

July 2016

*"To improve is to change; to be perfect is to change often" – Winston Churchill*

## **THE UNENVIABLE POSITION OF PERSONS SELLING SECOND HAND GOODS**

The Consumer Protection Act (the "CPA") provides protection for consumers against the purchase of second hand defective goods. This position was re-affirmed in a recent Eastern Cape High Court. The CPA allows consumers a 6 (six) month window to exploit the remedies provided for in the CPA.

As example, one of the remedies as per the CPA allows the consumer to claim for rescission of the sale agreement, to return the defective goods and reclaim the value of the purchase price. However, for the CPA to be applicable, the sale must be in the 'ordinary course of business' of the seller and not be a 'once-off' transaction.

Should the remedies as per the CPA not be available to the purchaser of second hand goods, the consumer may rely on the common law remedies in respect claims for damages or losses suffered due to latent defects. The test for common law remedies is whether a reasonable consumer would have declined to enter into the transaction had he / she known about the defects.

*Law & Laughter*

Joke: Lawyer talking under his breath "guilty peoplesaywhat"

Suspect: "what"

Lawyer: "No further questions your honor"

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# PREVENT FINAL DEREGISTRATION

The Companies and Intellectual Property Commission (the "Commission") recently issued a public notice stating that all companies and close corporations which have continued to fail to submit their annual returns on an annual basis will be deregistered on the 29th of July 2016.

The Companies Act requires every company to file an annual return in the prescribed form within 30 (thirty) days after the end of the anniversary of the date of its incorporation. In terms of the Companies Act the Commission has the power to deregister a company that continue to fail to file its annual return on demand.

When the Commission deregisters a company, it is removed from the Commissions companies register. The implication being that a company or close corporation is deprived of its legal existence upon deregistration and can no longer trade or enter into business transactions. A further implication being that the assets (if any) of the company or close corporation automatically passes to the state as bona vacantia (i.e. goods / property that has no apparent owner).

To determine whether your company is in deregistration and the outstanding annual returns to be submitted, please contact our offices to discuss.

## Contact Van Huyssteens

T +27 12 349 2306  
F +086 6151 183

## Address:

De Haviland Crescent Nr. 5,  
III Villaggio Nr.12, Torino Suite  
Persequor Park  
Pretoria, South Africa

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