC COMMENTS**Amendment of section 1**

- 2.1 In the definition of "brokering services" the term "supplier" is substituted with "provider". What is the reason for this? We are of the view that there should be a definition for "provider".
- 2.2 In the definition of "trade" the phrase "the rendering of brokering services" is replaced by "domestic transfers". We are of the view that brokering services should still form part of the definition of "trade".
- 2.3 We are of the view that "destroyed / destruction" should be included in the definition of "trade".
- 2.4 It is not clear whether transfer refers only to internal (domestic) transfers, or also includes exports/imports. Does transfer always refer to a transfer of ownership, or not? We therefore suggest that "transfer" should be defined as well.

Amendment of section 3

- 2.5 We are uncertain of the specific meaning of "certain assistance or services".

Amendment of section 4

- 2.6 We are of the view that "possession" should be added to Section 4 (1) (a) of the bill to read:
"...effective control of trade in and possession of controlled items".

- 2.7 Again the term "possession" should also be added to Section 4(1) (f) to read: "keep a register in the prescribed form of persons involved in trade in or in possession of controlled items".
- 2.8 Furthermore, in Sections 4(2)(a), 4(2)(c) and 4(2)(d) we suggest that : "possession" be added to read: "trade in and possession of".
- 2.9 In Sections 4(4) and 4(5) the words "imported, exported, conveyed, traded" should be replaced only by "traded", as the terms "imported, exported, conveyed" are included in the definition of "trade".

Insertion of section 7A

- 2.10 We suggest that the Departments of Minerals and Energy as well as Science and Technology be included as part of the scrutiny committee.

Amendment of section 9

- 2.11 Section 9(2)(a) should be amended to read: "trade in and possession of".

Substitution of section 13

- 2.12 In Section 13(1) reference is separately made to the rendering of services as referred to in section 27(3)(d), while the rendering of services is included in the definition of "trade in controlled items".
- 2.13 In section 13(2)(b)(i) reference to the Explosives Act, 1956 (Act No. 26 of 1956) should be replaced by Explosives Act, 2003 (Act No. 15 of 2003).
- 2.14 In section 13(2)(c), the last sentence of the Section should read: "under Section 13(2) of that Act".

Amendment of section 14

- 2.15 In Section 14(4)(a) the words "exported, re-exported, marketed, imported, conveyed, manufactured, traded or brokered" should be replaced by the term "traded", as all the other terms are already included in the definition of "trade".
- 2.16 We are of the view that Section 14(4)(b) makes difficult reading and should thus be rephrased and further, terms already included in the definition of "trade" should be omitted.

Amendment of section 17

- 2.17 We suggest that a Pro-Forma End-user Certificate be provided to a competent authority issuing end user certificates thus assist in standardising the process. This is being done by many countries.
- 2.18 In Section 17(4) it is stated in relation to imported controlled items, that "...the South African Government may issue an end-user certificate ...". This statement must be qualified, depending whether the imported items are destined for government entities, private companies or foreign end-users. We are therefore of the view that guidelines should be provided for in the regulations.

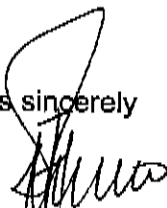
Amendment of section 22

- 2.19 The phrase "any person who trades in controlled items" should read "any person who trades in or possesses controlled items".

Amendment of section 24

- 2.20 In conclusion, Section 24(3) provides that the Secretary must decide on the disposal of goods. Why the secretary and not somebody or an entity in the arms control structure, e.g. the NCACC, its chairperson or the Scrutiny Committee?

Yours sincerely



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