

COMBATING OF REVENUE LOSSES AND THE SECOND-HAND GOODS ACT, 2009

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1. INTRODUCTION

The aim of the Second-Hand Goods Act, 2009¹ is to regulate dealers in second-hand goods, including scrap metal dealers and pawnbrokers, and to promote ethical trade amongst these dealers. This Act, through multi-party participation, introduces a new era in the prevention and combating of crime related to stolen goods.

Trade in stolen goods has a massive effect on the South African economy, especially when the knock-on effect of the initial crime is taken into account. Hijacking and robberies are more often than not highlighted by the violent means employed by the perpetrators resulting in loss of life or serious injuries. Theft of non-ferrous metal cable, especially copper cable, results in disruption of essential services through power and communication cuts and transport stoppages. These economic losses are borne not only by government and business, but also by the consumer who has to foot the eventual bill.

The aim of this paper is firstly to introduce SARPA members to the Act and secondly to outline methods to benefit from its advantages as a tool to combat revenue losses.

2. SUMMARY OF THE SECOND-HAND GOODS ACT, 2009

There are a few basic tenets that form the foundation of the Act. The Act —

- repeals the Second-Hand Goods Act of 1955², an old law which has been demonstrated to be woefully inadequate in providing law

¹ Second-Hand Goods Act, 2009 (Act No. 6 of 2009) – referred to *infra* as “the Act”.

² Second-Hand Goods Act, 1955 (Act No. 23 of 1955) – referred to *infra* as “the old Act”.

enforcement agencies with the necessary powers to regulate the industry, especially where theft of copper cable is an issue;

- requires all dealers in second-hand goods to register with the SAPS who issues a registration certificate to registered dealers;
- provides for disqualifications that prevent a dealer from registering;³
- provides for associations representing dealers, to be accredited by the National Commissioner of the SAPS;
- enjoins accredited associations to ensure that their members do business legally and assist the SAPS with information;⁴
- requires of accredited associations to assist to the extent that they have access to their members, have expert knowledge of the industry and can enforce a code of conduct;
- obligates dealers to —
 - keep detailed records of all transactions above R100-00 in order to enable the SAPS to trace stolen goods;⁵
 - ensure that the goods they buy are not stolen;⁶ and
 - keep goods that they buy for a period of seven days;⁷
- prohibits dealers from acquiring goods from persons under the age of 18 years;⁸
- provides for the registration of dealers who recycle controlled metal, such as copper, aluminium and other non-ferrous metals, as recyclers;⁹
- prohibits dealing in and possession of burnt cable and offenders may be sentenced to imprisonment of 10 years;¹⁰

³ The most notable are those with relevant criminal convictions or who are not legally competent to do business.

⁴ Functions of the accredited associations include limited self-regulation and promotion of ethical behaviour amongst their members.

⁵ Vehicle and communication equipment dealers have to provide more detailed requirements than ordinary goods.

⁶ Dealers commit a criminal offence if they buy stolen goods without checking thoroughly if the person selling the goods may do so - imprisonment of up to 10 years can be imposed for a failure to take reasonable steps in this regard.

⁷ During this period, the appearance of the goods may not be tampered with, preventing dealers from respraying a vehicle, or melting copper wire. A contravention can be punished with 10 years imprisonment.

⁸ In the case of children who collect cans, for example, the Act will not apply, as any goods under R100-00 is not regarded as second-hand goods.

⁹ No person other than a recycler may possess recycling equipment, thereby making it easier to police cable theft.

¹⁰ Recyclers must also ensure that metal regulated by the Act was not tampered with to conceal the identity thereof.

- assigns the necessary powers to the SAPS to do routine inspections and also to enter premises, search it, seize stolen property and seal it off;¹¹
- extends the powers of the SAPS to the extent that the SAPS may request a warrant to seal off a dealer's business for seven days when the dealer contravenes the Act;
- lays the foundation to extend the policing powers in the Act to any person employed by a public entity such as a local government, Telkom, Eskom and Spoornet;¹²
- drastically increases the penalties for contravention of the Act, ranging from three years imprisonment to ten years imprisonment; and
- empowers the Minister for Safety and Security to make the regulations necessary to implement the Act.¹³

The Act represents the logical result of a process of increased political awareness of the need to address the criminal aspects of property related crimes in a focussed manner. It also reflects the changing dynamics in law enforcement – being directed at different tiers of enforcement with different responsibilities¹⁴ inside each of these tiers and enhancing multi-professional coordination, whether it be traditional policing, compliance monitoring or the issue of trade permits. The Act furthermore represents an effective government response to the crime rate in South Africa.

Members of SARPA are amongst those who have a duty to ensure that these broader objects firstly filter through to their own strategies and policies to reduce losses caused by property crime and its effects on government

¹¹ The police must act in terms of a warrant, but the Act also allows the police to act without a warrant in specific circumstances. In this regard, the Act is aligned with the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

¹² The powers must be exercised according to the instructions that are applicable to SAPS.

¹³ The Minister may exempt dealers who are members of an accredited association from certain provisions of the Act. One of the benefits of this provision is that this measure will assist dealers in avoiding the duplication of records that must be kept under other legislation.

¹⁴ These may range from compliance monitoring to policing.

agencies, and secondly find application in effective employment of all co-operative mechanisms created by the Act.

3. EFFECT OF THE SECOND-HAND GOODS ACT, 2009 ON REVENUE PROTECTION

3.1 INTERNAL PROCESSES, MECHANISMS AND STRUCTURES

Even though there may be substantial differences in the internal processes, mechanisms and structures within the different parties interested in the application of the Act, these processes, mechanisms and structures are the seminal factors in determining the effectiveness with which that role player combats the economical effects of property crime.

The processes within an organisation must be analysed to determine whether the standardised procedures of various components of that organisation are aligned to ensure optimal use of resources, for instance communication.¹⁵ In order to ensure that all components have a shared vision of the required actions, it may be necessary to have a joint planning session where a “walk-through” of the events are discussed, from the point where service disruption is reported to a complaints desk or a maintenance unit, to the point where the service is restored by a separate unit, while a SWOT analysis may show the history of losses to be of primary importance.¹⁶

Mechanisms, such as regular meetings of committees, ensure the synergy between these components, especially where effective communication and coordination is concerned. Structures to support such mechanisms must be developed in accordance with the needs of each organisation.

3.2 EXTERNAL PROCESSES, MECHANISMS AND STRUCTURES

¹⁵ Example: when theft of copper cable occurs, the question arises whether the theft is properly reported to the SAPS or to the law enforcement component within that organisation or whether the issue is (not) dealt with by just restoring the service.

¹⁶ A service may be disrupted in one single area where physical factors act as a crime generator and where simple preventative steps could address the problem. Similarly, one scrap dealer in the jurisdiction could be singled out as a culprit

During the strategic planning process, several factors such as legal issues; resource issues; socio-economic issues; technological development in the jurisdiction; demographics of the community with the focus on the client you serve (who are the clients, why do they need the service you provide and what are their broad needs?) will direct the focus of the plan. These factors must also be considered against the backdrop of the question: What has changed?¹⁷

Existing law enforcement mechanisms must play a leading role. If, however, these mechanisms do not exist, it may be necessary to establish these for control of the available law enforcement resources and also to ensure effective communication and coordination of law enforcement functions.

4. CONCLUSION

Even though it is no *panacea*, the Act provides the foundation for the cooperation referred to above: Section 31 gives the Minister of Police the necessary powers to extend the police powers in the Act to other public entities contemplated in the Public Finance Management Act (PFMA)¹⁸ or any other statutory body, and to issue directives to regulate the use of those powers.

An organisation affected by the Act must therefore be prepared to assign functions to its different components and to objectively analyse the synergy between internal components and also between the organisation and other agencies such as the SAPS, the parastatals and other municipal or traffic police. This activity will ensure efficient and effective strategic plans.

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¹⁷ While this paper focuses on the changed legal framework, it is imperative to note that the other issues are equally important.

¹⁸ Public Finance Management Act, 1999 (Act No. 1 of 1999).