



The Non-Profit Lawyer

## NPOs AND THE SECOND-HAND GOODS ACT

By Ricardo Wyngaard

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**RICARDO WYNGAARD ATTORNEYS** which is aimed at updating the non-profit sector on relevant legal issues.

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- **NPOs and the Second-Hand Goods Act**

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### RICARDO WYNGAARD

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The Second-Hand Goods Act of 2009 (the Act) came into operation on 01 May 2012 and is, amongst other, aimed at regulating the business of dealers in second-hand goods and to promote ethical standards in the second-hand goods trade. The Act has significant implications for NPOs dealing in second-hand goods. This article explores some of those implications.

### NPOs as Dealers

Section 2(1) of the Act provides that *every person who carries on business as a dealer* must be registered in terms of the Act. The definition of 'dealer' includes *a person who carries on a business of dealing in second-hand goods*. The implication is that every NPO that carries on business as a *dealer* must be registered in terms of the Act and, unless exempted, comply with the relevant provisions of the Act.

The Act also defines a 'charity organisation' which *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*. A NPO only falls within this definition if it acquires second-hand goods *by way of donation*. NPOs that pay for the acquisition of second-hand goods do not fall within the definition of 'charity organisation'. Such NPOs are considered *dealers* in terms of the Act – not charity organisations.

It is also important to note that second-hand goods, as defined in the Act, do not include goods with a value of less than R100.

### Non-Profit Company

Some of the legal obligations that dealers must comply with include:

- Applying for registration in the prescribed format,
- Complying with conditions prescribed by the National Commissioner,
- Notifying the National Commissioner immediately if it stops trading or is unable to carry on business in terms of the Act,
- Keeping a register in the prescribed form and retaining it for a period of five years,
- Recording the required particulars in the prescribed form,
- Obtaining and retaining copies of the identity documents or passports of persons acquiring and disposing of second-hand goods,
- Reporting, amongst other, the offering of suspected stolen goods to a police official,
- Not acquiring or accepting in pawn goods from a person under the age of 18,
- Not storing goods elsewhere than the premises for which the certificate has been issued, and
- Not delivering or altering the appearance of acquired goods for a period of seven days after acquired.

### Displaying and Renewing the Registration Certificate

The dealer must display the original registration certificate in a clearly visible and prominent place on the relevant premises. The registration remains valid for a period of five years from the date the certificate is issued. The dealer must apply, within the required timeframe, for the renewal of its registration before its termination.

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### Powers of Police Officials

*With reference to dealers:* Police officials may, during trading operations, enter *the premises of a registered dealer* in order to investigate compliance with the Act. Dealers must produce the registration certificate, any register, goods and other records to such police officials.

The Act requires a police official to conduct at least one comprehensive annual inspection of each registered premises.

*With reference to any person:* Police officials may also obtain warrants to enter *any premises*, inspect and seize documents, examine any goods and seal off any premises where second-hand goods are found with the aim of preventing a person from conducting business in contravention of this Act. The police may in certain instances do so without a warrant.

### Exemptions from the Act

The Minister of Safety and Security may, through notice in the Gazette, exempt a *charity organisation* or *any dealer who is a member of an accredited association* from any or all the provisions of the Act. In order for NPOs to be eligible for potential exemption from any or all the provisions of the Act, it would be important to either fall within the definition of *charity organisation* or be *a member of an accredited association that is capable of introducing adequate levels of self-regulation aimed at achieving the objects of the Act*.

### NPOs as Accredited dealers' associations:

The Act makes provision for the accreditation of dealers' associations to cater for some form of self-regulation. Such associations must be accredited by the National Commissioner subject to the conditions prescribed by the Minister. Accredited associations must, amongst other, establish and maintain minimum legal and ethical standards with regard to its members and inspect any business practice, registers, stock and business premises of its members. Accredited associations must also submit annual reports to the National Commissioner.

### Transitional Arrangements

Those who were dealing in second-hand good before 01 May 2012 must before **31 July 2012** apply for registration as a dealer in terms of the Act. The dealer who submitted an application before 31 July 2012 can only continue to deal in second-hand goods, pending the outcome the application, on condition that:

- All second-hand goods must be entered into a transitional register until finalisation of the application, and
- A full description of the second-hand goods must be set out in the transitional register.