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POLICY WITH RESPECT TO THE COLLECTABILITY OF RESTRICTED AND PROHIBITED FIREARMS

1. Introduction

This policy has been prepared to address the requirements of section 17 (1A) of the Firearms Control Act of 2000 (as amended) (the "**FCA**"), which reads "(1A) *Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section.*"

2. Summary

2.1 Private collectors are permitted to licence collectible firearms in terms of section 17 of the FCA, subject to certain qualifications.

2.2 Section 17 (1) (a) reads –

*"(a) A firearm which may be possessed in a private collection is a firearm approved for collection by an accredited collector's association, based upon such historical, heritage, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value determined by the association [of which the private collector is a member in good standing and where such firearm has been demonstrated to be part of the said private collector's approved field of interest or theme or both]."*¹

2.3 Furthermore, private collectors in category A or B (as applicable) may collect certain prohibited and/or restricted firearms subject to certain conditions. This is referred to in section 17 (1A) –

*"(1A) *Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section.*"*

2.4 The phrase "*as prescribed*" is used to denote that there are conditions attached to this provision which are described in the FCA regulations (the "**Regulations**"). In this case the reference is to Regulations 5 and 15. The origins, intent and interpretation of regulation 15 is set out in the next sections, but following the amendments promulgated in March 2012, may be summarised as follows –

¹ The underlined wording in square parentheses appears in the proposed FCA amendment and is used for completeness. The current wording ends after the underlined words "*determined by the association*".

Restricted and prohibited firearms which may be licenced by private collectors in category A or B (as applicable) are those which –

- (a) *comply with the requirements of section 17 (1) (a) as described above;*
- (b) *were licenced as collectible items under the previous Arms and Ammunition Act of 1969;*
or
- (c) *are of significant historical value or importance with attributes described under section 17 (1) (a) (typically at least 50 years old); or*
- (d) *are of significant and demonstrable emerging historical importance with attributes described under section 17 (1) (a) (typically at least 10 years out of production); or*
- (e) *are rare, exceptional, or one off items which may not comply to the letter of (c) and (d) above, but which could however be deemed collectible under certain circumstances as listed in Regulation 15.*

2.5 What is clear from the above is that the agreement reached as contained in the amendments focuses on (a) firearms of historical value or importance or (b) firearms of clearly demonstrable emerging historical value or importance.²

2.6 Modern, current production and readily available restricted or prohibited firearms were in general not deemed to be or accepted as, collectible and are not included in the intent of these provisions.

3. Interpretation of Regulation 15: General Considerations

3.1 What is hopefully clear from the introduction and Annexure A is that the private collection of restricted and prohibited firearms is an extremely sensitive issue with our stakeholders and it was only by virtue of the fact that we were able to demonstrate that collectors play a vital part in the conservation³ of the "national estate"⁴ and that we have a solid track record in terms of responsible and incident free firearm ownership, that we were able to re-instate our dispensation in this area.⁵

3.2 It should be noted that this principle relating to the conservation of the national estate has been accepted by collectors, by NAACCSA and our stakeholders.⁶

² The background to the provisions in the amendments is included in Annexure A and members are encouraged to refer to this Annexure for an appreciation of the context within which Regulation 15 should be interpreted.

³ Note however that this does not mean that collecting is limited only to those items which are deserving of conservation.

⁴ Note that the "national estate" is not limited to items which are of South African origin or which have a peculiarly South African connection.

⁵ None of this means that collecting firearms is limited only to those items which are deserving of conservation or which form part of the national estate. See the discussion a little further along on page 4 in this regard which explains this in greater detail.

⁶ It is also for these reasons that collectors need to be sensitive to the preservation of South Africa's national estate insofar as it relates to firearms and that any exports of firearms which are or could possibly be considered as forming part of the

- 3.3 In this regard it is useful to consider the definition of the term "national estate" as reflected in section 3 of the National Heritage Resources Act 25 of 1999. The wording of that section references "*those Heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations*".
- 3.4 In that context the definition goes on to say that the national estate may⁷ include, amongst other things⁸ -
- (a) objects to which oral traditions are attached or which are associated with living heritage;
 - (b) military objects;
 - (c) objects of scientific or technological interest;
 - (d) an object which has cultural significance or other special value because of –
 - (i) its importance in the community, or pattern of South Africa's history;
 - (ii) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
 - (iii) its potential to yield information that will contribute to an understanding of South Africa's cultural heritage;
 - (iv) its importance in demonstrating the principal characteristics of a particular class of South Africa's cultural objects;
 - (v) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (vi) its importance in demonstrating a high degree of creative or technical achievement at a particular period; or
 - (vii) its strong or special association with a particular community or cultural group for social or cultural reasons.
- 3.5 Regulation 15 should therefore be interpreted against this background i.e. items of historical importance, with certain rare exceptions that have similar demonstrable value.
- 3.6 It is not suggested that only items which would fall within that definition of "national estate" may be brought under Regulation 15, the following needs to be borne in mind -

national estate should only occur in accordance with the South African Heritage Resources Agency's guidelines in that regard.

⁷ Note, not "will".

⁸ Included here are only those elements of section 3 of the National Heritage Resources Act 25 of 1999 which could be considered to reasonably be applicable in the context of firearms. The language that follows is therefore a shortened version of section 3. Regard should be had to the whole of section 3 if one wishes to fully understand the context.

- (a) as a matter of principle, if the firearm in question does not readily lend itself to being considered as being "of cultural significance or other special value for the present community and for future generations", then axiomatically a significantly more cautious approach needs to be taken to considering whether that firearm can be said to be properly brought within Regulation 15 or not;
- (b) in particular, one needs to consider whether the item may be considered to be of emerging cultural significance or special value.⁹ If the firearm cannot be considered to be of emerging cultural significance or special value, then serious questions must be raised as to whether it is capable of being brought within the ambit of Regulation 15. The contrary is also true inasmuch as a firearm that does readily lend itself to being considered as being of such cultural significance or special value will usually be easily found to fall within the framework of Regulation 15.

- 3.7 As a general rule therefore, a somewhat conservative approach needs to be taken in this context. As previously stated, current production, plentiful and inexpensive restricted or prohibited firearms cannot qualify in this context.
- 3.8 It is unavoidable that in assessing a certificate of collectability applications by members a certain degree of value judgement needs to be made by the individuals or committees considering such applications. However, in making such value judgements and reaching conclusions, what must be borne in mind is not only the interests and aspirations of the individual member but also the broader background against which collectors operate and the need to take a more conservative view (rather than a liberal one).
- 3.9 This is necessary in order to ensure the ability of NAACCSA to justify the continued collection of restricted and prohibited firearms in an environment where there is considerable political sensitivity in this regard.¹⁰ If it is seen that collectors are not following the "spirit" behind the intended legislation, it is very likely that the collection of restricted and prohibited items will be placed at risk.
- 3.10 At all times, when weighing certificate of collectability applications, this should be borne in mind first and foremost. While there is an obligation on each association to assist and promote the interests of every individual collector, it is the ability to continue collecting as a whole that is of primary importance. In circumstances of doubt, the particular certificate of collectability should rather be escalated to NAACCSA level for consideration in order to ensure consistency of approach at a national level across all associations.

⁹ In particular, see further along in relation to the discussion pertaining to sub- Regulation 15 (b) (iii).

¹⁰ It should also be noted that it is NAACCSA's mandate to promote the conservation of firearms and which mandate is accepted by NAACCSA's members as such.

4. Interpretation of Regulation 15: Specific Considerations

4.1 The requirements of Regulation 15¹¹ as reflected in the NAACCSA Certificate of Collectability template are considered and elaborated on as follows:

4.1.1 sub- Regulation 15 (b): A prohibited firearm and device contemplated in section 4 of the Act or a restricted firearm which is not less than 50 years old, calculated from the date of its manufacture, together with an attribute of its collectability regarding its historical, technological, scientific, heritage, educational, cultural, commemorative, investment, rarity, thematic or artistic value or any other aspect, as may be deemed appropriate by the accredited association and agreed to by the Registrar.

Note:

This regulation covers known and acknowledged firearms of historical importance. Examples might include the Vickers machine gun or MG-15 from World War I, the German World War II MP-40 and the like, particularly if they come with known provenance.

However, in order to qualify under this regulation, the specific firearm (as opposed to the type, class or model of firearm) in question must be shown to have been manufactured not less than 50 years ago. If it cannot be shown that the specific firearm was manufactured not less than 50 years ago, the firearm cannot be approved under sub- Regulation 15 (b). In that instance, one needs to consider whether the firearm is capable of being approved under the remaining principles discussed further below.

In order to be capable of being approved, the proof that the firearm was manufactured not less than 50 years ago need not be absolute; it should rather be approached based upon a principle of a "balance of probabilities" in the event of there being any doubt as to when the firearm was manufactured and as to whether or not it was manufactured not less than 50 years ago.¹²

4.1.2 Proviso to sub- Regulation 15 (b): Provided that if the prohibited firearm or device or restricted firearm does not readily conform to the said combination of age and attribute of collectability, one or more of the following further considerations may apply.

Note:

The effect of the proviso is that if the firearm cannot be brought within the "not less than 50 years" rule referred to above, that it may be brought within "one or more" of subparagraphs (i) to (x) to sub- Regulation 15 (b).

¹¹ Note that the first part of Regulation 15 is not included here as it is a transitional provision that deals with items already licenced as collectible firearms under the Arms and Ammunition Act 75 of 1969.

¹² In this regard, it should be borne in mind that it is in most instances not possible to attribute a specific date to the manufacture of a firearm but rather, at most, a year of manufacture (firearms often bear the year of manufacture stamped upon them) or a period during which the firearm was manufactured.

In this context it is very much a case of "more is better" and the greater the extent to which the member is able to bring a particular firearm within more than one of paragraphs (i) to (x) the more likely it is that the firearm is capable of being reasonably justified as being collectable under Regulation 15.¹³ In this regard, it should also be recognised that Regulation 15 is constructed in such a way that various of the elements overlap with each other. It will also be noted that Regulation 15 of necessity by definition recognises the requirements of section 17 (1) (a) relating to "historical, heritage, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value" attributes.¹⁴

In assessing a certificate of collectability application, the fewer of the elements in paragraphs (i) to (x) that are effectively and properly brought within the ambit of the certificate of collectability, the more weight needs to be placed on the individual elements that are included in the certificate of collectability and the higher the standard of justification required of the member in regard to those individual elements; the greater the extent to which the member is able to cover multiple elements of (i) to (x), the more they may be considered in conjunction with each other in order to create an overall impression of the justification for bringing the firearm within the ambit of Regulation 15.

Only in exceptional circumstances would a single one of the elements contained within subparagraphs (i) to (x) be sufficient to justify the collection of the firearm in question under Regulation 15. In most instances one would look to find a combination of the elements reflected in subparagraphs (i) to (x).

- 4.1.3 sub- Regulation 15 (b) (i): Its production has been discontinued for at least 10 years with the real likelihood of it becoming of collectable interest from a historic, technological, scientific, heritage, educational, cultural, commemorative, investment, rarity, thematic or artistic perspective.

Note:

This sub- Regulation covers known and acknowledged firearms of emerging historical importance. Examples might include models of the original FAL series of rifles as manufactured by Fabrique Nationale d'Herstal and LIW.¹⁵

In order to determine whether a firearm qualifies under this regulation, a two step test needs to be applied:

¹³ It is clear that by virtue of the word "or", in principle any one of the elements would, if sufficiently supported, suffice to bring the firearm within the step in question. However, it is unlikely that any firearm that truly qualifies in terms of the regulation would meet only one of these criteria. What is required is an overall value assessment of the firearm as a whole given the attributes raised by the member in the certificate of collectability. Members should address as many of the value attributes as can be fairly ascribed to the firearm in question.

¹⁴ It also ties in with the proposed amendments to section 17 (1) (a) reading "where such firearm has been demonstrated to be part of the said private collector's approved field of interest or theme or both", in which regard, see page 1.

¹⁵ It would not include for example the items currently still manufactured by DSA and Imbel in Brazil.

- (a) firstly, it must be shown that the type or model of firearm in question has been out of production for at least 10 years¹⁶; **and**¹⁷
- (b) secondly, it must be shown that there is a real likelihood (as opposed to a mere possibility) of it becoming of collectable interest from a historic, technological, scientific, heritage, educational, cultural, commemorative, investment, rarity, thematic **or** artistic perspective.¹⁸

If either one of the steps cannot be adequately shown in the certificate of collectability, then the firearm cannot be approved under this sub- Regulation.

In order to be capable of being approved, the proof that the firearm as a type or model has been out of production for at least 10 years need not be absolute; it should rather be approached based upon a principle of a "balance of probabilities" in the event of there being any doubt as to whether the firearm has been out of production for at least 10 years or not.

It should further be noted that what is required is proof, on a reasonable basis, that the type or model (as opposed to the class¹⁹) has been out of production for at least 10 years.

In relation to the collectability criterion, the words "real likelihood" indicate that the threshold of proof is significantly higher than just a balance of probabilities; the argument put forward by the member as to the collectability and the specific reasons for the collectability, needs to be persuasive. If there is any real doubt as to whether the test has been met, then it should rather be considered that the test has not been met. As such, the firearm will then not be capable of being approved under this sub-Regulation.

For example, the South African LIW licence manufactured version of the FAL rifle (commonly designated "R1") would probably qualify. The "class" of the R1 would be a "battle rifle"²⁰ and as such the class is clearly still in production and will continue to be produced into the foreseeable future. However, the "type" of rifle (the FAL series) is largely out of production, with the exception of the DSA copy made in the United States and the production by Imbel in Brazil. Further the "model" of the rifle (being the LIW manufactured variant²¹) has clearly been out of production for far more than 10 years. Accordingly, even if the rifle did not qualify under the "type" requirement it would still qualify under the "model" requirement. Accordingly, the first step of the test would

¹⁶ For example, an original Russian milled receiver AK-47 (these having been out of production for far more than 10 years now) may qualify, notwithstanding that the AK-47 as a class is still in production.

¹⁷ Note that both (a) and (b) must be met before the firearm is capable of being brought under sub- regulation 15 (b) (i).

¹⁸ The discussion at footnote 13 would have equal application here.

¹⁹ See the discussion to paragraphs further along for an explanation of the distinction between "class" as opposed to "type".

²⁰ Being a semiautomatic or fully automatic rifle designed to fire a full power cartridge, such as the 7.62 x 51 mm cartridge (as opposed to an assault rifle cartridge, such as the 7.62 x 39 mm cartridge).

²¹ Not to mention the various sub variants, such as those that were equipped with optics, those that were accurised, the folding stock models and so forth.

probably be met. As the "R1" series of rifles is clearly of considerable heritage interest in the South African context, a very strong argument could be made out as well bring it within the ambit of the second step of the test. As such the rifle would then qualify under this sub- Regulation as a whole.

4.1.4 sub- Regulation 15 (b) (ii): It is part of a commemorative issuance or limited edition.

Note:

Two separate elements are contemplated here: either that the item is one of "commemorative issuance" or that it is a "limited edition". Both elements contemplate a very limited production run, typically a few hundred items, perhaps a maximum of 1000²². One would certainly not find an item falling within this category available in the general consumer market.

A good example here might be the Colt Bulldog re-issue of the famous Gatling Gun of which a limited number are being built, predominantly for museums and the collector market.²³

4.1.5 sub- Regulation 15 (b) (iii): It will fit in as part of a demonstrable theme of future value²⁴, where a real likelihood of such future value can be sufficiently demonstrated or motivated.

Note:

This particular sub- Regulation was designed specifically to accommodate those firearms which would not yet be considered to be of cultural significance or special value but which may be properly considered to be of emerging cultural significance or special value.²⁵

In order to bring a firearm within this regulation, again, a two-step process needs to be followed:

(a) firstly, the member needs to establish that there is a "theme of demonstrable future value where a real likelihood of such future value can be sufficiently demonstrated or motivated"; and

(b) secondly, that the firearm fits in as part of that theme.

Again, if either one of the steps cannot be adequately shown in the certificate of collectability, then the firearm cannot be approved under this sub- Regulation.

²² This is indicated purely as a guideline and should not be interpreted excessively restrictively.

²³ Although it might be argued that the Bull Dog is manually operated, it would probably be classified as a prohibited firearm.

²⁴ The relevant part of this regulation should actually have read "theme of demonstrable future collectable value" and will probably be corrected to read as such.

²⁵ This ties into the discussion on page 4.

In relation to the first step of the test, the test relates to the theme within which the firearm is to be brought (and, at this stage of the first step, not the firearm itself). In order to meet the requirements for the first step of the test, three things need to be encompassed (although they need to be considered as a whole): (a) a real likelihood (b) of future value (c) that is sufficiently demonstrated.

The words "real likelihood" when coupled with the words "sufficiently demonstrated or motivated" indicate that the threshold of proof is significantly higher than just a balance of probabilities; the argument put forward by the member the theme has "future value" needs to be persuasive. If there is any real doubt as to whether the test has been met, then due weight should be given to the words "sufficiently demonstrated" and "real likelihood" and it should rather be considered that the test has not been met. As such, the firearm will then not be capable of being approved under this sub- Regulation.

Although the words "future value" have not been defined, they need to be considered in the context of the role of collectors in the public space and in particular the discussion under paragraph 2.6 above relating to the purpose of Regulation 15 inasmuch as the intention is to permit the conservation of items forming part of the "national estate".²⁶

In determining whether there is a theme of "future value" one needs to consider both the wording of the theme and the firearms which would reasonably be expected to fall within that theme²⁷. The question that needs to be answered is whether, considering the two together, it can be established to a reasonably persuasive degree (which is to say something more than merely a balance of probabilities) that the theme and the firearms would constitute items that would in the future be considered to be of heritage significance or other special value. In so doing, regard should be had to the principles pertaining to conservation of the national estate as discussed at the beginning of paragraph 2 and the language of section 17 (1) (a) of the FCA where it refers to "historical, heritage, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value". If there is any real doubt in that regard, then in all probability the firearm in question cannot be approved under this sub- Regulation.

If after applying the first step of the test it is found that the theme meets the requirements set out above, then the second step of the test must be applied to the firearm itself to ascertain whether the firearm genuinely falls within that theme²⁸. If so, then the firearm is capable of being approved under this sub- regulation.

²⁶ As such, financial or monetary value would not normally be the primary driver but it may be a secondary driver. By way of further explanation, one would not normally bring a firearm within the ambit of the sub- regulation **merely** by virtue of the fact that the value of the firearm is expected to increase over time; however, a particularly rare or important heritage item would probably naturally be capable of being brought within this sub- regulation; one would expect that the rarity or importance of such item would result in its value increasing significantly over time. However, it is its rarity or importance as a heritage item is the primary driver that enables it to be brought within this regulation; the fact that its rarity or importance as a heritage item will naturally result in a significant increase in value over time is entirely a secondary factor.

²⁷ In considering the latter point, one may also have regard to any firearms that the collector may have already added to his collection under the theme in question.

²⁸ With the result that it can be fairly said that the firearm itself will in future have collectable value.

It should further be noted that any firearm that is sought to be approved under this sub-Regulation will almost of necessity need to be supported by various elements contemplated in the other sub- Regulations. In almost no instance is it conceivable that this sub- Regulation could be asserted on its own in order to achieve an approval for collection of the firearm in question.

- 4.1.6 sub- Regulation 15 (b) (iv): It has proven or generally accepted association with famous or infamous people or events.

Note:

The more famous or infamous the people or events concerned and the stronger the proven association between the firearm in question and such people or events, the more likely it is that the firearm is capable of being regarded as being collectable under this regulation. The converse is equally true.

A good example is the otherwise standard AK-47 which was inscribed and presented to the retired Minister of Foreign Affairs by a well-known Southern African leader.

Another example might be where a specific firearm can be proven to have been carried and used in combat in a well-known and documented historic conflict.

- 4.1.7 sub- Regulation 15 (b) (v): Its current national or international scarcity or rarity based on an acceptable reason:

Note:

This regulation contemplates that there must be "an acceptable reason" for justifying a claim of national or international scarcity or rarity. This often goes hand-in-hand with other criteria.

It should be noted that the regulation refers to either "national" or "international" scarcity or rarity. It is not therefore necessary for the member to show both international and national scarcity or rarity – either one of the elements suffices.

It should also be noted that there is a distinction between "scarcity" and "rarity" and that the two terms are not interchangeable. A review of commonly accepted definitions will reflect that "scarcity" refers to something that is uncommon (or not readily available) given the context of demand while the term "rarity" on the other hand refers to something that is very uncommon. Again, it is sufficient if the member is able to show one or the other.

The member, in preparing his or her certificate of collectability needs to make out a complete and persuasive case as to why he or she contends that the firearm is nationally or internationally scarce or rare. The case made out by the member needs to be considered against available information relating to the type and model of firearm in question.

- 4.1.8 sub- Regulation 15 (b) (vi): Its unusual or unique design, materials or method of manufacture of historic interest.

Note:

In order to be brought within the ambit of this sub- Regulation again a two-step process must be followed:

- (a) firstly, it must be shown that any one of (i) the design, (ii) the materials or (iii) the manufacture were, in the context of their time either unusual or unique; and*
- (b) secondly, it must be shown that such are of historic²⁹ interest.*

The term "historic" is commonly accepted as referring to something that is famous or important in history and will be regarded as so for a long time. As a general rule, items that were a "first" would fall within this sub- regulation; subsequently manufactured items applying the same design, materials or method of manufacture would, in most instances, probably not meet the requirement. Again though, it is a question of an appropriate value judgement being made in the context of this element when weighed together with other elements asserted in respect of the firearm in question.

Also, the element referred to (design, materials or manufacture) should be something substantial and not a relatively minor element relating to the firearm.

A good example of a firearm which would apply a "historic method of manufacture" would be the Sturmgewehr 44 which was probably the first mass production item to be made with a receiver that was practically exclusively formed from stamped metal.³⁰ While there were predecessors to that item, this was the first that was truly mass manufactured in that manner and that was widely available on the battlefield and in that sense it is and remains historic. In that sense also, the design and the materials were unusual and historic. When one combines this with the other elements that are capable of being asserted in relation to that firearm, one ends up with a clear picture of collectability.

In the modern context, by of example, the mere nitriding of a barrel would probably be insufficient to adequately justify bringing the firearm within this element. However, by way of contrast, if one was able to obtain the first military rifle manufactured primarily through 3-D printing, that would clearly qualify as an item of historic interest from the perspective of the "method of manufacture".

- 4.1.9 sub- Regulation 15 (b) (vii): It is a custom or one-off building by a well-known gun maker or gunsmith, with significant value.

Note:

In order to be brought within this regulation, a three step process needs to be applied:

²⁹ Note that the term "historic" is quite different to the term "historical". The former denotes something which is "famous or important in history", whereas the latter simply refers to past events. In other words, what needs to be shown is not only that the design, materials and method of manufacture occurred in the past but also that they were famous.

³⁰ Although it is noted that the firearm would in any event fall within the 50-year rule mentioned above. This particular firearm is chosen simply for illustrative purposes.

- (a) firstly, it must be shown that it is a "custom or one off building";
- (b) secondly, it must be shown that it was done by a "well-known" gun maker or gunsmith; and
- (c) thirdly, it must be of "significant value".

If any one of the foregoing three elements is absent, then the firearm cannot be approved under this sub- Regulation.

In relation to the third element requiring "significant value", what has been done to the firearm must be substantial and embrace the concept of "significant value". Thus, for example, generic modifications or casual engravings of current production firearms would not qualify.

An example of this type of item would be the one off AK-47 derivative built by Phil Morgan for Chris Schulenberg of the Selous Scouts, which amongst a host of other things, could discharge a .22 cartridge out of the folding stock when the rifle was in the process of being ostensibly surrendered.³¹

This sub- Regulation often overlaps with other sub- Regulations, such as for example that relating to replicas. Thus, not only would the original firearm qualify under this sub- Regulation but an identical replica subsequently built by Phil Morgan would likely also qualify not only under this sub- Regulation but also under the sub- Regulation relating to replicas.

Another example would be where a well-known South African gun maker commissioned their gunsmith to build a version of the Colt M4 as a design and evaluation exercise.

4.1.10 sub- Regulation 15 (b) (viii): It is a prototype or part of a limited production run.

Note:

This sub- Regulation embraces two separate components, viz. "prototypes" and items which are "part of a limited production run". Either would qualify under this sub- Regulation. The comments above in relation to limited editions would have application here as well in relation to "limited production run" reference.

By way of an example, and flowing from the example given under the previous sub- Regulation, two prototypes of a "South African M4" were built as a precursor to a production run for the South African market. These prototypes would almost certainly be regarded as of being of national interest or importance.

4.1.11 sub- Regulation 15 (b) (ix): It is a replica of a well-known historical firearm.

Note:

³¹ This item is now located in the South African Special Forces museum.

In order to be brought within the ambit of this sub- Regulation a three step process must be followed:

- (a) firstly, it must be shown that the firearm is a "replica";*
- (b) secondly, it must be shown that the firearm being replicated (or copied) is "well-known"; and*
- (c) thirdly, it must be shown that the well-known firearm being replicated (or copied) is a "historical firearm".*

If any one of the foregoing three elements is absent, then the firearm cannot be approved under this sub- Regulation.

In this context "replica" means a reproduction or re-creation of a historical firearm specifically produced for the collector's, museum, or historical re-enactment and movie making market. Items that are derivatives of other items and which are commonly and readily available would usually not qualify. It can sometimes be difficult to draw a distinction between a replica and something that is not a replica. Distinguishing features of a replica would include:

- (a) they are not commonly available, usually being produced in limited quantities targeted specifically at the markets referred to above;*
- (b) they are usually expensive relative to other items that are readily available but are comparatively cheap relative to the original item that they set out to replicate;*
- (c) they are usually copies of items that are extremely difficult, if not utterly impossible, to obtain;*
- (d) they usually set out to replicate, as nearly as is possible, the appearances of the original item in question (they may not fully replicate the action of the original item where the original item is a prohibited item);*
- (e) they are usually built in the same calibre and for the same cartridge as the original item but sometimes, where the original cartridge is extremely rare or unavailable, they may be built to chamber a currently available modern cartridge which reasonably closely replicates the ballistic characteristics of the original cartridge;*
- (f) they are usually prized items;*
- (g) they are usually built out of high quality materials to a very high standard of workmanship; and*
- (h) it is an item not used for sport shooting purposes.*

In determining whether something is a "replica" one should consider the firearm in question against the above elements and the extent to which it does (or does not) comply with those elements. Taking account of that, one should then consider the

*dominant impression*³² as to whether or not the item is truly a "replica" as referred to earlier.

A good example is the World War II Fallschirmjaegergewehr 42 or FG-42. Only a few thousand were made and there are so few of them still in existence that they command prices in the order of R 1,500,000 if and when they appear on the collector market. As a result, SMG Guns of Decatur, Texas is building new semiautomatic only reproductions of the second model FG-42 at a more affordable price (at current exchange rates in the order of R 75,000) but even so they have a waiting list of nearly a year. This example could therefore also qualify in conjunction with other various elements of the other sub- Regulations.

In contradistinction, a good example of an item that would not qualify is the current cheaply made "Type 56" semiautomatic only firearms that are being imported in considerable numbers and sold, amongst others, into the sport shooters market.

4.1.12 sub- Regulation 15 (b) (x): It is an investment grade firearm or device of significant value.

Note:

In order to be brought within the ambit of this sub- Regulation a two step process must be followed:

- (a) firstly, it must be shown that the firearm is "an investment-grade firearm or device"; and*
- (b) secondly, it must be shown that the firearm is "of significant value".*

Although they need to be read in conjunction, these are two distinct and separate elements. In respect of the first element, the key issue is that the firearm must in the first place have been built as an "investment-grade firearm"³³. This goes to the question of the intention and purpose behind the building of the firearm by the manufacturer. Typically, such firearms would also be "scarce" or "rare" and sometimes, completely unique. They may well also be custom or one off buildings, part of limited production runs or replicas.

Secondly, the firearm must be "of significant value", implying that the firearm was of significant cost in the first place.

What is clear from the interplay of the two elements is that the mere fact that a firearm is expensive or that it represents a Rand hedge, would not on its own usually justify bringing it within the ambit of this sub- Regulation.

³² The dominant impression is the overall impression one has when one objectively considers the item in the context of all the elements referred to in (a) to (h) foregoing.

³³ An "investment grade" firearm would be a high end premium quality firearm made by a leading gun maker such as John Rigby & Co, James Purdey and Sons Limited or Holland & Holland.

The type of item fitting within this sub- Regulation is one that would have been recognised from the day of its manufacture as being highly desirable and not generally available, by virtue of its grading and price, to the general firearm owning public.

ANNEXURE A

BACKGROUND TO THE AMENDMENTS TO THE FCA AFFECTING RESTRICTED AND PROHIBITED FIREARMS

2006 was a turbulent year for collectors. Under pressure from various quarters, government engaged in the first round of amendments of the FCA and following a couple of incidents (later proved groundless) involving museums and public collectors, government decided that the collection of working firearms was problematic, with particular emphasis on restricted and prohibited firearms, it being said that “no private person should be allowed to own a ‘machine gun’ or an ‘assault rifle’”.

As a result the first draft of the amendments published in Government Gazette 28545 envisaged that all³⁴ collectors firearms should be rendered “inoperable” i.e. should not be capable of being fired, but would not be de-activated as such -

"17. Licence to possess firearms in private collection

(1) (a) A firearm which may be possessed in a private collection is any firearm:

(i) approved for collection by an accredited collectors association; and

(ii) made inoperable in accordance with the prescribed specifications.

(b) Despite section 4, such prohibited firearm as may be prescribed may be licensed under this section provided that the provision of subparagraph (a) are complied with."

An intense process of research, motivations and submissions followed, as a result of which it was accepted that "ordinary firearms"³⁵ could still be used 'for collector purposes' but restricted and prohibited firearms would still have to be rendered inoperable.

Furthermore, it was stipulated that all collectible firearms would have to be certified by the South African Heritage Resources Agency as having some degree of heritage value -

"17. (1) (a) A firearm or muzzle loading firearm which may be possessed in a private collection is any firearm or muzzle loading firearm—

(i) approved for collection by an accredited collectors' association;

(ii) certified as a collectable item having heritage value by the South African Heritage Resources Authority; and

(iii) complying with any other criteria which the Minister may prescribe in respect of collection of firearms.

³⁴ Note, not just restricted and prohibited items but everything.

³⁵ That is, items which are not considered to be semiautomatic or fully automatic.

(b) Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section."

With the final submissions and arguments during the parliamentary hearings on the bill, the NAACCSA delegation was successful in convincing the Portfolio Committee that -

- (a) the South African Heritage Resources Agency approval requirement was unduly restrictive given that not all collectible firearms would necessarily be heritage items;
- (b) the collectability attributes which we now see in Section 17 (1) (a) (history, heritage, technology, etc.) be adopted, being a distillation of currently accepted international practice and legislation from the UK, Canada and Australia amongst others;
- (c) certain restricted and prohibited firearms be allowed given their value to the "national estate", provided they were kept (stored) inoperable and strictly complied with the requirements of Regulation 15;
- (d) the development of such firearms started in the era of the Boer War and as such, together with other examples from World War I and World War II were clearly of historical importance and should be preserved; and
- (e) that something in the order of 80% of such firearms forming part of the "national estate" are held in private hands and only approximately 20% in museums.

Regulation 15 therefore recognises the current and in some instances future historical value or unique attributes of the firearms.

Note: Section 17 (1) (c) now refers to restricted firearms "as prescribed" (i.e. as set out in the accompanying regulations) and Regulation 15 was consequently amended in March 2012 to include restricted as well as prohibited firearms.

Regulation 15 was carefully re-examined and updated to include the provisions of Section 17 (1) (a) (history, heritage, etc.) and re-accepted against the background of the collection of historic artefacts with rare exceptions where justified.

APPROVAL

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Chairman

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Date