**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION. PRETORIA**

**CASE NO:22352/2020**

ln the matter between:

SAKELIGA NPC

(Applicant / Plaintiff)

and

THE PRESIDENT OF RSA +8

(Respondent / Defendant)

**Adv P ELLIS SC**
**COUNSEL FOR THE APPLICANT**

( Advocate) (Advocate)

DOCUMENT PRESENTED FOR FILING:

1. COURT ORDER DATED:28 MAY 2020 CORAM: JW LOUW (J)

Bundle prepared at sajustice.caselines.co.uk

2. COURT ORDER DATED:

1.It is declared that the Directions issued by the Minister of small Business Development (the seventh respondent) on 12 May 2020 under Government Notice R522 in Government Gazette 34406 are illegal and invalid.

2. The seventh respondent to pay the applicant's cost relating to the relief sought in respect of the Directives issued by the seventh respondent on 12 May 2020, such costs to include the costs of senior counsel.

**SET DOWN FOR HEARING ON: 26 MAY 2020 (URGENT COURT)**

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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

22352/20

**Case Number:**

In the matter between:

REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -05- 18
E. TIGER
REGISTRAR'S CLERK
GRIFFIER VAN DIE HO. HOF VAN
SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

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**NOTICE OF MOTION**

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TAKE NOTICE THAT the applicants intend to apply to the abovementioned Honourable Court on Tuesday **26 May 2020** at **10h00** or as soon thereafter as counsel may be heard, for an order in the following terms:

1. That this application be heard as one of urgency in terms of Rule 6(12) and that the applicants' failure to comply with the ordinary time limits of service of process be condoned.

2. That a declaratory order be issued to the effect that the sixth respondent has no authority to issue "*Essential Services Permits / Certificates*" to enable any company or close corporation to conduct emergency or permitted service in terms of the Regulation issued under the Disaster Management Act, Act 57 of 2002 and published as Government Notice R480 on 29 April 2020, ("the Regulations");

3. That a declaratory order be issued that the South African Police Service and any other enforcement agency mandated to enforce the Regulations, have no authority to demand from any person, an "*Essential/Permitted Service Permits / Certificates*" issued by the Sixth Respondent;

4. That a declaratory order be issued to the effect that the Respondents have no authority to direct any other Organ of State to issue "*Essential/Permitted Service Permits / Certificates*" pursuant to the National State of Disaster;

5. That a declaratory order be issued to the effect that no enforcement agency, mandated to enforce the Regulations issued pursuant to the Declaration of

a National State of Disaster, including the South African Police Service, may require an permit save those provided for in the Regulations in order to render a necessary or permitted service as described therein;

6. That an order be issued declaring illegal and invalid the Directions purportedly issued by the Seventh Respondent on 12 May 2020, under Government Notice R522, in Government Gazette 34406;

7. That an interdict be issued restraining the respondents and any individual falling under their control and / or authority from:

7.1. Interfering with the business operations of any person permitted under and in terms of the Regulations; and

7.2. Preventing or obstructing any person from trading in compliance with the Regulations.

8. That the sixth and seventh respondents, jointly and severally with any other respondent who elects to oppose this application, be ordered to pay the costs of this application.

9. That such further or alternative relief as the Honourable Court may consider just and equitable, be granted in favour of the applicants.

**TAKE NOTICE FURTHER** that the affidavit of Pieter Jacobus le Roux and all annexures thereto, will be used in support of this application.

**TAKE NOTICE FURTHER** that, if you elect to oppose this application, you must, by close of business on **Monday 18 May 2020** notify the applicants attorney in writing at peter@kriekprok.co.za , pieterk@kriekprok.co.za **AND** rohann@kriekprok.co.za and file your answering affidavits, if any, by close of business on **Tuesday 19 May 2020**, on the Caselines platform **AND** by email to the applicant's attorneys.

**TAKE NOTICE FURTHER** that you must, in your notice of opposition, indicate an address for service within 15 km of the court as well as en email address at which you will accept service of process in these proceedings.

**TAKE NOTICE FURTHER** that the applicant reserves the right by 12 noon on Thursday **20 May 2020** to file its replication, if so advised.

KINDLY ENROL THE MATTER ACCORDINGLY.

**SIGNED AT PRETORIA THIS 15TH DAY OF MAY 2020.**

**KRIEK WASSENAAR AND VENTER INC**

**APPLICANT'S ATTORNEYS**

1ST FLOOR, NOREX HOUSE, 79 RAUCH AVENUE

GEORGEVILLE, PRETORIA, 0184

(T) (+27) 12 803 4719 (C) 0829204474

(e) peter@kriekprok.co.za

pieterk@kriekprok.co.za / rohann@kriekprok.co.za

**REF: P WASSENAAR / QB0693**

TO: **THE REGISTAR OF THE HIGH COURT**

**PRETORIA**

AND TO: **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
THE FIRST RESPONDENT

c/o THE STATE ATTORNEY

SMzozoyana@justice.gov.za
TRamohlale@justice.gov.za
ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.gov.za

SERVICE BY EMAIL

AND TO: **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADTITIONAL AFFAIRS**
THE SECOND RESPONDENT

c/o THE STATE ATTORNEY

SMzozoyana@justice.gov.za
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VDhulam@justice.gov.za

SERVICE BY EMAIL

AND TO: **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION**
THE THIRD RESPONDENT

c/o THE STATE ATTORNEY

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SERVICE BY EMAIL

AND TO: **THE MINISTER OF POLICE**
THE FOURTH RESPONDENT

c/o THE STATE ATTORNEY

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ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
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AND TO: **THE NATIONAL COMMISSIONER OF POLICE**
THE FIFTH RESPONDENT

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GcilisheN@saps.gov.za
SelaoB@saps.gov.za
SereroR@saps.gov.za
DlakuV@saps.gov.za
sitolek@saps.gov.za
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c/o THE STATE ATTORNEY

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ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.gov.za

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AND TO: **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES**
THE SIXTH RESPONDENT

loctober@thedti.gov.za
EMsiza@thedti.gov.za
MSMedupe@thedti.gov.za

SERVICE BY EMAIL

AND TO: **THE MINISTER OF SMALL BUSINESS DEVELOPMENT**
THE SEVENTH RESPONDENT

c/o THE STATE ATTORNEY

SMzozoyana@justice.gov.za
TRamohlale@justice.gov.za
ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.gov.za

SERVICE BY EMAIL

AND TO: **THE NATIONAL COMMAND CENTRE**
THE EIGHT RESPONDENT

c/o OFFICE OF THE DIRECTOR-GENERAL AND SECRETARY OF

THE CABINET

nokukhanya@presidency.gov.za

Phumeza@presidency.gov.za

c/o THE STATE ATTORNEY

SMzozoyana@justice.gov.za
TRamohlale@justice.gov.za
ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.gov.za

SERVICE BY EMAIL

AND TO: **THE MINISTER OF HEALTH**
THE NINTH RESPONDENT

c/o THE STATE ATTORNEY

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TRamohlale@justice.gov.za
ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.gov.za

SERVICE BY EMAIL

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

**Case Number:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

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**FOUNDING AFFIDAVIT**

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I the undersigned

**PIETER JACOBUS LE ROUX**

make oath and state:

1. I am the Chief Executive Officer of the applicant.

2. The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3. Where I make submissions of a legal nature I do so on the advice of the applicant's legal advisors which advice I accept as correct.

**THE PARTIES**

4. The applicant is **SAKELIGA NPC**, a non-profit company with limited liability duly incorporated in terms of the Company Laws of the Republic of South Africa and registered under registration number 2012/043725/08 and with registered address at 117 Gerhardt Street, Die Hoewes, Extension 158, Centurion, Gauteng Province.

5. The first respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** who is cited herein in his official capacity and whose offices are situated in Union Buildings, Pretoria.

6. The second respondent is **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** who is cited herein in her official capacity as the Minister mandated in terms of the provisions of the Disaster Management Act, Act 57 of 2002 (*"the DMA"*) and whose offices are situated at 87 Hamilton Street, Arcadia, Pretoria.

7. The third respondent is **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** who is cited herein in his official capacity as the Minister responsible for the administration of the Competitions Act, Act 88 of 1998, and to whom certain responsibilities were delegated by the second respondent, in terms of the DMA, whose offices are situated at 77 Meintjes Street, Sunnyside, Pretoria.

8. The fourth respondent is **THE MINISTER OF POLICE** who is cited herein in his official capacity as such of 756 - 7th Floor, Wachthuis Building, 231 Pretorius Street, Pretoria.

9. The fifth respondent is **THE NATIONAL COMMISSIONER OF POLICE** who is cited herein in his official capacity as such of Wachthuis Building, 231 Pretorius Street, Pretoria.

10. The sixth respondent is **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES**, a statutory body and organ of state established in terms of Section 185 of the Companies Act, Act 71 of 2008, whose offices are situated at 77 Meintjes Street, Sunnyside, Pretoria.

11. The seventh respondent is **THE MINISTER OF SMALL BUSINESS DEVELOPMENT,** who is cited herein in her official capacity, whose offices are situated at The dti, Block A, 3rd Floor, 77 Meintjes Street, Sunnyside, PRETORIA.

12. The eighth respondent is **THE NATIONAL COMMAND CENTRE**, a structure, whose full and further particulars are unknown to the applicant, set up to control the National State of Disaster, announced by the first respondent on 13 March 2020, c/o the second respondent, 87 Hamilton Street, Arcadia, Pretoria, who is cited herein in so far as they may have an interest in these proceedings.

13. The ninth respondent is **THE MINISTER OF HEALTH** who is cited herein in his official capacity, whose offices are situated at Civitas Building, Floor 20, cnr Struben and Thabo Sehume Streets, PRETORIA.

**THE PURPOSE OF THE APPLICATION**

14. The purpose of this application is to obtain:

14.1. A declaratory order to the effect that the sixth respondent has no authority to issue "*Essential Services Permits / Certificates*" to enable any company or close corporation to conduct emergency or permitted service in terms of the Regulation issued under the Disaster Management Act, Act 57 of 2002 and published as Government Notice R480 on 29 April 2020, ("the Regulations");

14.2. A declaratory order that the South African Police Service and any other enforcement agency mandated to enforce the Regulations, have no authority to demand from any person, an "*Essential/Permitted Service Permits / Certificates*" issued by the sixth respondent;

14.3. A declaratory order to the effect that the respondents have no authority to direct any other Organ of State to issue "*Essential/Permitted Service Permits / Certificates*" pursuant to the National State of Disaster;

14.4. A declaratory order to the effect that no enforcement agency, mandated to enforce the Regulations issued pursuant to the Declaration of a National State of Disaster, including the South African Police Service, may require a permit save those provided for in the Regulations issued by the second respondent on 29 April 2020, under Government Notice

480, in Government Gazette 43258 of that date ("the Regulations"), in order to render a necessary or permitted service as described therein;

14.5. An order declaring illegal and invalid the Directions purportedly issued by the seventh respondent on 12 May 2020, under Government Notice R522, in Government Gazette 34406;

14.6. An interdict restraining the respondents and any individual falling under their control and / or authority from:

14.6.1. Interfering with the business operations of any person permitted under and in terms of the Regulations; and

14.6.2. Preventing or obstructing any person from trading in compliance with the Regulations.

**THE APPLICANT'S LOCUS STANDI**

15. The applicant is a Non-Profit Company, with a membership and donor base of 17 000 businesspeople, companies and business organisations, and a network of more than 40 000 subscribers. The applicant supports a constitutional order, free markets, prosperity and a favourable business environment in the public interest and for its members and all communities that are served by them.

16. The applicant acknowledges the fact that the Covid-19 pandemic has placed an enormous burden on the State in general and the respondents in particular, and that, under the tremendous strain imposed by circumstances, mistakes are inevitable. However, the applicant cannot sit idly by when the principles of law contained in the Constitution and other legislation are ignored and contravened and trampled upon by those involved in the combatting of the Covid-19 pandemic, however *bona fide* such actions may be.

17. The applicant brings this application by virtue of section 38(a) of the Constitution by acting in its own interest and in accordance with its own objectives directed at the protection of constitutional rights which include the rule of law.

18. The applicant also brings the application in the interest of a group or class of persons in terms of section 38(c) of the Constitution, specifically the following classes of persons:

18.1. Business owners entitled to issue permits under the Regulations;

18.2. Persons receiving and/or relying on permits issued by business owners under the Regulations;

18.3. Businesses that operate as sole proprietorships, partnerships, joint ventures and/or any other accepted body corporate under the law;

18.4. Persons deemed by the Regulations and Directions to constitute so-called:

18.4.1. Small scale bakeries and confectioneries;

18.4.2. Small scale hardware stores

18.4.3. Informal and micro restaurants and shisanyamas

18.4.4. Tradesmen and artisan's businesses

18.4.5. Sole traders within the clothing and textiles business

18.4.6. Cooperatives

18.4.7. Informal, micro and small businesses

18.4.8. Non-South African citizens and asylum seekers that own businesses

19. The applicant therefore brings this application in its own name, on behalf of its members and in the public interest.

**THE STRUCTURE OF THIS AFFIDAVIT**

20. The structure of this affidavit is as follows:

20.1. First, I will deal with the legal and Constitutional principles involved.

20.2. Second, I will deal with the development and progression of the national state of disaster and Regulations and Directions issued pursuant thereto and the permit systems introduced and sought to be introduced thereby.

20.3. Third, I will deal with various incidents which have occurred and could occur if the permit system continues its course.

20.4. Finally, I will deal with the requirements for the interdict sought.

**THE LEGAL AND CONSTITUTIONAL PRINCIPLES INVOLVED**

21. Section 1 of the Constitution provides that the Republic of South Africa is one, sovereign, democratic state founded, inter alia, on the following values:

21.1. Human dignity, the achievement of equality and the advancement of human rights and freedoms.

21.2. Non-racialism and non-sexism.

21.3. Supremacy of the Constitution and the Rule of Law.

22. The Constitution, however, distinguishes between three spheres of government, i.e. national, provincial and local. Those three spheres of government each have original powers deriving from the Constitution. Section 41(1) of the Constitution provides that:

*"All spheres of government and all organs of state within each sphere must-*

*(a) preserve the peace, national unity and the indivisibility of the Republic;*

*(b) secure the well-being of the people of the Republic;*

*(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;*

*(d) be loyal to the Constitution, the Republic and its people;*

*(e) respect the constitutional status, institutions, powers and functions of government in the other spheres;*

*(f) not assume any power or function except those conferred on them in terms of the Constitution;*

(g) *exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and*

(h) *co-operate with one another in mutual trust and good faith by-*

(i) *fostering friendly relations;*

(ii) *assisting and supporting one another;*

(iii) *informing one another of, and consulting one another on, matters of common interest;*

(iv) *co-ordinating their actions and legislation with one another;*

(v) *adhering to agreed procedures; and*

(vi) *avoiding legal proceedings against one another.*

23. The DMA expressly acknowledges this separation, in that it provides expressly, and separately, for the handling of disasters on a national, provincial and local level. In this regard, reference is made to section 4 and chapters 3, 4 and 5 of the DMA. I submit that, upon a proper interpretation of the DMA, the provisions thereof do not entitle the National Government, in the case of a national disaster, to usurp the functions of provincial and local authorities. Furthermore, I submit that the DMA, being a statute which by its very nature, authorises the placing of limitations on the rights entrenched in the Bill of Rights, must be restrictively interpreted, so as to impose a minimum limitation on those rights, in accordance with section 36 of the Constitution.

24. Licensing and permitting of business ventures is a provincial or local government competency, and then restricted to the sale of food and liquor only. The national government has no authority to issue such licences or permits, or authorise such licences to be issued by any organ of state, or require such licences to be produced as a prerequisite for the exercise of any constitutional or statutory right.

25. It is therefore submitted that, in so far as the Regulations or any Direction purportedly issued pursuant thereto, allow any organ of state in the national sphere of government to issue such licenses, or authorise such licences to be issued by any organ of state, or require such licences to be produced as a prerequisite for the exercise of any constitutional or statutory right, such provision is inconsistent with the Constitution, and therefore illegal and void to the extent of such inconsistency.

26. Furthermore, the rights in the Bill of Rights cannot be infringed upon or limited in any way save in terms of the provisions of section 36 or 37. The national state of disaster, announced in terms of the DMA, is not a state of emergency, as contemplated in section 37, and therefore the rights contained in the Bill of rights continue to apply and may only be limited in terms of section 36.

27. Section 22 of the Constitution guarantees the right to freedom of trade, occupation or profession, subject to regulation of that trade, occupation or

profession. Other than regulating how that trade, profession or occupation is to be practised, the State may not interfere with those freedoms, except under section 36.

**THE DEVELOPMENT AND PROGRESSION OF THE STATE OF DISASTER AND THE REGULATIONS THEREUNDER**

28. On 15 March 2020, Dr Mmaphaka Tau, the Head of the National Disaster Management Centre in the Department of Cooperative Governance gave notice that the Covid-19 pandemic was declared as a National Disaster. I attach hereto as **Annexure "A"** a copy of the notice to that effect in the Government Gazette.

29. Also, on 15 March 2020, the second respondent issued a declaration of a National State of Disaster in evidence of which I attach hereto as **Annexure "B"** a copy of Notice 313 published in the Government Gazette of that date.

30. Section 27(2) of the DMA provides:

*"If a national state of disaster has been declared in terms of subsection (1), the Minister may, subject to subsection (3), and after consulting the responsible Cabinet member, make regulations or issue directions or authorise the issue of directions concerning-*

(a) *the release of any available resources of the national government, including stores, equipment, vehicles and facilities;*

(b) *the release of personnel of a national organ of state for the rendering of emergency services;*

(c) *the implementation of all or any of the provisions of a national disaster management plan that are applicable in the circumstances;*

(d) *the evacuation to temporary shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life;*

(e) *the regulation of traffic to, from or within the disaster-stricken or threatened area;*

(f) *the regulation of the movement of persons and goods to, from or within the disaster-stricken or threatened area;*

(g) *the control and occupancy of premises in the disaster-stricken or threatened area;*

(h) *the provision, control or use of temporary emergency accommodation;*

(i) *the suspension or limiting of the sale, dispensing or transportation of alcoholic beverages in the disaster-stricken or threatened area;*

(j) *the maintenance or installation of temporary lines of communication to, from or within the disaster area;*

(k) *the dissemination of information required for dealing with the disaster;*

(l) *emergency procurement procedures;*

(m) *the facilitation of response and post-disaster recovery and rehabilitation;*

(n) *other steps that may be necessary to prevent an escalation of the disaster, or to alleviate, contain and minimise the effects of the disaster; or*

(o) *steps to facilitate international assistance.*

31. Section 27(3) of the DMA provides:

*"The powers referred to in subsection (2) may be exercised only to the extent that this is necessary for the purpose of-*

(a) *assisting and protecting the public;*

(b) *providing relief to the public;*

(c) *protecting property;*

(d) *preventing or combating disruption; or*

(e) *dealing with the destructive and other effects of the disaster."*

32. Two days later, on 18 March 2020, the second respondent, in terms of Section 27(2) of the Disaster Management Act ("*DMA*") made certain Regulations set out in the schedule to Government Notice 318 published in the Government Gazette of that date. I attach hereto as **Annexure "C"** a copy of those Regulations (hereinafter referred to as *"the 18 March 2020 Regulations"*).

33. In the 18 March 2020 Regulations, the second respondent imposed a number of restrictions on the movement of persons, goods and services. In Regulation 10 thereof the second respondent purported to authorise various other ministers to issue directives in terms of the DMA.

34. Regulation 10(6) provides:

"*The Minister of Trade and Industry may –*

a. *Issue directions to –*

i. *Protect consumers from excessive, unfair, unreasonable, or unjust pricing of goods and services during the National State of Disaster; and*

ii. *Maintain security and availability of the supply of goods and services during the National State of Disaster.*

b. *Issue directions to address, prevent and combat the spread of Covid-19; and*

c. *Vary the directions referred to in paragraphs (a) and (b) as the circumstances require."*

35. I submit that the DMA only authorises the second respondent to issue Regulations in terms of section 27(2) of the DMA: no other person may do so. The DMA also authorises the second respondent to authorise other persons to issue Directions. They must act within the boundaries of their respective authorisations.

36. **I submit that the ordinary grammatical meaning of "*Direction*" is "*an instruction on how to reach a destination or how to do something*". I submit that a direction may** not include an instruction on what to do and what not to do. I further submit that the *how* should be read restrictively in light of section 36 of the Constitution, that is: that it should have a negative character which restricts specific unacceptable conduct, rather than a positive character which prohibits all conduct except those to which a person is limited or compelled.

37. Pursuant to the aforesaid authorisation the third respondent issued Regulation R350 on 19 March 2020. A copy thereof is attached hereto as **Annexure "D"**.

38. On 23 March 2020 the first respondent, in a public address to the nation, announced a three week "*lockdown*". **I attach hereto as Annexure "E"** a copy of the first respondent's speech.

39. Following the announcement of the lockdown, the third respondent, during a media briefing on 24 March 2020 made certain further announcements. I attach hereto as **Annexure "F"** a copy of the text of the media briefing held by the third respondent.

I point out that the third respondent announced a number of categories of essential services which would be considered for inclusion in the Regulations to follow. The third respondent specifically said the following:

"*A number of businesses are essential services and will remain open during this period. We will publish further details and add specific businesses to the list as required… I am working with the Minister of Police and the Minister of Employment and Labour to ensure that police officers and health inspectors are well briefed on the kinds of businesses which should be allowed to continue with larger numbers of people*"

40. On 25 March 2020, the second respondent in terms of Section 27(2) of the DMA published a far-reaching amendment to the 18 March 2020 Regulations under Government Notice R398, a copy of which is attached hereto as **Annexure "G"**.

41. I specifically draw attention to the introduction of Chapter 2 thereof containing Regulations 11A to 11G.

42. **Important for purposes hereof are the definition of** "*essential goods*" **and** "*essential services*" **referred to in** Regulation 11A.

43. "*Essential Goods*" **are defined to be** "*the goods referred to in paragraph A of Annexure B as may be amended from time to time by the Cabinet member designated under section 3 of the Disaster Management Act*".

44. "*Essential Services*" **is defined as** "*the services as defined in Section 213 of the Labour Relations Act, 1995 (Act 66 of 1995) and designated in terms of Section 71(8) of the Labour Relations Act 1995 (and which designation remains valid at the date of publication of this Regulation) and as listed in paragraph B of Annexure B as may be amended from time to time*".

45. **Important further is the definition of** "*Institution*" **which is defined as** "*any public or private institution that is engaged in the supply or distribution of an essential good or service.*" "*Head of an institution*" **is then defined as** "*the accounting officer of a public institution and the Chief Executive Officer or the equivalent of a Chief Executive Officer of a private institution.*"

46. **Under the heading** "*Restriction on the movement of persons and goods*" in Regulation 11B(3) the following is stipulated:

"*Persons performing essential services as determined in sub regulation 2 must be duly designated in writing by the head of an institution on a form that corresponds substantially with form 1 in Annexure C*".

47. Form 1 in Annexure C is a "*permit to perform essential service*". The Regulations were amended on numerous occasions thereafter. However, Regulation 11C(6) has not yet been amended.

48. On 25 March 2020 the third respondent published a statement under the heading "*Minister Ebrahim Patel announces essential service application portal for Coronavirus COVID-19 lockdown*" **a copy of which is attached hereto as Annexure "H1"**. It *inter alia* **provides**: "*The Minister of Trade and Industry, Mr Ebrahim Patel has announced that all businesses that will be allowed to provide essential services are required to seek approval from the Department of Trade, Industry and Competition (the dtic) in order for them to trade during the period of the lockdown.*

49. On 26 March 2020 the third respondent published a statement under the heading "*Trade and Industry update on online Bizportal to register businesses that provide essential goods and service during the Coronavirus COVID-19lockdown*" **a copy of** which is attached hereto as **Annexure "H2"**. It *inter alia* provides:

"*We would like to clarify that the registration portal is only for registered companies operating in South Africa. Healthcare professionals registered with the Health Professions Council of South Africa, sole proprietors who provide essential goods and services (like spaza shops), and small-scale farmers will not have to register through the Bizportal.*

*Only companies, spaza shops, healthcare professionals and farmers permitted in terms of the lockdown regulations will be allowed to continue operating through the period. Possession of a CIPC certificate does not constitute permission to operate during the lockdown. Companies must be guided by the regulation as to whether their business operations constitute essential services. Any misrepresentation of information is a criminal offence and will be prosecuted. Already we have seen companies selling on-premise consumption of alcohol registering through the platform. Other examples include non-essential grooming for pets. We will advise these companies that this is not permitted and may take further action if required."*

50. Notwithstanding the media statement on 26 March 2020, the government website https://www.gov.za/Coronavirus/essential-services as on date of this affidavit still states inter alia the following:

*All businesses that will be allowed to provide essential services are required to seek approval from the Department of Trade, Industry and Competition (the dtic) in order for them to trade during the period of the lockdown. The registration portal is only for registered companies operating in South Africa. Healthcare professionals registered with the Health Professions Council of South Africa, sole proprietors who provide essential goods and services (like spaza shops), and small-scale farmers will not have to register through the Bizportal.*

*Such businesses are required to apply to the Companies and Intellectual Property Commission (CIPC) Bizportal website at www.bizportal.gov.za and obtain a*

*certificate from the Commission that allows them to continue trading. The Bizportal website will contain a menu icon listed as "Essential Service Businesses" through which an application can be made to the CIPC."* See in this regard **Annexure "H3".**

51. I submit that upon a proper interpretation of the Regulations as amended, the sixth respondent, being a creature of statute and more particularly of the Companies Act, 2008 **was not and is still not empowered to issue** "*Essential Service Business Certificates*", either in terms of the Companies Act or the DMA or any Regulation published thereunder.

52. More particularly I refer to Section 186 of the Companies Act which provides:

"*1. The objectives of the commission are –*

*a. The efficient and effective registration of –*

*i. Companies and external companies in terms of this Act;*

*ii. Other juristic persons in terms of any applicable legislation referred to in schedule 4; and*

*iii. Intellectual property rights in terms of any relevant legislation.*

b. *Maintenance of accurate, up to date and relevant information concerning companies, foreign companies and other juristic persons contemplated in subsection 1(a)(ii) and concerning intellectual property rights and the provision of that information to the public and other organs of state.*

c. *The promotion of education and awareness of company and intellectual property laws and related matters.*

d. *The promotion of compliance with this act, and any other applicable legislation; and*

e. *The efficient, effective and widest possible enforcement of this Act and any other legislation listed in schedule 4.*

2. *To achieve its objectives, the commission may –*

a. *Have regard to international developments in the field of company and intellectual property law; or*

b. *Consult any person, organisation or institution with regard to any matter."*

53. The DMA is not included in schedule 4 of the Companies Act.

54. Provision was made for the issue of *"Essential Service Business Certificates"* through an electronic platform called Bizportal. An applicant for such certificate merely needed to complete a form online. The form was entitled "*Essential Services Registration: Director / Member Details*". In the block "*Essential Service Category*" the applicant needed to select one of a finite list of categories. A copy of the list is attached hereto as **Annexure "I"**.

55. A computer-generated form is then emailed to the applicant, a specimen of which is attached hereto as **Annexure "J"**. It had no expiry date.

56. I point out that, in terms of the Companies Act, 2008, it is not required of a company to state its business in its application for registration as a company. The sixth respondent therefore does not have a database against which it could verify whether a category so selected was accorded with the actual business of the company concerned: the selection is solely dependent on the ability to correctly interpret the novel and complicated regulations of a user of the system.

57. The result of the application is also entirely computer driven and no human intervention appears to be required or possible on the side of the sixth respondent: the sixth respondent therefore does not apply its mind or bring any judgment or discretion to bear on the result of the process: no decision of an administrative

nature is taken. Yet the *"Essential Services Business Certificate"* resulting from this exercise, purports to authorise a person to conduct the business of the company on the basis of an essential or permitted service, in contradistinction with other services.

58. The regulatory provisions referred to in paragraph 41 above were not amended when the lockdown was extended on 16 April 2020 to 30 April 2020. However, the third respondent thought it appropriate, through his spokesperson, Sidwell Medupe, to issue a media release on 16 April 2020 regarding the issue of such certificates, a copy of which is attached hereto as **Annexure "K"**.

59. I deem it necessary to quote extensively from the said press release:

> *"Companies which are registered through the Companies and Intellectual Property Commission (CIPC) Bizportal to perform essential services during the lockdown period, will be required to have a new certificate from the Bizportal website for the extended period which begins tomorrow, 17 April 2020... Certificates issued before today will no longer be valid and must be disposed of. To provide time for businesses to adjust to the new requirements, the new certificates will be available to be displayed from start of business on Monday 20 April 2020. The department reminds the public that possession of the CIPC Certificate is still subject to the company fully complying with the applicable lockdown Regulation and is a record of the company's details and does not in itself constitute the right to continue operating during the period... "*

60. The spokesperson then proceeded to state:

*The CIPC Certificate is a reference to the legal registration of the company in terms of the Companies Act, 2008 (Act 71 of 2008) and a record of registration to the CIPC. It does not give a firm or individual a right to trade if that company does not fall into an essential service as defined in the lockdown Regulation… Where the CIPC finds that certificates have been issued to companies which do not meet definitions of an essential service, such certificate will be revoked, and the company will be referred to the South African Police Services. False declaration by the company is a criminal offence and will result in prosecution, in terms of lockdown Regulation…"*

61. I point out that:

61.1. The third respondent purported, by the press of a button to invalidate all CIPC certificates issued prior to 16 April 2020 despite the fact that they **merely constituted** "*a record of the company's details*".

61.2. Notwithstanding the phrase "*To provide time for businesses to adjust to the new requirements*", there were none except that additional categories of businesses were allowed to trade, and that new certificates were only available as from the start of business on 20 April 2020 leaving a window

of 4 days during which no company or close corporation would have been able to present a valid CIPC Certificate.

61.3. Then follows an alarming disclaimer in which the third respondent "*reminds the public*" that the certificate is actually worthless and does not provide a company or close corporation with the right to trade during the extended lockdown, since such a company or close corporation "*must still comply with the provisions of the lockdown Regulation*" i.e. to acquire a permit from a "*Head of Institution*".

62. Despite this "*clarification*" the third respondent made it clear that the new certificates "*will clearly state that it is for the extended lockdown period beginning 17 April 2020 and SAPS officials will be told which certificates to look for*". This statement suggests that they have some validity during the extended lockdown period only. The sixth respondent simply has no power to undo evidence of the registration of a company or close corporation.

63. The implication, as will be demonstrated with reference to various occurrences since 17 April 2020, is that the failure to produce an *"Essential Services Business Certificate"* post 17 April 2020, purportedly (but not actually) authorising the bearer to provide an emergency service will expose the person concerned to arrest by the SAPS under circumstances where such person actually complies with the Regulation.

64. More problematic though is the fact that enterprises not registered as companies or close corporations but who actually do render emergency services cannot be issued with CIPC Certificates and similarly run the risk of arrest by the SAPS.

65. On 29 April 2020 the second respondent issued a new set of Regulations herein after referred to as "*the Level 4 Regulations*". They repealed the 18 March 2020 Regulation as amended but in Regulations 2(3) provided that, despite the repeal of those Regulations, all directions issued in terms of those Regulations shall continue to apply unless varied, amended or withdrawn by the cabinet member responsible for such directions.

66. The third respondent has not issued any amended, varied or cancelling directions. He did, however, on 12 May 2020, issue directions regarding the sale of clothing, footwear and bedding during level 4. Those directions do not form part of this application, although the applicant reserves the right to include them at a later stage in this or similar proceedings.

67. The Level 4 Regulations provide that providers of emergency services may continue to provide such services, but a new category of services called "*permitted services*" was created.

68. Regulations 16(2)(a) and (b) provide:

"*A person may only leave their (sic) place of residence to –*

a. *Perform an essential or permitted service as allowed in alert level 4;*

b. *Go to work where a permit which corresponds with form 2 of Annexure A has been issued…*"

69. Regulation 16(3) introduces a curfew from 20h00 to 05h00 and provides:

"*Every person is confined to his or her place of residence from 20h00 until 05h00 daily, except where a person has been granted a permit to perform an essential or permitted service as listed in Annexure D, or is attending to a security or medical emergency*".

70. Regulations 28(4) provides:

*"Persons performing essential services or permitted services, must be duly designated in writing by the head of an institution, or a person designated by him or her, on a form that corresponds with Form 2 in Annexure A: Provided that the Cabinet member responsible for small enterprises may issue directions in respect of small and micro enterprises, co-operatives, informal traders and spaza shops in respect of those entities".*

71. The seventh respondent, on 12 May 2020, purported to issue such directions in terms of Government Notice R522, in Government Gazette 43306 of even date. A copy of those directions is attached hereto as **Annexure "L"**. I will revert to the provisions thereof shortly.

72. Upon a proper interpretation of the level 4 Regulation it is required of every person leaving his / her residence for work purposes to have been issued with a permit. "*Essential Services Business Certificates*" issued by the sixth respondent (which are in any event only "valid" for a finite time) are not such permits because they are not issued, by anybody, definitely not by a "*Head of Institution*" and the sixth respondent does not take any responsibility for the correctness of the information contained in such certificates. Moreover, the Companies Act, 2008, does not provide for the issue of such certificates.

73. In order to comply with the Regulation, a permit in the format of Form 2 is required: if by a company, issued by the CEO of that company (or person of equivalent rank); if by a close corporation, by a member of that corporation; if by a sole proprietor, by him / herself; if by a trust, by a trustee of that trust; if by a partnership, by a partner of that partnership.

74. The invalidity of "Essential Service Certificates" appeared to have finally dawned on the sixth respondent, because the Commissioner, on 11 May 2020, issued a letter, a copy of which is attached hereto as **Annexure "M"**, wherein it is said that

"the CIPC cannot provide any guidance as to whether an industry is allowed or prohibited to trade".

75. However, despite this *communique,* such certificates are still made available from Bizportal, and the members of the South African Police Service still require sight thereof, in order to determine whether persons are entitled to travel to and from their workplaces, in order to perform essential or permitted services.

76. Apart from the "*Essential Services Certificates*" electronically issued as a result of the efforts of the sixth respondent, the seventh respondent, in her directions issued on 12 May 2020, directed that four categories of businesses must be in possession of *"a business licence or permit to trade issued in accordance with the Businesses Act, (Act 71 of 1991) or a business licence or trading permit issued by the relevant municipality".* They are:

    76.1. Small scale bakeries and confectionaries: Directive 5;

    76.2. Small scale Hardware stores: Directive 6;

    76.3. Informal and micro restaurants and shisanyamas: Directive 7; and

    76.4. Tradesmen and artisans' businesses: Directive 8.

77. I point out that the Directions do not contain definitions of those types of enterprises. It is impossible to distinguish between small, medium and large-scale bakeries, confectionaries and hardware stores. To that extent, the ambit of the Direction is

indeterminable, except in the discretion of the law enforcement officer, and should therefore be void for vagueness.

78. I further point out that two of the four categories which are now required to have business licences in terms of the Businesses Act, i.e. hardware stores and artisans, do not require and cannot legally be issued with such permits or licences in terms of that Act. The Businesses Act is applicable only to the sale and supply of perishable foodstuffs, certain health and entertainment facilities and the hawking of meals or perishable foodstuffs . The inclusion of hardware stores and artisans under the compulsory Directions, therefore postulates an insurmountable obstacle to their operation as such.

79. In any event, the Directions do not exempt businesses excluded from the Businesses Act from the Directions. Such businesses are mentioned in Schedule 2 of that Act. They are charitable, religious, educational, cultural and agricultural businesses. Even they are now obliged to obtain such permits, under circumstances where the local authorities may not issue such licences to them.

80. The Directions do provide for alternatives such as "business licences or trading permits". However, no provision is made for the issue of such licences or permits in the DMA, the Level 4 Regulations (except such permits as are issued by "Heads of Institutions"), or any other legislation.

81. The seventh respondent can also not instruct local authorities to issue such licences or permits, since she is a minister in the national sphere of government, and the competence to issue licences and permits is either a provincial or local competency, in terms of the Constitution.

82. Furthermore, the issue of licences or permits in terms of the Businesses Act, may only take place if "an administrator (the predecessor of the Provincial Premier) by notice in the Provincial Gazette designates a local authority or appoint a person or body as a licensing authority for a specific area and from a specific date. (See section 2(1)(a)). Despite a diligent search, I could not find any such delegation, at least not any delegation by any Premier of any Province designating any local authority to issue licences or trade permits for use by enterprises under the Level 4 Regulations.

83. Direction 8(b) takes the matter a step further, where certain types of tradesmen, such as those operating vehicle service centres, fitment centres, or body repair workshops, who do not require any licence or trade permit from any local authority, are required to now apply for such a licence or permit, which local authorities may not issue.

84. Co-operatives are also placed under an additional burden to produce "a valid and original certificate of registration". A co-operative is, by definition, an entity consisting of two or more persons. Certificates are only issued in original form once.

It is therefore impossible for more than one member of a co-operative to be in possession of an original, when going about the business of such co-operative.

85. I submit that the Level 4 Regulations adequately caters for the permission of persons going about essential or permitted business: if the "head of institution" issues a permit, under circumstances where a person purports to be authorised to perform an essential or permitted service and such service is not allowed under the Regulations, that head of that institution commits fraud and can be dealt with under the common law of fraud.

86. I consequently submit that:

86.1. The Level 4 Regulations only require essential and permitted service providers to produce a permit issued by a "head of institution" as defined therein. Any requirement to produce any other permit or licence purportedly required by directive of any other Minister or by members of the SAPS is inconsistent with the Constitution, the Businesses Act, 1991 and the Level 4 Regulations.

86.2. The sixth respondent acts illegally by issuing "essential services certificates" to companies and close corporations;

86.3. The eighth respondent acted illegally by issuing Government Notice R522;

86.4. Any law enforcement officer who requires a person to comply with a more stringent requirement than those laid down in the Level 4 Regulations, also acts illegally.

**PRACTICAL EXAMPLES OF ABUSE OF THE PERMIT SYSTEM:**

87. In practice these "*Essential Services Business Certificates*" (or lack thereof) have *inter alia* led to the following situations:

87.1. Sole proprietorships, partnerships and other bodies corporate who are entitled to trade under the Regulations, are discouraged from doing so for fear of breaking the law. Many businesses and even members of law enforcement are under the impression that the duplicate CIPC essential service certificate of the sixth respondent, is a requirement in order to lawfully trade.

87.2. Businesses who are not registered entities with the sixth respondent, are required to apply for municipal permits now suddenly during the lockdown. This has led to many businesses being unable to trade due to either an

inability of local authorities to issue such permits and/or a lack of information regarding the availability of an application process.

87.3. Small business, hawkers and other tradespeople are exposed to even more harassment because of these extraordinary local government permits that they suddenly need comply with. They must undergo a far more strenuous process in order to trade, especially compared to other businesses who can merely rely on regulation 28(4) to issue their permits.

87.4. The new Directives issued by the seventh respondent has in particular created a lot of uncertainty amongst tradespeople and hardware store owners who do not own large business chain stores. What is supposed to be the "scale" against which a so called "Small scale" hardware stores are to be measured, is impossible to determine. These businesses now stand the risk of being closed down if the authorities apply different interpretations to the interpretation of the Directives.

87.5. The ambiguous and vague nature of the wording of the regulations expose the public to the risk of arrest if law enforcement differs on the interpretation. Business owners relying on the dictionary meaning of words within the regulations are summarily arrested. At ground level it is clearly whatever interpretation law enforcement attaches to the extremely wide wording of

the regulations that will determine whether or not you are acting within the confines of the regulations.

87.6. The continued insistence on *Essential Service Certificates* by the SAPS and the creation of further sub-categories of business that are required to obtain further special permits, results in great inequality and an uncompetitive environment between businesses who effectively conduct the same services.

87.7. Small business, tradespeople and hawkers are especially hard hit. Because of their size, they are subjected to harsh scrutiny and additional permit processes that are difficult to navigate. Even established and experienced businesses struggle to act during the lockdown with legal certainty.

87.8. Humanitarian organisations are especially hampered in their efforts due to municipal permits that need to be navigated from place to place. Some municipalities seemingly even require that permits must be renewed daily before they may even start distributing humanitarian relief to the hungry. In this regard I refer to a news article, attached as annexure **N1** taken from the Sandton Chronicle reporting about an organisation, Cradle of Hope, that is required to apply for a permit every day before they are allowed to distribute food to between 300 and 400 hungry adults. The applicant has been in

connection with persons assisting the organisation, but due to the urgency of this application could not secure supporting affidavits.

88. In support of paragraph 85 above, the applicant attaches supporting affidavits received from members of the public as annexures **N2 – N6.**

89. It is therefore clear that business persons who actually qualify as providers of essential or permitted services, are being detained, prosecuted or otherwise harassed by the South African Police Service when they are unable to produce such certificates, or are too scared to participate in the economy legally for fear of detention, prosecution or harassment by the South African Police Service.

**THE ELEMENTS OF AN INTERDICT:**

90. Clear right: The applicant and those whom it represents and in whose interest these proceedings are brought, have a clear right to go about their lives and livelihoods legally and without illegal interference.

91. Infringement of clear right: The illegal conduct described above, infringe the rights of ordinary citizens to go about their lives and livelihoods legally, and justify the censure of this Honourable Court.

92. No alternative remedy: The applicant has written to the respondents calling upon them to reconsider their conduct and to submit to mediation in terms of Regulation 13 of the Level 4 Regulations. Copies of the correspondence are attached hereto as annexures **"O1"** to **"O3"** The applicant has not received the courtesy of a reply. I submit that the applicant has no option but to resort to legal action.

93. The Court's discretion: I submit that the Court has a limited discretion in considering an application such as the present. I submit that this application raises a matter of considerable public interest in that clarity be obtained about the legality of the conduct of the sixth respondent, the Directions issued by the seventh respondent and the conduct of the South African Police Service in enforcing the Level 4 Regulations.

**URGENCY:**

94. Finally, I submit that these proceedings are urgent and cannot reasonably await a hearing in due course. The very legal system is affected by the Covid-19 pandemic, to the extent that it is unclear when the Courts will be able to resume their ordinary

activities. The Level 4 Regulations will be in place for at least the rest of May 2020, and will have a significant influence on the measures that will follow. I submit that the applicant and those whom it represents will be unable to obtain substantial redress at a hearing in due course, because the measures against which these proceedings are aimed, will by then have expired, with lasting damage to the rights of those affected by them.

95. I consequently pray for an order as set forth in the Notice of Motion.

DEPONENT

Thus signed and sworn to before me on this the 15th day of **MAY 2020**, the Deponent having acknowledged that he knows and understands the content of the above affidavit, the regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

Full names:
Capacity:
Designation:
Address:

NIEL DU PLESSIS
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY, REPUBLIC OF SOUTH AFRICA
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Annexure "A"



REPUBLIC OF SOUTH AFRICA
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**DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**NO. 312** **15 MARCH 2020**

## DISASTER MANAGEMENT ACT, 2002 (ACT NO 57 of 2002)

## CLASSIFICATION OF A NATIONAL DISASTER.

I, Dr Mmaphaka Tau, in my capacity as Head of the National Disaster Management Centre after assessing the potential magnitude and severity of the COVID-19 pandemic in the country, hereby give notice that on 15 March 2020, in terms of section 23(1)(b) of the Disaster Management Act, 2002 (Act No. 57 of 2002) (the Act), classified the COVID-19 pandemic as a national disaster.

Emanating from the classification of this occurrence as a national disaster, in terms of section 26, read with section 23 (8) of the Act, the primary responsibility to coordinate and manage the disaster, in terms of existing legislation and contingency arrangements, is designated to the national executive.

I hereby, in terms of Section 15(2)(*aA*) of the Act, read with section 23(8), call upon organs of state to further strengthen and support the existing structures to implement contingency arrangements and ensure that measures are put in place to enable the national executive to effectively deal with the effects of this disaster.

Also emanating from this classification, and the assistance provided by organs of state in terms of Section 23(8) and Sections 15(2)(*aA*) of the Act, organs of state are required to prepare and submit reports, as required by the National Disaster Management Centre and as outlined in Section 24(4)-(8) of the Act, to the respective intergovernmental forums as listed therein.

Dr Mmaphaka Tau
**Head: National Disaster Management Centre**
Department of Cooperative Governance
15·03·2020

**DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**NO. 313** **15 MARCH 2020**

## DISASTER MANAGEMENT ACT, 2002

## DECLARATION OF A NATIONAL STATE OF DISASTER

Considering the magnitude and severity of the COVID-19 outbreak which has been declared a global pandemic by the World Health Organisation (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre, and taking into account the need to augment the existing measures undertaken by organs of state to deal with the pandemic, I, Dr Nkosazana Dlamini Zuma, the Minister of Cooperative Governance and Traditional Affairs, as designated under Section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("the Act"), in terms of -

1) Section 27(1) of the Act, hereby declare a national state of disaster having recognised that special circumstances exist to warrant the declaration of a national state of disaster; and

2) Section 27(2) of the Act may, when required, make regulations or issue directions or authorise the issue of directions concerning the matters listed therein, only to the extent that it is necessary for the purpose of —

   (a) assisting and protecting the public;

   (b) providing relief to the public;

   (c) protecting property;

   (d) preventing or combatting disruption; or

   (e) dealing with the destructive and other effects of the disaster.

NC Zuma

**DR NKOSAZANA DLAMINI ZUMA, MP**

**MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**DATE:** 15 . 03 . 2020 .

**Annexure "B"**



**DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**NO. 313** **15 MARCH 2020**

## DISASTER MANAGEMENT ACT, 2002

## DECLARATION OF A NATIONAL STATE OF DISASTER

Considering the magnitude and severity of the COVID-19 outbreak which has been declared a global pandemic by the World Health Organisation (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre, and taking into account the need to augment the existing measures undertaken by organs of state to deal with the pandemic, I, Dr Nkosazana Dlamini Zuma, the Minister of Cooperative Governance and Traditional Affairs, as designated under Section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("the Act"), in terms of -

1) Section 27(1) of the Act, hereby declare a national state of disaster having recognised that special circumstances exist to warrant the declaration of a national state of disaster; and

2) Section 27(2) of the Act may, when required, make regulations or issue directions or authorise the issue of directions concerning the matters listed therein, only to the extent that it is necessary for the purpose of –

   (a) assisting and protecting the public;

   (b) providing relief to the public;

   (c) protecting property;

   (d) preventing or combatting disruption; or

   (e) dealing with the destructive and other effects of the disaster.

NC Zuma

**DR NKOSAZANA DLAMINI ZUMA, MP**

**MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**DATE:** 15 . 03 . 2020 .

Annexure "C"



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

**DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**NO. 318** **18 MARCH 2020**

## DISASTER MANAGEMENT ACT, 2002

## REGULATIONS ISSUED IN TERMS OF SECTION 27(2)() OF THE DISASTER MANAGEMENT ACT, 2002.

I, Dr Nkosazana Dlamini Zuma, the Minister of Cooperative Governance and Traditional Affairs, designated under Section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("the Act"), having declared a national state of disaster, published in Government Gazette No. 43096 on 15 March 2020, in terms of Section 27(2) of the Act, after consulting the relevant Cabinet members, hereby make the Regulations set out in the schedule hereto regarding the steps necessary to prevent an escalation of the disaster or to alleviate, contain and minimise the effects of the disaster.

NC Zuma

**DR NKOSAZANA DLAMINI ZUMA, MP**
**MINISTER OF COOPERATIVE**
**GOVERNANCE AND TRADITIONAL**
**AFFAIRS**
**DATE:** 17. 03. 2020.



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## SCHEDULE

**Definitions**

**1.** In these Regulations, unless the context otherwise indicates—

**'adequate space'** means not more than one person per square meter of floor space;

**'COVID-19'** means the Novel Coronavirus (2019-nCov) which is an infectious disease caused by a virus, which emerged during 2019 and was declared a global pandemic by the WHO during the year 2020 that has previously not been scientifically identified in humans;

**Criminal Procedure Act'** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**'enforcement officer'** includes a member of the South African Police Service, the South African National Defence Force and a peace officer as defined in section 1 of the Criminal Procedure Act;

**'donor'** means an individual, corporation or organisation that is a contributor of cash, kind and/or other assets;

**'gathering'** means any assembly, concourse or procession of more than 100 persons, wholly or partially in open air or in a building or premises;

**'isolation'** means separating a sick individual with a contagious disease from healthy individuals without that contagious disease in such a manner as to prevent the spread of infection or contamination;

**'liquor'** means—

(*a*) any liquor product, as defined in section 1 of the Liquor Products Act, 1979 (Act No. 60 of 1989);

(*b*) beer or traditional African beer; or

(*c*) any other substance or drink declared to be liquor under the Liquor Act, 2003 (Act No. 59 of 2003), but does not include methylated spirits;

**'national state of disaster'** means the national state of disaster declared by Government Notice No. R. 313 of 15 March 2020;

**'partial care facility'** means a facility offering partial care as defined in section 1 of the Children's Act, 2005 (Act No. 38 of 2005);

**'quarantine'** means separating asymptomatic individuals potentially exposed to a disease from non-exposed individuals in such a manner as to prevent the possible spread of infection or contamination;

**'school'** means a school as defined in section 1 of the South African Schools Act, 1984 (Act No. 84 of 1996); and

**'the Act'** means the Disaster Management Act, 2002 (Act No. 57 of 2002).

**'WHO'** means the World Health Organisation.

**Release of resources**

**2.** (1) The Department of Defence must, for the duration of the declared national state of disaster, within its available resources—

*(a)* release and mobilise any available resources, including human resources, stores, equipment, ships, aircraft platforms, vehicles and facilities; and

*(b)* ensure the delivery of essential services,

as may be required to prevent, limit, contain, combat and manage the spread of COVID-19.

(2) National organs of state must, within their available resources release their personnel for the rendering of emergency services, as contemplated in section 27(2)*(b)* of the Act.

(3) Institutions within national, provincial and local government must make resources, other than funding, available to implement these Regulations or directions issued in terms of section 27(2) of the Act regarding the national state of disaster.

(4) Institutions within national, provincial and local government must—

(*a*) make funding available; and

(*b*) as far as possible, without affecting service delivery in relation to the realisation of the rights contemplated in sections 26 to 29 of the Constitution of the Republic of South Africa, 1996, shift funding,

within its budget to implement these Regulations or directions issued in terms of section 27(2) of the Act, regarding the national state of disaster.

(5) The National Treasury and provincial treasuries must take the necessary steps in terms of applicable legislation to implement these Regulations or directions issued in terms of section 27(2) of the Act, in relation to the national state of disaster.

(6) Donor funding received to assist with the national state of disaster must be—

(*a*) paid into the Reconstruction and Development Fund, established by the Reconstruction and Development Fund Act, 1994 (Act No. 7 of 1994); and

(*b*) used strictly for purposes of implementing these Regulations and directions issued in terms of section 27(2) of the Act in relation to the national state of disaster.

**Prevention and prohibition of gatherings**

**3.** (1) In order to contain the spread of COVID-19, a gathering is prohibited.

(2) An enforcement officer must, where a gathering takes place—

(*a*) order the persons at the gathering to disperse immediately; and

(*b*) if they refuse to disperse, take appropriate action, which may, subject to the Criminal Procedure Act, include arrest and detention.

(3) The assembly of more than 50 persons at premises where liquor is sold and consumed is prohibited.

**Refusal of medical examination, prophylaxis, treatment, isolation and quarantine**

**4.** (1) No person who has been clinically, or by a laboratory, confirmed as having COVID-19, or who is suspected of having contracted COVID-19, or who has been in contact with a person who is a carrier of COVID–19, may refuse consent to an enforcement officer for—

(*a*) submission of that person to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so;

(*b*) admission of that person to a health establishment or a quarantine or isolation site; or

(*c*) submission of that person to mandatory prophylaxis, treatment, isolation or quarantine or isolation in order to prevent transmission:

Provided that if a person does not comply with the instruction or order of the enforcement officer, that person must be placed in isolation or quarantine for a period of 48 hours, as the case may be, pending a warrant being issued by a magistrate, on application by an enforcement officer for the medical examination contemplated in paragraph (*a*).

(2) A warrant contemplated in subregulation (1) may be issued by a magistrate, if it appears from information on oath or affirmation by an enforcement officer —

(*a*) that a person is confirmed as having been infected with COVID-19;

(*b*) who is on reasonable grounds suspected of having contracted COVID-19, or who has been in contact with, or on reasonable grounds suspected to have been in contact with a person who is a carrier or infected with COVID–19.

(3) The warrant may impose restrictions on the powers of the enforcement officer as the magistrate may deem fit.

(4) A warrant issued in terms of this regulation remains in force until —

(*a*) it is executed;

(*b*) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;

(*c*) the expiry of ninety days from the date of its issue; or

(*d*) the purpose for the issuing of the warrant has lapsed,

whichever occurs first.

(5) No person is entitled to compensation for any loss or damage arising out of any *bona fide* action or omission by an enforcement officer under this regulation.

**Places of quarantine and isolation**

**5.** (1) The Minister of Public Works and Infrastructure must identify and make available sites to be used as isolation and quarantine facilities as the need arises.

(2) The Members of the Executive Council responsible for public works must identify and make available sites to be used as isolation and quarantine facilities within each province, as the need arises.

(3) The accounting officers of municipalities must identify and make available sites to be used as isolation and quarantine facilities within their local areas, and provide the list to the Department of Health for resourcing.

**Closure of schools and partial care facilities**

**6.** Schools and partial care facilities must be closed by 18 March 2020 until 15 April 2020, which period may be extended for the duration of the national state of disaster by the cabinet member responsible.

**Suspension of visits**

**7.** All visits by members of the public to—

(*a*) Correctional Centres;

(*b*) Remand Detention Facilities;

(*c*) Holding Cells;

(*d*) Military Detention Facilities; and

(*e*) Department of Social Development facilities, including Child and Youth Care Centres, shelters, One Stop Centres, and Treatment Centres,

are suspended for a period of 30 days from the date of publication of this Notice, which period may be extended for any period, but not beyond the duration of the national state of disaster by the cabinet member responsible.

**Limitation on the sale, dispensing or transportation of liquor**

**8.** (1) All on-consumption premises selling liquor, including taverns, restaurants and clubs, must be closed with immediate effect, or must accommodate no more than 50 persons at any time: Provided that adequate space is available and that all directions in respect of hygienic conditions and limitation of exposure to persons with COVID-19, are adhered to.

(2) All premises selling liquor which provide accommodation must implement measures to stop the spread of COVID-19: Provided that adequate space is available and that all directions in respect of hygienic conditions and limitation of exposure to persons with COVID-19 are adhered to.

(3) No special or events liquor licenses may be considered for approval during the duration of the national state of disaster.

(4) All on-consumption premises selling liquor referred to in subregulation (1) must be closed —

(i) between 18:00 and 09:00 the next morning on weekdays and Saturdays; and

(ii) from 13:00 on Sundays and public holidays.

(5) All off-consumption premises selling liquor must be closed —

(i) between 18:00 and 09:00 the next morning on weekdays and Saturdays; and

(ii) from 13:00 on Sundays and public holidays.

**Emergency Procurement Procedures**

**9.** Emergency procurement for institutions is subject to —

(*a*) the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the applicable emergency provisions in the Regulations or Instructions made under section 76 of that Act; and

(*b*) the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the applicable emergency provisions in the Regulations made under that Act.

**Authority to issue directions**

**10.** (1) The Minister of Health may—

(*a*) issue directions to address, prevent and combat the spread of COVID-19 in any area of the Republic of South Africa, which directions may include the—

(i) recruitment and training of human resources from the Department of Health, and other entities responsible for the handling of COVID-19 mortal remains;

(ii) deployment of human resources from the Department of Health to identified sites to render services;

(iii) sourcing of human resources from the Expanded Public Works Programme retired health professionals and Non-Governmental Organisations to render services in identified sites;

(iv) provision of health equipment, sanitation materials and medical supplies;

(v) identification and establishment of mortuaries that will accommodate all COVID-19 mortal remains;

(vi) disposal of COVID-19 mortal remains; and

(*b*) vary the directions referred to in paragraph (*a*) as the circumstances require.

(2) The Minister of Justice and Correctional Services may—

(*a*) issue directions to address, prevent and combat the spread of COVID-19 in all Correctional Centres and Remand Detention Facilities in the Republic of South Africa;

(*b*) after consultation with the Chief Justice, where appropriate, issue directions to address, prevent and combat the spread of COVID-19 in all courts and court precincts in the Republic of South Africa; and

(*c*) vary the directions referred to in paragraphs (*a*) and (*b*) as the circumstances require.

(3) The Ministers of Basic and Higher Education may —

(*a*) issue directions to address, prevent and combat the spread of COVID-19 in all schools and institutions of higher learning; and



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(*b*) vary the directions referred to in (*a*) as the circumstances require.

(4) The Minister of Police may—

(*a*) issue directions to address, prevent and combat the spread of COVID-19 in all police stations, police precincts, and holding cells; and

(*b*) vary the directions referred to in paragraph (*a*) as the circumstances require.

(5) The Minister of Social Development may—

(*a*) issue directions to address, prevent and combat the spread of COVID-19 in all Department of Social Development facilities; and

(*b*) vary the directions referred to in paragraph (*a*) as the circumstances require.

(6) The Minister of Trade and Industry may —

(*a*) issue directions to—

(i) protect consumers from excessive, unfair, unreasonable or unjust pricing of goods and services during the national state of disaster; and

(ii) maintain security and availability of the supply of goods and services during the national state of disaster;

(*b*) issue directions to address, prevent and combat the spread of COVID-19; and

(*c*) vary the directions referred to in paragraphs (*a*) and (*b*) as the circumstances require.

(7) The Minister of Transport may—

(*a*) issue directions to address, prevent and combat the spread of COVID-19 in matters falling within his mandate; and

(*b*) vary the directions referred to in paragraph (*a*) as the circumstances require.

(8) Any Minister may issue and vary directions, as required, within his or her mandate, to address, prevent and combat the spread of COVID-19, from time to time, as may be required, including—

(*a*) disseminating information required for dealing with the national state of disaster;

(*b*) implementing emergency procurement procedures;

(*c*) taking any other steps that may be necessary to prevent an escalation of the national state of disaster, or to alleviate, contain and minimise the effects of the national state of disaster; or

(*d*) taking steps to facilitate international assistance.

**Offences and penalties**

**11.** (1) For purposes of regulation 3, any person who—

(*a*) convenes a gathering;

(*b*) permits more than 50 persons at premises where liquor is sold and consumed; or

(*c*) hinders, interferes with, or obstructs an enforcement officer in the exercise of his or her powers, or the performance of his or her duties in terms of these Regulations,

is guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) A person is guilty of an offence if that person fails to comply with or contravenes the provisions of regulations 6 and 9 of these Regulations.

(3) A person convicted of an offence mentioned in subregulation (2) liable on conviction to a fine or to imprisonment not exceeding six months or to both a fine and imprisonment.

(4) Any person who intentionally misrepresents that he, she or any other person is infected with COVID-19 is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(5) Any person who publishes any statement, through any medium, including social media, with the intention to deceive any other person about—

(*a*) COVID-19;

(*b*) COVID-19 infection status of any person; or

(*c*) any measure taken by the Government to address COVID-19,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months, or both such fine and imprisonment.

(6) Any person who intentionally exposes another person to COVID-19 may be prosecuted for an offence, including assault, attempted murder or murder.

**Commencement**

**12.** These Regulations come into operation on the date of publication.



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Annexure "D"



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

**DEPARTMENT OF TRADE AND INDUSTRY**

**NO. R. 350** **19 MARCH 2020**

# CONSUMER AND CUSTOMER PROTECTION AND NATIONAL DISASTER MANAGEMENT REGULATIONS AND DIRECTIONS

I, Ebrahim Patel, Minister of Trade and Industry, do hereby make the regulations and directions set out in the schedule hereto in terms of and under section 78 read with section 8(3)(f) of the Competition Act, 1998 (Act No. 89 of 1998); section 120 (1)(d) read with sections 40 and 48 of the Consumer Protection Act, 2008 (Act 68 of 2008); and, the regulations issued by the Minister of Co-operative Governance and Traditional Affairs in terms of section 27 (2) of the Disaster Management Act, 1957 (Act 57 of 2002) pursuant to the national disaster declared in Government Notice No. 313 of *Government Gazette* No. 430096 on 15 March 2020.

**EBRAHIM PATEL**
**MINISTER OF TRADE AND INDUSTRY**

## SCHEDULE

1. **Interpretation.**

In these regulations, unless the context indicates otherwise, any word or expression has the meaning assigned to it by the Competition Act, 1998 (Act No. 89 of 1998), Consumer Protection Act, 2008 (Act No. 68 of 2000), the Disaster Management Act, 1957 (Act 57 of 2002), or the regulations issued in terms of section 27 (2) of the Disaster Management Act, 1957 (Act No. 57 of 2002) and published in Government Notice No. 318 of *Government Gazette* No. 43107 on 18 March 2020 and—

1.1. "**Competition Act**" means the Competition Act, 1998 (Act No. 89 of 1998);

1.2. "**Consumer Protection Act**" means the Consumer Protection Act, 2008 (Act No. 68 of 2008);

1.3. "**Disaster Management Act**" means the Disaster Management Act, 1957 (Act No. 57 of 2002);

1.4. "**national disaster**" means the national disaster relating to the COVID-19 outbreak declared in Government Notice No. 313 of *Government Gazette* No. 43096 on 15 March 2020; and

1.5. "**price increase**" means a direct increase or an increase as a result of unfair conduct such as, amongst others, false or misleading pricing practices, covert manipulation of prices, manipulation through raising or reducing grade levels of goods and services.

2. **Application.**

2.1. These regulations and directions apply to the supply of goods and services contemplated and listed in Annexures A and B during the period of the national disaster.

2.2. These regulations and directions come into effect on the date of their publication in the *Government Gazette*.

2.3. These regulations and directions will be of no force of effect when the COVID-19 outbreak is no longer declared a disaster.

3. **Purpose.**

The purpose of these regulations is to—

3.1. promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster; and

3.2. protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.

4. **Excessive Pricing.**

4.1. In terms of section 8 (1) of the Competition Act a dominant firm may not charge an excessive price to the detriment of consumers or customers.

4.2. In terms of section 8 (3)(f) of the Competition Act during any period of the national disaster, a material price increase of a good or service contemplated in Annexure A which—

4.2.1. does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or

4.2.2. increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three month period prior to 1 March 2020,

is a relevant and critical factor for determining whether the price is excessive or unfair and indicates *prima facie* that the price is excessive or unfair.

5. **Unconscionable, unfair, unreasonable and unjust prices.**

5.1. In terms of sections 40 and 48 of the Consumer Protection Act a supplier may not—

5.1.1. engage in unconscionable conduct, which includes the use of unfair tactics in connection with the marketing of any goods or service and the supply of goods or service to a consumer; and

5.1.2. may not offer to supply, supply or enter into an agreement to supply any good and service at a price that is unfair, unreasonable or unjust.

5.2. In terms of section 120 (1)(d) of the Consumer Protection Act, during any period of the national disaster, a price increase of a good or service contemplated in Annexure A which—

5.2.1. does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or

5.2.2. increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three month period prior to 1 March 2020,

is unconscionable, unfair, unreasonable and unjust and a supplier is prohibited from effecting such a price increase.

5.3. The Minister, after consultation with the Minister of Health, may issue directions in terms of the regulations issued in terms of section 27(2) of the Disaster Management Act published in Government Notice No. 318 of *Government Gazette* No. 43107 on 18 March 2020, should it become necessary, to set maximum prices on private medical goods and services relating to the testing, prevention and treatment of the COVID-19 and its associated diseases during the national disaster.

6. **Supply of goods.**

6.1. A supplier must develop and implement reasonable measures to—

6.1.1. ensure the equitable distribution to consumers or customers, including small businesses, of goods contemplated in Annexure A; and

6.1.2. maintain adequate stocks of goods contemplated in Annexure A.

6.2. These measures may include limiting the number of items of the goods referred to in Annexure B which a consumer or customer may purchase in a defined period of time.

6.3. A retailer must prominently display a notice in each of its stores that states that it has developed and will implement the measures referred to in sub-regulations 6.1 and 6.2 and that it will adequality and diligently carry out these measures.

6.4. A wholesaler must take all reasonable steps to ensure that purchases by customers and consumers are not intended to circumvent the object and implementation of the measures referred to in sub-regulation 6.1.



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6.5. The Minister may, by notice in the *Gazette*, delete or add goods and services contemplated and listed in Annexures A and B.

6.6. The Minister may, by notice in the Gazette, issue directionsin terms of the regulations issued in terms of section 27(2) of the Disaster Management Act published in Government Notice No. 318 of *Government Gazette* No. 43107 on 18 March 2020, should it become necessary, to set maximum quantities limiting the number of items of the goods referred to in Annexure B which a consumer or customer may purchase in a defined period of time.

7. **Penalties.**

7.1. A dominant firm that contravenes or fails to comply with regulation 4 must be investigated by the Competition Commission and, if found to be in contravention, is liable for the penalties imposed upon it as provided for in the Competition Act.

7.2. Subject to the requirements of the Competition Act, the Consumer Protection Act and the regulations published in terms of section 27 (2) of the Disaster Management Act, a person or firm which contravenes these regulations could have one of more of the following penalties imposed—

7.2.1. a fine of up to R1 000 000;

7.2.2. a fine of up to 10% of a firm's turnover; and

7.2.3. imprisonment for a period not exceeding 12 months.

8. **Representations on these regulations.**

8.1. Any person may make written representations regarding these regulations and directions.

8.2. Representations must reach the Department of Trade and Industry not later than 14 days from the date of publication of this notice.

8.3. Representations should be submitted by email to ministry@economic.gov.za.

8.4. Following consideration of the representations, the Minister may amend these regulations and directions.

## ANNEXURE A

The goods and services are those which relate to—

1. basic food and consumer items;
2. emergency products and services;
3. medical and hygiene supplies;
4. emergency clean-up products and services.

## ANNEXURE B

1. The goods are—

1.1. Toilet Paper;

1.2. Hand Sanitiser;

1.3. Facial Masks;

1.4. Disinfectants Cleaners;

1.5. Surgical gloves;

1.6. Surgical masks;

1.7. Disinfectant Wipes;

1.8. Antiseptic Liquids;

1.9. All-Purpose Cleaners;

1.10. Baby Formula;

1.11. Disposable Nappies;

1.12. Bleach;

1.13. Cooking Oils;

1.14. Wheat Flour;

1.15. Rice;

1.16. Maize meal;

1.17. Pasta;

1.18. Sugar;

1.19. Long-life Milk

1.20. Canned and Frozen Vegetables;

1.21. Canned, frozen and fresh meat, chicken or fish;

1.22. Bottled Water.

2. The services are—

2.1. private medical services relating to the testing, prevention and treatment of the COVID-19 and its associated diseases.



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Annexure "E"

# STATEMENT BY PRESIDENT CYRIL RAMAPHOSA ON ESCALATION OF MEASURES TO COMBAT COVID-19 EPIDEMIC

## UNION BUILDINGS, TSHWANE

## 23 MARCH 2020

My fellow South Africans,

It is a week since we declared the coronavirus pandemic a national disaster and announced a package of extraordinary measures to combat this grave public health emergency.

The response of the South African people to this crisis has been remarkable.

Millions of our people have understood the gravity of the situation.

Most South Africans have accepted the restrictions that have been placed on their lives and have taken responsibility for changing their behaviour.

I am heartened that every sector of society has been mobilised and has accepted the role that it needs to play.

From religious leaders to sporting associations, from political parties to business people, from trade unions to traditional leaders, from NGOs to public servants, every part of our society has come forward to confront this challenge.

Many have had to make difficult choices and sacrifices, but all have been determined that these choices and sacrifices are absolutely necessary if our country is to emerge stronger from this disaster.

Over the past week, South Africans have demonstrated their determination, their sense of purpose, their sense of community and their sense of responsibility.

For this, we salute you and we thank you.

On behalf of the nation, I would also like to thank the health workers, our doctors, nurses and paramedics who are on the frontline of the pandemic, our teachers, border officials, police and traffic officers and all the other people who have been leading our response.

Since the national state of disaster was declared, we have put in place a range of regulations and directives.

These regulations have restricted international travel, prohibited gatherings of more than 100 people, closed schools and other educational institutions and restricted the sale of alcohol after 6pm.

We reiterate that the most effective way to prevent infection is through basic changes in individual behaviour and hygiene.

We are therefore once more calling on everyone to:

- wash hands frequently with hand sanitisers or soap and water for at least 20 seconds;

- cover our nose and mouth when coughing and sneezing with tissue or flexed elbow;

- avoid close contact with anyone with cold or flu-like symptoms.

Everyone must do everything within their means to avoid contact with other people.

Staying at home, avoiding public places and cancelling all social activities is the preferred best defence against the virus.

Over the past week, as we have been implementing these measures, the global crisis has deepened.

When I addressed the nation last Sunday there were over 160,000 confirmed COVID-19 cases worldwide.

Today, there are over 340,000 confirmed cases across the world.

In South Africa, the number of confirmed cases has increased six-fold in just eight days from 61 cases to 402 cases.

This number will continue to rise.

It is clear from the development of the disease in other countries and from our own modelling that immediate, swift and extraordinary action is required if we are to prevent a human catastrophe of enormous proportions in our country.

Our fundamental task at this moment is to contain the spread of the disease.

I am concerned that a rapid rise in infections will stretch our health services beyond what we can manage and many people will not be able to access the care they need.

We must therefore do everything within our means to reduce the overall number of infections and to delay the spread of infection over a longer period – what is known as flattening the curve of infections.

It is essential that every person in this country adheres strictly – and without exception – to the regulations that have already been put in place and to the measures that I am going to announce this evening.

Our analysis of the progress of the epidemic informs us that we need to urgently and dramatically escalate our response.

The next few days are crucial.

Without decisive action, the number of people infected will rapidly increase from a few hundred to tens of thousands, and within a few weeks to hundreds of thousands.

This is extremely dangerous for a population like ours, with a large number of people with suppressed immunity because of HIV and TB, and high levels of poverty and malnutrition.

We have learnt a great deal from the experiences of other countries.

Those countries that have acted swiftly and dramatically have been far more effective in controlling the spread of the disease.

As a consequence, the National Coronavirus Command Council has decided to enforce a nation-wide lockdown for 21 days with effect from midnight on Thursday 26 March.

This is a decisive measure to save millions of South Africans from infection and save the lives of hundreds of thousands of people.

While this measure will have a considerable impact on people's livelihoods, on the life of our society and on our economy, the human cost of delaying this action would be far, far greater.

The nation-wide lockdown will be enacted in terms of the Disaster Management Act and will entail the following:

- From midnight on Thursday 26 March until midnight on Thursday 16 April, all South Africans will have to stay at home.

- The categories of people who will be exempted from this lockdown are the following: health workers in the public and private sectors, emergency personnel, those in security services – such as the police, traffic officers, military medical personnel, soldiers – and other persons necessary for our response to the pandemic.

  It will also include those involved in the production, distribution and supply of food and basic goods, essential banking services, the maintenance of power, water

and telecommunications services, laboratory services, and the provision of medical and hygiene products. A full list of essential personnel will be published.

- Individuals will not be allowed to leave their homes except under strictly controlled circumstances, such as to seek medical care, buy food, medicine and other supplies or collect a social grant.

- Temporary shelters that meet the necessary hygiene standards will be identified for homeless people. Sites are also being identified for quarantine and self-isolation for people who cannot self-isolate at home.

- All shops and businesses will be closed, except for pharmacies, laboratories, banks, essential financial and payment services, including the JSE, supermarkets, petrol stations and health care providers.

  Companies that are essential to the production and transportation of food, basic goods and medical supplies will remain open.

  We will publish a full list of the categories of businesses that should remain open.

  Companies whose operations require continuous processes such as furnaces, underground mine operations will be required to make arrangements for care and maintenance to avoid damage to their continuous operations.

  Firms that are able to continue their operations remotely should do so.

- Provision will be made for essential transport services to continue, including transport for essential staff and for patients who need to be managed elsewhere.

The nation-wide lockdown is necessary to fundamentally disrupt the chain of transmission across society.

I have accordingly directed the South African National Defence Force be deployed to support the South African Police Service in ensuring that the measures we are announcing are implemented.
This nationwide lockdown will be accompanied by a public health management programme which will significantly increase screening, testing, contact tracing and medical management.

Community health teams will focus on expanding screening and testing where people live, focusing first on high density and high-risk areas.

To ensure that hospitals are not overwhelmed, a system will be put in place for 'centralised patient management' for severe cases and 'decentralised primary care' for mild cases.

Emergency water supplies – using water storage tanks, water tankers, boreholes and communal standpipes – are being provided to informal settlements and rural areas.

A number of additional measures will be implemented with immediate effect to strengthen prevention measures. Some of those measures are that:

- South African citizens and residents arriving from high-risk countries will automatically be placed under quarantine for 14 days.

- Non-South Africans arriving on flights from high-risk countries we prohibited a week ago will be turned back.

- International flights to Lanseria Airport will be temporarily suspended.

- International travellers who arrived in South Africa after 9 March 2020 from high-risk countries will be confined to their hotels until they have completed a 14-day period of quarantine.

Fellow South Africans,

Our country finds itself confronted not only by a virus that has infected more than a quarter of a million people across the globe, but also by the prospects of a very deep economic recession that will cause businesses to close and many people to lose their jobs.

Therefore, as we marshal our every resource and our every energy to fight this epidemic, working together with business, we are putting in place measures to mitigate the economic impact both of this disease and of our economic response to it.

We are today announcing a set of interventions that will help to cushion our society from these economic difficulties.

This is the first phase of the economic response, and further measures are under consideration and will be deployed as needed.

These interventions are quick and targeted.

Firstly, we are supporting the vulnerable.

- Following consultation with social partners, we have set up a Solidarity Fund, which South African businesses, organisations and individuals, and members of the international community, can contribute to.

  The Fund will focus efforts to combat the spread of the virus, help us to track the spread, care for those who are ill and support those whose lives are disrupted.

  The Fund will complement what we are doing in the public sector.

  I am pleased to announce that this Fund will be chaired by Ms Gloria Serobe and the deputy Chairperson is Mr Adrian Enthoven.

The Fund has a website – www.solidarityfund.co.za – and you can begin to deposit monies into the account tonight.

The Fund will be administered by a reputable team of people, drawn from financial institutions, accounting firms and government.

It will fully account for every cent contributed and will publish the details on the website.

It will have a board of eminent South Africans to ensure proper governance.

To get things moving, Government is providing seed capital of R150 million and the private sector has already pledged to support this fund with financial contributions in the coming period.

We will be spending money to save lives and to support the economy.

In this regard, we must applaud the commitment made in this time of crisis by the Rupert and Oppenheimer families of R1 billion each to assist small businesses and their employees affected by the coronavirus pandemic.

- We are concerned that there are a number of businesses that are selling certain goods at excessively high prices. This cannot be allowed.

  Regulations have been put in place to prohibit unjustified price hikes, to ensure shops maintain adequate stocks of basic goods and to prevent people from 'panic buying'.

  It is important for all South Africans to understand that the supply of goods remains continuous and supply chains remain intact.

  Government has had discussions with manufacturers and distributors of basic necessities, who have indicated that there will be a continuous supply of these goods. There is therefore no need for stockpiling of any items.

- A safety net is being developed to support persons in the informal sector, where most businesses will suffer as a result of this shutdown. More details will be announced as soon as we have completed the work of assistance measures that will be put in place.

- To alleviate congestion at payment points, old age pensions and disability grants will be available for collection from 30 and 31 March 2020, while other categories of grants will be available for collection from 01 April 2020.

  All channels for access will remain open, including ATMs, retail point of sale devices, Post Offices and cash pay points.

Secondly, we are going to support people whose livelihoods will be affected.

- We are in consultation on a proposal for a special dispensation for companies that are in distress because of COVID-19. Through this proposal employees will receive wage payment through the Temporary Employee Relief Scheme, which will enable companies to pay employees directly during this period and avoid retrenchment.

- Any employee who falls ill through exposure at their workplace will be paid through the Compensation Fund.

- Commercial banks have been exempted from provisions of the Competition Act to enable them to develop common approaches to debt relief and other necessary measures.

  We have met with all the major banks and expect that most banks will put measures in place within the next few days.

- Many large companies that are currently closed have accepted their responsibility to pay workers affected. We call on larger businesses in particular to take care of their workers during this period.

- In the event that it becomes necessary, we will utilise the reserves within the UIF system to extend support to those workers in SMEs and other vulnerable firms who are faced with loss of income and whose companies are unable to provide support. Details of these will be made available within the next few days.

Thirdly, we are assisting businesses that may be in distress.

- Using the tax system, we will provide a tax subsidy of up to R500 per month for the next four months for those private sector employees earning below R6,500 under the Employment Tax Incentive. This will help over 4 million workers.

- The South African Revenue Service will also work towards accelerating the payment of employment tax incentive reimbursements from twice a year to monthly to get cash into the hands of compliant employers as soon as possible.

- Tax compliant businesses with a turnover of less than R50 million will be allowed to delay 20% of their pay-as-you-earn liabilities over the next four months and a portion of their provisional corporate income tax payments without penalties or interest over the next six months. This intervention is expected to assist over 75 000 small and medium-term enterprises.

- We are exploring the temporary reduction of employer and employee contributions to the Unemployment Insurance Fund and employer contributions to the Skill Development Fund.

- The Department of Small Business Development has made over R500 million available immediately to assist small and medium enterprises that are in distress through a simplified application process.

- The Industrial Development Corporation has put a package together with the Department of Trade, Industry and Competition of more than R3 billion for industrial funding to address the situation of vulnerable firms and to fast-track financing for companies critical to our efforts to fight the virus and its economic impact.

- The Department of Tourism has made an additional R200 million available to assist SMEs in the tourism and hospitality sector who are under particular stress due to the new travel restrictions.

I want to make it clear that we expect all South Africans to act in the interest of the South African nation and not in their own selfish interests.

We will therefore act very strongly against any attempts at corruption and profiteering from this crisis.

I have directed that special units of the NPA be put together to act immediately and arrest those against who we find evidence of corruption.

We will work with the judiciary to expedite cases against implicated persons and make sure the guilty go to jail.

South Africa has a safe, sound, well-regulated and resilient financial sector.

Since the global financial crisis, we have taken steps to strengthen the banking system, including increasing capital, improving liquidity and reducing leverage.

With a strong financial sector and deep and liquid domestic capital markets, we have the space to provide support to the real economy.

We can make sure money flows to firms and households.

We can ensure that our markets are efficient.

Last week, in line with its Constitutional mandate, the South African Reserve Bank cut the repo rate by 100 basis point. This will provide relief to consumers and businesses.

The South African Reserve Bank has also proactively provided additional liquidity to the financial system.

The Governor has assured me that the Bank is ready to do 'whatever it takes' to ensure the financial sector operates well during this pandemic.

The banking system will remain open, the JSE will continue to function, the national payment system will continue to operate and the Reserve Bank and the commercial banks will ensure that bank notes and coins remain available.

The action we are taking now will have lasting economic costs.

But we are convinced that the cost of not acting now would be far greater.

We will prioritise the lives and livelihoods of our people above all else, and will use all of the measures that are within our power to protect them from the economic consequences of this pandemic.

In the days, weeks and months ahead our resolve, our resourcefulness and our unity as a nation will be tested as never before.

I call on all of us, one and all, to play our part.

To be courageous, to be patient, and above all, to show compassion.

Let us never despair.

For we are a nation at one, and we will surely prevail.

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seën Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.

I thank you.

the dti
Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

# Annexure "F"

**Media Briefing – Remarks by Minister of Trade, Industry and Competition Ebrahim Patel on Tuesday 24 March 2020**

2020-03-24

The address by the President last night recognised that saving lives must be the priority and we need to draw on all our resources in the economy and within each of the major economic players to come through this with as little damage.

Across the world, more countries are now doing lockdowns and we want to ensure that it is managed in strong partnership with our people, with large and small businesses, with workers and with consumers.

Last night, the President identified a number of key interventions. Over the next few days, we will release more information as we finalise programmes and interventions.

**IDC facility**

The President announced that the IDC has put a package together with the Department of Trade, Industry and Competition of more than R3 billion for industrial funding to address the situation of vulnerable firms and to fast-track financing for companies critical to our efforts to fight the virus and its economic impact.

**This facility will be available to South African owned businesses.**

It is important that industry does not come to a standstill and therefore the Industrial Development Corporation (IDC) is responding to sector challenges that arise from this crisis whether these are surges in demand or those industries that are facing distress.

**We have made two special interventions**

- R500 million has been allocated for trade finance to import essential medical products;
- R700 million has been allocated for working capital and equipment and machinery

**In addition to this, the IDC is engaging industry players to address surges in demand**

- Ensuring food security by prioritizing support to Agriculture and food value chains
- Tourism sector support for working capital
- Bridging finance to support supply chain interruptions
- Working capital to ensure energy security by supporting suppliers of primary energy
- Working capital and Bridging Finance to SMEs that provide components to car-makers

In addition to the above, IDC has made available a capital allocation of R3 billion in the next quarter to support businesses during this crisis.

Essential services that fall outside of normal IDC sectors will be considered, as a measure we have now introduced during this period.

For existing clients, IDC is already in contact with its business partners to consider repayment deferments on a case-by-case basis.

Price increases - Consumer and Competition investigations into pricing of products

Last week we published a list of 22 critical products and categories which the National Consumer and Competition Commission will be monitoring closely to ensure that there are no unjustified price increases.

These include basic food items (like Rice, Maize meal, Milk, Canned Vegetables and Meats), Personal Care products (like Toilet paper, Baby formula and nappies), Hygiene products (like disinfectant, hand sanitiser, and cleaning agents) and key medical supplies (like surgical masks and gloves).

The Consumer and Competition Commissions are investigating 11 firms who have been found to be selling products like face-masks, hand sanitisers and other products, for high prices and abusing the situation. More firms are being investigated and prosecutions will follow.

These 11 firms which the regulators are investigating have been brought to the attention of the authorities by ordinary consumers. The National Consumer Commission has established a toll-free hotline (0800-014-880) and are also reachable on social media through Twitter (@NCC_COVID19)

Consumers can report unjustified price increases on any of these 22 products and other key products to the National Consumer Commission, and we encourage you to do.

**Competition exemptions for banks and for retail**

On Friday, we issued an exemption to banks under the Competition Act to coordinate on measures which can be used to support businesses and ordinary citizens during this period. It has been published in the Government Gazette yesterday.

The exemptions will allow South African banks to work together to devise programmes and relief measures which can help small businesses and consumers through these financial and economic challenges. In particular, the exemptions will enable banks to coordinate in respect of:

- payment holidays and debt relief for business and individual citizens subject to financial stress.
- limitations set on asset repossessions of business and individual citizens subject to financial stress.
- the extension of credit lines to individuals and businesses subject to financial stress.

The exemptions will allow banks to work together in ensuring continued functioning of the payments system, a critical component of the financial system. This includes sharing information and resources to ensure the continued availability of bank notes to ATMs, branches and businesses.

The COVID-19 National Disaster will put strain on our economy, including small business owners and ordinary citizens. With the Minister of Finance, we have been engaging the banking sector to work together in finding solutions and providing relief packages which will ease the burden on ordinary South African citizens, workers and business owners.

This is a time for all us to pull together as corporate and ordinary citizens to ensure that our people and economy come through this challenge with their lives, their jobs, their businesses, their livelihoods and their property intact. These banking exemptions are a critical step in ensuring an appropriate regulatory environment to do this work.

**Essential services**

Last night President Ramaphosa announced that companies that are essential to the production and transportation of food, basic goods and medical supplies will remain open during the 21-day "lockdown". This means that essential personnel required for the continued functioning of these companies during the "lockdown" will be exempted from the stay-home provisions.

We will be publishing further guidelines tomorrow, ahead of the "lockdown", which begins on Thursday evening just after midnight, in other words, the lockdown will come into effect the whole of Friday and beyond.

I can make a few preliminary comments now, with more detail to come in the coming days.

Grocery stores, supermarkets, and spaza shops will remain open during the "lockdown".

We call on our people to limit the trips to shopping centres for the purpose of shopping for food and basic goods only, and not to gather in shopping malls. Pharmacies will remain open during the "lockdown". Healthcare professionals providing essential services to the public will be open as well.

All essential items – food and beverages, medical supplies, personal products, hygiene products, cleaning products – will remain available through the lockdown and the period of the national disaster. This means that all businesses essential for the production and distribution of these essential items will be allowed to remain in operation during the "lockdown".

Businesses which remain in operation during the "lockdown" will be required to do so with all the staff required to ensure that the service or production is uninterrupted.

Businesses will also be required to take necessary protocols to ensure adequate hygiene and social distancing.

Consumer-facing businesses, like grocery stores, supermarkets, pharmacies and spaza shops, especially, will be asked to educate their staff and customers on the required protocols and to take reasonable steps to keep social distancing between customers.

There are a number of categories of essential services that due to time-constraints, the President could not mention yesterday.

These include essential staff in the following areas that are being looked at for inclusion in the Gazetted list:

- those responsible for essential care of the elderly and sick persons, including home-care and old-age homes
- essential private security services for the protection of property and persons
- All essential back-office services to enable salary and human resource departments to work so as to ensure smooth management of wage and salary payments
- essential animal welfare and emergency veterinary services
- those who assist in transporting food and other essentials to people's homes including on-line retail, as well as transport systems that support any of the essential services
- key maintenance systems required at workplaces to avoid serious damage to economic assets, where the interruption of that service will destroy critical working areas, factories or machinery.
- Members of Parliament, Provincial legislatures, Municipal councils and their core staff, as well as government departments and public entities' staff responsible to assist with implementation of the measures announced by the President, as they will all need to be working to make the country safe;
- members of the media and broadcasting services, who will serve as a vital communication between ourselves and the public.
- Transportation of fuel, food and basic goods supply trucks between SADC countries

The full list will be gazetted shortly. The purpose of this illustrative list is to show that we are taking into account the critical services that should remain open in this period.

During the lockdown, we strongly encourage all companies whose employees are able to work from home, to make the necessary arrangements for them to do so, as we need to maintain as much of the economic activity as we can during this critical period, so that we generate resources to finance the measures that we are undertaking.

The sooner we slow the spread of the disease, the sooner we can return to normal life and normal business. While some of may be exempt from the "lockdown" because the nature of our work, none of us are exempt from susceptibility of the virus.

**Supply-chains and securing basic supplies**

A number of businesses are essential services and will remain open during this period. We will publish further details and add specific businesses to the list as required.

While the limit of 100 people does not apply to essential services, we will still need all the affected businesses to take steps to protect workers through social distancing and public hygiene measures.

I am working with the Minister of Police and the Minister of Employment and Labour to ensure that police offices and health inspectors are well-briefed on the kinds of businesses which should be allowed to continue with larger numbers of people.

**These include supermarkets, food production facilities, and farms.**

These businesses, must however, take all necessary precautions to ensure adequate social distancing amongst customers and staff, and to educate staff on the appropriate hygiene protocols to counteract the spread of COVID-19. Where staff are not critical to the functioning of the operation, we encourage employers to allow those staff members to stay at home.

**The steps that companies must take include**

- Providing hand sanitisers at workplaces, as people enter, at key workstations and when they leave
- Managing clocking arrangements and canteen facilities and scheduling of work breaks, to limit the level of social interaction
- Disinfecting work surfaces that workers are exposed to

We are going into the month-end period where the numbers of South Africans in grocery stores and supermarkets naturally increases. We are working with major grocery retailers to ensure that there are appropriate protocols to ensure social distancing, and that their shelves remain well-stocked.

We appeal to all our people to remain calm and to buy only what the need for their immediate requirements. We are keeping the full food supply-chain open, from farms and fisheries, to factories, transport systems and shops, so that we can have food available in this period and beyond. This is a moment to show our caring for each other and to resist any effort to score from the crisis.

**Shopping mall tenants**

A number of shops and other businesses in shopping malls have already seen a decline in their turnover. They face significant fixed costs, including rents and costs specified in leases.

We will publish a special Gazette today, to enable tenants who are competitors to meet and to reach agreements with shopping mall owners and to address matters such as



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- Payment holidays or rental discounts and
- Limitations on evictions.

**These initially cover three categories of retailers, being**

- Personal care functions
- Restaurants and
- Clothing, footwear and home-textile shops.

These categories will be expanded as required in the next few days.

**Solidarity Fund.**

Last night President Cyril Ramaphosa announced the creation of the Solidarity Response Fund. The Solidarity Response Fund is designed to unite the nation and to accelerate the country's response to COVID-19.

The Focus of the fund is to alleviate the suffering and distress caused by the virus to our country and will mobilise the support of business and civil society in support of government's efforts in response to COVID-19.

Government has made an initial R150 million available as seed funding and a number of businesses will be contributing within the next few days. R100m of this is from National Treasury; and R50m from the National Lotteries.

The Chairperson of the Fund is Ms Gloria Serobe and the Vice Chairperson is Mr Adnan Enthoven. The Fund will be independently administered and transparently governed through an independent board to ensure that the funds are effectively and efficiently used to combat COVID-19.

The fund will be a rapid response vehicle through which contributions from citizens, communities, business and international donors can be pooled together to primarily fund four key initiatives:

- Prevent: preventative and supporting measures to "flatten the curve" by lowering infection rates
- Detect: detect and understand the magnitude of the infection problem
- Care: assist with the management of those people in hospital or medical care
- Support: support those people whose lives are disrupted by COVID-19.

Organized business is assisting with the initial formation of the Fund and thereafter the Board which is being appointed will take full responsibility for the fund and its activities.

Details on how to donate will be available on the Fund's website www.solidarityfund.co.za

**Trade with neighbours.**

We will take all steps to keep open trade links with neighbours to ensure that we have food-supply across the region and that we come through this together as neighbours. The controls on movement of people will not affect the movement of goods across borders with our neighbours.

Thank you!

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Annexure "G"



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

**DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**NO. R. 398** **25 MARCH 2020**

## DISASTER MANAGEMENT ACT, 2002: AMENDMENT OF REGULATIONS ISSUED IN TERMS OF SECTION 27(2)

I, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002), having declared a national state of disaster, published in Government Gazette No. 43096 on 15 March 2020, hereby in terms of section 27(2) of the Disaster Management Act, 2002, after consultation with the Minister of Health, made the Regulations in the Schedule.

NC Zuma

**DR NKOSAZANA DLAMINI ZUMA, MP**
**MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**
**DATE:** 25.03.2020

### SCHEDULE

**Definitions**

1. In these regulations, "the Regulations" means the regulations published by Government Notice No. 318 of 18 March 2020.

**Insertion of heading in Regulations**

2. The Regulations are hereby amended by the insertion of the following heading after the heading "SCHEDULE":

"CHAPTER 1".

**Amendment of regulation 1 of the Regulations**

3. Regulation 1 of the Regulations is hereby amended by the—

*(a)* insertion of the following definitions after the definition of "adequate space";

"'**clinical case**' means a patient that presents with clinical signs and symptoms of COVID-19;

'**Constitution**' means the Constitution of the Republic of South Africa, 1996;";

*(b)* substitution for the definition of "gathering" for the following definition:

"'**gathering**' means any assembly, concourse or procession in or on—

*(a)* any public road, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996); or



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(b) any other building, place or premises, including wholly or partly in the open air, and including, but not limited to, any premises or place used for any sporting, entertainment, funeral, recreational, religious, or cultural purposes;";

(c) the insertion of the following definitions after the definition of "gathering":
"'**institutions of higher learning**' means 'higher education college' and 'higher education institution' as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);
'**laboratory confirmed case**' means a patient who has been diagnosed with COVID-19 through a Department of Health approved laboratory diagnostic method;";

(d) insertion of the following definition after the definition of "liquor":
"'**quarantine**' means the restriction of activities or separation of a person, who was exposed, or potentially exposed, to COVID-19 and could be a possible source of the spread of the disease, from other non-exposed persons, in such a manner so as to prevent the possible spread of infection or contamination to healthy individuals;" and

(e) the substitution for the definition of "school" for the following definition:
"'**school**' means a school as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);".

**Insertion of regulation 1A in Regulations**

4. The following regulation is hereby inserted in the Regulations:

"**Application of Chapters 1 and 2**

**1A.** (1) Chapter 1 and any direction issued pursuant to the Regulations shall continue to be force and effect, save that if there are any inconsistencies between Chapter 1 and Chapter 2, Chapter 2 shall prevail to the extent of the inconsistency.

(2) Chapter 2 of these Regulations will apply as from 26 March 2020 at 24H00 until 16 April 2020 at 24H00, or on a date to be determined by the Cabinet member designated under section 3 of the Disaster Management Act.".

**Amendment of Regulation 4 of the Regulations**

5. Regulation 4 of the Regulations is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No person who has been confirmed, as a clinical case or as a laboratory confirmed case as having contracted COVID-19, or who is suspected of having contracted COVID-19, or who has been in contact with a person who is a carrier of COVID--19, may refuse consent to—

(a) submission of that person to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so;

(b) admission of that person to a health establishment or a quarantine or isolation site; or

*(c)* submission of that person to mandatory prophylaxis, treatment, isolation or quarantine, or isolation in order to prevent transmission:

Provided that if a person does not comply with the instruction or order of the enforcement officer, that person must be placed in isolation or quarantine for a period of 48 hours, as the case may be, pending a warrant being issued by a competent Court, on application by an enforcement officer for the medical examination contemplated in paragraph *(a)*.".

**Amendment of Regulation 5 of the Regulations**

6. Regulation 5 of the Regulations is hereby amended by the substitution for subregulation (2) of the following subregulation:

"(2) A member of the provincial Executive Council responsible for public works must identify and make available sites to be used as isolation and quarantine facilities within each province as the need arises: Provided that if a person refuses to go to such a site of isolation or quarantined facility a magistrate in whose jurisdiction such a person is, an order as contemplated in Annexure A, must be made by that magistrate to force such a person to go to such site of isolation, quarantined facility, or medical examination.".

**Amendment of regulation 11 of the Regulations**

7. Regulation 11 of the Regulations is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A person is guilty of an offence if that person fails to comply with or contravenes the provisions of regulations 6 and 8 of these Regulations.".

**Insertion of Chapter 2 into the Regulations**

8. The following Chapter is hereby inserted into the Regulations after regulation 11:

"CHAPTER 2

**Definitions**

**11A.** For purposes of this Chapter, unless the context otherwise indicates—

'**essential goods**' means the goods referred to in paragraph A of Annexure B, as may be amended from time to time by the Cabinet member designated under section 3 of the Disaster Management Act;

'**essential services**' means the services as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and designated in terms of section 71(8) of the Labour Relations Act, 1995 (and which designation remains valid as at the date of publication of this regulation), and as listed in paragraph B of Annexure B, as may be amended from time to time;

'**head of an institution**' means the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution;

'**institution**' means any public or private institution that is engaged in the supply or distribution of an essential good or service;

'**lockdown**' means the restriction of movement of persons during the period for which this regulation is in force and effect namely from 23H59 on Thursday, 26 March 2020, until 23H59 on Thursday 16 April 2020, and during which time the movement of persons is restricted; and

'**movement**' means entering or leaving a place of residence or, in the case of people not ordinarily resident in the Republic, their place of temporary residence while in the Republic.

**Restriction on the movement of persons and goods**

**11B.** (1)*(a)* For the period of lockdown-

(i) every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving, or chronic medical attention;

(ii) every gathering, as defined in regulation 1 is hereby prohibited, except for funeral as provided for in subregulation (8);

(iii) movement between provinces is prohibited; and

(iv) movement between the metropolitan and district areas, is prohibited.

*(b)* All businesses and other entities shall cease operations during the lockdown, save for any business or entity involved in the manufacturing, supply, or provision of an essential good or service.

*(c)* Retail shops and shopping malls must be closed, except where essential goods are sold and on condition that the person in control of the said store must put in place controls to ensure that customers keep a distance of at least one square meter from each other, and that all directions in respect of hygienic conditions and the exposure of persons to COVID-19 are adhered to.

*(c)* Retail stores selling essential goods is prohibited from selling any other goods.

*(d)* The Cabinet member designated under section 3 of the Act may amend the list contemplated in paragraph *(c)* as required from time to time.

*(e)* Any place not involved in the provision of an essential good or service must remain closed to all persons for the duration of the lockdown.

(2) The head of an institution must determine essential services to be performed by his or her institution, and must determine the essential staff who will perform those services: Provided that the head of an institution may delegate this function, as may be required in line with the complexity and size of the business operation.

(3) Persons performing essential services as determined in subregulation (2), must be duly designated in writing by the head of an institution, on a form that corresponds substantially with Form 1 in Annexure C.

(4) All places or premises provided for in Annexure D must be closed to the public except to those persons rendering security and maintenance services at those places or premises.

(5) All persons performing essential services, obtaining essential goods or seeking medical attention, may be subjected to screening for COVID-19 by an enforcement officer.

(6)*(a)* All borders of the Republic are closed during the period of lockdown, except for transportation of fuel, and essential goods.

*(b)* The Cabinet member responsible for home affairs, or a person designated by him or her, may allow a person who requires to enter the Republic for emergency medical attention for a life-threatening condition.

*(c)* All foreign tourists who arrived in the Republic prior to, or after, the lockdown, and who remain in the Republic, must remain in their place of temporary residence in the Republic for the duration of the lockdown or 14 days, as the case may be, and may be subject to screening for COVID-19 and be quarantined or isolated as required.

(7) The Minister may issue directions to provide further conditions that will apply to activities referred to in subregulation (1), or other activities, and may vary the directions as the circumstances require.

(8) Attendance at a funeral is limited to 50 people and will for purposes of these Regulations not be regarded as a prohibited gathering: Provided that no night vigil shall be held and that all safety measures are strictly adhered to.

**Prohibition of public transport**

**11C.** (1) All commuter transport services including passenger rail services, bus services, taxi services, e-hailing services, maritime and air passenger transport is prohibited, except bus services, taxi services, e-hailing services and private motor vehicles for purposes of rendering essential services, obtaining essential goods, seeking medical attention, funeral services and to receive payment of grants: Provided that such vehicle carries no more than 50% of the licensed capacity and all directions in respect of hygienic conditions and the limitation of exposure of persons to COVID-19, are adhered to.

(2) Where a person rendering essential services is unable to travel to and from his or her place of employment, the employer must make the necessary transport arrangements: Provided that no more than 50% of the licensed capacity of the vehicle or vessel is exceeded and all directions in respect of hygienic conditions and the limitation of exposure to persons with COVID-19, are adhered to.

(3) The Cabinet member responsible for transport must issue directions for the transportation of persons who must obtain essential goods or services and where such person has no other means of transport except public

transport as contemplated in subregulation (1), provided that no more than 50% of the licensed capacity of the vehicle or vessel is exceeded and all directions in respect of hygienic conditions and the limitation of exposure to persons with COVID-19, are adhered to.

**Resources by the State during lockdown**

**11D.** (1) For the period of the declaration of a lockdown, a person refusing to be evacuated from any place subject to lockdown, may be evacuated by an enforcement officer to a temporary shelter, if such action is necessary for the preservation of life.

(2) The State shall identify—

*(a)* temporary shelters that meet the necessary hygiene standards for homeless people; and

*(b)* temporary sites for quarantine and self-isolation that meet the necessary hygiene standards for people who cannot isolate or quarantine in their homes.

(3) The provision of the State's resources listed herein shall be for the duration of the lockdown, and the use thereof will be subject to conditions determined by the Cabinet member responsible for such resources.

**Loss or damage**

**11E.** No person is entitled to compensation for any loss or damage arising out of any *bona fide* action or omission by an enforcement officer under these regulations.

**Powers and indemnity**

**11F.** These Regulations do not limit any powers or indemnities of security services provided for in any law.

**Offences and penalties**

**11G.** For purposes of this Chapter any person who contravenes regulation 11B(1) and (4), shall be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.".

**Addition of Annexures to the Regulations**

**9.** The following Annexures are hereby added to the Regulations:



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"ANNEXURE A

ORDER FOR A PERSON TO GO TO A SITE OF ISOLATION, QUARANTINED FACILITY, OR FOR A PERSON TO GO FOR MEDICAL EXAMINATION

Regulation 5(2)

IN THE MAGISTRATES COURT FOR THE DISTRICT OF _____ HELD AT _____ ON THIS _____ DAY OF _____ 2020.

BEFORE ME _____ MAGISTRATE FOR THE AFOREMENTIONED DISTRICT IN CHAMBERS

**WHEREAS** it appears that _____ (name of person)
Being a person:

☐ who has been clinically, or by a laboratory, confirmed as having COVID-19

☐ who is suspected of having contracted COVID-19

☐ who has been in contact with a person who is a carrier of COVID-19

and who has refused consent for the—

☐ submission to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so

☐ admission to a site to be used as isolation or a quarantine facility

☐ submission to mandatory prophylaxis, treatment, isolation or quarantine or isolation in order to prevent transmission.

I hereby issue a warrant for the submission of the said person to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so.

..... DATE .....
MAGISTRATE

*NOTE: This warrant remains in force until one of the following occurs:*
*(a) it is executed;*
*(b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;*
*(c) the expiry of ninety days from the date of its issue; or*
*(d) the purpose for the issuing of the warrant has lapsed.*

## ANNEXURE B
## CATEGORISATION OF ESSENTIAL GOODS AND SERVICES DURING LOCKDOWN
**Regulation 11A**

### A. GOODS

1. Food
   - (i) Any food product, including non-alcoholic beverages;
   - (ii) Animal food; and
   - (iii) Chemicals, packaging and ancillary products used in the production of any food product.
2. Cleaning and Hygiene Products
   - (i) Toilet Paper, sanitary pads, sanitary tampons, condoms;
   - (ii) Hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment; and
   - (iii) Chemicals, packaging and ancillary products used in the production of any of the above.
3. Medical:
   - (i) Medical and Hospital Supplies, equipment and personal protective equipment; and
   - (ii) Chemicals, packaging and ancillary products used in the production of any of the above.
4. Fuel, including coal and gas
5. Basic goods, including airtime and electricity.

### B. SERVICES

Categories of essential services shall be confined to the following services:

1. Medical, Health (including Mental Health), Laboratory and Medical services;
2. Disaster Management, Fire Prevention, Fire Fighting and Emergency services;
3. Financial services necessary to maintain the functioning of the banking and payments environment, including the JSE and similar exchanges, as well as Insurance services;
4. Production and sale of the goods listed in category A, above;
5. Grocery stores, including spaza shops;
6. Electricity, water, gas and fuel production, supply and maintenance;
7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance by the DPSA, including Social Grant Payments;
8. Birth and death certificates, and replacement identification documents;
9. Essential municipal services;
10. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;
11. Funeral services, including mortuaries;
12. Wildlife Management, Anti-poaching, Animal Care and Veterinary services;
13. Newspaper, broadcasting and telecommunication infrastructure and services;
14. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;
15. Cleaning, sanitation, sewerage, waste and refuse removal services;

16. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;
17. Essential SARS services defined by the Commissioner of SARS;
18. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;
19. Postal services and courier services related to transport of medical products;
20. Private security services;
21. Air-traffic Navigation, Civil Aviation Authority, Cargo Shipping and dockyard services;
22. Gold, gold refinery, coal and essential mining;
23. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown;
24. Production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment;
25. Transport services for persons rendering essential services and goods, and transportation of patients;
26. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament;
27. Commissioners of the South African Human Rights Commission, Gender Commission, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Public Protector and Deputy Public Protector; and
28. Transport and logistics in respect of essential goods as set out in A above to neighboring countries.

## ANNEXURE C
## FORM 1
## PERMIT TO PERFORM ESSENTIAL SERVICE
## Regulation 11B(3)

- *Please note that the person to whom the permit is issued must at all times a form of identification to be presented together with this permit. If no identification is presented the person to whom the permit is issued will have to return to his or her place of residence during the lockdown*

I,

| | | | | |
|---|---|---|---|---|
| **Surname** | | | | |
| **Full names** | | | | |
| **Identity number** | | | | |
| **Contact details** | **Cell nr.** | **Tel Nr(W)** | **Tel Nr(H)** | **e-mail address** |
| | | | | |

| | |
|---|---|
| **Physical Address of Institution** | |

Hereby certify that:

| | |
|---|---|
| **Surname** | |
| **Full names** | |
| **Identity number** | |

Signed at _____, on this the _____ day of _____ 2020.

_____
*Signature of Head of Institution*

*Official stamp of Institution*

## ANNEXURE D
## PLACES AND PREMISES CLOSED TO THE PUBLIC
**Regulation 11B(4)**

The following places and premises are closed to the public:

*(a)* Any place or premises normally open to the public where religious, cultural, sporting, entertainment, recreational, exhibitional, organisational or similar activities may take place;

*(b)* any place or premises normally open to the public where goods other than essential goods are procured, acquired, disposed of or sold;

*(c)* any place or premises normally open to the public such as—

(i) public parks, beaches and swimming pools;
(ii) flea markets;
(iii) open air food markets;
(iv) fêtes and bazaars;
(v) night clubs;
(vi) casinos;
(vii) hotels, lodges and guest houses, except to the extent that they are required for remaining tourists confined to hotels, lodges and guest houses;
(viii) private and public game reserves except to the extent that they are required for remaining tourists confined to private and public game reserves;
(ix) holiday resorts except to the extent that they are required for remaining tourists confined to such holiday resort;



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(x) on-consumption premises, including taverns, shebeens, *shisanyama* where liquor is sold;

(xi) off-consumption premises, including bottle stores, where liquor is sold

(xii) off-consumption areas in supermarkets where liquor is sold;

(xiii) theatres and cinemas;

(xiv) shopping malls and centres (excluding grocery stores and pharmacies); and

(xv) taxi ranks, bus depots, train stations and airports; and

*(d)* any other place or premises determined by the Cabinet member responsible for cooperative governance and traditional affairs by direction in the *Gazette*.".

**Annexure "H1"**



# Minister Ebrahim Patel announces essential service application portal for Coronavirus COVID-19 lockdown

25 Mar 2020

## Minister Patel announces essential service application portal

The Minister of Trade and Industry, Mr Ebrahim Patel has announced that all businesses that will be allowed to provide essential services are required to seek approval from the Department of Trade, Industry and Competition (the dtic) in order for them to trade during the period of the lockdown in terms of the regulations published today by the Minister of Cooperative Governance and Traditional Affairs, Ms Nkosazana Dlamini-Zuma in Regulation Gazette No. 11062

Such businesses are required to apply to the Companies and Intellectual Property Commission (CIPC) Bizportal website at www.bizportal.gov.za and obtain a certificate from the Commission that allows them to continue trading. The Bizportal website will contain a menu icon listed as "Essential Service Businesses" through which an application can be made to the CIPC.

The application will be a simple declaration requiring minimal registration details, type of business/trade involved in, what trading name if any is used an d whether it meets the requirements contained in the essential services list, the contact details of the person applying as well as the number of employees that will be working during the lockdown period.

The CIPC registry will then pre-populate the remaining company information and email a certificate stating that the business is allowed to remain trading.

The certificate can then be used as evidence to authorities requiring same that indeed the business has been given government permission to trade and that its employees are able to have unrestricted movement ONLY in the course of that trade.

It should be stressed and noted that if you make a false application to the CIPC, and are indeed not an essential service as per the government regulations, such will be taken as a fraudulent application and will render yourself as applicant liable to criminal prosecution and sanction.

This service will be available tomorrow morning 26 March 2020 at the start of business trading hours.

Enquiries:
Sidwell Medupe-Departmental Spokesperson
Tel: (012) 394 1650
Mobile: 079 492 1774
E-mail: MSMedupe@thedti.gov.za

**Issued by:** Department of Trade and Industry
**More from:** Department of Trade and Industry
**More on:** Trade and industry

**Annexure "H2"**

South African Government

www.gov.za

Let's grow South Africa together



# Trade and Industry update on online Bizportal to register businesses that provide essential goods and service during the Coronavirus COVID-19lockdown

26 Mar 2020

## Update on online Bizportal to register businesses that provide essential goods and service during the lockdown period

As of 16h00 this afternoon, nearly 15 000 companies have already registered as providers of essential goods and services. Most of these have been in food supply, medical and pharmaceutical services and transport services.

We will provide further update on communication platforms as to the number of registered businesses during the lockdown period.

We have introduced a portal at the website run by the Companies and Intellectual Property Commission (CIPC) to log company details only where companies comply with the regulations issued by the Minister for Cooperative Governance and Traditional Affairs on 25 March 2020 in Government Notice 398 of Government Gazette No. 43148 ("lockdown regulations").

The website can be found at www.bizportal.gov.za.

We would like to clarify that the registration portal is only for registered companies operating in South Africa. Healthcare professionals registered with the Health Professions Council of South Africa, sole proprietors who provide essential goods and services (like spaza shops), and small-scale farmers will not have to register through the Bizportal.

Only companies, spaza shops, healthcare professionals and farmers permitted in terms of the lockdown regulations will be allowed to continue operating through the period. Possession of a CIPC certificate does not constitute permission to operate during the lockdown. Companies must be guided by the regulation as to whether their business operations constitute essential services. Any misrepresentation of information is a criminal offence and will be prosecuted. Already we have seen companies selling on-premise consumption of alcohol registering through the platform. Other examples include non-essential grooming for pets. We will advise these companies that this is not permitted, and may take further action if required.

The system is currently running with full functionality. We ask that companies be patient through the registration process, as there are large volumes presently being experienced. No companies will be prejudiced by any delay in the system. The service will continue to run tomorrow and beyond and it is not a requirement that companies complete registration before the lockdown begins.

Enquiries:
Sidwell Medupe-Departmental Spokesperson
Tel: (012) 394 1650
Mobile: 079 492 1774
E-mail: MSMedupe@thedti.gov.za

**Issued by:** Department of Trade and Industry
**More from:** Department of Trade and Industry

**Annexure H3**



# Essential services - Coronavirus COVID-19

All businesses that will be allowed to provide essential services are required to seek approval from the Department of Trade, Industry and Competition (the dtic) in order for them to trade during the period of the lockdown. The registration portal is only for registered companies operating in South Africa. Healthcare professionals registered with the Health Professions Council of South Africa, sole proprietors who provide essential goods and services (like spaza shops), and small-scale farmers will not have to register through the Bizportal.

Such businesses are required to apply to the Companies and Intellectual Property Commission (CIPC) Bizportal website at www.bizportal.gov.za and obtain a certificate from the Commission that allows them to continue trading. The Bizportal website will contain a menu icon listed as "Essential Service Businesses" through which an application can be made to the CIPC.

The application will be a simple declaration requiring minimal registration details, type of business/trade involved in, what trading name if any is used an d whether it meets the requirements contained in the essential services list, the contact details of the person applying as well as the number of employees that will be working during the lockdown period.

The CIPC registry will then pre-populate the remaining company information and email a certificate stating that the business is allowed to remain trading.

The certificate can then be used as evidence to authorities requiring same that indeed the business has been given government permission to trade and that its employees are able to have unrestricted movement ONLY in the course of that trade.

**Alert level 4 e-commerce sales** (Gazette 43321, 14 May 2020)

4. Goods which may be transacted through e-Commerce platforms Subject to all applicable laws, all goods may be transacted through e-Commerce platforms, except for goods prohibited for sale in terms of regulation 26 and 27 (no sale of liquor or cigarettes) of the Regulations.

5. Protocols for e-Commerce retailers
All retailers using e-Commerce platforms to sell goods must ensure the following:
a) All Regulations and Directions in respect of hygienic workplace conditions and the potential exposure of employees to COVID-19 must be adhered to, including the Covid-19 Occupational Health and Safety Measures in Workplaces directions issued by the Minister of Employment of Labour and published in Government Notice 479 on 29 April 2019, which for ease of reference has been set out in Annexure A.
b) In addition, employees may not share face masks, equipment, stationery, utensils or similar items, and Designated and adequately trained health and safety officers must take each employee's temperatures using appropriate equipment or instruments at the start of a shift and every four hours after the shift commences. Records of the temperatures of each employee must be kept. Any employee whose temperature is 37,5 degrees or above should immediately be moved to an isolated observation room for a second measurement. If the second test measurement also exceeds 37,5 degrees, the employee must be returned home for self-quarantine, provided with a surgical mask and not be permitted to enter or stay on the premises.
c) In order to limit the social and economic hardship caused by the pandemic on local industries and enable consumer

choice to support local producers, retailers must give prominence to those goods which are manufactured in the Republic of South Africa.
d) Retailers must provide for as many payment options as possible for consumers, that are based on reducing risks of transmission, and enabling poorer consumers to access delivery services.
e) When packaging goods, retailers must provide written guidelines for customers on how to safely disinfect their goods before use.
f) Retailers must put in place collection protocols to ensure that adequate social distancing is maintained by courier or delivery service personnel when collecting goods from a warehouse or depot.
g) All goods must be sanitised, in line with the guidelines published by the National Department of Health, before leaving the warehouse or depot.

6. Protocols for courier or delivery services
All e-Commerce courier or delivery services must ensure the following:
a) All Regulations and Directions in respect of hygienic workplace conditions and the potential exposure of employees to COVID-19 must be adhered to, including the Covid-19 Occupational Health and Safety Measures in Workplaces directions issued by the Minister of Employment of Labour and published in Government Notice 479 on 29 April 2019, which for ease of reference has been set out in Annexure A.
b) In addition, employees may not share face masks, equipment, stationery, utensils or similar items, and Designated and adequately trained health and safety officers must take each employee's temperatures using appropriate equipment or instruments at the start of a shift and every four hours after the shift commences. Records of the temperatures of each employee must be kept. Any employee whose temperature is 37,5 degrees or above should immediately be moved to an isolated observation room for a second measurement. If the second test measurement also exceeds 37,5 degrees, the employee must be returned home for self-quarantine, provided with a surgical mask and not be permitted to enter or stay on the premises.
c) All courier and delivery personnel must have their own hand sanitiser and disinfectant wipes, which must be refilled daily.
d) Courier and delivery personnel must wear a cloth face mask that covers the nose and mouth when delivering goods to customers.
e) Courier and delivery personnel must maintain at least one and a half metres distance from
i) other courier or delivery personnel when collecting goods for delivery; and
ii) customers when delivering goods.
f) Courier and delivery service personnel may not enter the home of a customer if such customer and any other residents within the immediate vicinity are not wearing cloth face mask or a homemade item that covers the nose and mouth.

7. Protocols for customers
All e-Commerce customers must ensure the following:
a) Customers and all residents within the immediate vicinity must wear a cloth face mask or a homemade item that covers the nose and mouth when receiving goods from courier and delivery personnel.
b) Customers must maintain at least one and a half metres distance from courier and delivery personnel.
c) Customers are encouraged to disinfect goods using guidelines published by the National Department of Health and those provided by retailers.

**Alert level 4 car sales and emergency automotive repairs** (Gazette 43308, 12 May 2020)

**2. Permitted trading activities**

2.1. The following trading activities with regard to cars are permitted during Alert Level 4:
2.1.1. Trade in new and used cars;
2.1.2. wholesale trade of new and used cars by OEMs and importers;
2.1.3. export and import of all category of cars through national ports of entry under strict guidelines; and
2.1.4. trade-in purchases, car lease scheme returns and wholesale trading of used cars.

2.2. To allow for and facilitate the sales of cars, and the proper functioning of the supply chain, it is necessary that the various administrative and other functionaries, such as roadworthy assessment and testing centres, and other testing stations are operational.

2.3. Car sales will be allowed under the following conditions:

2.3.1. Phase One:
2.3.1.1 All dealerships and used car outlets will operate with up to 30% of employment subject to a maximum of one employee or customer per every nine (9) square metres of floor space: Provided that small businesses may operate with a minimum of five employees.
2.3.1.2 The majority of car sales will be done remotely via the internet or e-Commerce or telephone. Personal contact will be kept to a minimum and only on appointment under very strict hygiene and social distancing conditions in line with the Regulations.
2.3.1.3 Test drives will be conducted on appointment only.
2.3.1.4 Home delivery of vehicles with full sanitisation will be mandatory.
2.3.1.5 Where possible, electronic, or virtual signatures will be used for finance and insurance documentation.
2.3.1.6 Car auctions for all categories will be conducted online in compliance with the CPA Regulations.

2.3.2 Phase Two:
2.3.2.1 All dealerships and used car outlets will operate with up to 60% of employment.
2.3.2.2 Limited customers will be allowed to enter the dealership under very strict hygiene and social distancing conditions in line with the Regulations.
2.3.2.3 Remote vehicle sales will continue for those potential customers with access to online services.
2.3.2.4 Test drives can be arranged on site by appointment only, and under very strict hygiene conditions including fully sanitised cars.
2.3.2.5 On site pick-ups and deliveries of fully sanitised cars will be allowed under strict hygiene conditions with an option of home delivery of fully sanitised cars, if possible.
2.3.2.6 Car auctions for all categories will be conducted online in compliance with the CPA Regulations and limited physical contact will be allowed for viewing prior to the auction under very strict hygiene conditions
including fully sanitised cars.

2.3.3 Phase Three: From 8 June 2020 until Alert Level 4 is Lifted:
2.3.3.1 All dealerships and used car outlets will operate with up to 100% of employment.
2.3.3.2 Customer on-site contact will be allowed, but kept to a minimum, whilst remote vehicle sales is encouraged.
2.3.3.3 Test drives can be arranged on site by appointment only, and under very strict hygiene conditions including fully sanitised cars.
2.3.3.4 On site pick-ups and deliveries of fully sanitised cars will be allowed under strict hygiene conditions with an option of home delivery of fully sanitised cars if possible.
2.3.3.5 Car auctions for all categories will be conducted online in compliance with the CPA Regulations and limited physical contact will be allowed for viewing prior to the auction under very strict hygiene conditions including fully sanitised cars and limits on the numbers of persons at auctions in order to maintain a distance of at least 1,5m between persons at all times, including when entering or exiting from an auction.

**3. Emergency Automobile Repairs**

3.1. Service Operations:

3.1.1. All car maintenance and repairs will be confirmed through appointment only. Unsolicited walk-ins will only be allowed under exceptional and emergency circumstances and a full record of each such instance will be kept in writing at the premises of the business for a period of 3 months after the state of disaster has been lifted.
3.1.2. Members of the public will not be allowed, under any circumstances, to enter the workshop environment. These workspaces will exclusively be reserved for technical and support staff.
3.1.3. Car owners are to maintain or service their cars within their own municipal boundaries unless in case of extraordinary circumstances.
3.1.4. The following categories are classified as emergency car repairs for passenger cars (PCs), Light Commercial Vehicles (LCV), Medium Commercial Vehicles (MCV), Heavy Commercial Vehicles (HCV), Extra Heavy Commercial Vehicles (XHCV), inclusive of buses, motorcycles, trailers, caravans, agricultural or any other implement designed or adapted to be drawn by such car:
3.1.4.1. Repairs on essential services cars, or on the cars of persons performing essential services;
3.1.4.2. repairs required to restore a car's safety and roadworthiness to good running condition;
3.1.4.3. routine servicing of cars that is due or overdue in terms of the manufacturer's recommended service intervals, whether due as a result of -

(a) mileage;
(b) time interval since last service;
(c) recommendation by car on-board computer;
(d) urgent collision repairs; and
(e) specific OEM activated recall or warranty campaigns.
3.1.5 The following categories are not classified as emergency car repairs:
(a) Cosmetic repairs, such as minor scratches and dents or cosmetic enhancements;
(b) voluntary or routine servicing that is not overdue in terms of manufacturer's service intervals; and
(c) warranty campaigns of a cosmetic nature unless warranty is due to expire within 30 days of the intended repair date.

3.2. Parts Supply and Logistics
3.2.1. Aftersales car servicing and parts sales should operate to support regular services and maintenance of cars under Alert Level 4 and to avoid or minimise any mechanical breakdown that might result in permanent damage given continued car usage and mileage increases during the extended lockdown by ensuring the provision of the necessary parts.
3.2.2. In order to give effect to the provisions of subparagraph 3.2.1 the following facilities may be reopened under strict trading risk-adjusted measures, hygiene and social distancing restrictions:
3.2.2.1. Auto electricians;
3.2.2.2. tyre fitment, windscreen replacement centres;
3.2.2.3. bond stores and parts distribution centres;
3.2.2.4. motor body repairers; and
3.2.2.5. any other related business that can attend to the mentioned repairs.

**Alert level 4 essential services (Gazette 43258 of 29 April 2020)**

ANNEXURE D: ESSENTIAL SERVICES

A: Essential and permitted services referred to in section 16(3) of the Regulation shall refer to:
(a) the list of essential services as set out in B below; and
(b) such other service as are set out in Alert Level 4 and where the technological. industrial, structural or similar requirement of the service necessitates a continuous or shift operation, as set out in directions, as set out below.

B: Essential services means the services as defined in section 213 of the Labour Relations Act. 1995 (Act No. 66 of 1995), and designated in terms of section 71(8) of the Labour Relations Act, 1995 (and which designation remains valid as at the date of publication of this regulation), and as listed below:

1. Medical, Health (including Mental Health), Laboratory and Medical services and the National Institute for Communicable Diseases;

2. Disaster Management, Fire Prevention. Fire Fighting and Emergency services;

3.1 (a) The following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:
(i) the banking environment (including the operations of mutual banks, co-operative banks, co-operative financial institutions and the Postbank);
(ii) the payments environment;
(iii) the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);
(iv) the insurance environment;
(v) the savings and investment environment;
(vi) pension fund administration;
(vii) outsourced administration;
(viii) medical schemes administration, and
(ix) additional services set out in directions.
(b) The services listed in paragraph (a) may not be construed to include debt collection services.3.2 Services necessary for the provision of social grants.

4. Production and sale of the goods listed in Annexure B;

5. Whole sale and retail stores for re-stocking;

6. Electricity (including vital demand management services), water, gas and fuel production, supply and maintenance;

7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance of the Department of Public Service and Administration, including Social Grant Payments and pension payments;

8. Essential municipal services;

9. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;

10. Funeral and cremation services, including mortuaries services and the transportation of mortal remains;

11. Wildlife Management, Anti -poaching. Animal Care and Veterinary services;

12. Newspaper, broadcasting and telecommunication infrastructure and services, including call centres critical for the support of such services;

13. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;

14. Cleaning, sanitation, pest control, sewerage, waste and refuse removal services;

15. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;

16. Essential SARS services defined by the Commissioner of SARS;

17. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;

18. Postal services and courier services related to transport of medical products;

19. Private security services;

20. Air-traffic Navigation, Civil Aviation Authority, air charters. Cargo Shipping and dockyard services;

21. Gold, gold refinery, coal and mining;

22. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown

23. Production, manufacturing, supply, logistics, transport, delivery. critical maintenance and repair in relation to the rendering of essential services including components and equipment;

24. Transport services for persons rendering essential services and goods. and transportation of patients;

25. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament;

26.1 Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector and the Independent Electoral Commission; and
26.2 Services rendered by the institutions referred to in item 26.1

27. Transport and logistics in respect of cargo and goods as set out in Part A to neighbouring countries;

28. Tow trucks and vehicle recovery services;

29. Call centres necessary to provide health, safety, social support, government and financial services, debt restructuring for consumers of retailers, and access to short-term insurance policies as a result of reduced income or loss of income;

30. Harvesting and storage activities essential to prevent the wastage of primary agricultural goods;

31. Implementation of payroll systems to the extent that such arrangement has not been made, to ensure timeous payments to workers; and

32. Critical maintenance services which cannot be delayed for more than 21 days and are essential to resume operations;

33. Trades necessary for the rendering of emergency repair work. including plumbers, electricians. locksmiths, glaziers, roof repair work;

34. Trades necessary for emergency automobile repairs for persons rendering essential services;

35. Information and Communication Technology services rendered to entities

**Categories of essential services shall be confined to the following services: (as amended by Gazette 43168 of 26 March 2020 and Gazette 43199 of 2 April 2020 and Gazette 43232 of 16 April 2020)**

1. Medical, Health (including Mental Health), Laboratory and Medical services and the National Institute for Communicable Diseases; "

2. Disaster Management, Fire Prevention, Fire Fighting and Emergency services;

3.1 (a) The following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:
(i) the banking environment (including the operations of mutual banks, cooperative banks, co-operative financial institutions and the Postbank);
(ii) the payments environment;
(iii) the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);
(iv) the insurance environment;
(v) the savings and investment environment;
(vi) pension fund administration;
(vii) outsourced administration;
(viii) medical schemes administration; and
(ix) additional services designated in terms of regulation 11B(4A)(c)(i).
(b) The services listed in paragraph (a) may not be construed to include debt collection services.
3.2 Services necessary for the provision of social grants designated in terms of regulation 11B(4A)(c)(ii).";

4. Production and sale of the goods listed in category A, above;

5. Grocery stores and wholesale produce markets. spaza shops, informal fruit and vegetable sellers and langanas, with written permission from a municipal authority to operate being required in respect of spaza shops and informal fruit and vegetable traders: Provided that all valid permits for spaza shops and informal fruit and vegetable traders issued before or during the declared national state of disaster and which fall due during the said period, will remain valid for a period of one month after the end of the national state of disaster;

6. Electricity (including vital demand management services), water gas and fuel production, supply and maintenance;

7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance of the Department of Public Service and Administration, including Social Grant Payments and pension payments;

8. Birth and death certificates, and replacement identification documents;

9. Essential municipal services;

10. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;

11. Funeral and cremation services, including mortuaries services and the transportation of mortal remains;

12. Wildlife Management, Anti-poaching, Animal Care and Veterinary services;

13. Newspaper, broadcasting and telecommunication infrastructure and services, including call centres critical for the support of such services;

14. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;

15. Cleaning, sanitation, pest control, sewerage, waste and refuse removal services;

16. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;

17. Essential SARS services defined by the Commissioner of SARS;

18. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;

19. Postal services and courier services related to transport of medical products;

20. Private security services;

21. Air-traffic Navigation, Civil Aviation Authority, air charters, Cargo Shipping and dockyard services;

22. Gold, gold refinery, coal and mining;

23. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown;

24. Production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment;

25. Transport services for persons rendering essential services and goods, and transportation of patients;

26. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the judiciary, traditional leaders and National Office Bearers. of Political Parties represented in Parliament;

27.1 Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector and the Independent Electoral Commission; and
27 .2 Services rendered by the institutions referred to in item 27 .1;

28. Transport and logistics in respect of cargo and goods as set out in Part A to neighbouring countries;

29. Tow trucks and vehicle recovery services;

30. Call centres necessary to provide health, safety, social support, government and financial services, debt restructuring for consumers of retailers. and access to short-term insurance policies as a result of reduced income or loss of income;

31. Harvesting and storage activities essential to prevent the wastage of primary agricultural goods;

32. Implementation of payroll systems to the extent that such arrangement has not been made for the lockdown, to ensure timeous payments to workers; and

33. Critical maintenance services which cannot be delayed for more than 21 days and are essential to resume operations after the lockdown.

34. Trades necessary for the rendering of emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work;

35. Trades necessary for emergency automobile repairs for persons rendering essential services;

36. Information and Communication Technology services rendered to entities and institutions engaged in delivering essential services in terms of these Regulations.

## RELATED INFORMATION

Coronavirus Covid-19

Regulations and guidelines

Government statements on Covid-19

Frequently asked questions

Update on online Bizportal to register businesses that provide essential goods and service

**Annexure "I"**

Not secure | cipcregistration.co.za/essential-service-business/

Does this business use a "trading as" name? If so, type in the name

Essential Service Category:

Select Category

Select category

Agriculture, hunting, forestry, fishing
Electricity, Gas, Water supply
Manufacturing
Construction and related services
Wholesale, Retail trade, Spaza shops
Information and Communication services
Media and Entertainment
Financial and Business services
Accommodation for quarantine, essential services
Food services (Deliveries)
Transport, Storage, Communication services
Mining and Quarrying
Repair and Related Emergency services
Supply Chain
Health, Social and Personal services

How m

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How can I h

Verification Code:

**Annexure "J"**

**Document issued by the Commissioner of**

**Companies & Intellectual Property Commission**

**on , , at**

Companies and Intellectual Property Commission
a member of the dti group

Enterprise Number:
Enterprise Name:
Business Category: **ELECTRICITY, WATER, GAS, FUEL SUPPLY AND MAINTAIN**
Contact Person Name:
Contact Person Surname:
Contact Person Email:
Contact Person Cell Number:
Number of Employee:

Physical Address

**TO WHOM IT MAY CONCERN**

The CIPC hereby certifies that the business operating as has registered as an Essential Service business during the lockdown period as announced by the President of the Republic on 23 March 2020.

The possession of this certificate is still subject to the business complying with the definition of an Essential Service business in terms of the applicable Regulations.

Yours truly

**CIPC Commissioner**

*The company has declared that is an essential service based on the regulation issued on 25 March 2020, therefore, this certificate by CIPC is based on accuracy of information submitted. False declaration by the company is a criminal offence and will result in prosecution. This certificate may be revoked if there are changes to the regulation, or if required to better implement the lockdown.*

Physical Address
***the dti*** Campus - Block F
77 Meintjies Street
Sunnyside 0001

Postal Address: Companies
P O Box 429
Pretoria
0001

Docex: 256
Web: www.cipc.co.za
Contact Centre: 086 100 2472(CIPC)
Contact Centre (International): +27 12 394 9573

**Annexure "K"**

# CIPC Certification Process for Essential Service Businesses During Extended Lockdown

thedtic.gov.za/cipc-certification-process-for-essential-service-businesses-during-extended-lockdown/

**CIPC Certification Process for Essential Service Businesses During Extended Lockdown**

Companies, which are registered through the Companies and Intellectual Property Commission's (CIPC) BizPortal to perform essential services during the lockdown period, will be required to have a new certificate from the BizPortal website for the extended period, which begins tomorrow 17 April 2020.

The certificate will be sent via email using the details provided at the time of registration, and will also be available for download from today. Companies will receive the certificates from today and the full list of registered companies will have received their certificates by the weekend.

The new certificate will clearly state that it is for the extended lockdown period, beginning 17 April 2020, and South African Police Service officials will be told which certificates to look for.

Certificates issued before today will no longer be valid and must be disposed of. To provide time for businesses to adjust to the new requirements, the new certificates will be available to be displayed from start of business on Monday, 20 April 2020.

The department reminds the public that possession of the CIPC certificate is still subject to the company fully complying with the applicable Lockdown Regulations and is a record of the company's details, and does not in itself constitute the right to continue operating during the period.

Only businesses which provide essential services in terms of the Lockdown Regulations, as amended, issued by the Minister for Cooperative Governance and Traditional Affairs may continue their operations during the COVID-19 lockdown.

The CIPC certificate is a reference to the legal registration of the company in terms of the Companies Act, 2008 (Act No. 71 of 2008) and a record of registration to the CIPC. It does not give a firm or individual a right to trade if that company does not fall into an Essential Service as defined in the Lockdown Regulations.

The Department clarifies that the registration portal is only for companies registered in terms of the Companies Act. Other essential service providers, like healthcare professionals registered with the Health Professions Council of South Africa, sole proprietors who provide essential goods and services (like small business owners and

spaza shops), and small-scale farmers will not register through the Bizportal. These businesses will not have a CIPC certificate, but must still comply with the provisions of the lockdown regulations.

Where the CIPC finds that certificates have been issued to companies which do not meet the definitions of an essential service, such certificate will be revoked, and the company will be referred to the South African Police Services. False declaration by the company is a criminal offence and will result in prosecution, in terms of Lockdown Regulations.

The regulations for the extended lockdown have also clarified that the transportation of liquor is prohibited, except where alcohol is required for industries producing hand sanitizers, disinfectants, soap, alcohol for industrial use and household cleaning products.

To confirm if your business complies, please consult the necessary regulation at https://www.gov.za/documents/disaster-management-act-regulations-address-prevent-and-combat-spread-coronavirus-covid-19.

Enquiries:

Sidwell Medupe-Departmental Spokesperson

Tel: (012) 394 1650

Mobile: 079 492 1774

E-mail: MSMedupe@thedti.gov.za

Issued by: The Department of Trade, Industry and Competition

Follow us on Twitter: @the_dti

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Annexure "L"



GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

**DEPARTMENT OF SMALL BUSINESS DEVELOPMENT**

**NO. R. 522** **12 MAY 2020**

**DIRECTIONS ISSUED IN TERMS OF REGULATION 4(9) OF THE REGULATIONS MADE UNDER SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002 (ACT NO. 57 of 2002): MEASURES TO PREVENT AND COMBAT THE SPREAD OF COVID-19**

**I, Ms Khumbudzo Ntshavheni,** the Minister of Small Business Development, hereby, in terms of regulation 4(9) of the Regulations made under section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), and published in Government *Gazette* No. 43258, Government Notice No. 480 of 29 April 2020, issue the Directions set out in the Schedule hereto in order to assist micro and small businesses trading in permitted services, to comply with the Regulations.

K.R. Ntshavheni

**Khumbudzo Ntshavheni, MP**
**Minister for Small Business Development**
**Date:** 10-05-2020

## SCHEDULE

### DEFINITIONS

1. In these Directions, a word or expression bears the meaning assigned to it in the Regulations promulgated in Government *Gazette* No. 43258, Government Notice No. R 480 of 29 April 2020, and unless the context otherwise indicates——

**"Regulations"** means the regulations published in Government *Gazette* No. 43258, Government Notice No. R480 of 29 April 2020.

### SCOPE

2.1 These Directions re-affirm and extend the application of the previous Directions published in Government *Gazette* No. 43208, Government Notice No. R450 of 6 April 2020 that applied to informal, micro and small businesses that render essential services.

2.2 These Directions are issued in order to assist micro and small businesses trading in permitted services, to comply with the Regulations and do not seek to deviate from any previous Directions issued under the regulations repealed by regulation 2(1) of the Regulations.

2.3 The permitted businesses covered in these Directions are the following-

(a) small scale bakeries and confectioneries;
(b) small scale hardware stores;
(c) informal restaurants and shisanyamas - for home deliveries only;
(d) trades, herein referred to as artisanry businesses, necessary for rendering emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work, tow



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trucks, vehicle recovery and automobile repairs (motor mechanics), including small-scale vehicle services centres/ workshops, small-scale motor body repair shops, and fitment centres;

(e) Sole traders within the clothing and textiles and confectionery business; and

(f) Cooperatives operating under permitted businesses in line with the Regulations.

**Directions**

3.1 All formal and informal small businesses are required to comply with the Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS), 2020 Directions issued by the Minister of Employment and Labour and the Guidelines of the Department of Health with specific reference to preventing the spread of, and infection by Covid-19.

3.2 All formal and informal small businesses must ensure that no person is allowed to enter business premises, if that person is not wearing a cloth face mask, a homemade item or another appropriate item that covers the nose and mouth.

3.3 An employer must provide every employee who may come into direct contact with members of the public as part of the employee's duties, with a cloth face mask, a homemade item or another appropriate item that covers the nose and mouth.

3.4 All formal and informal small businesses are encouraged to provide transport for their employees during the national state of disaster.



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## APPLICABLE PERMITS/ BUSINESS LICENCES REQUIRED

4. All other small businesses, not specifically mentioned in these Directions must apply for permits to operate their permitted businesses as per the Regulations.

### Small scale bakeries and confectioneries

5. A Small scale bakery and a confectionery must–

(a) possess a business licence or permit to trade issued in accordance with the Business Act, 1999 (Act No. 71 of 1991) or a business licence or trading permit issued by the relevant municipality;

(b) not sell products or goods that are prohibited by the Regulations; and

(c) not allow the business premises to be used as sleeping quarters.

### Small-scale Hardware Stores

6. A Small scale hardware store must–

(a) possess a business licence or a permit to trade issued in accordance with the Business Act, 1999 (Act No. 71 of 1991) or a business licence or trading permit issued by the relevant municipality;

(b) not sell sub-standard goods; and

(c) not allow the business premises to be used as sleeping quarters.

### Informal and micro restaurants and shisanyamas

7. Informal and micro restaurants and shisanyamas–

(a) must possess a business licence or permit to trade issued in accordance with the Business Act, 1991 (Act No. 71 of 1991) or a business licence or trading permit issued by the relevant municipality; and

(b) may not sell cooked food unless it is for home deliveries and the orders are placed telephonically or online.



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**Tradesmen and/ or Artisans Businesses**

8. (a) An Artisan's business must possess a business licence or permit to trade issued in accordance with the Business Act, 1999 (Act No. 71 of 1991); or
(b) in the case of a vehicle service centre, fitment centre or a motor body repair workshop, if it does not already possess a business licence or trading permit, it must apply for such a business licence or trading permit with the relevant municipality.

**Sole traders within the clothing and textiles business**

9.1 Personal Protective Equipment (PPEs) may not be fitted or tried on by customers before purchase.

9.2 Traders within the clothing and textiles sector-
(a) are prohibited from selling PPEs that had been fitted, tried on or returned by a customer;
(b) must ensure that sizes are clearly marked before products are purchased; and
(c) must display notices that PPEs may not be fitted or tried on before purchase.

**Cooperatives**

10. Cooperatives must possess a valid and original certificate of registration as a Cooperative, in order to trade.



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## APPLICATION FOR BUSINESS LICENCES OR TRADING PERMITS

11.1 The Informal, micro and small businesses which are required to possess trading permits or business licences and which are currently trading without permits, must apply for temporary permits to continue trading.

11.2 In the case of non-South African citizens, the business owner must–

(a) have been lawfully admitted into the Republic and must hold a valid passport with a visa issued by the Department of Home Affairs in terms of section 10 of the Immigration Act, 2002 (Act No.13 of 2002), authorising him or her to operate a business; or

(b) alternatively, hold an asylum seeker's permit issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), which allows him or her to work.

11.3 Permission to operate the business will be linked to the period covered by the asylum seeker's permit.



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**PERMITS**

12.1 All formal and informal small businesses or sole proprietors must have a permit to perform essential or permitted services as per Form 2 of the Regulations.

12.2 Form 2 may be signed by the Head of the Small business in respect of employees, and in the case the Head or Sole proprietor, by him or herself provided that–

(a) in the case of the Head or Sole proprietor, he or she must–

(i) be in possession of an Affidavit indicating that he or she is performing a service permitted in terms of the Regulations.

(ii) have in his or her possession a CIPC company registration certificate, or sole trader document issued by SARS, or certified copies of the trade certificate of the owner or college certificate in the related qualification, or other documentary proof of the existence of, and the nature of, the business; and

(b) produce the documents referred to in subparagraph (a) together with the permit upon request by an enforcement officer.

**COMMENCEMENT**

13. These Directions come into operation on the date of publication in the Government *Gazette*.

7



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**Annexure "M"**

Companies and Intellectual Property Commission
a member of the dti group

## GUIDANCE NOTE

## ESSENTIAL SERVICES CERTIFICATE ISSUED BY CIPC

It has come to our attention that there exists a lot of confusion in the marketplace in relation to the essential services certificate issued by CIPC via the online platform www.bizportal.gov.za.

**It is important to note that the CIPC essential services certificate DOES NOT constitute a permit or permission to provide essential services or goods.** The Disaster Management Act, 2002 (the Act) and the Regulations issued in terms of Section 27(2) of the Act prescribes the essential services allowed in terms of alert level 4.

Any entity which falls within descriptions listed in Table 1 Alert Level 4 as well as Annexure B, C and D of the above mentioned legislation, may operate or trade in terms of the requirements of the Act and its Regulations.

Companies, Close Corporations and Co-Operatives may register on www.bizportal.gov.za and apply for a CIPC essential services certificate. This option is non-compulsory and any certificate obtained from the CIPC acts as supporting documentation in the form of identification of an entity.

All members of the public and all business are urged to familiarize themselves with the content of the Disaster Management Act Regulations published in the Government Gazette on 29 April 2020. CIPC cannot provide any guidance as to whether an industry is allowed or prohibited to trade during the current alert level 4. If any uncertainty still exists on whether an enterprise / entity qualifies as an essential service or provider of essential goods, a query may be lodged via lockdownexemptions@thedtic.gov.za

Once an entity acquired a certificate from CIPC, such remains valid until the Regulations in terms of the Disaster Management Act, 2002 is amended, or if revoked by the CIPC. There is no need to obtain a renewed certificate, unless the details contained thereon has changed, such as the information of the responsible person.

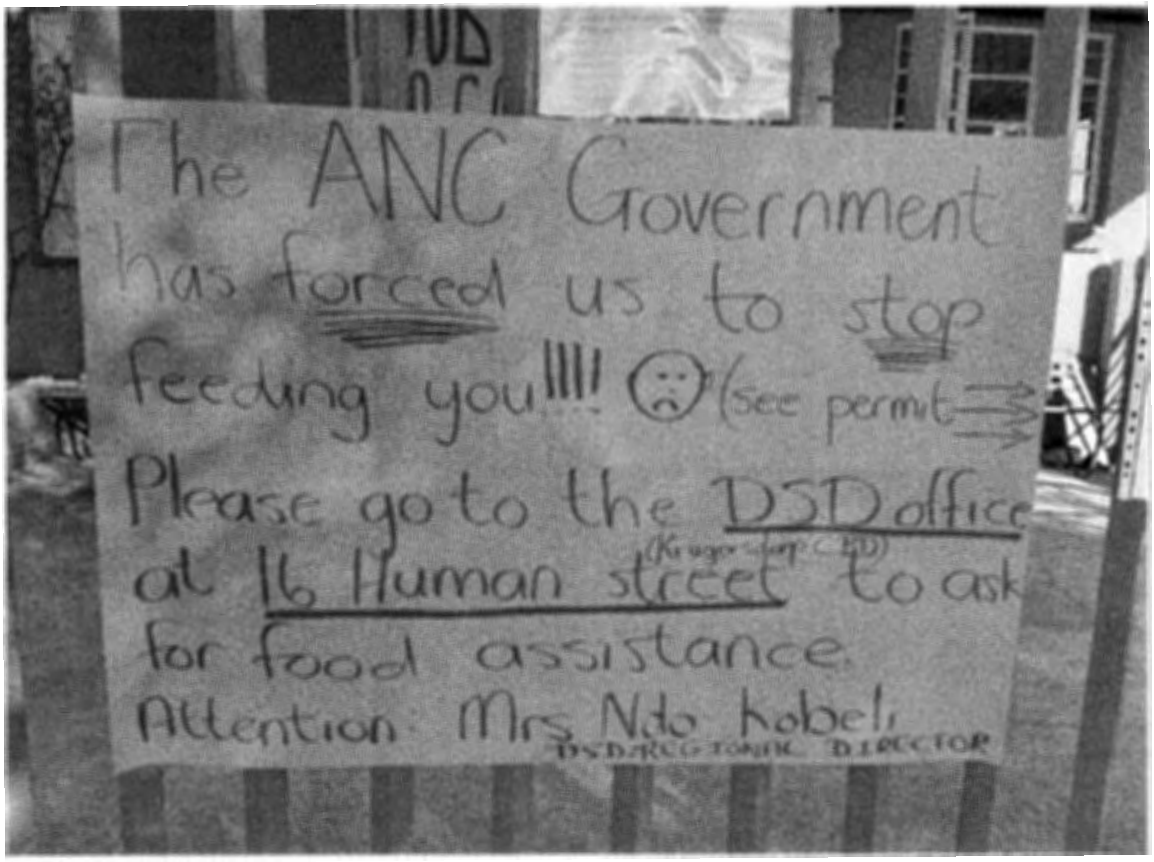
**Adv. Rory Voller**
**Commissioner**
**Date :** 11/5/20

**Annexure "N1"**

# Cradle of Hope organisation forced to stop doing what they have been for three years

**Every day, for the past three years, they have been supplying fresh peanut butter sandwiches to around 300 to 400 hungry adults and children.**

2 days ago




The sign on the palisade fence of the Cradle of Hope. Photo: Facebook.

An organisation that feeds around 600 of Krugersdorp's most vulnerable, was dealt a heavy blow yesterday, 12 May.

The Cradle of Hope in Krugersdorp was forced to stop serving the homeless, hungry and destitute their daily warm meal, often the only meal they would receive for the day.



Sometimes the sandwich and a piece of fruit are their only meal for the day. Photos: Facebook.

"Today was a bitterly sad day at The Cradle of Hope," a post from the founder of the organisation, Melodie van Brakel, stated on their Facebook page.

Every day, for the past three years, they have been supplying fresh peanut butter sandwiches to around 300 to 400 hungry adults and children. During the past six weeks this number has doubled.



"Strict hygiene measures were put in place, social distancing was perfected and a health inspector gave us a temporary health certificate to continue our labour of love.

Many of these recipients are homeless persons who do not have any access to cooking facilities. [illegible]s are just so poor that they cannot afford any electricity and water.



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> "Today we were formally forced to stop doing this."

Their permit as issued by Department of Social Development (DSD), very clearly prohibits them from serving any cooked or prepared food, and only allows them to distribute non-perishable food parcels and maize, which they preferably have to deliver to the recipients as well.



"We also need to apply for a new permit for every new day, which has to be picked up, and signed for, from the local DSD offices. I personally phoned the Regional Director of DSD and spoke to her regarding our sandwiches. Her answer was a very clear no. We are forced to comply with the regulations. We have no choice. Our focus now needs to shift to supplying food parcels. We have no choice. At the moment we are supplying between 80 and 120 food parcels every day.

We can only hand out what we receive. Literally anything and everything makes a difference."

Melodie also said they receive neither government funding nor food, and rely solely on donors, sponsors and volunteers for support and assistance. But this very dark cloud has a very feint silver lining; you can still help them by donating funds.

**Donate via their account:**

The Cradle of Hope

First National Bank

Account no: 621-8035-2628

Branch code: 250241

Reference: FP and YOUR NAME

"We can issue Section 18a SARS tax certificates for all donations received." You can also donate via BackaBuddy (https://www.backabuddy.co.za/champion/project/hope2020).

"For a copy of our needs list, please contact Sharon Lee on WhatsApp on 079 049 5802, or email info@thecradleofhope.org (mailto:info@thecradleofhope.org) or visit www.thecradleofhope.org.

*** Notice:** *Coronavirus reporting at Caxton Local Media aims to combat fake news*

*eader,*

*As your local news provider, we have the duty of keeping you factually informed on Covid-19 developments.*

*As you may have noticed, mis- and disinformation (also known as "fake news") is circulating online. Caxton Local Media is determined to filter through the masses of information doing the rounds and to separate truth from untruth in order to keep you adequately informed.*

*Local newsrooms follow a strict pre-publication fact-checking protocol.*

*A national task team has been established to assist in bringing you credible news reports on Covid-19.*

*Readers with any comments or queries may contact National Group Editor Irma Green (irma@caxton.co.za (mailto:irma@caxton.co.za)) or Legal Adviser Helene Eloff (helene@caxton.co.za (mailto:helene@caxton.co.za)).*

Read original story on krugersdorpnews.co.za (https://krugersdorpnews.co.za/435224/organisation-forced-to-stop-doing-what-they-have-been-for-three-yearsorgood-samaritans-stopped-in-their-tracks/)

SHARE

4

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## INTERNATIONAL NEWS



Typhoon forces 140,000 from homes in virus-hit Philippines (https://sandtonchronicle.co.za/afp/1061911/typhoon-forces-140000-from-homes-in-virus-hit-philippines/)

about 1 hour ago



**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**Case Number:**_____

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

---

**SUPPORTING AFFIDAVIT**

---

I the undersigned

**ADRIAAN JOSEF WEYERS**

Make oath and state:

1 I am a major male businessman. I am the owner member of Exilite 416 CC trading as Laundry Save (hereinafter referred to as "Laundry save"), with registered address at 74 Joseph Road Lynnwood Glen, Pretoria, Gauteng, 0018.

2 The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 Laundry Save is a cleaning business that provides a cleaning service that includes laundry, dry cleaning and alteration services.

4 Amongst our clients are doctors, medical staff and other persons working during the lockdown. The clients using our services during the lockdown either do not have their own washing facilities or alternatively do not have the time due to the extreme hours that they must work, to do their own laundry and cleaning. Due to the high heat and specialist cleaning processes we have available, many service providers also prefer to use our services during the COVID 19 pandemic.

5 Before commencing any business operations I ensured that my permits were in order. I was also led to believe that a CIPC Essential Services Certificate was a requirement in order for my business to operate, and accordingly also obtained a certificate.

6 It was at all times my bona fide understanding that my business would qualify as both an essential and permitted service provider due to Table 1 part P2 and Item 14 to Annexure D of the lockdown regulations that specifically authorised Cleaning, sanitation, pest control, sewerage, waste and refuse removal services.

7 On the morning of 29 April 2020, my shop was approached by members of the SAPS and the SANDF. A member of the SAPS questioned me whether or not I had a CIPC permit, which I immediately provided to him along with my other permits. The SAPS member seemed satisfied and left the shop.

8 Shortly thereafter a captain of the SAPS Brooklyn station entered the store with memebers of the SANDF. The SAPS captain informed me that I was not entitled to trade as I may only provide my services to essential service providers. The SAPS captain was then instructed by one of the SANDF members in the store that she must arrest me to which the SAPS captain complied. I was arrested and taken to the Brooklyn Police Station. They refused to consider the regulations and the fact that my services clearly fall under the dictionary meaning of the authorised business categories, especially cleaning and sanitation services. I was summarily arrested and detained.

9 I was only released on bail on the evening of 29 April 2020 at 22h00. While being detained at Brooklyn Police Station I heard the captain who arrested me mention to another colleague that she has "arrested 26 of them today".

10 I have been instructed to ensure that my business remain closed. My business has remained closed since my arrest.

**DEPONENT**

THUS SWORN AND SIGNED AT Pretoria ON THIS 15th DAY OF MAY 2020, BEFORE ME, Niel du Plessis, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HIS CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:



COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

NIEL DU PLESSIS
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY, REPUBLIC OF SOUTH AFRICA
1250 PRETORIUS STREET, HATFIELD, PRETORIA

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**Case Number:**_____

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

---

**SUPPORTING AFFIDAVIT**

---

I the undersigned

**MARKUS ALEXANDER BAGDAHN**

Make oath and state:

1 I am the owner of Das Grüne Autohaus an auto-repair shop situated at 537 Bush Road, Equestria, Pretoria, 0184.

2 The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 I trade as a sole proprietorship. My business qualifies as a Level 4 permitted service provider in terms of *Table 1 Part L3 - Emergency automobile repairs for all persons.*

4 I confirm that the applicant's attorneys have advised me that an *Essential Service Certificate* from the sixth respondent, the CIPC, is not a requirement in order for me to continue to conduct business as a permitted service provider. Until receiving such advice on 14 May 2020, I was made to believe that only persons who have a Essential *Service Certificate* would be entitled to trade.

5 My business however now falls under a class of tradespersons in terms of new directives issued by the seventh respondent on 12 May 2020 which now require me to apparently apply for a special permit in order to operate. I have been advised that the following directive applies to my business:

> *Tradesmen and/ or Artisans Businesses*
>
> *8.(a) An Artisan's business must possess a business licence or permit to trade issued in accordance with the Business Act, 1999 (Act No. 71 of 1991); or*
>
> *(b) in the case of a vehicle service centre, fitment centre or a motor body repair workshop, if it does not already possess a business licence or trading permit, it must apply for such a business licence or trading permit with the relevant municipality.*

6 I have never been required to apply for a permit to trade and I have been advised that no such permits applicable to my industry exists. I do not even know where or how to apply for a special permit.

7 I do not understand why my business should be required to get special permission to trade. It is extremely difficult for me to navigate the regulations and I do not know why I should have to issue any further permits other than those already provided for in terms of regulation 28(4). My business is suffering due to the uncertainties caused by these regulations.

**DEPONENT**

THUS SWORN AND SIGNED AT Pretoria ON THIS 15th DAY OF MAY 2020, BEFORE ME, Niel du Plessis, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HIS CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

NIEL DU PLESSIS
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY, REPUBLIC OF SOUTH AFRICA
1250 PRETORIUS STREET, HATFIELD, PRETORIA

COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

**Annexure "N4"** 

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**Case Number:**_____

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

---

**SUPPORTING AFFIDAVIT**

---

I the undersigned

**ALETTA DU PREEZ**

Make oath and state:

1 I am a major female businesswoman. I am the owner member of Blits Elektries TV en Hardeware CC ("Blits"), with registered address at 1149 Cunningham Avenue, Villieria, Pretoria, Gauteng, 0186.

2 The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 Blits is a specialist electrical and hardware store in Pretoria. We also conduct business as specialist electritions.

4 I have noted the directives issued by the seventh respondent on 12 May 2020 which provides for the following:

> ***Small -scale Hardware Stores***
>
> *6. A Small scale hardware store must-*
>
> *(a) possess a business licence or a permit to trade issued in accordance with the Business Act, 1999 (Act No. 71 of 1991) or a business licence or trading permit issued by the relevant municipality;*
>
> *(b) not sell sub -standard goods; and*
>
> *(c) not allow the business premises to be used as sleeping quarters.*

5 As businessowner, I have no idea whether the directions will apply to Blits and what is meant by a "*Small scale hardware store*". I have no idea how the scale of a hardware store is to be determined.

6 Our business also operates as electricians. It is becoming increasingly difficult to manage all the different permits which we will have to get in addition to the standard form permits provided for in the lockdown regulations. It is however clear that our business due to its small size will most likely be required to jump through many more administrative hoops compared to larger chains.

7 I have no idea how these regulations will be enforced and what types of permits Blitz should obtain in order to operate

**DEPONENT**

THUS SWORN AND SIGNED AT Pretoria ON THIS 15th DAY OF MAY 2020, BEFORE ME, Niel du Plessis, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT SHE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HER CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

NIEL DU PLESSIS
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY, REPUBLIC OF SOUTH AFRICA
1250 PRETORIUS STREET, HATFIELD, PRETORIA

COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**Case Number:**_____

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

---

**SUPPORTING AFFIDAVIT**

---

I the undersigned

**JACK DUVENHAGE**

Make oath and state:

1 I am a major male businessman. I am the owner member of Jackrite Building Supplies CC ("Jackrite"), with registered address at Hendriksstraat 675, Daspoort, Pretoria, 0002.

2 The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 Jackrite is a specialist paint and hardware store in Pretoria.

4 I have noted the directives issued by the seventh respondent on 12 May 2020 which provides for the following:

> ***Small -scale Hardware Stores***
>
> *6. A Small scale hardware store must-*
>
> *(a) possess a business licence or a permit to trade issued in accordance with the Business Act, 1999 (Act No. 71 of 1991) or a business licence or trading permit issued by the relevant municipality;*
>
> *(b) not sell sub -standard goods; and*
>
> *(c) not allow the business premises to be used as sleeping quarters.*

5 As businessowner, I have no idea whether the directions will apply to Jackrite and what is meant by a "*Small scale hardware store*". Jackrite is a single-owner operation. Even though we have a strong business operation, we have a relatively small staff component compared to larger hardware chain stores. Jackrite associates with various large brands and franchises, but operates independently.

6 I have no idea how the scale of a hardware store is to be determined.

7 I have been advised that no permit is required for hardware stores in my area. I have no idea however how these regulations will be enforced and whether Jackrite is required to obtain a trade permit.

DEPONENT

THUS SWORN AND SIGNED AT Pretoria ON THIS 15th DAY OF MAY 2020, BEFORE ME, Niel du Plessis, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE NdP UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NdP NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON ~~HIS~~ HIS NdP CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

NIEL DU PLESSIS
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY, REPUBLIC OF SOUTH AFRICA
1250 PRETORIUS STREET, HATFIELD, PRETORIA

COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

Annexure N6



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

**SUPPORTING AFFIDAVIT**

02-133
141

I the undersigned

**TERRY-LEE GEORGIEV**

hereby make oath and state:

1 I am a major female businesswoman. I am a farmer trading as a sole proprietor of the Georgiev Farm, with main place of business at Farm 321 Portion 8, Klein Haggelkraal, Pearly Beach, Western Cape.

2 The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 Where I make submissions of a legal nature I do so on the advice of the applicant's legal advisors which advice I accept as correct.

4 Georgiev Farm (hereinafter referred to as the "business") farms free range chicken eggs and elephant garlic and also trades in fresh fruit, veg and local produce.

5 I have been advised that the business qualifies as an Alert Level 4 essential and / or permitted service provider in terms of the regulations issued by the Minister of Co-operative Governance and Traditional Affairs on 29 April 2020. I have been advised that:

5.1 the products manufactured and supplied by my business are deemed to be essential goods in terms of regulation 22(1) read with the following items to the list of essential goods set out in Annexure B:

5.1.1 Item 2 - "Food products, including non-alcoholic beverages and animal food."

02-133

5.2 as a supplier of essential goods, I qualify as an essential service provider in terms of item B4 to annexure D of the regulations:

5.2.1 Production and sale of the goods listed in Annexure B;

5.3 I furthermore also qualify as a permitted service provider under Alert Level 4 in terms of regulation 28 (4) read with Table 1, with specific reference to the following items:

5.3.1 Part A1 - All agriculture, hunting, forestry and fishing, bee -keeping, including preparation, cultivation, harvesting, storage, transport of live animals and auctions (subject to health directions) and related agricultural infrastructure and services (including research, inspection, certification and quality control).

5.3.2 Part E1 - Food products, including non -alcoholic beverages and animal food.

6 Seeing as the business is a sole proprietorship, the business is not registered with the CIPC and cannot apply for or procure the *Essential Service Certificate* provided by the CIPC.

7 Before commencing operation of the business during the lockdown, I tried my best to ensure that I would be lawfully operating. I followed the guidelines and instructions published on https://sacoronavirus.co.za/ and enforced all of the health and safety measures published on the government website. All the required forms and permits were complete and in order on 26 March 2020 before the lockdown.

8 On 31 March 2020 uniformed members of the SAPS visited my farm. The members, who are still unknown to me, informed that I was an informal trader and that was not allowed to conduct business during the lockdown. These members specifically

requested a CIPC certificate. I was able to assist the members on that day to correctly determine that I was indeed an essential service provider.

9 On 1 April 2020 I was informed by the SAPS that I am authorised to supply eggs to two of the big supermarkets in my area, Spar and OK Stores, but that I am not allowed to deliver or sell food products to any other person.

10 On 3 April 2020 Lindsay Hanekom from Grootbosfoundation Farm and I went to consult with the Overberg Cluster Commander Brigadier Donovan Heilbron in order to try and resolve the matter. Also calling into the meeting was Mrs Helen Davis from the department of economic development and tourism. I was thereafter informed by both Brigadier Heilbron and Mrs Davis that I may proceed to sell my produce as per my process plan discussed in the above meeting.

11 On the 3rd of April 2020 I received permission from Brigadier Heilbron and Colonel Coetzee to proceed with operations on my farm. I was also authorised to proceed to sell my products from my normal vending stand near a local bus stop.

12 I at all times enforced strict health and safety protocols required by the lockdown regulations (which procedures and protocols I specifically vetted with the SAPS on 3 April 2020). I also issued to myself and my employees an essential service permit on the advice of the SAPS.

13 On 11 April 2020 while operating at my business' stand, I was approached by a Mr Kat Myburg, who I later learned is the municipal manager of the Gansbaai municipality. Mr Myburg ordered me to cease all business activities as I was not allowed to trade on municipal property (even though I have always been allowed to trade at the bus stop prior to the lockdown). A customer present at the time informed me that he has a private residential property close by which he will make available to me in order for me to continue to trade.

14 Later that day on 11 April 2020, I was again approached by a purported employee of the municipality, a person who was identified as Mr Blankenberg acting on the instructions of Mr Myburg. Mr Blankenberg told me that he has instructed the SAPS to issue me a R1 000.00 fine and that I am instructed to immediately cease all business operations. He also informed my customers that they are breaking the law by supporting my business and that they would be arrested. I was instructed to immediately shut down all operations as I was not in possession of the right municipal permits.

15 My business is stuck between a rock and a hard place since as I am unable to secure the CIPC certificates and municipal permits which Mr Myburg requires. I have done my best to try and secure permits from the Gansbaai municipality, but no-one is willing to assist me. I don't even know if the municipal council has even approved a permit and application procedure. There is simply no information.

16 My business is suffering immense and irreparable harm. I am however treated as if I am a second-class citizen who is unable to conduct my business in a responsible manner during the COVID 19 pandemic. In the eyes of the law I do not have the same capabilities as the manager of a larger business to conduct responsible business during the lockdown. Needless to say I reject this notion.

17 I provide the exact same service as a supermarket. I sell food to the public. I comply with all of the health and safety regulations and I am more than able to ensure strict compliance and social distancing with my clients (not that it is necessary seeing as my clients are all responsible adults who out of their own accord apply social distancing, wear face masks and act no different when conducting business with me than they would have done when conducting business with an established retailer).

18 My business cannot however operate due to the unwillingness or inability of the municipality to issue me a permit and my inability to produce a CIPC certificate. I am

only allowed to deliver product to established supermarkets. If I dare conduct business from my normal stand, I do so at the risk of being arrested by the municipality.

DEPONENT

THUS SWORN AND SIGNED AT Kirstenhof SAP ON THIS 20 DAY OF MAY 2020, BEFORE ME, CST BACA, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT SHE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HER CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

7234705-8
BACA CST
COMMISSIONER OF OATHS

NAME: BACA

CAPACITY: CST

ADDRESS: 13 Pollsmoor road
Kirstenhof SAPS

SOUTH AFRICAN POLICE SERVICE
KIRSTENHOF SAPS
2020 -05- 20
CSC
SUID AFRIKAANSE POLISIEDIENS

Annexure "O1"

**KRIEK WASSENAAR & VENTER ING**
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: PJ Wassenaar/es/QB0665
Your ref:

2 May 2020

**THE ACTING SOLICITOR GENERAL**

By email: SMzozoyana@justice.gov.za
TRamohlale@justice.gov.za
ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.co.za

**THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

By e-mail: MandisaMB@cogta.gov.za
PamelaS@cogta.gov.za
MathoM@cogta.gov.za
ThobaniM@cogta.gov.za
legadimal@cogta.gov.za

**THE MINISTER OF TRADE AND INDUSTRY**

By e-mail: KMashaba@thedtic.gov.za
LGava@justice.gov.za

**THE MINISTER OF POLICE**

By e-mail:
PhokaneN@saps.gov.za
LenzieD@saps.gov.za
GcilisheN@saps.gov.za
SelaoB@saps.gov.za
SereroR@saps.gov.za
DlakuV@saps.gov.za

Minister/Sir/Madam,

**DISPUTE REGARDING THE COVID 19 REGULATIONS: 29 APRIL 2020**

1. We act on instructions of Sakeliga NPC (our client).

2. On 29 April 2020, the Minister of COGTA ("the Minister") published a set of revised regulations in terms of the Disaster Management Act, 2002, colloquially referred to as the "Level 4 Regulations". Our client is of the view that they contain numerous provisions which are unconstitutional and should be set aside as invalid.

3. Our client has had regard to the provisions of regulation 13, and, prior to instituting legal proceedings, wishes to engage the Minister through a process of mediation as provided therein. We hereby request the assistance of the Solicitor-General in the co-ordination and oversight of the process, and to that end, invite the Solicitor General to provide us with a list of 5 available mediators, from which our client may select one.

4. The dispute relates to the regulations requiring the issue of permits authorising travel in general, and permits to perform essential and permitted services in particular. It is our client's considered view that the regulations requiring a permit for travelling to and from a person's workplace, in order to perform essential or permitted services, or for any other purpose allowed by the regulations, as currently applied by the law enforcement agencies, is unconstitutional in that they allow such agencies and others to disregard the validity (or ostensible validity) of such permits.

5. The Disaster Management Act, 2002, makes it clear that the Constitution is not thereby suspended, and the rights contained in the Bill of Rights are not suspended by the national state of disaster. Therefore, the issue of a permit remains administrative action, subject to the provisions of the Promotion of Administrative Justice Act, 2000. As such:

    a. A permit, once issued, remains valid and enforceable, until set aside by a Court of Law, and

    b. The validity of a permit ostensibly validly issued, cannot be questioned or decided upon by an enforcement officer.

6. Our client's considered view is that the Level 4 Regulations allow enforcement officers an unbridled discretion to question or reject permits duly issued. The permit system is in our client's view unreasonable and irrational in various respects, resulting in an unenforceable system which can only and has already resulted in arbitrary action by law enforcement. Serious rule of law questions arise when trying to interpret and apply this system.

7. Our client also objects to the CIPC certification system introduced by the Minister of Trade and Industry, which also relies on the self-issue of a permit by the public. This system is however only available to registered companies, even though we have feedback from the public that law enforcement requires a CIPC certificate before allowing a business to trade. This additional system has only contributed to further arbitrary and unlawful action by law enforcement.

8. It is our client's position that all permit system/s should immediately be abandoned and withdrawn.

9. We also require that the Minister of COGTA provide reasons for the use of a self-issue permit system as provided for in the regulations.

10. We seek to urgently resolve the matter, either by mediation or alternatively urgent litigation. Seeing however that regulation 13 has been introduced, we are willing to seek alternative dispute resolution if the process can expedite the finalisation of the dispute.

11. We request your response by 16h00 on 4 May 2020.

Yours faithfully,

**KRIEK WASSENAAR & VENTER INC**
**PÉTER WASSENAAR – DIRECTOR**
**(f) 086 596 8516**
**(e) peter@kriekprpk.co.za**

Elektronies gesteken
Electronically signed

Annexure "O2"

**KRIEK WASSENAAR & VENTER ING**

Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: PJ Wassenaar/es/QB0665
Your ref:

5 May 2020

**THE ACTING SOLICITOR GENERAL**

By e-mail: SMzozoyana@justice.gov.za
TRamohlale@justice.gov.za
ZNhlayisi@justice.gov.za
TiPillay@justice.gov.za
VDhulam@justice.gov.za

**THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

By e-mail: MandisaMB@cogta.gov.za
PamelaS@cogta.gov.za
MathoM@cogta.gov.za
ThobaniM@cogta.gov.za
legadimal@cogta.gov.za

**THE MINISTER OF TRADE AND INDUSTRY**

By e-mail: KMashaba@thedtic.gov.za
LGava@justice.gov.za

**THE MINISTER OF POLICE**

By e-mail:
PhokaneN@saps.gov.za
LenzieD@saps.gov.za
GcilisheN@saps.gov.za
SelaoB@saps.gov.za
SereroR@saps.gov.za
DlakuV@saps.gov.za



02-141

www.kwv-inc.com

Minister/Sir/Madam,

**DISPUTE REGARDING THE COVID 19 REGULATIONS: 29 APRIL 2020**

1. We refer to our letter of 2 May 2020 to which we have yet to receive a response.

2. Failing an agreement between the parties to seek alternative dispute resolution, our client has no choice but to now consult with counsel about formal litigation. Without a response, our client can only assume that offer for mediation has been rejected. We will now advise our client accordingly.

3. Our client's rights remain reserved.

Yours faithfully,

**KRIEK WASSENAAR & VENTER INC**
**PÉTER WASSENAAR – DIRECTOR**
**(f) 086 596 8516**
**(e) peter@kriekprpk.co.za**

Elektronies geteken
Electronically signed

**Annexure "O3"**

**KRIEK WASSENAAR & VENTER ING**
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: PJ Wassenaar/es/QB0693
Your ref:

13 May 2020

**THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

By e-mail: MandisaMB@cogta.gov.za
PamelaS@cogta.gov.za
MathoM@cogta.gov.za
ThobaniM@cogta.gov.za
legadimal@cogta.gov.za

**THE MINISTER OF SMALL BUSINESS DEVELOPMENT**

By e-mail rnevhutshena@dsbd.gov.za
smokwebo@dsbd.gov.za
nmonama@dsbd.gov.za
GSithole@dsbd.gov.za

Minister/Sir/Madam,

**DISPUTE REGARDING THE COVID 19 REGULATIONS: 29 APRIL 2020**
**DIRECTIVES ISSUED BY MINISTER OF SMALL BUSINESS DEVELOPMENT ON 12 MAY 2020 (GN 522)**

1. We refer to our previous request addressed to the Solicitor General and the Minister of Cooperative Governance and Traditional Affairs (COGTA) dated 5 May 2020.

2. In the aforementioned letter our client, Sakeliga NPC, requested that government agree to mediation in terms of regulation 13 of the main lockdown regulations issued in terms of Sections 27(2) of the Disaster Management Act, in order to mediate and avoid litigation regarding the permit system employed by government.

3. We have yet to receive a response from government. We accept that our offer to mediate has been rejected.

4. Our client has noted the new directions issued by the Minister for Small Business Development on 12 May 2020 which persists with government's confusing approach towards businesses deemed to be *informal*. According to this latest directive, so-called informal, micro and small businesses are required to apply for temporary permits from local government in order to continue trading. Additional permits are required notwithstanding the fact that these businesses already qualify as essential and/or permitted service providers in terms of regulations 16(2) and 28(4).



102-143

5. Our client demands the immediate withdrawal of the directives of 12 May 2020 by no later than 16h00 today. Failing thereto our client will proceed with an urgent application.

Yours faithfully,

**KRIEK WASSENAAR & VENTER INC**
**PÉTER WASSENAAR – DIRECTOR**
**(f) 086 596 8516**
**(e) peter@kriekprpk.co.za**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**CASE NO:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | **APPLICANT** |
| **and** | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | **1ST RESPONDENT** |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | **2ND RESPONDENT** |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | **3RD RESPONDENT** |
| **THE MINISTER OF POLICE** | **4TH RESPONDENT** |
| **THE NATIONAL COMMISSIONER OF POLICE** | **5TH RESPONDENT** |
| **THE COMMISSION FOR INTERLLECTUAL PROPERTY AND COMPANIES** | **6TH RESPONDENT** |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | **7TH RESPONDENT** |
| **THE NATIONAL COMMAND CENTRE** | **8TH RESPONDENT** |
| **THE MINISTER OF HEALTH** | **9TH RESPONDENT** |

## NOTICE OF APPOINTMENT AS ATTORNEYS OF RECORD

**KINDLY TAKE NOTICE** that the office of State Attorney, Pretoria is hereby appointed as attorneys of record.

**KINDLY TAKE FURTHER NOTICE** that the address of the State Attorneys appearing

below herein will be used for exchange of document and pleadings.

**DATED AND SIGNED AT PRETORIA ON THIS THE 18th DAY OF MAY 2020.**

_____

THE RESPONDENT'S ATTORNEY
**THE STATE ATTORNEY**
SALU BUILDING, GROUND FLOOR
316 THABO SEHUME STREET
P.O. BOX X91
PRETORIA
**REF: ……/2020/Z42/DM**
TEL: (012) 309-1572/
Cell:0768926024
ENQ: T MUKASI
FAX: 086 406 6203
E-MAIL: TMukasi@justice.gov.za

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
**PRETORIA**

AND TO: **KRIEK WASSENAAR AND VENTER INC.**
APPLICANT'S ATTORNEYS
**1ST FLOOR, NOREX HOUSE, 79 RAUCHAVENUE**
GEORGEVILLE, PRETORIA, 0184
TEL: (012) 803-4719/ (c) 082 9204474
EMAIL: pieterk@kriekprok.co.za;
peter@kriekprok.co.za
rohann@kriekprok.co.za
REF: P WASSENAAR/ QB0693

# IN THE HIGH COURT OF SOUTH AFRICA
# GAUTENG DIVISION, PRETORIA

**CASE NO:**

In the matter between:

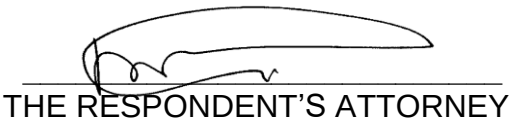
| | |
|---|---|
| **SAKELIGA NPC** | **APPLICANT** |
| **and** | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | **1ST RESPONDENT** |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | **2ND RESPONDENT** |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | **3RD RESPONDENT** |
| **THE MINISTER OF POLICE** | **4TH RESPONDENT** |
| **THE NATIONAL COMMISSIONER OF POLICE** | **5TH RESPONDENT** |
| **THE COMMISSION FOR INTERLLECTUAL PROPERTY AND COMPANIES** | **6TH RESPONDENT** |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | **7TH RESPONDENT** |
| **THE NATIONAL COMMAND CENTRE** | **8TH RESPONDENT** |
| **THE MINISTER OF HEALTH** | **9TH RESPONDENT** |

## NOTICE OF INTENTION TO OPPOSE

**BE PLEASED TO TAKE NOTICE** that the Respondents hereby give notice of their intention to oppose the urgent application set for hearing on the 26th May 2020.

**KINDLY TAKE NOTICE FURTHER** that the Respondents have appointed the undersigned as their attorney of record and will accept service of all documents in these proceedings at the address set out below.

**DATED AND SIGNED AT PRETORIA ON THIS THE 18th DAY OF MAY 2020.**



THE RESPONDENT'S ATTORNEY
**THE STATE ATTORNEY**
SALU BUILDING, GROUND FLOOR
316 THABO SEHUME STREET
P.O. BOX X91
PRETORIA
**REF: 1603/2020/Z42/DM**
TEL: (012) 309-1572/
Cell:0768926024
ENQ: T MUKASI
FAX: 086 406 6203
E-MAIL: TMukasi@justice.gov.za

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
**PRETORIA**

AND TO: **KRIEK WASSENAAR AND VENTER INC.**
APPLICANT'S ATTORNEYS
**1ST FLOOR, NOREX HOUSE, 79 RAUCHAVENUE**
GEORGEVILLE, PRETORIA, 0184
TEL: (012) 803-4719/ (c) 082 9204474
EMAIL: pieterk@kriekprok.co.za;
peter@kriekprok.co.za
rohann@kriekprok.co.za
REF: P WASSENAAR/ QB0693

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE AND INDUSTRY** | Third Respondent |
| **THE MINISTER OF SAFETY AND SECURITY** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |

---

**NOTICE IN TERMS OF RULE 16A**

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**TAKE NOTICE THAT** the applicants intend to apply to the abovementioned Honourable Court on Tuesday 26 May 2020 at 10h00 or as soon thereafter as counsel may be heard, for an order in the following terms:

1. That this application be heard as one of urgency in terms of Rule 6(12) and that the applicants' failure to comply with the ordinary time limits of service of process be condoned.
2. That a declaratory order be issued to the effect that the sixth respondent has no authority to issue "*Essential Services Permits / Certificates*" to enable any company or close corporation to conduct emergency or permitted service in terms of the Regulation issued under the Disaster Management Act, Act 57 of 2002 and published as Government Notice R480 on 29 April 2020, ("the Regulations");
3. That a declaratory order be issued that the South African Police Service and any other enforcement agency mandated to enforce the Regulations, have no authority to demand from any person, an "*Essential/Permitted Service Permits / Certificates*" issued by the Sixth Respondent;
4. That a declaratory order be issued to the effect that the Respondents have no authority to direct any other Organ of State to issue "*Essential/Permitted Service Permits / Certificates*" pursuant to the National State of Disaster;
5. That a declaratory order be issued to the effect that no enforcement agency, mandated to enforce the Regulations issued pursuant to the Declaration of a National State of Disaster, including the South African Police Service, may require an permit save those provided for in the Regulations in order to render a necessary or permitted service as described therein;
6. That an order be issued declaring illegal and invalid the Directions purportedly issued by the Seventh Respondent on 12 May 2020, under Government Notice R522, in Government Gazette 34406;

7. That an interdict be issued restraining the respondents and any individual falling under their control and / or authority from:

   7.1. Interfering with the business operations of any person permitted under and in terms of the Regulations; and

   7.2. Preventing or obstructing any person from trading in compliance with the Regulations.

8. That the sixth and seventh respondents, jointly and severally with any other respondent who elects to oppose this application, be ordered to pay the costs of this application.

9. That such further or alternative relief as the Honourable Court may consider just and equitable, be granted in favour of the applicants.

**TAKE NOTICE FURTHER** that the application raises the following constitutional issues:

1. Whether the Commissioner for Intellectual Property and Companies has any right to issue "*Essential Services Permits / Certificates*" in terms of the Constitution, the Companies Act, 2008 or the Disaster Management Act, Act 57 of 2002 or the Regulations issued in terms thereof;

2. Whether the Minister of Small Business Development was empowered by the Constitution, the Disaster Management Act, 2002 or any Regulation issued in terms thereof, to issue a directive requiring any person performing any Essential or Permitted Service under the Regulations, to be in possession of any other permit or licence except such permits as are required in terms of the Regulations;

3. Whether members of the South African Police Service have the authority to arrest or detain any person not in possession of such additional licences.

**TAKE NOTICE FURTHER** that any interested party who may wish to intervene as *amicus curiae* in these proceedings may do so with the consent of all parties, upon notice to such parties before close of business on 25 May 2020, by email:

- To the applicant at peter@kriekprok.co.za;
- And to the Respondents at TMukasi@justice.gov.za

**TAKE NOTICE FURTHER** that, failing such consent, any such person wishing to intervene as *amicus curiae*, must apply to the Court for such consent, to be heard on the date of the hearing.

**SIGNED AT PRETORIA THIS 20 DAY OF MAY 2020.**

**KRIEK WASSENAAR AND VENTER INC**

**APPLICANT'S ATTORNEYS**

1ST FLOOR, NOREX HOUSE, 79 RAUCH AVENUE

GEORGEVILLE, PRETORIA

(T) (+27) 12 803 4719 (C) 0829204474

(E) peter@kriekprok.co.za

**REF: P WASSENAAR /QB0693**

**TO: THE REGISTRAR OF THE HIGH COURT**

**PRETORIA**

**AND TO:** **THE STATE ATTORNEY**

**ATTORNEYS FOR THE RESPONDENTS**

SALU BUILDING, GROUND FLOOR,

316 THABO SEHUME STREET, PRETORIA

(T) 012 309 1572 (C) 076 892 6024

(E) TMukasi@justice.gov.za

**Ref: T Mukasi / 1603/2020/Z42/DM**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

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**FILING NOTICE**

---

**DOCUMENTS FILED:**

- **SERVICE AFFIDAVIT.**
- **COMMISSIONED ANNEXURE N6.**

**FILED BY:** **KRIEK WASSENAAR & VENTER INC**

**APPLICANT'S ATTORNEYS**

1ST FLOOR, NOREX HOUSE, 79 RAUCH AVENUE

GEORGEVILLE, PRETORIA

(T) (+27) 12 803 4719 (C) 0829204474

(E) peter@kriekprok.co.za

**REF: P WASSENAAR /QB0693**

**TO:** **THE REGISTRAR OF THE HIGH COURT**

**PRETORIA**

**AND TO:** **THE STATE ATTORNEY**

**ATTORNEYS FOR THE RESPONDENTS**

SALU BUILDING, GROUND FLOOR,

316 THABO SEHUME STREET, PRETORIA

(T) 012 309 1572 (C) 076 892 6024

(E) TMukasi@justice.gov.za

**Ref: T Mukasi / 1603/2020/Z42/DM**

SERVICE BY EMAIL

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

**SERVICE AFFIDAVIT**

I the undersigned,

**PIETER EDUARD KRIEL**

Do hereby make oath and state as follows:

1 I am an adult male candidate attorney with the firm Kriek Wassenaar & Venter Incorporated situated at First Floor, Norex House, 79 Rauch Avenue, Georgeville, Pretoria under a vocational training contract/contract of articles with Mr PJ Wassenaar.

2 The facts set out herein falls within my personal knowledge, unless the contrary appears from the text hereof.

3 The notice of motion and founding affidavit under case number 22352/2020 (the "application") was finalised and commissioned on 15 May 2020. In order to ensure that the respondents receive a copy of the notice of motion and founding affidavit, a complete copy with annexures was served by email onto each of the respondents.

4 The signed and commissioned affidavits were scanned and also forwarded to all of the respondents again on 16 May 2020 by email.

5 In support of paragraph 3 and 4 above, I confirm that I forwarded the documents stated in paragraph 3 and 4 to the e-mail addresses listed in the subparagraphs below. I confirm that the e-mails were accepted as a complete data message by the information system and e-mail server host of the respective e-mail addresses, as is evidenced below.

**SERVICE UNTO THE 1ST, 2ND, 3RD, 4TH, 7TH AND 9TH RESPONDENTS**

6 A copy of the application was forwarded the following known addresses of the 1st, 2nd, 3rd, 4th, 7th and 9th respondents:

6.1 SMzozoyana@justice.gov.za

6.2 TRamohlale@justice.gov.za

6.3 ZNhlayisi@justice.gov.za

6.4 TiPillay@justice.gov.za

6.5 VDhulam@justice.gov.za

7 A copy of my email was forwarded on 15 May 2020 at 16h37 to the addressees stated in paragraph 6 above and is attached hereto as annexure **PK1**.

8 A copy of my email was forwarded on 16 May 2020 at 12h32 to the addressees stated in paragraph 6 above and is attached hereto as annexure **PK2**.

9 In order to ensure that the e-mails were properly dispatched, I copied Mr Rohann Eloff, a candidate attorney from our offices into the e-mails. I can confirm that Mr Eloff received a full copy of each message sent by me.

10 On 20 May 2020 I proceeded to draw a server report from our firm's e-mail server as proof that the data messages entered and was accepted by the information systems of the e-mail accounts listed in paragraph 5.1 to 5.5 above. The delivery reports drawn from our firm's information system, indicates that the data messages were accepted by the e-mail server of the 1st, 2nd, 3rd, 4th, 7th and 9th respondents as follows:

10.1 on 15 May 2020 at 12h34. Copies of the server delivery reports are attached hereto as annexures **PK3.1 – PK3.5**.

10.2 on 16 May 2020 at 12h34. Copies of the server delivery reports are attached hereto as annexures **PK4.1 – PK4.5**.

11 I can confirm that none of the addressees' information systems rejected the data message and/or indicated to our information system that the data messages could not be retrieved and/or processed by the 1st, 2nd, 3rd, 4th, 7th and 9th respondents.

**FIFTH RESPONDENT**

12 A copy of the application was forwarded the following known addresses of the 5th respondent:

12.1 natjocj8@saps.gov.za

12.2 PhokaneN@saps.gov.za

12.3 LenzieD@saps.gov.za

12.4 GcilisheN@saps.gov.za

12.5 SelaoB@saps.gov.za

12.6 SereroR@saps.gov.za

12.7 DlakuV@saps.gov.za

12.8 sitolek@saps.gov.za

12.9 selepemashadi@saps.gov.za

13 A copy of my email was forwarded on 15 May 2020 at 16h37 to the addressees stated in paragraph 12 above and is attached hereto as annexure **PK5**.

14 A copy of my email was forwarded on 16 May 2020 at 12h29 to the addressees stated in paragraph 12 above and is attached hereto as annexure **PK6.**

15 In order to ensure that the e-mails were properly dispatched, I copied Mr Rohann Eloff, a candidate attorney from our offices into the e-mails. I can confirm that Mr Eloff received a full copy of each message sent by me.

16 On 20 May 2020 I proceeded to draw a server report from our firm's e-mail server as proof that the data messages entered and was accepted by the information systems of the e-mail accounts listed in paragraph 12.1 to 12.9 above. The delivery reports drawn from our firm's information system, indicates that the data messages were accepted by the e-mail server of the 5th respondent as follows:

16.1 on 15 May 2020 at 16h38. Copies of the server delivery reports are attached hereto as annexures **PK7.1 – PK7.9**.

16.2 on 16 May 2020 at 12h30. Copies of the server delivery reports are attached hereto as annexures **PK8.1 – PK8.9**.

17 I can confirm that none of the addressees' information systems rejected the data message and/or indicated to our information system that the data messages could not be retrieved and/or processed by the 5th respondent.

**SIXTH RESPONDENT**

18 A copy of the application was forwarded the following known addresses of the 6th respondent:

18.1 loctober@thedti.gov.za

18.2 EMsiza@thedti.gov.za

18.3 MSMedupe@thedti.gov.za

19 A copy of my email was forwarded on 15 May 2020 at 16h39 to the addressees stated in paragraph 18 above and is attached hereto as annexure **PK9**.

20 A copy of my email was forwarded on 16 May 2020 at 12h22 to the addressees stated in paragraph 18 above and is attached hereto as annexure **PK10.**

21 On 20 May 2020 I proceeded to draw a server report from our firm's e-mail server as proof that the data messages entered and was accepted by the information systems of the e-mail accounts listed in paragraph 18.1 to 18.3 above. The delivery reports drawn from our firm's information system, indicates that the data messages were accepted by the e-mail server of the 5th respondent as follows:

21.1 on 15 May 2020 at 16h39. Copies of the server delivery reports are attached hereto as annexures **PK11.1 – PK11.3**.

21.2 on 16 May 2020 at 12h23. Copies of the server delivery reports are attached hereto as annexures **PK12.1 – PK12.3**.

P

22 I can confirm that the addressees' information system did not reject the data message and/or indicated to our information system that the data message could not be retrieved and/or processed by the 6th respondent.

23 I can confirm that the email address of loctober@thedti.gov.za forwarded my e-mails to one Advocate Ntokozo Khamba. The e-mails referred to our urgent application and the fact that I was copied in the e-mails in order to ensure speedy response. These emails were forwarded on:

23.1 15 May 2020. A copy of which is attached hereto as annexure **PK13**.

23.2 16 May 2020. A copy of which is attached hereto as annexure **PK14**.

**EIGHTH RESPONDENT**

24 A copy of the application was forwarded the following known addresses of the 8th respondent:

24.1 nokukhanya@presidency.gov.za

24.2 Phumeza@presidency.gov.za

25 A copy of my email was forwarded on 15 May 2020 at 16h38 to the addressees stated in paragraph 24 above and is attached hereto as annexure **PK15**.

26 A copy of my email was forwarded on 16 May 2020 at 12h25 to the addressees stated in paragraph 24 above and is attached hereto as annexure **PK16.**

27 In order to ensure that the e-mails were properly dispatched, I copied Mr Rohann Eloff, a candidate attorney from our offices into the e-mails. I can confirm that Mr Eloff received a full copy of each message sent by me.

P

28 On 20 May 2020 I proceeded to draw a server report from our firm's e-mail server as proof that the data messages entered and was accepted by the information systems of the e-mail accounts listed in paragraph 24.1 to 24.2 above. The delivery reports drawn from our firm's information system, indicates that the data messages were accepted by the e-mail server of the 5th respondent as follows:

28.1 on 15 May 2020 at 16h38. Copies of the server delivery reports are attached hereto as annexures **PK17.1 – PK17.2**.

28.2 on 16 May 2020 at 12h27. Copies of the server delivery reports are attached hereto as annexures **PK18.1 – PK18.2**.

29 I can confirm that the addressees' information system did not reject the data message and/or indicate to our information system that the data message could not be retrieved and/or processed by the 8th Respondent.

**ELECTRONIC SERVICE ON RESPONDENTS**

30 I confirm that all data messages discussed in this affidavit were forwarded and should, in my submission, be regarded to have been received by the respective addressees in terms of Section 23(b) of the Electronic Communications and Transactions Act 25 of 2002, seeing that:

30.1 Each data message entered the information system of the designated addressee; and

30.2 Each data message was capable of being retrieved and processed by the addressees; and

30.3 Service of the data messages were effected to a valid e-mail address of each of the respondents without any of the addressees' information system rejecting the data messages and/or indicating to our information system and/or e-mail

that the data messages could not be retrieved and/or processed by the respective addressees.

31 The application was issued on 18 May 2020 and an issued copy was also forwarded to the respondents' attorneys of record, who also confirmed that they act on behalf of all nine respondents. A copy of this email is attached as annexure **PK19.**

**PIETER EDUARD KRIEL**

THUS SWORN AND SIGNED AT PRETORIA ON THIS 20th DAY OF MAY 2020, BEFORE ME, Johannes Jacobus Van Der Merwe, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HIS CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

COMMISSIONER OF OATHS

NAME:
CAPACITY:
ADDRESS:

JOHANNES JACOBUS VAN DER MERWE
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

## Annexure PK1

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-15, 04:37 pm
**To:** SMzozoyana@justice.gov.za, TRamohlale@justice.gov.za, ZNhlayisi@justice.gov.za, TiPillay@justice.gov.za, VDhulam@justice.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients unsigned urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

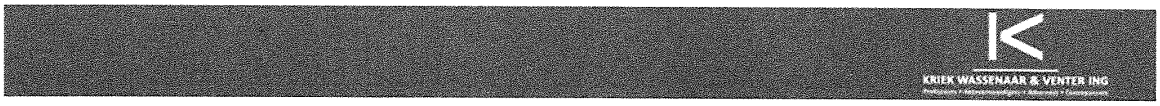
Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (unsigned) 20200515.pdf 5.0 MB

P

## Annexure PK2

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-16, 12:32 pm
**To:** SMzozoyana@justice.gov.za, TRamohlale@justice.gov.za, ZNhlayisi@justice.gov.za, TiPillay@justice.gov.za, VDhulam@justice.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

The above mentioned urgent application as well as my email of 15 May 2020 refers.

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients **SIGNED** urgent application.

We have tried throuhout Friday 15 May 2020 to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

KRIEK WASSENAAR & VENTER ING

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (signed) 20200515.pdf 6.1 MB



2020-05-20, 02:40 pm

**Annexure PK3.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:37:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | smzozoyana@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | smzozoyana@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:37:16 PM |
| **ID**: | 1jZbSf-00HJwP-RO |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK3.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:37:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | tramohlale@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | tramohlale@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:37:16 PM |
| **ID**: | 1jZbSf-00HJwP-RO |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK3.3**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:37:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | znhlayisi@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | znhlayisi@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:37:16 PM |
| **ID**: | 1jZbSf-00HJwP-RO |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK3.4**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:37:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | tipillay@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | tipillay@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:37:16 PM |
| **ID**: | 1jZbSf-00HJwP-RO |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK3.5**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:37:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | vdhulam@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | vdhulam@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:37:16 PM |
| **ID**: | 1jZbSf-00HJwP-RO |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK4.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:33:12 PM |
| **Sender Host**: | 8ta-250-5-250.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.250 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | smzozoyana@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | smzozoyana@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:34:12 PM |
| **ID**: | 1jZu7B-0042By-G0 |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK4.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:33:12 PM |
| **Sender Host**: | 8ta-250-5-250.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.250 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | tramohlale@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | tramohlale@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:34:12 PM |
| **ID**: | 1jZu7B-0042By-G0 |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK4.3**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:33:12 PM |
| **Sender Host**: | 8ta-250-5-250.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.250 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | znhlayisi@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | znhlayisi@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:34:12 PM |
| **ID**: | 1jZu7B-0042By-G0 |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

P

**Annexure PK4.4**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:33:12 PM |
| **Sender Host**: | 8ta-250-5-250.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.250 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | tipillay@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | tipillay@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:34:12 PM |
| **ID**: | 1jZu7B-0042By-G0 |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK4.5**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:33:12 PM |
| **Sender Host**: | 8ta-250-5-250.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.250 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | vdhulam@justice.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | vdhulam@justice.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:34:12 PM |
| **ID**: | 1jZu7B-0042By-G0 |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

## Annexure PK5

**Subject:** URGENT APPLICTION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-15, 04:37 pm
**To:** natjocj8@saps.gov.za, PhokaneN@saps.gov.za, LenzieD@saps.gov.za, GcilisheN@saps.gov.za, SelaoB@saps.gov.za, SereroR@saps.gov.za, DlakuV@saps.gov.za, sitolek@saps.gov.za, selepemashadi@saps.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients unsigned urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

KRIEK WASSENAAR & VENTER ING

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (unsigned) 20200515.pdf 5.0 MB



2020-05-20, 02:50 pm

## Annexure PK6

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-16, 12:29 pm
**To:** natjocj8@saps.gov.za, PhokaneN@saps.gov.za, LenzieD@saps.gov.za, GcilisheN@saps.gov.za, SelaoB@saps.gov.za, SereroR@saps.gov.za, DlakuV@saps.gov.za, sitolek@saps.gov.za, selepemashadi@saps.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients **SIGNED** urgent application.

We have tried throuhout the day on 15 May 2020 to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

KRIEK WASSENAAR & VENTER ING

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (signed) 20200515.pdf 6.1 MB

**Annexure PK7.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | natjocj8@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | natjocj8@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | phokanen@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | phokanen@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.3**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | lenzied@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | lenzied@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.4**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | gcilishen@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | gcilishen@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.5**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | selaob@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | selaob@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.6**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | sereror@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | sereror@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.7**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | dlakuv@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | dlakuv@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.8**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | sitolek@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | sitolek@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK7.9**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | selepemashadi@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | selepemashadi@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTJ-00HK57-Ub |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK8.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | natjocj8@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | natjocj8@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | phokanen@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | phokanen@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.3**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | lenzied@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | lenzied@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.4**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | gcilishen@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | gcilishen@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.5**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | selaob@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | selaob@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.6**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | sereror@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | sereror@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.7**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | dlakuv@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | dlakuv@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.8**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | sitolek@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | sitolek@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK8.9**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:30:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.246 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | selepemashadi@saps.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | selepemashadi@saps.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:31:12 PM |
| **ID**: | 1jZu4N-0041K6-MX |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

## Annexure PK9

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-15, 04:39 pm
**To:** loctober@thedti.gov.za, EMsiza@thedti.gov.za, MSMedupe@thedti.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients unsigned urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

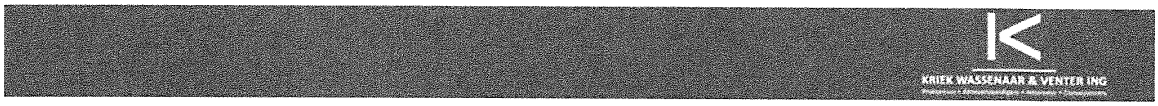
Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




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Attachments:

Urgent Application - Sakeliga (unsigned) 20200515.pdf 5.0 MB

## Annexure PK10

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-16, 12:22 pm
**To:** loctober@thedti.gov.za, EMsiza@thedti.gov.za, MSMedupe@thedti.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients **SIGNED** urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day on 15 May 2020 to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




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Attachments:

Urgent Application - Sakeliga (signed) 20200515.pdf 6.1 MB

P 9

**Annexure PK11.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:39:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | loctober@thedti.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | loctober@thedti.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:39:16 PM |
| **ID**: | 1jZbUQ-00HKIz-4j |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK11.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:39:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | emsiza@thedti.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | emsiza@thedti.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:39:16 PM |
| **ID**: | 1jZbUQ-00HKIz-4j |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK11.3**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:39:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | msmedupe@thedti.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | msmedupe@thedti.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:39:16 PM |
| **ID**: | 1jZbUQ-00HKIz-4j |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.218.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK12.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:23:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.147 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | loctober@thedti.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | loctober@thedti.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:23:12 PM |
| **ID**: | 1jZtxN-003ztK-KE |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK12.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:23:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.147 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | emsiza@thedti.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | emsiza@thedti.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:23:12 PM |
| **ID**: | 1jZtxN-003ztK-KE |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK12.3**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:23:12 PM |
| **Sender Host**: | 192.168.8.110 |
| **Sender IP**: | 102.250.5.147 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | msmedupe@thedti.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | msmedupe@thedti.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:23:12 PM |
| **ID**: | 1jZtxN-003ztK-KE |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

## Annexure PK13

**Subject:** FW: URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Lionel October <LOctober@thedtic.gov.za>
**Date:** 2020-05-15, 07:25 pm
**To:** Ntokozo Khamba <NKhamba@thedtic.gov.za>
**CC:** Julia Serumula <JSerumula@thedtic.gov.za>, Kedibone Mashaba <KMashaba@thedtic.gov.za>, Sidwell Medupe <SSMedupe@thedtic.gov.za>, "Ellen Msiza" <EMsiza@thedtic.gov.za>, "pieterk@kriekprok.co.za" <pieterk@kriekprok.co.za>

Good evening Advocate Khamba

Please find attached urgent application from Kriek Wassenaar & Venter Ing, acting on behalf of Sakeliga, for consideration. We have copied the writer for speedy response.

Thank you.

**From:** Pieter Kriel [mailto:pieterk@kriekprok.co.za]
**Sent:** Friday, 15 May 2020 16:39
**To:** Lionel October <LOctober@thedtic.gov.za>; Ellen Msiza <EMsiza@thedtic.gov.za>; Sidwell Medupe <MSMedupe@thedtic.gov.za>
**Cc:** Rohann Eloff <rohann@kriekprok.co.za>
**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients unsigned urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

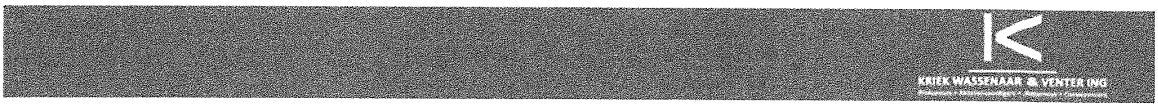


2020-05-20, 03:09 pr

FW: URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

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## Annexure PK14

**Subject:** FW: URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Lionel October <LOctober@thedtic.gov.za>
**Date:** 2020-05-16, 03:44 pm
**To:** Ntokozo Khamba <NKhamba@thedtic.gov.za>
**CC:** Kedibone Mashaba <KMashaba@thedtic.gov.za>, Sidwell Medupe <SSMedupe@thedtic.gov.za>, Ellen Msiza <EMsiza@thedtic.gov.za>, "Thabiso Matshego" <TMatshego@thedtic.gov.za>, "pieterk@kriekprok.co.za" <pieterk@kriekprok.co.za>

Dear Advocate Khamba

Please find attached an urgent application from the writer below for your attention. We have copied the writer for speedy response.

Thank you

On behalf of the DG

Ms Thabiso Matshego

**From:** Pieter Kriel [mailto:pieterk@kriekprok.co.za]
**Sent:** Saturday, 16 May 2020 12:22
**To:** Lionel October <LOctober@thedtic.gov.za>; Ellen Msiza <EMsiza@thedtic.gov.za>; Sidwell Medupe <MSMedupe@thedtic.gov.za>
**Cc:** Rohann Eloff <rohann@kriekprok.co.za>
**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients **SIGNED** urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day on 15 May 2020 to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

FW: URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT



Pieter Kriel

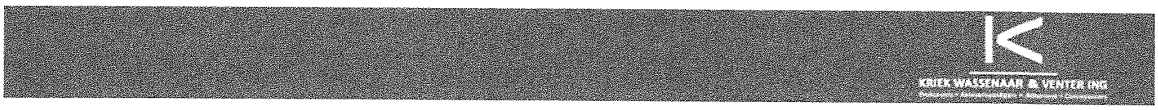
Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (signed) 20200515.pdf 6.1 MB

P 9

## Annexure PK15

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-15, 04:38 pm
**To:** nokukhanya@presidency.gov.za, Phumeza@presidency.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients unsigned urgent application.

A signed copy will be served on you shortly.

We have tried throuhout the day to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,

Pieter Kriel

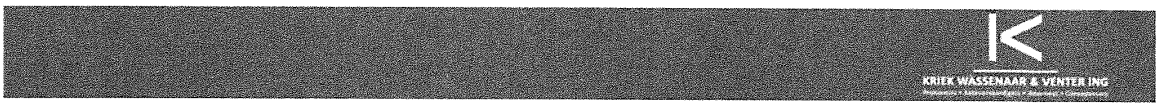
Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (unsigned) 20200515.pdf 5.0 MB

URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT

## Annexure PK16

**Subject:** URGENT APPLICATION (NEW) SAKELIGA / THE PRESIDENT
**From:** Pieter Kriel <pieterk@kriekprok.co.za>
**Date:** 2020-05-16, 12:25 pm
**To:** nokukhanya@presidency.gov.za, Phumeza@presidency.gov.za
**CC:** Rohann Eloff <rohann@kriekprok.co.za>

Good day

--

The above mentioned urgent application as well as my email of 15 May 2020 refers.

We act on behalf of Sakeliga (the applicant).

Kindly find attached hereto our clients **SIGNED** urgent application.

We have tried throuhout Friday 15 May 2020 to electronically issue the notice of motion and provide a case number for casselines purposes. We have not been able to get through on the designated court telephone numbers. We will notify you once a case number has been allocated.

We request that if you / your clients are of the intention to oppose the matter that they forward their notice of intention to oppose as per the notice of motion.

--
Yours faithfully,



Pieter Kriel

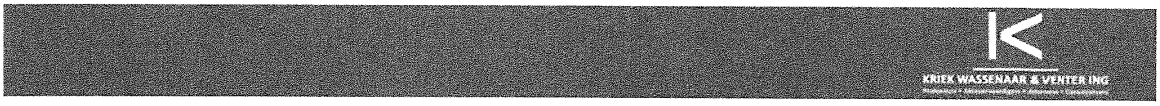
Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

Attachments:

Urgent Application - Sakeliga (signed) 20200515.pdf 6.1 MB

**Annexure PK17.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | nokukhanya@presidency.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | nokukhanya@presidency.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTs-00HKCn-8I |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK17.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 15, 2020, 4:38:16 PM |
| **Sender Host**: | 192.168.0.106 |
| **Sender IP**: | 105.247.143.196 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | phumeza@presidency.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | phumeza@presidency.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 15, 2020, 4:38:16 PM |
| **ID**: | 1jZbTs-00HKCn-8I |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.219.3 |
| **Size**: | 6.82 MB |
| **Result**: | Accepted |

**Annexure PK18.1**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:27:12 PM |
| **Sender Host**: | 8ta-250-5-236.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.236 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | nokukhanya@presidency.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | nokukhanya@presidency.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:27:12 PM |
| **ID**: | 1jZu0v-0040n0-TW |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK18.2**

# Delivery Event Details

| | |
|---|---|
| **Event**: | success |
| **User**: | kriekpro |
| **Domain**: | kriekprok.co.za |
| **From Address**: | pieterk@kriekprok.co.za |
| **Sender**: | pieterk@kriekprok.co.za |
| **Sent Time**: | May 16, 2020, 12:27:12 PM |
| **Sender Host**: | 8ta-250-5-236.telkomadsl.co.za |
| **Sender IP**: | 102.250.5.236 |
| **Authentication**: | dovecot_plain |
| **Spam Score**: | |
| **Recipient**: | phumeza@presidency.gov.za |
| **Delivery User**: | -remote- |
| **Delivery Domain**: | |
| **Delivered To**: | phumeza@presidency.gov.za |
| **Router**: | smarthost_dkim |
| **Transport**: | remote_smtp_smart_dkim |
| **Out Time**: | May 16, 2020, 12:27:12 PM |
| **ID**: | 1jZu0v-0040n0-TW |
| **Delivery Host**: | out.tld-mx.com |
| **Delivery IP**: | 169.239.217.3 |
| **Size**: | 8.24 MB |
| **Result**: | Accepted |

**Annexure PK19**

**rohann@kriekprok.co.za**

| | |
|---|---|
| **From:** | peter@kriekprok.co.za |
| **Sent:** | Monday, 18 May 2020 13:23 |
| **To:** | 'Mukasi Terrence'; pieterk@kriekprok.co.za; rohann@kriekprok.co.za |
| **Cc:** | 'Mokoena Patricia' |
| **Subject:** | RE: SAKELIGA VS PRESIDENT OF RSA AND 8 OTHERS |
| **Attachments:** | Urgent Application - Sakeliga (issued) 20200518.pdf |

Mr Mukasi

I refer to our conversation just now. I confirm that you have confirmed that you are acting on behalf of ALL of the respondents.

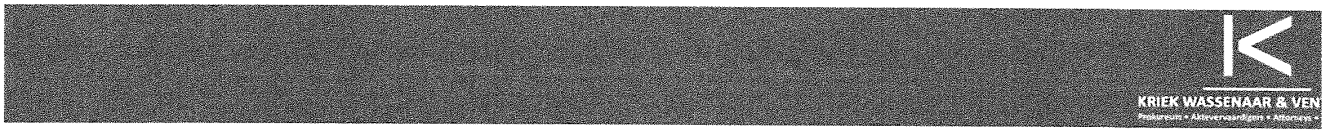
I also confirm that the commissioned papers were forwarded to all parties on Saturday-morning. The registrar issued the application this morning. Kindly see attached a issued and commissioned copy.

We are still waiting on a CaseLines link. Please confirm what email addresses at your offices should be linked to the CaseLInes system once active?

Kindy acknowledge receipt.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21




**From:** Mukasi Terrence <TMukasi@justice.gov.za>
**Sent:** Monday, 18 May 2020 09:59
**To:** pieterk@kriekprok.co.za; peter@kriekprok.co.za; rohann@kriekprok.co.za
**Cc:** Mokoena Patricia <PaMokoena@justice.gov.za>
**Subject:** SAKELIGA VS PRESIDENT OF RSA AND 8 OTHERS

Good morning

The above matter bears reference.

We attach hereto the notice of appointment as attorneys of record.

Hope you find this in order.

*TERRENCE MUKASI*

Senior Assistant State Attorney
Salu Building
Floor 20, Room 2035

316 Thabo Sehume street, Pretoria
Private Bag X91, Pretoria, 0001

Tel: +27[012]309 1572
Fax: 086 406 6203
Mobile: +2776 892 6024
Mailto:TMukasi@justice.gov.za



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

**Case Number:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

**SUPPORTING AFFIDAVIT**

I the undersigned

**TERRY-LEE GEORGIEV**

hereby make oath and state:

1 I am a major female businesswoman. I am a farmer trading as a sole proprietor of the Georgiev Farm, with main place of business at Farm 321 Portion 8, Klein Haggelkraal, Pearly Beach, Western Cape.

2 The facts herein deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 Where I make submissions of a legal nature I do so on the advice of the applicant's legal advisors which advice I accept as correct.

4 Georgiev Farm (hereinafter referred to as the "business") farms free range chicken eggs and elephant garlic and also trades in fresh fruit, veg and local produce.

5 I have been advised that the business qualifies as an Alert Level 4 essential and / or permitted service provider in terms of the regulations issued by the Minister of Co-operative Governance and Traditional Affairs on 29 April 2020. I have been advised that:

5.1 the products manufactured and supplied by my business are deemed to be essential goods in terms of regulation 22(1) read with the following items to the list of essential goods set out in Annexure B:

5.1.1 Item 2 - "Food products, including non-alcoholic beverages and animal food."

5.2 as a supplier of essential goods, I qualify as an essential service provider in terms of item B4 to annexure D of the regulations:

5.2.1 Production and sale of the goods listed in Annexure B;

5.3 I furthermore also qualify as a permitted service provider under Alert Level 4 in terms of regulation 28 (4) read with Table 1, with specific reference to the following items:

5.3.1 Part A1 - All agriculture, hunting, forestry and fishing, bee -keeping, including preparation, cultivation, harvesting, storage, transport of live animals and auctions (subject to health directions) and related agricultural infrastructure and services (including research, inspection, certification and quality control).

5.3.2 Part E1 - Food products, including non -alcoholic beverages and animal food.

6 Seeing as the business is a sole proprietorship, the business is not registered with the CIPC and cannot apply for or procure the *Essential Service Certificate* provided by the CIPC.

7 Before commencing operation of the business during the lockdown, I tried my best to ensure that I would be lawfully operating. I followed the guidelines and instructions published on https://sacoronavirus.co.za/ and enforced all of the health and safety measures published on the government website. All the required forms and permits were complete and in order on 26 March 2020 before the lockdown.

8 On 31 March 2020 uniformed members of the SAPS visited my farm. The members, who are still unknown to me, informed that I was an informal trader and that was not allowed to conduct business during the lockdown. These members specifically

requested a CIPC certificate. I was able to assist the members on that day to correctly determine that I was indeed an essential service provider.

9 On 1 April 2020 I was informed by the SAPS that I am authorised to supply eggs to two of the big supermarkets in my area, Spar and OK Stores, but that I am not allowed to deliver or sell food products to any other person.

10 On 3 April 2020 Lindsay Hanekom from Grootbosfoundation Farm and I went to consult with the Overberg Cluster Commander Brigadier Donovan Heilbron in order to try and resolve the matter. Also calling into the meeting was Mrs Helen Davis from the department of economic development and tourism. I was thereafter informed by both Brigadier Heilbron and Mrs Davis that I may proceed to sell my produce as per my process plan discussed in the above meeting.

11 On the 3rd of April 2020 I received permission from Brigadier Heilbron and Colonel Coetzee to proceed with operations on my farm. I was also authorised to proceed to sell my products from my normal vending stand near a local bus stop.

12 I at all times enforced strict health and safety protocols required by the lockdown regulations (which procedures and protocols I specifically vetted with the SAPS on 3 April 2020). I also issued to myself and my employees an essential service permit on the advice of the SAPS.

13 On 11 April 2020 while operating at my business' stand, I was approached by a Mr Kat Myburg, who I later learned is the municipal manager of the Gansbaai municipality. Mr Myburg ordered me to cease all business activities as I was not allowed to trade on municipal property (even though I have always been allowed to trade at the bus stop prior to the lockdown). A customer present at the time informed me that he has a private residential property close by which he will make available to me in order for me to continue to trade.

14 Later that day on 11 April 2020, I was again approached by a purported employee of the municipality, a person who was identified as Mr Blankenberg acting on the instructions of Mr Myburg. Mr Blankenberg told me that he has instructed the SAPS to issue me a R1 000.00 fine and that I am instructed to immediately cease all business operations. He also informed my customers that they are breaking the law by supporting my business and that they would be arrested. I was instructed to immediately shut down all operations as I was not in possession of the right municipal permits.

15 My business is stuck between a rock and a hard place since as I am unable to secure the CIPC certificates and municipal permits which Mr Myburg requires. I have done my best to try and secure permits from the Gansbaai municipality, but no-one is willing to assist me. I don't even know if the municipal council has even approved a permit and application procedure. There is simply no information.

16 My business is suffering immense and irreparable harm. I am however treated as if I am a second-class citizen who is unable to conduct my business in a responsible manner during the COVID 19 pandemic. In the eyes of the law I do not have the same capabilities as the manager of a larger business to conduct responsible business during the lockdown. Needless to say I reject this notion.

17 I provide the exact same service as a supermarket. I sell food to the public. I comply with all of the health and safety regulations and I am more than able to ensure strict compliance and social distancing with my clients (not that it is necessary seeing as my clients are all responsible adults who out of their own accord apply social distancing, wear face masks and act no different when conducting business with me than they would have done when conducting business with an established retailer).

18 My business cannot however operate due to the unwillingness or inability of the municipality to issue me a permit and my inability to produce a CIPC certificate. I am

only allowed to deliver product to established supermarkets. If I dare conduct business from my normal stand, I do so at the risk of being arrested by the municipality.

DEPONENT

THUS SWORN AND SIGNED AT Kirstenhof SAP ON THIS 20 DAY OF MAY 2020, BEFORE ME, CST BACA, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT SHE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HER CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

7234705-8
BACA CST
COMMISSIONER OF OATHS

NAME: BACA
CAPACITY: CST
ADDRESS: 13 Pollsmoor road
Kirstenhof SAPS

SOUTH AFRICAN POLICE SERVICE
KIRSTENHOF SAPS
2020 -05- 20
CSC
SUID AFRIKAANSE POLISIEDIENS

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

---

**FILING NOTICE**

---

**DOCUMENTS TO BE FILED:**

- **APPLICANT'S PRACTICE NOTE**
- **CERTIFICATE OF URGENCY**

**FILED BY:** **KRIEK WASSENAAR AND VENTER INC**

**APPLICANT'S ATTORNEYS**

1ST FLOOR, NOREX HOUSE, 79 RAUCH AVENUE

GEORGEVILLE, PRETORIA

(T) (+27) 12 803 4719 (C) 0829204474

(E) peter@kriekprok.co.za

**REF: P WASSENAAR /QB0693**

**TO: THE REGISTRAR OF THE HIGH COURT**

**PRETORIA**

**AND TO:** **THE STATE ATTORNEY**

**ATTORNEYS FOR THE RESPONDENTS**

SALU BUILDING, GROUND FLOOR,

316 THABO SEHUME STREET, PRETORIA

(T) 012 309 1572 (C) 076 892 6024

(E) TMukasi@justice.gov.za

**Ref: T Mukasi / 1603/2020/Z42/DM**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE AND INDUSTRY** | Third Respondent |
| **THE MINISTER OF SAFETY AND SECURITY** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |

---

**APPLICANT'S PRACTICE NOTE**

---

1. Number on the roll: Unknown

2. Counsel appearing:

   a. For the Applicant: P Ellis SC

      Cellphone number: 082-447-0610

      Email address: pellis@lawcircle.co.za

      On instructions of Kriek Wassenaar and Venter Inc

      Ref: Mr Peter Wassenaar

      Cellphone number: 082-920-4474

      Email address; peter@kriekprok.co.za

   b. For the Respondents: Unknown

      On instructions of the State Attorney, Pretoria

      Ref: Mr T Mukasi

      Cellphone number: 076-892-6024

      Email address: TMukasi@justice.gov.za

3. Nature of the matter:

   a. The applicants apply for a declaratory order declaring that the Sixth Respondent, the Commissioner of Intellectual Property and Companies ("CIPC") has no authority to issue "*Essential Services Permits/Certificates*" to enable any company or close corporation to conduct essential or permitted services in terms of the Regulations issued under the Disaster Management Act, Act 57 of 2002, and published as Government Notice 480 on 29 April 2020 (*"the Level 4 Regulations"*), that members of the South African Police Service

("*SAPS*") or any other enforcement agency, has no authority to do demand such permits/certificates from any person, and related relief.

b. The Applicant further applies for an order declaring illegal and invalid certain directions issued by the Seventh Respondent (the Minister of Small Business Development) on 12 May 2020 under Government Notice R522, in Government Gazette 34406 of that date, in terms of which businesses performing legal acts in terms of the Level 4 Regulations are required, in addition to the documentation required in terms of the Regulations, to be in possession of licences issued by local authorities.

4. Urgency:

a. The matter is of an urgent nature in that it affects the ability of businesspeople to carry on legitimate business during the National State of Disaster and can therefore not await adjudication until after the State of Disaster has been lifted.

b. The impugned directions illegally require small scal bakeries and confectioners, small scale hardware stores, informal and micro restaurants and shisanyamas, tradespersons and artisans to be in possession of licences issued by local authorities, in terms of the Businesses Act, Act 71 of 1999, under circumstances where local authorities are not empowered to issue such licences, either in terms of the Act or any Regulation issued in terms of the Disaster Management Act.

c. The impugned directions were published on 12 May 2020, two weeks into Level 4, and will endure beyond the expiry date of Level 4.

d. The application was served on the Respondents 4 days later, on 16 May 2020.

e. The Respondents have been afforded time to file opposing papers up to the close of business on 19 May 2020.

f. The State Attorney has come on record for all the Respondents on 28 May 2020, but to date, no opposing papers have been filed.

g. The application was duly enrolled for hearing before 12 noon on Thursday 20 May 2020 and uploaded onto the Caselines system.

5. In accordance with the directives issued by the Judge President and the senior Urgent Court Judge, the Applicant, whilst ready, willing and able to present its case in open court, is also ready, willing and able to arrange the necessary electronic communication platform for the matter to be heard by way of videoconference. The applicant does, however, request the presiding judge, in the interest of all the parties, to afford its counsel a hearing, whether in person or by electronic means.

6. The expected duration of argument is about two to three hours, if the matter is to be fully argued.

7. The applicant's heads of argument are filed simultaneously herewith.

SIGNED AT PRETORIA THIS 25TH DAY OF MAY 2020.



P ELLIS SC

APPLICANT'S COUNSEL

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE AND INDUSTRY** | Third Respondent |
| **THE MINISTER OF SAFETY AND SECURITY** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |

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**APPLICANT'S CERTIFICATE OF URGENCY**

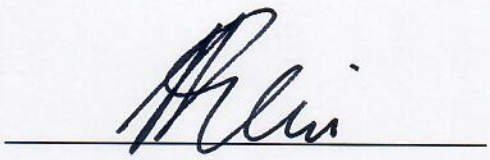
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I, the undersigned,

**PATRICK ELLIS SC**

Hereby certify that this matter is of such an urgent nature that it must be heard during the week of 26 – 29 May 2020, since it involves the legality of directives issued in respect of the National State of Disaster and governmental practices developed as a result thereof, which are more fully set out in the Practice Note and Heads of Argument filed herewith.

SIGNED AT PRETORIA THIS 25TH OF MAY 2020.



PATRICK ELLIS SC

APPLICANT'S COUNSEL

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
| **NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

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**RESPONDENTS' PRACTICE NOTE**

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1 Number on the roll 11

2 Counsel appearing

2.1 For applicant: P Ellis SC

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Email: pellis@lawcircle.co.za

Instructed by: Kriek Wassenaar and Venter Inc (Ref: Mr P Wassenaar)

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2.2 For respondents: DI Berger SC and K Millard

Cell: 083 455 3887 / 082 922 7785

Email: diberger@chambers.co.za and kmillard@law.co.za

Instructed by: State Attorney, Pretoria (Ref: Mr T Mukasi)

Cell: 076 892 6024

Email: TMukasi@justice.gov.za

3 Nature of the matter and respondents' main submissions

3.1 The applicant applies for urgent declaratory and interdictory relief against the respondents.

3.2 The respondents submit that the matter is not urgent because the applicant has known about the CIPC certificate since 25 March 2020. In addition, the Minister of Small Business Development issued Directions on 6 April 2020, which were extended by the Directions of 12 May 2020. The applicant waited for seven weeks before launching the present application and offers no explanation for this inordinate delay.

3.3 The respondents submit that the applicant has failed to establish its *locus standi*. The founding affidavit contains no evidence in this

regard, such as the applicant's constitution, a list of its members and subscribers, and the authority of Mr Le Roux to launch this application. There is also no basis for the applicant's contention that it acts in the public interest.

3.4 The respondents submit that the applicant has failed to demonstrate that it has no alternative remedy but to persist with this application. In terms of Regulation 13 of the lockdown Regulations of 29 April 2020, the Solicitor General is empowered to facilitate a mediation between the parties. The Solicitor General has referred the matter to the Arbitration Foundation of South Africa ("AFSA"), which has confirmed that it has secured the services of two retired judges, Tuchten J and Bertelsmann J, at no cost to the parties, to act as mediator. The applicant's refusal to agree to pursue mediation is unreasonable in the circumstances.

3.5 The applicant has misconstrued the basis for the CIPC certificate. The Minister of Trade, Industry and Competition made it clear on 26 March 2020 that possession of a CIPC certificate did not constitute permission to operate during the lockdown and that companies should be guided by the Regulations as to whether they were permitted to operate.

3.6 The process for obtaining a CIPC certificate entails a simple online application after which a certificate is automatically generated. To date, more than 475 000 companies have applied for and have been issued CIPC certificates. There is no evidence

on the papers that the introduction of the CIPC certificate has inhibited companies who are entitled to operate in terms of the Regulations from doing so. Nor is there evidence of harassment and intimidation on the part of officials of the SAPS.

3.7 The Directions of 12 May 2020 issued by the Minister of Small Business Development do not impose anything more than that which is ordinarily required of micro and small enterprises. The respondents submit that the applicant's challenge is based on a misreading of the Directions. It is apparent from a plain reading of the Directions that the purpose is to assist micro and small enterprises to operate under the lockdown, and not to impose additional or onerous obligations.

3.8 The respondents submit that the applicants have not established a basis for any of the relief sought. In addition, it is submitted that the interdictory relief is too widely framed.

3.9 The respondents seek an order striking the application from the roll with costs, including the costs of two counsel. Alternatively, the respondents seek the dismissal of the application with costs, including the costs of two counsel.

4 Urgency

4.1 As stated above, the respondents submit that the matter is not urgent, and ought to be struck from the roll.

4.2 The application was served on the respondents on Saturday, 16 May 2020. In terms of the Notice of Motion, the respondents were required to file answering papers by Tuesday, 19 May 2020.

4.3 The respondents have been unable to file their papers until today, Monday, 25 May 2020. Given the demands under the current lockdown on the Minister of Trade, Industry and Competition, the Minister of Small Business Development, and the other respondents, it has not been possible to file papers any sooner.

4.4 We are aware of the Judge President's Directive for the urgent court that all papers should be filed before 12h00 on the Monday. We seek this Court's indulgence and request condonation for the late filing of the respondents' papers, including this practice note.

5 Hearing

The respondents request the presiding Judge to afford their counsel and the applicant's counsel a hearing by video conference.

6 Duration of argument

We estimate that the argument will last for approximately 3 hours.

Dated at Sandton on 25 May 2020

**D I Berger SC**
**K Millard**

Respondents' Counsel

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

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**FILING NOTICE**

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**DOCUMENTS TO BE FILED:**

- **APPLICANT'S HEADS OF ARGUMENT**

**FILED BY:** **KRIEK WASSENAAR AND VENTER INC**

**APPLICANT'S ATTORNEYS**

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**REF: P WASSENAAR /QB0693**

**TO:** **THE REGISTRAR OF THE HIGH COURT**

**PRETORIA**

**AND TO:** **THE STATE ATTORNEY**

**ATTORNEYS FOR THE RESPONDENTS**

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**Ref: T Mukasi / 1603/2020/Z42/DM**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
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| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
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**APPLICANT'S HEADS OF ARGUMENT**

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## INDEX TO ARGUMENTS

1. Introduction

2. Urgency

3. The provisions of the Constitution

4. The Disaster Management Act, 2002 and its provisions

5. The Regulations issued under the Disaster Management Act, 2002

6. The conduct of the CIPC

7. The impugned Directions of the Seventh Respondent

8. Conclusion

## INTRODUCTION

1. The Covid-19 pandemic created untold misery for the people of the country, and more particularly, those more vulnerable to its devastating effects than others. Those vulnerable people include those who are dependent for their daily bread on conducting some sort of business or trade.

2. During the Lockdown (27 March – 30 April) only such businesses as were declared "Essential" were allowed to operate, under strict measures of control.[1]

3. The advent of May 2020 brought some relief, when the country was downscaled to "Level 4".[2] The difficulty facing those businesspeople who

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1 See the "Lockdown Regulations" published as Regulation 398 on 25 March 2020, page 02-80. References are to the papers as they were uploaded onto the Caselines platform.

2 See the "Level 4 Regulations" issued on 29 April 2020, under Regulation 480, a copy of which is attached hereto as annexure "X".

are entitled to trade legally, are being hamstrung by a system of permits and licences which are not required (or even permitted) in terms of the Regulations or any other law. The aim of this application is to destroy those illegal stumbling blocks to legal business.

4. The applicant therefore approaches this Court for following relief, on an urgent basis:

4.1 A declaratory order declaring that the Sixth Respondent, the Commissioner of Intellectual Property and Companies ("CIPC") has no authority to issue "*Essential Services Permits/Certificates*" to enable any company or close corporation to conduct essential or permitted services in terms of the Regulations issued under the Disaster Management Act, Act 57 of 2002, and published as Government Notice 480 on 29 April 2020 (*"the Level 4 Regulations"*), that members of the South African Police Service (*"SAPS"*) or any other enforcement agency, has no authority to do demand such permits/certificates from any person, and related relief.[3]

4.2 The Applicant further applies for an order declaring illegal and invalid certain directions issued by the Seventh Respondent (the Minister of Small Business Development) on 12 May 2020 under Government Notice R522, in Government Gazette 34406 of that date, in terms of which businesses performing legal acts in terms of the Level 4

[3] Prayers 2 to 5, page 01-2 of the papers.

Regulations are required, in addition to the documentation required in terms of the Regulations, to be in possession of licences issued by local authorities.[4]

5. The "Level 4 Regulations", as did the Lockdown Regulations, required providers of essential and permitted services, to be in possession of a permit issued by a "Head of Institution" evidencing the fact that such a person was entitled to provide such service.

6. Such permits were created by the Lockdown and Level 4 Regulations and has no other source of legality.

7. Soon after the Lockdown was declared, the 6th Respondent, the CIPC, developed a practice (it cannot be put higher than that) to issue "Essential Services Certificates" on an electronic platform called "Bizportal"[5], as the Minister said "to be used as evidence to authorities requiring same that indeed the business has been given government permission to trade and that its employees are able to have unrestricted movement ONLY in the course of that trade".[6] Those certificates soon became the first thing any enforcement officer would ask a member of the public going about his or her business during the Lockdown. Such permits do not comply with the Regulations, since they are not "issued" by the CIPC following a rational process, and certainly not by a "Head of Institution". The CIPC soon realised

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4 Prayer 6 on page 01-3.
5 See the Minister's announcement at page 02-93 and 02-94.
6 See the Minister's announcement at page 02-95.

that such service providers who were not registered as companies or close corporations[7], could not be issued with such certificates and the process was open to large scale abuse because the electronic portal had no means of establishing between essential and non-essential businesses. That was met by stern warnings by the CIPC and the Minister of Trade and Industry that bearers of such certificates, "duly issued to" persons who do not perform essential or permitted services, will face arrest and detention.[8]

8. On 11 May 2020, the Commissioner of the CIPC, in an open letter posted on the Department's website, acknowledged that such certificates do not constitute a permit as provided for in the Regulations, but the CIPC doggedly persists to issue them on the basis that they "remain valid until the Regulations in terms of the Disaster Management Act 2002 is (sic) amended or if revoked by the CIPC".[9]

9. Despite these warnings, the CIPC continued to issue those certificates.

10. On 12 may 2020, the Minister of Small Business Development (the 7th Respondent, took the licensing issue to a new level, by promulgating Directions requiring municipal licences for numerous trades and businesses "in terms of the Businesses Act, Act 71 of 1999." The stated objective of the Directions is to "assist micro and small businesses trading in permitted services", yet they achieve the exact opposite. The Businesses Act also do

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7 See the announcement on page 02-105.
8 See the statement of the Departmental Spokesperson on page 02-106.
9 See the letter on page 02-114.

not authorise such licenses, and the Directions are an unlawful intrusion by a National Minister into the powers of Local Authorities. The applicant seeks an order declaring those Directions illegal and invalid.

**URGENCY**

11. I submit that the matter is of an urgent nature in that it affects the ability of businesspeople to carry on legitimate business during the National State of Disaster and can therefore not await adjudication until after the State of Disaster has been lifted.

12. The impugned directions illegally require small scale bakeries and confectioners, small scale hardware stores, informal and micro restaurants and shisanyamas, tradespersons and artisans to be in possession of licences issued by local authorities, in terms of the Businesses Act under circumstances where local authorities are not empowered to issue such licences, either in terms of the Act or any Regulation issued in terms of the Disaster Management Act.

13. The impugned directions were published on 12 May 2020, two weeks into Level 4, and will endure beyond the expiry date of Level 4.

14. The application was served on the Respondents 4 days later, on 16 May 2020.

15. The Respondents have been afforded time to file opposing papers up to the close of business on 19 May 2020.

16. The State Attorney has come on record for all the Respondents on 28 May 2020, but to date, no opposing papers have been filed.

17. The application was duly enrolled for hearing before 12 noon on Thursday 20 May 2020 and uploaded onto the Caselines system.

18. It is therefore submitted that the provisions of Rule 6(12) apply, in that the applicant, and those that they represent, cannot obtain adequate relief at a hearing in due course, which would only take place once the state of disaster is lifted: the relief is sought to enable them to trade and conduct their businesses during the very same state of disaster.

**THE PROVISIONS OF THE CONSTITUTION**

19. Section 1 of the Constitution provides that the Republic of South Africa is one, sovereign, democratic state founded, inter alia, on the following values:

19.1 Human dignity, the achievement of equality and the advancement of human rights and freedoms.

19.2 Non-racialism and non-sexism.

19.3 Supremacy of the Constitution and the Rule of Law.


10-9

20 The Rule of Law entails that a person's rights are determined by law of general application, and not by the unauthorised dictates of any person: In Ascendis Animal Health (Pty) Ltd v Merck Sharp Dohme Corporation and others 2020(1) SA 327 (CC) Khampepe, J said (at para [30]:

> *It can thus not be gainsaid that an integral principle of the rule of law is the power given to people to challenge and demur at the legality of any conduct or law.*

21. The Constitution also distinguishes between three spheres of government, i.e. national, provincial and local. These three spheres of government each have original powers deriving from the Constitution. Section 41(1) of the Constitution provides that:

> *"All spheres of government and all organs of state within each sphere must-*
> *(a) preserve the peace, national unity and the indivisibility of the Republic;*
> *(b) secure the well-being of the people of the Republic;*
> *(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;*
> *(d) be loyal to the Constitution, the Republic and its people;*
> *(e) respect the constitutional status, institutions, powers and functions of government in the other spheres;*
> *(f) not assume any power or function except those conferred on them in terms of the Constitution;*
> *(g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and*
> *(h) co-operate with one another in mutual trust and good faith by-*
> *(i) fostering friendly relations;*
> *(ii) assisting and supporting one another;*
> *(iii) informing one another of, and consulting one another on, matters of common interest;*
> *(iv) co-ordinating their actions and legislation with one another;*
> *(v) adhering to agreed procedures; and*
> *(vi) avoiding legal proceedings against one another.*

22. Section 22 of the Constitution provides that *"Every citizen has the right to choose their trade, occupation or profession freely."*

23. Section 36(2) of the Constitution provides that no law may limit any right entrenched in the Bill of Rights, unless it complies with section 36(1) which provides:

> *The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-*
> *(a) the nature of the right;*
> *(b) the importance of the purpose of the limitation;*
> *(c) the nature and extent of the limitation;*
> *(d) the relation between the limitation and its purpose; and*
> *(e) less restrictive means to achieve the purpose.*

**THE PROVISIONS OF THE DISASTER MANAGEMENT ACT**

24. The Disaster Management Act, 2002 (*"the DMA"*) is such an Act.

25. On 15 March 2020, the Minister of Co-Operative Governance and Traditional Affairs, the second respondent herein, in terms of section 27(1) of the DMA declared a national state of disaster. This was not a national state of emergency, as provided for in section 37(1) of the Constitution, which could only be declared by Act of Parliament.

26. Consequently, the declaration of a state of disaster is an administrative act, performed by the Minister in terms of the DMA, and the principles laid down in the Promotion of Administrative Justice Act, 3 of 2002, ("PAJA") apply. The applicant does not seek to review the declaration of the State of Disaster declared in terms thereof, but seeks an order trimming some of the excesses that occurred in the process.

27. Section 27(2) of the DMA provides:

> *"If a national state of disaster has been declared in terms of subsection (1), the Minister may, subject to subsection (3), and after consulting the responsible Cabinet member, make **regulations** or issue **directions** or authorise the issue of **directions** concerning-*
>
> *(a) the release of any available resources of the national government, including stores, equipment, vehicles and facilities;*
> *(b) the release of personnel of a national organ of state for the rendering of emergency services;*
> *(c) the implementation of all or any of the provisions of a national disaster management plan that are applicable in the circumstances;*
> *(d) the evacuation to temporary shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life;*
> *(e) the regulation of traffic to, from or within the disaster-stricken or threatened area;*
> *(f) the regulation of the movement of persons and goods to, from or within the disaster-stricken or threatened area;*
> *(g) the control and occupancy of premises in the disaster-stricken or threatened area;*
> *(h) the provision, control or use of temporary emergency accommodation;*
> *(i) the suspension or limiting of the sale, dispensing or transportation of alcoholic beverages in the disaster-stricken or threatened area;*
> *(j) the maintenance or installation of temporary lines of communication to, from or within the disaster area;*
> *(k) the dissemination of information required for dealing with the disaster;*
> *(l) emergency procurement procedures;*
> *(m) the facilitation of response and post-disaster recovery and rehabilitation;*
> *(n) other steps that may be necessary to prevent an escalation of the disaster, or to alleviate, contain and minimise the effects of the disaster; or*
> *(o) steps to facilitate international assistance".*


10-12

28. It is therefore clear that only the 2nd Respondent is empowered to issue Regulations, but other Ministers may be empowered by her to issue Directions.

29. Section 27(3) of the DMA provides:

> *"The powers referred to in subsection (2) may be exercised only to the extent that this is necessary for the purpose of-*
> *(a) assisting and protecting the public;*
> *(b) providing relief to the public;*
> *(c) protecting property;*
> *(d) preventing or combating disruption; or*
> *(e) dealing with the destructive and other effects of the disaster."*

**THE REGULATIONS ISSUED UNDER THE DISASTER MANAGEMENT ACT, 2002**

30. In the days following the declaration of the disaster, a raft of regulations and directions were published, statements made to the press and on various departments' websites.

31. The period between 27 March 2020 and 30 April 2020 became known as "the Lockdown" or later "Level 5".

32. Following the announcement of the lockdown, the third respondent, during a media briefing on 24 March 2020 made certain further announcements.[10] I point out that the third respondent announced a number of categories of essential services which would be considered for inclusion in the Regulations to follow. The third respondent specifically said the following:

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10 See page 02-77.

*"A number of businesses are essential services and will remain open during this period. We will publish further details and add specific businesses to the list as required... I am working with the Minister of Police and the Minister of Employment and Labour to ensure that police officers and health inspectors are well briefed on the kinds of businesses which should be allowed to continue with larger numbers of people"*

33. On 25 March 2020, the second respondent in terms of Section 27(2) of the DMA published the Lockdown Regulations, by way of an amendment of the initial Disaster Management Regulations. I specifically draw the Court's attention attention to the introduction of Chapter 2 thereof containing Regulations 11A to 11G.

34. Important for purposes hereof are the definition of "*essential goods*" and "*essential services*" referred to in Regulation 11A.

35. "*Essential Goods*" are defined to be "*the goods referred to in paragraph A of Annexure B as may be amended from time to time by the Cabinet member designated under section 3 of the Disaster Management Act*".

36. "*Essential Services*" is defined as "*the services as defined in Section 213 of the Labour Relations Act, 1995 (Act 66 of 1995) and designated in terms of Section 71(8) of the Labour Relations Act 1995 (and which designation remains valid at the date of publication of this Regulation) and as listed in paragraph B of Annexure B as may be amended from time to time*".


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37. Important further is the definition of "*Institution*" which is defined as "*any public or private institution that is engaged in the supply or distribution of an essential good or service.*" "*Head of an Institution*" is then defined as "*the accounting officer of a public institution and the Chief Executive Officer or the equivalent of a Chief Executive Officer of a private institution.*"

38. Under the heading "*Restriction on the movement of persons and goods*" in Regulation 11B(3) the following is stipulated:

> *"Persons performing essential services as determined in sub regulation 2 must be duly designated in writing by the head of an institution on a form that corresponds substantially with form 1 in Annexure C".*

39. Form 1 in Annexure C is a "*permit to perform essential service*". The Regulations were amended on numerous occasions thereafter. However, Regulation 11C(6) has not yet been amended.

40. The Lockdown was reduced with effect from 1 May 2020, to "Level 4", in order to reduce the devastating impact on the economy. The Lockdown Regulations were repealed and substituted with a new set of Regulations, the "Level 4 Regulations", the impact of which were, in some instances, even more severe on the rights entrenched in the Bill of Rights.

41. The Level 4 Regulations consist of seven parts, two of which are relevant for purposes hereof. The first is Chapter 1, which contains definitions and certain general provisions. Of importance is the definition of an "Institution":


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*"Institution" means any public or private institution, including a sole practitioner and any other business owned and operated by a single person, that is engaged in the supply or distribution of a good or service as set out in Table 1, or which regulates such supply and distribution, including regulatory bodies designated in directions made in terms of Regulation 4 of the Regulations".*

42. Also of importance again is the definition of "Head of Institution":

*"Head of Institution" means the accounting officer of a public institution and the chief executive officer or the equivalent ... of a private institution".*

43. The second is Chapter 2 which contains a set of general regulations applicable throughout the state of disaster. They contain no provisions regarding the issue of permits.

44. The third is Chapter 3 which contains the Level 4 Regulations. They are applicable for so long as that level of disaster management applies. Regulation 16(2) provides that a person may only leave his or her place of residence *inter alia* to perform "*essential or permitted services*" provided that a permit corresponding to Form 2 of Annexure A has been issued.

45. **It is evident that these permits, whether under the Lockdown or Level 4, may be issued by the "Head of <u>any</u> Institution" for that institution, whether public or private. The permit system is therefore controlled <u>internally</u> and not <u>externally.</u>**

46. **The only exception to the system of internal control is in the case of a "Regulatory Bodies" which are designated in Directions. Those bodies must, in my submission have existed <u>before</u> the Lockdown and have**


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**been empowered in terms of existing legislation since the Regulations do not create such bodies or empower them to do anything.**

47. It is submitted that the conduct of the CIPC and the directions issued by the Minister of Small Business Development, unlawfully encroaches on this principle. The CIPC is not an *"Institution engaged in the supply or distribution of a good or service"* and was not empowered to issue permits under the Companies Act, 2008, in terms of which that office was created, nor under the Lockdown or Level 4 Regulations.

48. It is submitted further that Local Authorities are not empowered by the DMA to issue any permits, and that the Minister of Small Business Development had no authority so to empower them through directions. The Businesses Act also do not empower them to issue such permits, and especially not to businesses falling in the category of "Essential or Permitted Services" under the Lockdown or Level 4 Regulations.

**THE CONDUCT OF THE CIPC**

49. I submit that upon a proper interpretation of the Regulations as amended, the sixth respondent, being a creature of statute and more particularly of the Companies Act, 2008 was not and is still not empowered to issue "*Essential Service Business Certificates*", either in terms of the Companies Act or the DMA or any Regulation published thereunder.

50. More particularly I refer to Section 186 of the Companies Act which provides:

*" The objectives of the commission are –*

*a. The efficient and effective registration of –*

*i. Companies and external companies in terms of this Act;*

*ii. Other juristic persons in terms of any applicable legislation referred to in schedule 4; and*

*iii. Intellectual property rights in terms of any relevant legislation.*

*b. Maintenance of accurate, up to date and relevant information concerning companies, foreign companies and other juristic persons contemplated in subsection 1(a)(ii) and concerning intellectual property rights and the provision of that information to the public and other organs of state.*

*c. The promotion of education and awareness of company and intellectual property laws and related matters.*

*d. The promotion of compliance with this act, and any other applicable legislation; and*

*e. The efficient, effective and widest possible enforcement of this Act and any other legislation listed in schedule 4.*

*2. To achieve its objectives, the commission may –*

*a. Have regard to international developments in the field of company and intellectual property law; or*

*b. Consult any person, organisation or institution with regard to any matter."*

51. The DMA is not included in schedule 4 of the Companies Act.

52. Provision was made for the issue of *"Essential Service Business Certificates"* through an electronic platform called Bizportal. An applicant for such certificate merely needed to complete a form online. The form was entitled "*Essential Services Registration: Director / Member Details*". In the block "*Essential Service Category*" the applicant needed to select one of a finite list of


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categories.[11] A computer-generated form is then emailed to the applicant.[12] It had no expiry date.

53. I point out that, in terms of the Companies Act, 2008, it is not required of a company to state its business in its application for registration as a company. The sixth respondent therefore does not have a database against which it could verify whether a category so selected was accorded with the actual business of the company concerned: the selection is solely dependent on the applicant's ability to correctly interpret and apply the novel and complicated regulations.

54. The result of the application is also entirely computer driven and no human intervention appears to be required or possible on the side of the sixth respondent: the sixth respondent therefore does not apply its mind or bring any judgment or discretion to bear on the result of the process: no decision of an administrative nature is taken.

55. Yet the *"Essential Services Business Certificate"* resulting from this exercise, purports to authorise (but actually do not authorise) a person to conduct the business of the company on the basis of an essential or permitted service, in contradistinction with other services.

56. The regulatory provisions referred to above were not amended when the lockdown was extended on 16 April 2020 to 30 April 2020. However, the third

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11 See page 02-103 of the papers.

12 See page 02-104 pf the papers.

respondent thought it appropriate, through his spokesperson, Sidwell Medupe, to issue a media release on 16 April 2020 regarding the issue of such certificates, a copy of which is attached to the founding affidavit as Annexure "K".[13]

57. I deem it necessary to quote extensively from the said press release:[14]

> *"Companies which are registered through the Companies and Intellectual Property Commission (CIPC) Bizportal to perform essential services during the lockdown period, will be required to have a new certificate from the Bizportal website for the extended period which begins tomorrow, 17 April 2020... Certificates issued before today will no longer be valid and must be disposed of. To provide time for businesses to adjust to the new requirements, the new certificates will be available to be displayed from start of business on Monday 20 April 2020. The department reminds the public that possession of the CIPC Certificate is still subject to the company fully complying with the applicable lockdown Regulation and is a record of the company's details and does not in itself constitute the right to continue operating during the period...*

58. The spokesperson then proceeded to state:[15]

> *The CIPC Certificate is a reference to the legal registration of the company in terms of the Companies Act, 2008 (Act 71 of 2008) and a record of registration to the CIPC. It does not give a firm or individual a right to trade if that company does not fall into an essential service as defined in the lockdown Regulation... Where the CIPC finds that certificates have been issued to companies which do not meet definitions of an*

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13 See page 02-105.
14 See page 02-105.
15 See page 02-105.

*essential service, such certificate will be revoked, and the company will be referred to the South African Police Services. False declaration by the company is a criminal offence and will result in prosecution, in terms of lockdown Regulation...*

59. I point out that:

51.1 The third respondent purported, by the press of a button to invalidate all CIPC certificates issued prior to 16 April 2020 despite the fact that they merely constituted "*a record of the company's details*".

51.2 Notwithstanding the phrase "*To provide time for businesses to adjust to the new requirements*", there were none except that additional categories of businesses were allowed to trade, and that new certificates were only available as from the start of business on 20 April 2020 leaving a window of 4 days during which no company or close corporation would have been able to present a valid CIPC Certificate.

51.3 Then follows an alarming disclaimer in which the third respondent "*reminds the public*" that the certificate is actually worthless and does not provide a company or close corporation with the right to trade during the extended lockdown, since such a company or close corporation "*must still comply with the provisions of the lockdown Regulation*" i.e. to acquire a permit from a "*Head of Institution*".

52 Despite this "*clarification*" the third respondent made it clear that the new certificates "*will clearly state that it is for the extended lockdown period*


10-21

*beginning 17 April 2020 and SAPS officials will be told which certificates to look for".* This statement suggests that they do have some validity during the extended lockdown period only. **The sixth respondent simply has no power to undo evidence of the registration of a company or close corporation**.

53 The implication, as will be demonstrated with reference to various occurrences since 17 April 2020, is that the failure to produce an *"Essential Services Business Certificate"* post 17 April 2020, purportedly (but not actually) authorising the bearer to provide an emergency service will expose the person concerned to arrest by the SAPS under circumstances where such person actually complies with the Regulation.

54 A case in point is that of Mr Adriaan Josef Weyers, from whom a supporting affidavit was attached.[16] He was in possession of an "Essential Services Certificate" and all other requisite documentation, and yet he was arrested by the SAPS and the SANDF.

55 Another case in point is that of Mr Markus Alexander Bagdahn, the owner of an auto repair shop trading under the name Das Grune Autohaus.[17] It is not registered as a company or close corporation. He could not get a CIPC certificate, and therefore, for fear of arrest, did not open his business, which would have been able to trade perfectly legitimately under Level 4.

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16 See page 02-119.
17 See page 02-124.

56 More problematic though is the fact that enterprises not registered as companies or close corporations but who actually do render emergency services cannot be issued with CIPC Certificates and similarly run the risk of arrest by the SAPS, because the SAPS has been conditioned to seek the production of such certificates.

57 It is therefore submitted that prayers 2 – 5 be granted.

**THE IMPUGNED DIRECTIONS OF THE SEVENTH RESPONDENT**

60. Apart from the "*Essential Services Certificates*" electronically issued as a result of the efforts of the CIPC, the Minister of Small Business Development in her directions issued on 12 May 2020,[18] directed that four categories of businesses must be in possession of *"a business licence or permit to trade issued in accordance with the Businesses Act, (Act 71 of 1991) or a business licence or trading permit issued by the relevant municipality"*. They are:

60.1 Small scale bakeries and confectionaries: Directive 5;

60.2 Small scale hardware stores: Directive 6;

60.3 Informal and micro restaurants and *shisanyamas*: Directive 7; and

60.4 Tradesmen and artisans' businesses: Directive 8.

61. A copy of the Businesses Act is attached hereto as annexure "Y".

[18] See page 02-107 et seqq.

62. I point out that the Directions do not contain definitions of those types of enterprises. It is impossible to distinguish between small, medium and large-scale bakeries, confectionaries and hardware stores. To that extent, the ambit of the Direction is indeterminable, except in the discretion of the law enforcement officer, does not accord with basic concepts of the Rule of Law and should be void for vagueness.

63. The devastating effect this has on business is described by Mr Jack Duvenage in his supporting affidavit[19] and Ms Terry-Lee Georgiev in hers.[20]

64. **I point out that two of the four categories which are now required to have business licences in terms of the Businesses Act, i.e. hardware stores and artisans, do not require and cannot legally be issued with such permits or licences in terms of that Act.**

65. It is pointed out that the Businesses Act has a restricted application: it is applicable only to the sale and supply of perishable foodstuffs, certain health and entertainment facilities and the hawking of meals or perishable foodstuffs.

65.1 The provision of food is an essential service even in the Lockdown Regulations.[21] The imposition of a business licence in terms of the Businesses Act as a prerequisite for the provision of food under the

19 See page 02-129.
20 See page 02-133.
21 See page 02-89.


10-24

Lockdown or Level 4 Regulations is an unlawful additional requirement.

65.2 The inclusion of hardware stores and artisans under the compulsory Level 4 Directions, postulates an insurmountable obstacle to their operation as such. They are not required to have such licences under the Businesses Act and they cannot get them in terms thereof.

66. In any event, the Directions includes businesses expressly excluded from the Businesses Act in the Directions. Such businesses are mentioned in Schedule 2 of that Act. They are charitable, religious, educational, cultural and agricultural businesses. Even they are now obliged to obtain such permits, under circumstances where the local authorities may not issue such licences to them.

67. The Directions do purport provide for alternatives such as "business licences or trading permits". However, no provision is made for the issue of such licences or permits in the DMA, the Level 4 Regulations (except such permits as are issued by "Heads of Institutions"), or any other legislation.

68. But there is another, and in my submission, even more compelling reason why the Minister could not legally issue such a Direction: She is a National Minister. The Businesses Act was assigned to the Provinces in terms of Proclamation 18 in *GG* 16302 of 9 March 1995. Licences are issued by either local or provincial authorities in terms of the Constitution. That is a competence which

excludes intervention by the National Government. Such intrusions are illegal and bound to be set aside.[22]

69. The seventh respondent can also not instruct local authorities to issue such licences or permits, since she is a minister in the national sphere of government, and the competence to issue licences and permits is either a provincial or local competency, in terms of the Constitution.

70. Furthermore, the issue of licences or permits in terms of the Businesses Act, may only take place if "an administrator" (the predecessor of the Provincial Premier) by notice in the Provincial Gazette designates a local authority or appoint a person or body as a licensing authority for a specific area and from a specific date. (See section 2(1)(a)). Despite a diligent search, I could not find any such delegation, at least not any delegation by any Premier of any Province designating any local authority to issue licences or trade permits for use by enterprises under the Level 4 Regulations.

71. Direction 8(b) takes the matter a step further, where certain types of tradesmen, such as those operating vehicle service centres, fitment centres, or body repair workshops, who do not require any licence or trade permit from any local authority, are required to now apply for such a licence or permit, which local authorities may not issue.

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22 See Maccsand (Pty) Ltd v City Of Cape Town and Others 2012 (4) SA 181 (CC); Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others 2010 (6) SA 182 (CC).


10-26

72. Co-operatives are also placed under an additional burden to produce "a valid and original certificate of registration". A co-operative is, by definition, an entity consisting of two or more persons. Certificates are only issued in original form once. It is therefore impossible for more than one member of a co-operative to be in possession of an original, when going about the business of such co-operative.

73. I submit that the Level 4 Regulations adequately caters for the permission of persons going about essential or permitted business: if the "head of institution" issues a permit, under circumstances where a person purports to be authorised to perform an essential or permitted service and such service is not allowed under the Regulations, the head of that institution commits fraud and can be dealt with under the common law of fraud.

74. It is therefore abundantly clear that the Minister of Small Business Development had no power to issue the Directions she purported to issue, and they should be declared illegal and invalid.

75. I consequently submit that a proper case has been made out for the relief sought in prayer 6.

**CONCLUSION**

76. It is therefore submitted that the applicant has made out an unassailable case for the relief sought in prayers 2 – 6.


10-27

77. As far as costs are concerned, it is submitted that the 6th and 7th Respondents be ordered to pay the costs of the application: they, among other respondents, have stubbornly opposed the application in the face of unassailable arguments against them, yet failed to file opposing papers.

78. A draft order is attached hereto as annexure "Z".

SIGNED AT PRETORIA THIS 25TH DAY OF MAY 2020.



P ELLIS SC

APPLICANT'S COUNSEL

Annexure "X"
10-29



**GOVERNMENT NOTICE**
**DEPARTMENT OF COOPERATIVE GOVERNANCE**

No. R. 480 2020

**DISASTER MANAGEMENT ACT, 2002**
**REGULATIONS ISSUED IN TERMS OF SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002**

I, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002), having declared a national state of disaster, published in Government *Gazette* No. 43096 on 15 March 2020, hereby in terms of section 27(2) of the Disaster Management Act, 2002, after consultation with the relevant Cabinet members, make the Regulations in the Schedule.

NC Zuma

**DR NKOSAZANA DLAMINI ZUMA, MP**
**MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**
**DATE:** 29.04.2020.

**SCHEDULE**
**CLASSIFICATION OF REGULATIONS**

**CHAPTER I**
**DEFINITIONS AND APPLICATION**

1. Definitions
2. Repeal and transitional provisions
3. Application of Regulations

**CHAPTER 2**
**GENERAL PROVISIONS APPLICABLE DURING NATIONAL STATE OF DISASTER**

4. Authority to issue directions
5. General measures to contain the spread of COVID-19
6. Refusal of medical examination, prophylaxis, treatment, isolation and quarantine
7. Isolation or quarantine of persons
8. Contact tracing
9. Release of resources

10. Shelters and sites identified by the State during national state of disaster
11. Emergency Procurement Procedures
12. Powers and indemnity
13. Resolution of disputes
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**CHAPTER 3**
**ALERT LEVEL 4**

15. Determination of Alert Level
16. Movement of persons
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18. Attendance of funerals
19. Prohibition on evictions
20. Public transport
21. Closure of borders
22. Movement of cargo
23. Gatherings
24. Places and premises closed to the public
25. Controlled visits by members of the public
26. Sale, dispensing or transportation of liquor
27. Tobacco products, e-cigarettes and related products
28. Operation of economic sectors
29. Energy and petroleum products supply
30. Mining Operations
31. Offences and penalties

**TABLE 1**

Alert Level 4

**ANNEXURE A**

**Form No.**

1. Order for a person to go to a site of isolation, quarantine facility, or for a person to go for medical examination
2. Permit to perform an essential or permitted service
3. Permit for the movement of children to travel to another province, metropolitan area or district
4. Permit to travel to another province, metropolitan area or district for a funeral
5. Sworn affidavit by person who wishes to attend a funeral in another province metropolitan area or district

**ANNEXURE B**

Essential goods for import

**ANNEXURE C**

Permitted goods for export

**ANNEXURE D**

Essential services

**ANNEXURE E**

Workplace plans

## CHAPTER I

## DEFINITIONS AND APPLICATION

### Definitions

1. In these Regulations, unless the context otherwise indicates—

**'adequate space'** means not more than one person per one and a half metres of floor space;

**'Alert Level'** means the determination made under subregulation 3(2);

**'clinical case'** means a patient that presents with clinical signs and symptoms of COVID-19;

**'Constitution'** means the Constitution of the Republic of South Africa, 1996;

**'COVID-19'** means the Novel Coronavirus (2019-nCov2) which is an infectious disease caused by a virus that has previously not been scientifically identified in humans, which emerged during 2019 and was declared a global pandemic by the **WHO** in 2020;

**'Criminal Procedure Act'** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**'directions'** means the directions contemplated in section 27(2) of the Act, issued by a Cabinet member relating to his or her line functions, after consultation with the Cabinet members responsible for cooperative governance and traditional affairs and justice and correctional services;

**'donor'** means an individual, corporation or organisation that is a contributor of cash, kind and/or other assets;

**'enforcement officer'** includes a member of the South African Police Service, the South African National Defence Force, metro police, traffic officers, immigration inspectors; and a peace officer as defined in section 1 of the Criminal Procedure Act;

**'essential goods for import'** means the goods listed in Annexure B;

**'essential services'** means the services listed in Annexure D;

**'gathering'** means any assembly, concourse or procession in or on—

*(a)* any public road, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996); or

*(b)* any other building, place or premises, including wholly or partly in the open air, and including, but not limited to, any premises or place used for any sporting, entertainment, funeral, recreational, religious, or cultural purposes; but excludes a workplace and a place of residence for those persons ordinarily residing at the residence;

**'health protocols'** means the COVID-19 health protocols determined by the Director General of Health;

**'head of an institution'** means the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution;

**'institution'** means any public or private institution, including a sole practitioner and any other business owned and operated by a single person, that is engaged in the supply or distribution of a good or service as set out in the Table 1, or which regulates such supply or distribution, including professional regulatory bodies designated in directions made in terms of regulation 4 of the Regulations;

**'institutions of higher learning'** means 'higher education college' and 'higher education institution' as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);

**'isolation'** means separating a sick individual with a contagious disease from healthy individuals

that are not infected with such disease in a manner that aims to prevent the spreading of infection or contamination;

**'laboratory confirmed case'** means a patient who has been diagnosed with COVID-19 by means of a laboratory diagnostic method approved by the Department of Health;

**'liquor'** means—

*(a)* any liquor product, as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989);

*(b)* beer or traditional African beer; or

*(c)* any other substance or drink declared to be liquor under the Liquor Act, 2003 (Act No. 59 of 2003), but does not include methylated spirits;

**'lockdown'** means the period between 23H59 on 26 March 2020, until 23H59 on 30 April 2020,

**'movement'** means entering or leaving a place of residence or, in the case of people not ordinarily resident in the Republic, their place of temporary residence while in the Republic.

**'national state of disaster'** means the national state of disaster declared by Government Notice No. R. 313 of 15 March 2020;

**'permitted goods'** means Part E in the Table 1;

**'permitted goods for export'** means the goods listed in Annexure C;

'**permitted services**' means the services permitted in Table1;

**'quarantine'** means the restriction of activities or separation of a person, who was or may potentially have been exposed, to COVID-19 and who could potentially spread the disease to other non-exposed persons, to prevent the possible spread of infection or contamination to healthy individuals;

**'school'** means a school as defined in section 1 of the South African Schools Act, 1984 (Act No. 84 of 1996);

**'the Act'** means the Disaster Management Act, 2002 (Act No. 57 of 2002); and

**'WHO'** means the World Health Organisation.

**Repeal and transitional provisions**

**2.** (1) The regulations published by Government Notice No. 318 of 18 March 2020, as amended by Government Notice Nos. R. 398 of 25 March 2020, R.419 of 26 March 2020, R. 446 of 2 April 2020, R. 465 of 16 April 2020 and R. 471 of 20 April 2020, are hereby repealed.

(2) Despite the repeal of the regulations referred to in subregulation (1), any regulation, for purposes of the disposal of any investigation, prosecution or any criminal or legal proceedings or the appointment made in regulation 8(13), remains in force as if such regulation had not been repealed.

(3) Despite the repeal of the regulations referred to in subregulation (1), all directions issued in terms of those Regulations shall continue to apply unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.

**Application of Regulations**

**3.** (1) Chapters 1 and 2 of these Regulations will apply for the duration of the national state of disaster.

(2) The Cabinet member responsible for cooperative governance and traditional affairs shall, upon the recommendation of the Cabinet member responsible for health and in consultation with Cabinet, declare which of the following alert levels apply, and the extent to which they apply at a national, provincial, metropolitan or district level:

*(a)* 'Alert Level 1' as determined by Cabinet;
*(b)* 'Alert Level 2' as determined by Cabinet;
*(c)* 'Alert Level 3' as determined by Cabinet;
*(d)* 'Alert Level 4' as determined by Cabinet; and
*(e)* 'Alert Level 5' as determined by Cabinet.

(3) The Cabinet member responsible for health shall issue directions on the criteria that will guide the determination of alert levels;

(4) The detail of permissions and prohibitions for each Alert Level will be set out in the different Alert levels.

## CHAPTER 2
## GENERAL PROVISIONS APPLICABLE DURING NATIONAL STATE OF DISASTER

**Authority to issue directions**

**4.** (1) The Cabinet member responsible for health may—

*(a)* issue directions to address, prevent and combat the spread of COVID-19 in any area of the Republic of South Africa, which directions may include the—
  (i) recruitment and training of human resources from the Department of Health, and other entities responsible for the handling of COVID-19 mortal remains;
  (ii) deployment of human resources from the Department of Health to identified sites to render services;
  (iii) sourcing of human resources from the Expanded Public Works Programme, retired health professionals and Non-Governmental Organisations to render services in identified sites;
  (iv) provision of health equipment, sanitation materials and medical supplies;
  (v) identification and establishment of mortuaries that will accommodate all COVID-19 mortal remains;
  (vi) disposal of COVID-19 mortal remains; and
*(b)* vary the directions referred to in paragraph *(a)* as the circumstances require.

(2) The Cabinet member responsible for justice and correctional Services may—

*(a)* issue directions to address, prevent and combat the spread of COVID-19 in all Correctional Centres and Remand Detention Facilities in the Republic of South Africa;
*(b)* where appropriate, issue directions to address, prevent and combat the spread of COVID-19 in all courts and court precincts in the Republic of South Africa;
*(c)* issue directions for voluntary alternative dispute resolution mechanisms, pursuant to regulationn13, to resolve COVID-19 disputes and related matters; and
*(d)* vary the directions referred to in paragraphs (*a*) to (*c*) as the circumstances require.

(3) The Cabinet members responsible for basic and higher education may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all schools and institutions of higher learning; and

(b) vary the directions referred to in (a) as the circumstances require.

(4) The Cabinet member responsible for police may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all police stations, police precincts, and holding cells; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(5) The Cabinet member responsible for social development may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all Department of Social Development facilities; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(6) The Cabinet member responsible for trade, industry and competition may —

(a) issue directions to—

(i) protect consumers from excessive, unfair, unreasonable or unjust pricing of goods and services during the national state of disaster; and

(ii) maintain security and availability of the supply of goods and services during the national state of disaster;

(b) issue directions to address, prevent and combat the spread of COVID-19; and

(c) vary the directions referred to in paragraphs (a) and (b) as the circumstances require.

(7) The Cabinet member responsible for transport may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in matters falling within his or her mandate; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(8) The Cabinet member responsible for home affairs may issue directions to allow a person to enter or exit the Republic for emergency medical attention for a life-threatening condition, or for a South African, or foreign national to be repatriated to their country of nationality or permanent residence.

(9) The Cabinet member responsible for small business may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in matters falling within his or her mandate; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(10) Any Cabinet member may issue and vary directions, as required, within his or her mandate, to address, prevent and combat the spread of COVID-19, and its impact on matters relevant to their portfolio, from time to time, as may be required, including—

(a) disseminating information required for dealing with the national state of disaster;

(b) implementing emergency procurement procedures;

(c) taking any other steps that may be necessary to prevent an escalation of the national state of disaster, or to alleviate, contain and minimise the effects of the national state of disaster; or

(d) taking steps to facilitate international assistance.

(11) All directions issued in terms of these Regulations shall continue to apply unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.

(12) Directions with regard to health and social services and trade, industry and competition may be issued to designate services which are necessary to provide or maintain essential health and social services and international trade or industrial activities.

(13) Directions may be issued and varied, as required, to address, prevent and combat the spread of COVID-19, from time to time, including—

*(a)* disseminating information required for dealing with the national state of disaster;

*(b)* implementing emergency procurement procedures;

*(c)* taking any other steps that may be necessary to prevent an escalation of the national state of disaster, or to alleviate, contain and minimise the effects of the national state of disaster; or

*(d)* taking steps to facilitate international assistance.

(14) All directions issued in terms of these Regulations shall continue to apply unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.

**General measures to contain the spread of COVID-19**

**5.** (1) A person must wear a cloth face mask or a homemade item that covers the nose and mouth when in a public place, or another appropriate item to cover the nose and mouth

(2) No person will be allowed to use any form of public transport, or enter a building, place or premises, if they do not wear a cloth face mask or a homemade item that covers the nose and mouth when in a public place, or another appropriate item to cover the nose and mouth.

(3) An employer must provide every employee who may come into direct contact with members of the public as part of their duties with a cloth face mask to cover his or her nose and mouth or a homemade item that covers the nose and mouth when in a public place, or another appropriate item to cover the nose and mouth.

(4) Every business premises, including, but not limited to, a supermarket, shop, grocery store, retail store, wholesale produce market or pharmacy shall–

*(a)* determine their area of floor space in square metres;

*(b)* based on the information contemplated in paragraph *(a)*, determine the number of customers and employees that may be inside the premises at any time with adequate space available;

*(c)* take steps to ensure that persons queuing inside or outside the premises are able to maintain a distance of one and a half metres from each other;

*(d)* provide hand sanitisers for use by the public and employees at the entrance to the premises; and

*(e)* assign, in writing, an employee or any other suitable person, as the compliance employee, who must ensure—

(i) compliance with the measures provided for in paragraphs *(a)* to *(d)*; and

(ii) that all directions in respect of hygienic conditions and limitation of exposure to persons with COVID-19 are adhered to.

(5) All employers must, adopt measures to promote physical distancing of employees, including—

*(a)* enabling employees to work from home or minimising the need for employees to be physically present at the workplace;

*(b)* the provision for adequate space;

(c) restrictions on face to face meetings;
(d) special measures for employees with known or disclosed health issues or comorbidities, or with any condition which may place such employees at a higher risk of complications or death if they are infected with COVID-19;
(e) special measures for employees above the age of 60 who are at a higher risk of complications or death if they are infected with COVID-19.

(6) The requirements as set out in subregulation (4) applies with the necessary changes, to any other building that is not provided for by subregulation (4).

(7) All courier and delivery services shall provide for minimized personal contact during delivery.

**Refusal of medical examination, prophylaxis, treatment, isolation and quarantine**

**6.** (1) No person who has been confirmed as a clinical or a laboratory confirmed case as having contracted COVID-19, or who is suspected of having contracted COVID-19, or who has been in contact with a person who is a carrier of COVID–19, may refuse to—

(a) submit to a medical examination, including, but not limited to, the taking of any bodily sample which is authorised in law;
(b) be admitted to a health establishment or a quarantine or isolation site; or
(c) submit to mandatory prophylaxis, treatment, isolation or quarantine, in order to prevent transmission:

Provided that if a person does not comply with the instruction or order of the enforcement officer, that person must be placed in quarantine for a period not exceeding 48 hours, pending a warrant being issued by a competent Court, on application by an enforcement officer for the medical examination contemplated in paragraph *(a)*.

(2) A warrant contemplated in subregulation (1) may be issued by a magistrate, if it appears from information on oath or affirmation by an enforcement officer—

(a) that a person is confirmed as having been infected with COVID-19;
(b) who is on reasonable grounds suspected of having contracted COVID-19, or who has been in contact with, or who is on reasonable grounds suspected as having been in contact with a person who is a carrier of, or infected with COVID–19.

(3) The warrant may impose restrictions on the powers of the enforcement officer as the magistrate may deem fit.

(4) A warrant issued in terms of this regulation remains in force until—

(a) it is executed;
(b) it is cancelled by the person who issued it or, if such person is not available, by any other magistrate;
(c) the expiry of ninety days from the date of its issue; or
(d) the purpose for the issuing of the warrant has lapsed,

whichever occurs first.

**Isolation or quarantine of persons**

**7.** (1) Any person who is a clinical case, or who is on reasonable grounds suspected to be infected or contaminated with COVID-19, or who has been in contact with a person who is infected or contaminated with COVID–19, must comply with—

*(a)* an oral instruction of, or a written direction, issued by a medical practitioner, a person authorised by the medical practitioner, a nurse or an enforcement officer to subject himself or herself to screening to determine his or her COVID-19 status; or

*(b)* a written direction, issued by a medical practitioner, a person authorised by the medical practitioner, a nurse or an enforcement officer to—

(i) voluntarily travel to or be taken to a health establishment or any other place for purposes of isolation or quarantine; or

(ii) quarantine himself or herself in accordance with the instructions of such medical practitioner or person authorised by him or her, or a nurse,

pending the determination of his or her COVID-19 status, as a precautionary measure to contain the transmission of COVID-19.

(2) If a person refuses to quarantine himself or herself, or travel to a site of isolation or quarantined facility as directed, a magistrate in whose jurisdiction such a person is, must make an order as contemplated in Form 1 of Annexure A, to compel such a person to quarantine himself or herself, travel to such site of isolation, quarantined facility, or medical screening.

(3) The—

*(a)* Cabinet member responsible for public works and infrastructure;

*(b)* member of the provincial Executive Council responsible for public works; or

*(c)* accounting officers of municipalities,

must identify and make available sites to be used as isolation and quarantine facilities as the need arises and provide a list thereof to the Department of Health for resourcing.

**Contact tracing**

**8.** (1) In this regulation—

*(a)* "COVID-19 Tracing Database" means the database established by the National Department of Health in terms of subregulation (2); and

*(b)* "COVID-19 Designated Judge" means a judge designated in terms of subregulation (13).

(2) The National Department of Health shall develop and maintain a national database to enable the tracing of persons who are known or reasonably suspected to have come into contact with any person known or reasonably suspected to have contracted COVID-19.

(3) The COVID-19 Tracing Database shall include all information considered necessary for the contact tracing process to be effective, including but not limited to:

*(a)* the first name and surname, identity or passport numbers, residential address and other address where such person could be located, and cellular phone numbers of all persons who have been tested for COVID-19;

*(b)* the COVID-19 test results of all such persons; and

*(c)* the details of the known or suspected contacts of any person who tested positive for COVID-19.

(4) The information contained in the COVID-19 Tracing Database and any information obtained through this regulation is confidential.

(5) No person may disclose any information contained in the COVID-19 Tracing Database or any information obtained through this regulation unless authorized to do so and unless the disclosure is necessary for the purpose of addressing, preventing or combatting the spread of COVID-19.

(6) Where any person is to be tested for COVID-19, the person taking the sample for purposes of testing must obtain as much of the following information as is available at the time of taking the sample—

*(a)* the first name and surname, identity or passport number, residential address, and cellular phone numbers of the person tested; and

*(b)* a copy or photograph of the passport, driver's licence, identity card, identity book of the person tested;

and promptly submit this information, along with any information it has regarding likely contacts of the person tested, to the Director-General: Health for inclusion in the COVID-19 Tracing Database.

(7) Where any laboratory has tested a sample for COVID-19, the laboratory must promptly transmit to the Director-General: Health, for inclusion in the COVID-19 Tracing Database—

*(a)* all details the laboratory has, including the first name and surname, identity or passport numbers, residential address and cellular phone numbers, regarding the person tested;

*(b)* the COVID-19 test result concerned.

(8) The National Institute for Communicable Diseases (NICD) must transmit to the Director-General: Health, for inclusion in the COVID-19 Tracing Database—

*(a)* all details the NICD has, including the first name and surname, identity or passport numbers, residential address and cellular phone numbers of any person tested for COVID-19;

*(b)* the results of the COVID-19 test concerned; and

*(c)* any information the NICD has regarding likely contacts of the person tested.

(9) Every accommodation establishment must, promptly after the coming into force of this regulation, transmit to the Director-General: Health, for inclusion in the COVID-19 Tracing Database, the following information regarding every person staying at the accommodation establishment during the period of lockdown—

*(a)* the first name and surname, identity or passport number, residential address and cellular phone numbers of the person concerned; and

*(b)* a copy or photograph of the passport, driver's licence, identity card or identity book of the person concerned.

(10) The Director-General: Health may, in writing and without prior notice to the person concerned, direct an electronic communications service provider licensed under the Electronic Communications Act, 2005 (Act No. 36 of 2005) to provide him or her, for inclusion in the COVID-19 Tracing Database, with such information as that electronic communications service provider has available to it regarding—

*(a)* the location or movements of any person known or reasonably suspected to have contracted COVID-19; and

*(b)* the location or movements of any person known or reasonably suspected to have come into contact, during the period 5 March 2020 to the date on which the national state of disaster has lapsed or has been terminated, with a person contemplated in subparagraph *(a)*,

and the electronic communications service provider must promptly comply with the directive concerned.

(11) The information referred to in subregulation (10)—

*(a)* may only be obtained in relation to the location or movements of persons during the period 5 March 2020 to the date on which the national state of disaster has lapsed or has been terminated;

*(b)* may only be obtained, used or disclosed by authorised persons and may only be obtained, used and disclosed when necessary for the purposes of addressing, preventing or combatting the spread of COVID-19 through the contact tracing process;

*(c)* where relevant to the contact tracing process, must be included in the COVID-19 Tracing Database; and

*(d)* apart from what is included in the COVID-19 Tracing Database, may only be retained by the Director-General: Health for a period of six weeks after being obtained and shall thereafter be destroyed.

(12) Nothing in this regulation entitles the Director-General: Health or any other person to intercept the contents of any electronic communication.

(13) The Cabinet member responsible for justice and correctional services has, in terms of section 7(1)*(a)* read with paragraph *(d)* of the definition of 'service' in section 1(1) of Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), appointed a Constitutional Court Judge who has been discharged from active service to perform service as a COVID-19 Designated Judge as provided for in the Regulations.

(14) The Director-General: Health must file a weekly report with the COVID-19 Designated Judge setting out the names and details of all persons whose location or movements were obtained in terms of subregulation (10)*(a)* and 10*(b)* respectively.

(15) The COVID-19 Designated Judge may make such recommendations to the Cabinet members responsible for cooperative governance and traditional affairs, health and justice and correctional services as he or she deems fit regarding the amendment or enforcement of this regulation in order to safeguard the right to privacy while ensuring the ability of the Department of Health to engage in urgent and effective contact tracing to address, prevent and combat the spread of COVID-19.

(16) The Director-General: Health shall, within six weeks after the national state of disaster has lapsed, or has been terminated, notify every person whose information has been obtained in terms of subregulation (10) that information regarding their location or movements was obtained in terms of subregulation (10).

(17) Within six weeks after the national state of disaster has lapsed or has been terminated—

*(a)* the information on the COVID-19 Tracing Database shall be de-identified;

*(b)* the de-identified information on the COVID-19 Tracing Database shall be retained and used only for research, study and teaching purposes;

*(c)* all information on the COVID-19 Tracing Database which has not been de-identified shall be destroyed; and

*(d)* the Director-General: Health shall file a report with the COVID-19 Designated Judge recording the steps taken in this regard, and the steps taken pursuant to subregulation (16).

(18) Upon receipt of the report in subregulation (17)*(d)*, the COVID-19 Designated Judge shall be entitled to give directions as to any further steps to be taken to protect the right to privacy of those persons whose data has been collected, which directions must be complied with.

(19) The report required by subregulation (17)*(d)* and any directions given in terms of subregulation (18) shall be tabled in Parliament.

**Release of resources**

**9.** (1) The Department of Defence must, for the duration of the declared national state of disaster, within its available resources—

*(a)* release and mobilise available resources, including human resources, stores, equipment, ships, aircraft platforms, vehicles and facilities; and

*(b)* ensure the delivery of essential services,

as may be required, to prevent, limit, contain, combat and manage the spreading of COVID-19.

(2) National organs of state must, within their available resources, release their personnel for the rendering of emergency services, as contemplated in section 27(2)*(b)* of the Act.

(3) Institutions within national, provincial and local government must make resources, other than funding, available to implement these Regulations or directions issued in terms of section 27(2) of the Act regarding the national state of disaster.

(4) Institutions within national, provincial and local government must—

*(a)* make funding available; and

*(b)* as far as possible, without affecting service delivery in relation to the realisation of the rights contemplated in sections 26 to 29 of the Constitution, shift funding, within its budget to implement these Regulations or directions issued in terms of section 27(2) of the Act, regarding the national state of disaster.

(5) The National Treasury and provincial treasuries must take the necessary steps in terms of applicable legislation to implement these Regulations and directions issued in terms of section 27(2) of the Act, in relation to the national state of disaster.

(6) Donor funding received by institutions, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999) or the Local Government: Municipal Finance Management Act, 2003 (Act Np. 56 of 2003), to assist with the national state of disaster must be—

*(a)* paid into the Reconstruction and Development Fund, established by the Reconstruction and Development Fund Act, 1994 (Act No. 7 of 1994); and

*(b)* used strictly for purposes of implementing these Regulations and directions issued in terms of section 27(2) of the Act in relation to the national state of disaster.

**Shelters and sites identified by the State during national state of disaster**

**10.** (1) The State shall identify—

*(a)* temporary shelters for homeless people that comply with the necessary health protocols and adequate spacing standards as provided for in guidelines published by the Director General of Health; and

*(b)* temporary sites for quarantine and self-isolation that comply with the necessary health protocols and adequate spacing standards, as provided for in guidelines published by the Director General of Health, for persons who cannot isolate or quarantine in their homes.

(2) The provision of the State's resources contemplated in subregulation (1) shall be for the duration of the national state of disaster, and the use thereof will be subject to conditions determined by the Cabinet member responsible for such resources.

**Emergency Procurement Procedures**

**11.** Emergency procurement for institutions is subject to—

*(a)* the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the applicable emergency provisions in the Regulations or Instructions made under section 76 of that Act; and

*(b)* the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the applicable emergency provisions in the Regulations made under that Act.

**Powers and indemnity**

**12.** These Regulations do not limit any powers or indemnities of security services provided for in any law.

**Resolution of disputes**

**13.** (1) The parties to a civil dispute against the State or any organ of State, which may potentially result in litigation, may—

*(a)* either before or after the commencement of litigation but before the granting of judgment by the court, agree to refer the dispute to mediation; or

*(b)* before the commencement of litigation, agree to refer the dispute to arbitration.

(2) Where the parties agree to mediation or arbitration:

*(a)* the Office of the Solicitor General shall assist the parties in coordinating and overseeing the process; and

*(b)* the parties may agree that a judge who has retired from active service shall act as the mediator or arbitrator as the case may be, in which event no fees shall be payable to such mediator or arbitrator.

(3) The Office of the State Attorney in whose area of jurisdiction a dispute arises shall immediately upon knowledge of such dispute engage the party raising the dispute, or such party's legal representative, in considering mediation or arbitration.

**Offences and penalties**

**14.** (1) Any person who intentionally misrepresents that he, she or any other person is infected with COVID-19 is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) Any person who publishes any statement, through any medium, including social media, with the intention to deceive any other person about—

(*a*) COVID-19;

(*b*) COVID-19 infection status of any person; or

(*c*) any measure taken by the Government to address COVID-19,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months, or both such fine and imprisonment.

(3) Any person who intentionally exposes another person to COVID-19 may be prosecuted for an offence, including assault, attempted murder or murder.

(4) A person who fails to comply with—

(*a*) an obligation imposed in terms of regulation 8(5),8 (9), 8(11), 8(17); or

(*b*) a direction issued in terms of regulation 8(10) or 8(18);

of these Regulations commits an offence and is, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

## CHAPTER 3
## ALERT LEVEL 4

**Determination of Alert Level**

**15.** (1) The Cabinet member responsible for cooperative governance and traditional affairs, in terms of regulation 3(2), declares, upon the recommendation of the Cabinet member responsible for health, and in consultation with Cabinet, that Alert Level 4 will be applicable from 1 May 2020 in the Republic of South Africa and will remain in force up to the declaration of different Alert Levels for the duration of the national state of disaster.

(2) The regulations set out in this Chapter apply during Alert Level 4.

**Movement of persons**

**16.** (1) Every person is confined to his or her place of residence.

(2) A person may only leave their place of residence to—

(*a*) perform an essential or permitted service, as allowed in Alert Level 4;

(*b*) go to work where a permit which corresponds with Form 2 of Annexure A, has been issued;

(*c*) buy permitted goods;

(*d*) obtain services that are allowed to operate as set out in Table 1 to the Regulations;

(*e*) move children, as allowed;

(*f*) walk, run or cycle between the hours of 06H00 to 09H00, within a five kilometre radius of their place of residence: Provided that this is not done in organised groups.

(3) Every person is confined to his or her place of residence from 20H00 until 05H00 daily, except where a person has been granted a permit to perform an essential or permitted service as listed in Annexure D, or is attending to a security or medical emergency.

(4) Movement between provinces, metropolitan areas and districts are prohibited except—

*(a)* for workers who have a permit to perform an essential or permitted service who have to commute to and from work on a daily basis;

*(b)* the attendance of a funeral, as allowed;

*(c)* the transportation of mortal remains; and

*(d)* for learners who have to commute to and from school or higher education institutions on a daily basis during periods when those institutions are permitted to operate.

(5) Any person who was not at their place of residence, or work before the lockdown period and who could not travel between provinces, metropolitan and district areas during the lockdown, will be permitted, on a once-off basis, to return to their places of residence or work and will be required to stay in such place until the end of Alert Level 4.

(6) All industries, businesses, entities, both private and in the public sector, which are permitted to operate during Alert Level 4, must—

*(a)* designate a COVID-19 compliance officer who will oversee the:

(i) implementation of the plan referred to in subregulation (*b*); and

(ii) adherence to the standards of hygiene and health protocols relating to COVID-19 at the workplace;

*(b)* develop a plan for the phased in return of their employees to the workplace, prior to reopening the workplace for business, which plan must correspond with Annexure E and be retained for inspection and contain the following information:

(i) which employees are permitted to work;

(ii) what the plans for the phased-in return of their employees to the workplace are;

(iii) what health protocols are in place to protect employees from COVID-19; and

(iv) the details of the COVID-19 compliance officer;

*(c)* phase in the return of their employees to work to manage the return of employees from other provinces, metropolitan and district areas; and

*(d)* develop measures to ensure that the workplace meets the standards of health protocols, adequate space for employees and social distancing measures for the public and service providers, as required.

(5) The Cabinet member responsible for home affairs, or a person designated by him or her, may allow a person to enter or exit the Republic for emergency medical attention for a life-threatening condition, or for a South African, or foreign national to be repatriated to their country of nationality or permanent residence.

(6) All foreign tourists who arrived in the Republic prior to the lockdown period, which ended on 30 April 2020, and who remained in the Republic, must remain in their place of temporary residence in the Republic for the duration of Alert Level 4, as the case may be, and may be subject to screening for COVID-19 and be quarantined or isolated as required: Provided that the evacuation of foreign tourists where arrangements, including an arrangement for the evacuation by air charter, has been made by the relevant embassy, may be allowed: Provided further that a tourist is escorted to the point of exit where he or she may be screened again.

**Movement of children**

**17.** (1) The movement of children between co-holders of parental responsibilities and rights or a caregiver, as defined in section 1(1) of the Children's Act, 2005 (Act No. 38 of 2005), in the same metropolitan area or district municipality is allowed subject to the following if the co-holders of parental responsibilities and rights or a caregiver is in possession of—

*(a)* a court order; or

*(b)* a parental responsibilities and rights agreement or parenting plan, registered with the family advocate

(c) a permit issued by a magistrate where which corresponds with Form 3 of Annexure A if the documentation in paragraphs (a) and (b) is not available.

(2) The movement of children between co-holders of parental responsibilities and rights or a caregiver, as defined in section 1(1) of the Children's Act, 2005 (Act No. 38 of 2005), between different metropolitan areas, district municipalities or provinces is allowed if the co-holders of parental responsibilities and rights or a caregiver is in possession of a permit, issued by a magistrate which corresponds with Form 3 of Annexure A.

(3) Any child who was not at the residence of their primary caregiver before the lockdown period and who could not travel between provinces, metropolitan and district areas during the lockdown will be permitted, on a once-off basis, to return to the residence of their primary caregiver if the co-holders of parental responsibilities and rights or a caregiver is in possession of a permit issued by a magistrate which corresponds with Form 3 of annexure A.

(4) The household to which the child has to move, must be free of COVID-19.

(5) *(a)* Before a magistrate issues a permit referred to in regulation 17(1)*(c)*, he or she must be provided with—

(i) a birth certificate or certified copy of a birth certificate of the child or children to prove a legitimate relationship between the co-holders of parental responsibilities and rights; and

(ii) written reasons why the movement of the child is necessary.

*(b)* Before a magistrate issues a permit referred to in 17(2) or (3), he or she must be provided with—

(i) A court order

(ii) a parental responsibilities and rights agreement or parenting plan registered with the family advocate or

(iii) a birth certificate or certified copy of a birth certificate of the child or children to prove a legitimate relationship between the co-holders of parental responsibilities and rights; and

(iv) written reasons why the movement of the child is necessary.

**Attendance of funerals**

**18.** (1) Movement between a province, metropolitan area or district by a person wishing to attend a funeral shall only be permitted if that person so wishing to attend the funeral is a—

*(a)* spouse or partner of the deceased;

*(b)* child of the deceased, whether biological, adopted or stepchild;

*(c)* child-in-law of the deceased;

*(d)* parent of the deceased whether biological, adopted or stepparent;

*(e)* sibling, whether biological, adopted or stepbrother or sister of the deceased; or

*(f)* grandparent of the deceased;

(2) Attendance at a funeral is limited to 50 people and will not be regarded as a prohibited gathering.

(3) Night vigils at a funeral is banned.

(4) During a funeral, all hygienic conditions and distancing measures must be adhered to for the limitation of exposure of persons at the funeral to COVID-19.

(5) Each person, whether traveling alone or not, wishing to attend a funeral and who has to travel between districts, or between provinces to attend a funeral must obtain a permit which corresponds substantially with Form 4 of Annexure A, from his or her nearest magistrate's office or police station to travel to the funeral and back.

(6) The head of court, or a person designated by him or her, or a station commander of a police station or a person designated by him or her, may issue the permit to travel to a funeral.

(7) Upon a request for a permit to attend a funeral, a person requesting a permit must produce a death certificate or a certified copy of the death certificate to the head of court, or a person designated by him or her, or a station commander of a police station or a person designated by him or her: Provided that where a death certificate is not yet available, and the funeral must be held within 24 hours in keeping with cultural and religious practices, the person requesting the permit must make a sworn affidavit which corresponds with Form 5 of Annexure A, together with a letter from a cultural or religious leader confirming the need for the funeral within 24 hours.

(8) Only two family members or a person with a close affiliation to the deceased may, with the required permits, be present in the vehicle transporting the mortal remains to the metropolitan or district area, or province where the funeral will take place: provided that the cause of death of the deceased being transported is non-COVID-19 related.

(9) The Regulations for the use of public transport must be strictly adhered to when travelling.

(10) A copy of the permit issued and the death certificate or sworn affidavit made, must be kept safely by the head of court, or station commander of a police station for record keeping for a period of three months after the national state of disaster has ended, where after it may be destroyed.

(11) All forms must be completed in full, including full names, identification or passport numbers and full contact details as required in the form and failure to do so will result in the form being rejected as invalid.

**Prohibition on evictions**

**19.** A competent court may grant an order for the eviction of any person from land or a home in terms of the provisions of the Extension of Security of Tenure Act 62 of 1997 and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998: Provided that any order of eviction shall be stayed and suspended until the last day Alert Level 4, unless a court decides that it is not just and equitable to stay and suspend the order until the last day of the Alert Level 4 period.

**Public transport**

**20.** (1) The Minister of Transport must, after consultation with the Cabinet members responsible for cooperative governance and traditional affairs, health, police and justice and correctional services, issue directions for the resumption of different modes of public transport to cater for the gradual return to work of people, in respect of —

*(a)* rail, bus services, taxi services;

*(b)* e-hailing services; and

*(c)* private vehicles.

(2) The directions to be issued by the cabinet member responsible for Transport must set out the hygienic conditions that must be adhered to and steps to be followed for the limitation of exposure of members of the public using public transport to COVID-19.

**Closure of borders**

**21.** All borders of the Republic remain closed during the period of Alert Level 4, except for ports of entry designated by the Cabinet member responsible for home affairs and for the transportation of fuel, cargo and goods during the period of Alert Level 4.

**Transportation of cargo**

**22.** (1) Rail, ocean, air and road transport is permitted for the movement of cargo to other countries and within the Republic of South Africa, subject to national legislation, for the transportation of the following goods—

*(a)* essential goods for import as set out in Annexure B to the Regulations;

*(b)* the import of materials and components required for manufacturing activities allowed under Alert Level 4;

*(c)* cargo at ports of entry;

*(d)* goods cleared at ports of entry for removal in transit through the Republic destined for neighboring countries;

*(e)* permitted goods for export as set out in Annexure C to the Regulations;

*(f)* transport of goods within the Republic of South Africa; and

*(g)* any other goods as set out in Directions by the relevant Cabinet member; taking into account health risks, constrained capacity at ports of entry and other factors relevant to the health, public order and economic effects of Covid-19.

(2) The Cabinet member responsible for transport, may, after consultation with the Cabinet members responsible cooperative governance and traditional affairs, trade, industry and competition, health, justice and correctional services and public enterprises, issue directions relating to sea cargo operations and air freight operations.

**Gatherings**

**23.** (1) All gatherings are banned, except—

*(a)* for funerals;

*(b)* when at a workplace; or

(c) when buying or obtaining goods and services, as allowed in Table 1.

(2) An enforcement officer must, where a gathering takes place—

(a) order the persons at the gathering to disperse immediately; and

(b) if the persons refuse to disperse, take appropriate action, which may, subject to the Criminal Procedure Act, include arrest and detention.

**Places and premises closed to the public**

**24.** (1) Any place or premises normally open to the public where religious, cultural, sporting, entertainment, recreational, exhibitional, organisational or similar activities may take place, is closed.

(2) Any place or premises normally open to the public or where people may gather, are prohibited. These include—

(a) public parks, sports grounds and fields, beaches and swimming pools;

(b) flea markets;

(c) fêtes and bazaars;

(d) night clubs;

(e) casinos;

(f) hotels, lodges, bed and breakfasts, *airbnbs*', timeshare facilities and resorts, and guest houses, except to the extent that they are required for remaining tourists confined to hotels, lodges and guest houses;

(g) private and public game reserves except to the extent that they are required for remaining tourists confined to private and public game reserves;

(h) holiday resorts except to the extent that they are required for remaining tourists confined to such holiday resort;

(i) taverns and *shebeens*, or similar establishments;

(j) theatres and cinemas; and

(k) museums.

(3) Persons rendering security and maintenance services may continue to perform these services at the places or premises listed in this regulation.

(4) The Cabinet member responsible for cooperative governance and traditional affairs may, by direction in the Gazette, determine any other place or premises that must be closed, if there is a risk to any person or members of the public being exposed to COVID-19.

**Controlled visits by members of the public**

**25.** All visits by members of the public to—

(a) Correctional Centres;

(b) Remand Detention Facilities;

(c) Police Holding Cells;

(d) Military Detention Facilities;

(e) Health establishments and facilities, except to receive treatment or medication in accordance with health protocols; and

*(f)* Facilities controlled or managed by the Department of Social Development, including Child and Youth Care Centres, shelters, One Stop Centres, and Treatment Centres,

will be allowed to the extent and in the manner as directed by the Cabinet member responsible for cooperative governance and traditional affairs after consultation with the Cabinet members responsible for health, police and justice and correctional services.

**Sale, dispensing or transportation of liquor**

**26.** (1) The sale, dispensing and distribution of liquor is prohibited.

(2) The transportation of liquor is prohibited, except where alcohol is required for industries producing hand sanitizers, disinfectants, soap, alcohol for industrial use and household cleaning products.

(3) The transportation of liquor for export purposes is permitted.

(4) No special or events liquor licenses may be considered for approval during the duration of the national state of disaster.

**Tobacco products, e-cigarettes and related products**

**27.** The sale of tobacco, tobacco products, e-cigarettes and related products is prohibited.

**Operation of economic sectors**

**28.** (1) Businesses and other entities as set out in Table 1 may commence operations.

(2) Every person in control of a retail store or institution must—

*(a)* take steps to ensure that customers keep a distance of at least one and a half metres from each other, and that all directions in respect of health protocols and social distancing measures COVID-19, are adhered to; and

*(b)* designate a compliance official to ensure that the safety controls are strictly adhered to, and display the name of the official prominently in the store or in a visible area.

(3) Retail stores selling goods as provided for the Table 1 are prohibited from selling other goods that are not permitted in terms of the Table 1.

(4) Persons performing essential services or permitted services, must be duly designated in writing by the head of an institution, or a person designated by him or her, on a form that corresponds with Form 2 in Annexure A: Provided that Cabinet member responsible for small enterprises may issue directions in respect of small and micro enterprises, co-operatives, informal traders and *spaza* shops in respect of those entities.

**Energy and petroleum products supply**

**29.** To ensure the continuous supply of energy and petroleum products to society as referred to in Table 1—

*(a)* collieries that supply Eskom may continue to operate at full capacity; and

(b) refineries and other facilities providing energy and fuel may operate at full capacity to avoid shortage of fuel and energy, and such operations may include fuel storage, smelters, plants and furnaces.

**Mining Operations**

**30.** (1) Open-cast mining scaling up to a baseline of 50% and thereafter scaling up to full employment.

(2) All other mining starting in batches scaling up towards 50% employment.

(3) Mining operations, must be conducted at a reduced capacity of not more than 50%, and thereafter at increasing capacity as determined by direction issued by the Cabinet member responsible for mineral resources and energy.

(4) The following conditions apply to the starting and increasing of capacity:

(a) Appropriate measures to protect the health and safety of workers must be implemented by mining companies in accordance with the directions issued from time to time by the Cabinet member responsible for mineral resources and energy, in consultation with the Cabinet member responsible for health.

(b) a rigorous screening and testing programme must be implemented as employees return to work;

(c) the mining industry must provide quarantine facilities for employees who have tested positive for the COVID-19;

(d) data collected during the screening and testing programme must be submitted to the authority referred to in regulation 8;

(e) mining companies must make arrangements to transport their South African employees from their homes to their respective areas of operations;

(5) The monitoring and impact assessment of seismicity through the Council for Geoscience must be intensified with immediate effect.

**Offences and penalties**

**31.** (1) For the duration of the national state of disaster, any person who—

(a) convenes a gathering; or

(b) hinders, interferes with, or obstructs an enforcement officer in the exercise of his or her powers, or the performance of his or her duties in terms of these Regulations,

is guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) For the purposes of this Chapter, any person who fails to comply with or contravenes the provisions of regulations 16(1), 16(2),16(3) and 16(4), 19, 24(1) and 24(2), 26(1) and 26(2), 27 and 28(3) of these Regulations commits an offence and is, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

**TABLE 1**
**ALERT LEVEL 4**

All persons who are able to work from home should do so.

Persons in the following list of industries and activities will be permitted to perform work outside the home, and to travel to and from work, under Alert Level 4, subject to—

*(a)* strict health protocols, and social distancing rules;

*(b)* return to work to be phased in to enable measures to make the workplace COVID-ready; and

*(c)* return to work to be done in a manner that avoids and reduces risks of infection.

| PERMISSIONS AND PROHIBITIONS | |
|---|---|
| **PART A** | **AGRICULTURE, HUNTING, FORESTRY AND FISHING** |
| 1 | All agriculture, hunting, forestry and fishing, bee-keeping, including preparation, cultivation, harvesting, storage, transport of live animals and auctions (subject to health directions) and related agricultural infrastructure and services (including research, inspection, certification and quality control).<br>All fishing, operation of fish hatcheries and fish farms, on such conditions as may be issued in directions by the cabinet members responsible for the environment, forestry and fisheries.<br>Harvesting and storage activities essential to prevent the wastage of primary agricultural, fishing and forestry goods.<br>Export of all agricultural, agro-processed, fishing and forestry products. |
| **PART B** | **ELECTRICITY, GAS AND WATER SUPPLY** |
| 1. | All electricity, gas and water supply is permitted. |
| **PART C** | **MANUFACTURING** |
| 1 | Manufacture of wholesale and retail products permitted to be sold under Alert Level 4, and all input products, permitted scaling up to full employment, except where otherwise indicated, and subject to strict health protocols. |
| 2 | Manufacture of paper and paper products, excluding stationery, permitted scaling up to full employment and subject to strict health protocols. |
| 3 | Manufacture of plastics and packaging, including glass, plastic bottles and containers, permitted scaling up to full employment and subject to strict health protocols. |
| 4 | Petroleum refineries, smelters, and furnaces, permitted scaling up to full employment and subject to strict health protocols. |
| 5 | Manufacture of winter clothing, footwear, bedding and heaters (and all inputs required, including textiles) permitted, commencing at 25% and scaling up to 50% employment and subject to strict health protocols. |
| 6 | Manufacturing of automotives, steel and other metals, rail and ship-building (including components), scaling up in phases to 50% employment and subject to strict health protocols. |
| 7 | Stationery production, scaling up in phases to 50% employment and subject to strict health protocols. |
| 8 | Cement, other construction material, and hardware, scaling up in phases to 50% employment and subject to strict health protocols. |
| 9 | All other manufacturing, scaling up to 30% employment and subject to strict health protocols. |

| PART D | CONSTRUCTION AND RELATED SERVICES (INC. TRADES PERSONS) |
|---|---|
| 1 | Civil engineering for public works projects (including water, energy, sanitation). |
| 2 | Public works civil engineering and construction works. |
| 3 | Road and bridge projects, including local road repairs |
| 4 | Critical maintenance and repairs. |
| **PART E** | **WHOLESALE AND RETAIL TRADE, COVERING STORES, *SPAZA* SHOPS, E-COMMERCE AND INFORMAL TRADERS** |
| 1 | Food products, including non-alcoholic beverages and animal food. |
| 2 | The sale of hot cooked food, only for home delivery. |
| 3 | Toilet Paper, sanitary pads, sanitary tampons, and condoms. |
| 4 | Hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment. |
| 5 | Products for the care of babies and toddlers. |
| 6 | Personal toiletries, including haircare, body, face, hand and foot care products, roll-ons, deodorants, dental care products. |
| 7 | Medical and Hospital Supplies, medicine, equipment and personal protective equipment. |
| 8 | Fuel and lighting, including coal, wood, paraffin and gas. |
| 9 | Airtime and electricity. |
| 10 | Hardware, components and supplies. |
| 12 | Components for vehicles undergoing emergency repairs |
| 13 | Chemicals, packaging and ancillary products used in the production of any these products listed in Part E. |
| 14 | Textiles required to produce face masks and other personal protective equipment and winter clothing. |
| 15 | Winter clothing, footwear, bedding and heaters and the components and fabrics required to manufacture these. |
| 16 | Children's clothing and fabrics and components required to manufacture these. |
| 17 | Stationery and educational books. |
| 18 | Personal ICT equipment including computers, mobile telephones and other home office equipment. |
| 19 | No sale of liquor permitted. |
| 20 | Directions may permit the incremental expansion of e-Commerce, taking into account the need to limit the extent of movement on the road, contact between people, law-enforcement challenges and the impact on other businesses. |
| **PART F** | **INFORMATION AND COMMUNICATION SERVICES** |
| 1 | All telecommunication services and infrastructure. |
| 2 | Information and Communication Technology services for all private and business customers. |
| 3 | Postal services and courier services for all permitted Alert Level 4 services. |
| **PART G** | **MEDIA AND ENTERTAINMENT SERVICES** |
| 1 | Online services. |
| 2 | Productions for local broadcast and live streaming of creative sector services in support of COVID-19 subject to directions. |
| 3 | Newspapers and broadcasting. |
| **PART H** | **FINANCIAL AND BUSINESS SERVICES** |
| 1 | Employees should work from home where possible. |
| 2 | Essential financial services may operate, subject to directions issues by the relevant Cabinet member, including the following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial |

| | |
|---|---|
| | Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:<br>i. the banking environment (including the operations of mutual banks, co-operative banks, co-operative financial institutions and the Postbank);<br>ii. the payments environment;<br>iii. the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);<br>iv. the insurance environment;<br>v. the savings and investment environment;<br>vi. pension fund administration;<br>vii. outsourced administration;<br>viii. medical schemes administration; and<br>ix. additional services designated in terms of regulation 11B (4A) (c) (i).<br>The services listed above may not include debt collection services. |
| 3 | Services necessary for the provision of social grants. |
| 4 | Private security services may operate. |
| 5 | Implementation of payroll systems. |
| 6 | Car sales under specific directions |
| 7 | Chauffeur services, rental of motor vehicles, driven vehicles, machinery and equipment, and of goods to support other Alert Level 4 services. |
| 8 | Call centres, for local and all international markets, may operate subject to directions issues by the relevant cabinet members. |
| 9 | Other professional services may operate only where work-from-home is not possible, and only to support other Alert Level 4 services. |
| **PART I** | **ACCOMMODATION AND FOOD SERVICE ACTIVITIES PERMITTED** |
| 1 | Accommodation not permitted, except for quarantine and essential services |
| 2 | Restaurants only for food delivery services (9H00-19H00) and subject to restriction on movement (no sit down or pick-up allowed). |
| **PART J** | **TRANSPORT, STORAGE AND COMMUNICATION SERVICES PERMITTED** |
| 1 | Ocean, rail, road and air transport of goods permitted only for activities set out in Regulation 22(1). |
| 2 | Public rail, minibus taxi and bus services will resume at Alert Levels and on terms as will be set out in Directions, based on the progressive increase in commuter numbers during the various phases. |
| 3 | E-hailing services subject to restrictions on capacity and times, and for permitted activities only. |
| 4 | Transport and logistics in respect of specified cargo specified in J1, and permitted retail goods to neighbouring countries, which shall include all goods imported via SA ports of entry, for re-export to neighbouring countries. |
| **PART K** | **MINING AND QUARRYING** |
| 1 | Coal production for Eskom scaling up to full employment. |
| 2 | Open-cast mining scaling up to a baseline of 50% and thereafter scaling up to full employment. |
| 3 | All other mining starting in batches scaling up towards 50% employment. |
| **PART L** | **REPAIR AND RELATED EMERGENCY SERVICES PERMITTED** |
| 1 | Tow trucks and vehicle recovery services. |
| 2 | Emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work. |
| 3 | Emergency automobile repairs for all persons. |
| **PART M** | **SUPPLY CHAINS** |

| | |
|---|---|
| 1 | Production, manufacturing, supply, logistics, transport, delivery and critical maintenance and repair of goods and services (including components and equipment) required for the production or rendering of permitted goods and services |
| 2 | All workplaces or premises must have care and maintenance that is essential to the prevention of the destruction or significant impairment of working areas, plant, machinery or inventory, or to permit orderly wind down arrangements, on such conditions as may be issued by means of directions by the relevant cabinet members. |
| **PART N** | **PRIVATE HOUSEHOLDS' EMPLOYMENT** |
| 1 | Live-in staff, and staff providing care to the sick, mentally ill, elderly, people with disabilities and children. |
| **PART O** | **PUBLIC ADMINISTRATION, GOVERNMENT SERVICES AND OTHER ARMS OF THE STATE**<br>Only essential government and administration services may operate, including: |
| 1 | Disaster management services. |
| 2 | Licensing, permitting, deeds, masters offices, birth and death certificates, replacement identification documents |
| 3 | Any other service designated by the Executive Authority, HODs, Heads of Courts, and Heads of other Chapter 9 Institutions. |
| 4 | Essential municipal services. |
| 5 | Services related to the functioning of courts; the State Capture Commission. |
| 6 | Essential SARS services defined by the Commissioner of SARS. |
| 7 | Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services. |
| 8 | Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament. |
| 9 | Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector and the Independent Electoral Commission. |
| **PART P** | **HEALTH, SOCIAL AND PERSONAL SERVICES** |
| 1 | Medical and veterinary services permitted. |
| 2 | Cleaning, sanitation, pest control, sewerage, waste and refuse removal services. |
| 3 | Recycling of glass, paper, plastic, metal, tyres and such others as determined by directions, are permitted at 50% capacity. Informal recyclers will be permitted to resume operations. |
| 4 | All Social work, counselling, services supporting gender based violence, care and relief activities permitted. |
| 5 | Wildlife Management, Anti-poaching, Animal Care and Veterinary services. |
| 6 | Funeral services, including mortuaries services and the transportation of mortal remains. |
| 7 | Trade union essential staff for workers covered by Alert Level 4, subject to Directions. |
| **PART Q** | **EDUCATION SERVICES** |
| 1 | Permitted on dates and schedule set out separately. |

**ANNEXURE A**

**FORM 1**

**ORDER FOR A PERSON TO GO TO A SITE OF ISOLATION, QUARANTINE FACILITY, OR FOR A PERSON TO GO FOR MEDICAL EXAMINATION**

Regulation 7(2)

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF _____ HELD AT _____ ON THIS _____ DAY OF _____ 2020.**

**BEFORE ME _____ MAGISTRATE FOR THE AFOREMENTIONED DISTRICT IN CHAMBERS**

**WHEREAS** it appears that _____ (name of person)
Being a person:

☐ who has been clinically, or by a laboratory, confirmed as having COVID-19

☐ who is suspected of having contracted COVID-19

☐ who has been in contact with a person who is a carrier of COVID-19

and who has refused to —

☐ submit to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so;

☐ be admitted to a site to be used as isolation or a quarantine facility; or

☐ submit to mandatory prophylaxis, treatment, isolation or quarantine or isolation in order to prevent transmission.

I hereby issue an order for the submission of the said person to a medical examination; including the taking of any bodily sample by a person authorised in law.

..... **DATE** .....
**MAGISTRATE**

***NOTE:*** *This order remains in force until —*

*(a) it is executed;*
*(b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;*
*(c) a period of ninety days has lapsed from the date of its issue; or*
*(d) the purpose for the issuing of the order has lapsed.*

Signed at _____, on this the _____ day of _____ 2020.

*Official stamp of Institution*

**FORM 2**
**PERMIT TO PERFORM AN ESSENTIAL OR PERMITTED SERVICE**
Regulations 16(2)(*b*) and 28(4)

- *Please note that the person to whom the permit is issued must at all times present a form of identification together with this permit. If no identification is presented, the person to whom the permit is issued will have to return to his or her place of residence during Alert Level 4.*

I, being the head of institution, with the below mentioned details,

| | | | | |
|---|---|---|---|---|
| **Surname** | | | | |
| **Full names** | | | | |
| **Identity number** | | | | |
| **Contact details** | **Cell nr.** | **Tel Nr(W)** | **Tel Nr(H)** | **e-mail address** |
| | | | | |
| **Physical Address of Institution** | | | | |

Hereby certify that the below mentioned official/employee is performing services in my institution

| | |
|---|---|
| **Surname** | |
| **Full names** | |
| **Identity number** | |
| **Place of residence of employee** | |

Signed at _____, on this the _____ day of _____ 2020.

_____
*Signature of Head of Institution*

*Official stamp of Institution*

**FORM 3**
**PERMIT FOR THE MOVEMENT OF CHILDREN TO TRAVEL TO ANOTHER PROVINCE/METROPOLITAN AREA/DISTRICT**
Regulation 17(1)*(c)*

*Note: This permit and any form of identification must be in the possession of the person to whom this permit is issued*

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF _____ HELD AT _____ ON THIS _____ DAY OF _____ 2020.**

**BEFORE ME _____ MAGISTRATE FOR THE AFOREMENTIONED DISTRICT IN CHAMBERS**

I, hereby issue this permit for travel to the following person:

| | | | | | | |
|---|---|---|---|---|---|---|
| Full names: | | | | | | |
| Surname: | | | | | | |
| Identity number: | | | | | | |
| Address of place of residence: | | | | | | |
| Province of residence: | | | | | | |
| Contact details: | Cell nr | | Tel No (h) | | e-mail address | |
| Metropolitan area/district travelling to: | | | | | | |
| Province travelling to: | | | | | | |
| Date of travel to: | | | | | | |
| Date of return travel: | | | | | | |
| Name of child concerned (*must correspond with the birth certificate*): | | | | | | |
| Reason for movement of child(ren): | | | | | | |

I also declare that the above-mentioned person presented the documentation as required by *regulation 17(5).

Signed at _____ this _____ day of _____ 2020.

_____
*Magistrate issuing*

*Official stamp*

**FORM 4**

**PERMIT TO TRAVEL TO ANOTHER PROVINCE/METROPOLITAN AREA/DISTRICT FOR A FUNERAL**

Regulations 18(5)

*(To be completed by the head of court or a station commander or a person designated by him or her respectively.)*

I,_____*(full names of *head of court, or a person designated by him or her / station commander of a police station or a person designated by him or her)* for—

(a) the Magistrate's court for the district of _____;

(b) the police station at _____,

hereby issue this permit for travel to another district/province, to the following person:

| | | | | | |
|---|---|---|---|---|---|
| Full names: | | | | | |
| Surname: | | | | | |
| Identity number | | | | | |
| Address of place of residence: | | | | | |
| Province of residence: | | | | | |
| Contact details: | Cell nr | | Tel No (h) | e-mail address | |
| Metropolitan area/district travelling to: | | | | | |
| Province travelling to: | | | | | |
| Date of funeral: | | | | | |

I also declare that the above-mentioned person presented the *death certificate/certified copy of the death certificate/affidavit to me.

Signed at_____this _____ day of _____ 2020.

_____

**Person issuing permit*

*Official stamp*

**FORM 5**

**SWORN AFFIDAVIT BY PERSON WHO WISHES TO ATTEND A FUNERAL IN ANOTHER PROVINCE/METROPOLITAN AREA/DISTRICT**

Regulations 18(7)

***Note: 1.*** *A person giving false information on this affidavit shall be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.*

*2. This affidavit may only be sworn to or affirmed at a magistrate's court or police station.*

I,

| | | | | | | |
|---|---|---|---|---|---|---|
| Full names: | | | | | | |
| Surname: | | | | | | |
| Identity number | | | | | | |
| Address of place of residence: | | | | | | |
| Province of residence: | | | | | | |
| Contact details: | Cell nr | | Tel No (h) | | e-mail address | |
| District of funeral: | | | | | | |
| Province in which funeral will take place: | | | | | | |

Hereby declare under oath with regards to the deceased:

| | | | | |
|---|---|---|---|---|
| Names of deceased: | | | | |
| Surname of deceased: | | | | |
| Relationship/Affiliation to the deceased*(eg spouse/parent)* | | | | |
| I am not in possession of the death certificate for the reasons set out, and a copy of the letter from a cultural or religious leader is attached: | **Yes** | | **No** | |
| Date of funeral: | | | | |
| Province in which funeral will take place: | | | | |
| *City/town/village of funeral: | | | | |

***OATH/AFFIRMATION**

I,_____(full names), identity number _____, hereby declare under *oath/affirmation that the above-mentioned information is true and correct.

Signed at_____on this _____day of _____2020.

_____

*Signature of person making affidavit*

**CERTIFICATION**

I hereby certify that before administering the *oath/taking the affirmation, I asked the deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

(a) Do you know and understand the contents of the above declaration?

Answer: _____

(b) Do you have any objection to taking the *oath/affirmation?

Answer: _____

I Do you consider the *oath/affirmation to be binding on your conscience?

Answer: _____

I hereby certify that the deponent has acknowledged that *he/she knows and understands the content of this declaration which was *sworn to/affirmed before me, and the deponent's signature was placed thereon in my presence.

Signed at_____this_____day of_____2020__

*Justice of the Peace/Commissioner of Oaths

Full names: _____

Designation: _____

Business address: _____

_____

_____

*Delete which is not applicable".

## ANNEXURE B
## ESSENTIAL GOODS FOR IMPORT
Regulation 22(1)

| | ESSENTIAL GOODS FOR IMPORT |
|---|---|
| 1. | Food products, including non-alcoholic beverages and animal feed . |
| 2. | Sanitary pads, sanitary tampons, condoms. |
| 3. | Hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment, excluding cloth face masks. |
| 4. | Products for the care of babies and toddlers. |
| 5. | Personal toiletries, including haircare, body and face care products, roll-ons, deodorants, and dental care products. |
| 6. | Medical and hospital supplies, medicine, equipment and personal protective equipment (excluding cloth face masks). |
| 7. | Fuel, including coal, wood, paraffin and gas. |
| 8. | Hardware, components and supplies. |
| 9. | Components for aftersales vehicles services. |
| 10. | Chemicals, packaging and ancillary products used in the production of any these products. |
| 11. | Textiles required to produce face masks, and other personal protective equipment. |
| 12. | ICT equipment to facilitate work-from-home arrangements including computers, mobile telephones and other home office equipment. |

## ANNEXURE C
## PERMITTED GOODS FOR EXPORT
Regulation 22(1)(*e*)

| | PERMITTED GOODS FOR EXPORT |
|---|---|
| 1. | Agricultural, agro-processing, forestry and fishing products |
| 2. | Manufacturing products and mining products permitted for production under the Alert Level 4 table subject to directions issued by the relevant Minister |

## ANNEXURE D
## ESSENTIAL SERVICES

A: Essential and permitted services referred to in section 16(3) of the Regulation shall refer to:

*(a)* the list of essential services as set out in B below; and

*(b)* such other service as are set out in Alert Level 4 and where the technological, industrial, structural or similar requirement of the service necessitates a continuous or shift operation, as set out in directions, as set out below.

B Essential services means the services as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and designated in terms of section 71(8) of the Labour Relations Act, 1995 (and which designation remains valid as at the date of publication of this regulation), and as listed below:

1. Medical, Health (including Mental Health), Laboratory and Medical services and the National Institute for Communicable Diseases;
2. Disaster Management, Fire Prevention, Fire Fighting and Emergency services;

3.1 *(a)* The following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:

(i) the banking environment (including the operations of mutual banks, co-operative banks, co-operative financial institutions and the Postbank);
(ii) the payments environment;
(iii) the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);
(iv) the insurance environment;
(v) the savings and investment environment;
(vi) pension fund administration;
(vii) outsourced administration;
(viii) medical schemes administration; and
(ix) additional services set out in directions.

*(b)* The services listed in paragraph *(a)* may not be construed to include debt collection services.

3.2 Services necessary for the provision of social grants.

4. Production and sale of the goods listed in Annexure B;
5. Whole sale and retail stores for re-stocking;
6. Electricity (including vital demand management services), water, gas and fuel production, supply and maintenance;
7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance of the Department of Public Service and Administration, including Social Grant Payments and pension payments;
8. Essential municipal services;

9. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;
10. Funeral and cremation services, including mortuaries services and the transportation of mortal remains;
11. Wildlife Management, Anti-poaching, Animal Care and Veterinary services;
12. Newspaper, broadcasting and telecommunication infrastructure and services, including call centres critical for the support of such services;
13. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;
14. Cleaning, sanitation, pest control, sewerage, waste and refuse removal services;
15. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;
16. Essential SARS services defined by the Commissioner of SARS;
17. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;
18. Postal services and courier services related to transport of medical products;
19. Private security services;
20. Air-traffic Navigation, Civil Aviation Authority, air charters, Cargo Shipping and dockyard services;
21. Gold, gold refinery, coal and mining;
22. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown;
23. Production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment;
24. Transport services for persons rendering essential services and goods, and transportation of patients;
25. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament;

26.1 Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector and the Independent Electoral Commission; and

26.2 Services rendered by the institutions referred to in item 26.1

27. Transport and logistics in respect of cargo and goods as set out in Part A to neighbouring countries;
28. Tow trucks and vehicle recovery services;
29. Call centres necessary to provide health, safety, social support, government and financial services, debt restructuring for consumers of retailers, and access to short-term insurance policies as a result of reduced income or loss of income;
30. Harvesting and storage activities essential to prevent the wastage of primary agricultural goods;
31. Implementation of payroll systems to the extent that such arrangement has not been made, to ensure timeous payments to workers; and

32. Critical maintenance services which cannot be delayed for more than 21 days and are essential to resume operations;
33. Trades necessary for the rendering of emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work;
34. Trades necessary for emergency automobile repairs for persons rendering essential services;
35. Information and Communication Technology services rendered to entities and institutions engaged in delivering essential services in terms of these Regulations.

## ANNEXURE E
## WORKPLACE PLANS
Regulation 16(6)(*b*)

A COVID-ready Workplace Plan must be developed prior to the reopening of an enterprise employing persons or serving the public.

For small businesses, the plan can be basic reflecting the size of the business, while for medium and larger businesses, a more detailed written plan should be developed given the larger numbers of persons at the workplace.

The Plan for medium and large businesses must include the following:

1. The date the business will open and the hours of opening;
2. The timetable setting out the phased return-to-work of employees, to enable appropriate measures to be taken to avoid and reduce the spread of the virus in the workplace;
3. The steps taken to get the workplace COVID-19 ready;
4. A list of staff who can work from home; staff who are 60 years or older; and staff with comorbidities who will be required to stay at home or work from home;
5. Arrangements for staff in the establishment:
   (a) sanitary and social distancing measures and facilities at the entrance and exit to the workplace;
   (b) screening facilities and systems;
   (c) the attendance-record system and infrastructure;
   (d) the work-area of employees;
   (e) any designated area where the public is served;
   (f) canteen and bathroom facilities;
   (g) testing facilities (for establishments with more than 500 employees);
   (h) staff rotational arrangements (for establishments where fewer than 100% of employees will be permitted to work).
6. Arrangements for customers or members of the public, including sanitation and social distancing measures.

**Source:**
Statutes and Regulations of South Africa/Statutes of South Africa, Juta's/Full_Act/56917_full_act

**URL:**
http://jutastat.juta.co.za/nxt/gateway.dll/strg/statreg/full_act/56917_full_act?f=templates$fn=default.htm

Annexure "Y"
10-65

# BUSINESSES ACT 71 OF 1991[1]

[ASSENTED TO 15 MAY 1991] [DATE OF COMMENCEMENT: 24 MAY 1991]

(Unless otherwise indicated; see ss. 7 and 8)

You are currently viewing the full Act.

*(English text signed by the State President)*

**NB: See Proc 18 in *GG* 16302 of 9 March 1995 concerning the extent of the assignment of the administration of this Act to the provinces.**

**published in**

*GG* 13266 of 24 May 1991

**commencements**
(see s. 8 of this Act)

| provisions | date | refer to |
|---|---|---|
| whole Act, except ss. 2 (3)-(11), 3, 5 and 6 (5) | 24 May 1991 | s. 8 of this Act |
| ss. 2 (3)-(11), 3 and 5 in the Cape of Good Hope | 1 January 1992 | Proc 124 in *GG* 13708 of 27 December 1991 |
| s. 6 (5) in the Cape of Good Hope | 28 August 1992 | Proc 95 in *GG* 14238 of 28 August 1992 |
| ss. 2 (3)-(11), 3, 5 and 6 (5) in Natal | 1 July 1992 | Proc R60 in *GG* 14060 of 26 June 1992 |
| ss. 2 (3)-(11), 3, 5 and 6 (5) in the Orange Free State | 1 January 1993 | Proc 139 in *GG* 14486 of 24 December 1992 |
| ss. 2 (3)-(11), 3, 5 and 6 (5) in the Transvaal | 25 April 1994 | Proc 59 in *GG* 15621 of 31 March 1994 |

**as amended**

| by | with effect from | refer to |
|---|---|---|
| Businesses Amendment Act 186 of 1993 | 29 December 1993 | s. 7 of Act 186 of 1993 |
| Films and Publications Act 65 of 1996 | 16 January 1998 | s. 35 of Act 65 of 1996; Proc R3 in *GG* 18633 of 16 January 1998 |

**also amended**

| by | with effect from | refer to |
|---|---|---|
| Transformation of Certain Rural Areas Act 94 of 1998 | a date to be proclaimed | ss. 10 and 11 of Act 94 of 1998 |

**ACT**

**To repeal or amend certain laws regarding the licensing and carrying on of businesses, and shop hours; to make certain new provision regarding such licensing and carrying on of businesses; and to provide for matters connected therewith.**

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

1 This Act has been updated to include all available historical commencement details

## 1 Definitions

In this Act, unless the context otherwise indicates-

**'Administrator' means an Administrator as defined in the Provincial Government Act, 1986 (Act 69 of 1986);**



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**'business'**, for the purposes of section 2, means any business referred to in Schedule 1, but excluding a business mentioned in Schedule 2;



**'business premises'**, in relation to a business referred to in item 1 (1) or 2 of Schedule 1, means the premises upon, in or from which the business is or is to be carried on;

**'carry on business'** includes the opening or keeping open of any premises for such purpose;

**'condition'**, in relation to a licence, means a condition imposed under section 2 (6) *(b)* or 2 (8) *(a)* and specified in the relevant licence;

**'employee'** means any person employed by or working for any employer and receiving or entitled to receive any remuneration, and any other person whomsoever who in any manner assists in the carrying on or conducting of the business of an employer;

**'employer'** means any person whomsoever who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him, or who permits any person whomsoever in any manner to assist him in the carrying on or conducting of his business;

**'foodstuff'** means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);

**'hawker's licence'** means a licence to carry on any business referred to in item 3 (1) of Schedule 1;

**'licence'**, in relation to a business, means a licence referred to in section 2 (3);

**'licence holder'** means a person who is the holder of a licence;

**'licensing authority'** means any local authority, or person or body, designated or appointed under section 2 as a licensing authority;

**'local authority'** means-

*(a)* an institution or body referred to in section 84 (1) *(f)* of the Provincial Government Act, 1961 (Act 32 of 1961);

*(b)* a local government body established by virtue of section 30 (2) *(a)* of the Black Administration Act, 1927 (Act 38 of 1927);

*(c)* a local authority as defined in section 1 (1) of the Black Local Authorities Act, 1982 (Act 102 of 1982);

*(d)* a Local Development Committee established under section 28A (1) of the Development Act (House of Representatives), 1987 (Act 3 of 1987);

*(e)* a board of management or board as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987);

*(f)* a local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act 94 of 1987);

*(g)* the Local Government Affairs Council established by section 2 (1) of the Local Government Affairs Council Act (House of Assembly), 1989 (Act 84 of 1989);

**'Minister'** means the Minister of Trade and Industry and Tourism, acting after consultation with every Administrator or with the Administrator concerned, as the case may be;

**'officer'** means-

*(a)* a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);

*(b)* a member of the Force as defined in section 1 (1) of the Police Act, 1958 (Act 7 of 1958);

*(c)* a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

**'premises'** includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

**'prescribed'** means prescribed by regulation;

**'public road'** means a public road as defined in section 1 of the Road Traffic Act, 1989;

**'regulation'** means a regulation made by an Administrator under section 6 (1) or 6A (4) *(a)* (i);

[Definition of 'regulation' substituted by s. 1 of Act 186 of 1993 (wef 29 December 1993).]

**'sell'** includes to prepare, process, store, offer or display for sale;

**'this Act'** includes a regulation.

2 Minister of Trade and Industry designated as a competent authority within the national government to exercise the powers previously designated to an Administrator in terms of ss. 2, 6, 6A and 7 - see GenN 865 in *GG* 15901 of 28 July 1994

**2 Licensing authorities and licensing of businesses**

(1) *(a)* An Administrator may by notice in the *Official Gazette* designate a local authority, or appoint any person or body, as a licensing authority for an area which the Administrator specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned.

*(b)* A local authority may so be designated or appointed for any area, whether in or outside its own area of jurisdiction, but in the province concerned, including the area of jurisdiction of any other local authority or any part of such an area.

*(c)* When an Administrator exercises any power under paragraph *(a)*, he shall do so with the concurrence of-

(i) the local authority, or person or body, designated or appointed as licensing authority;

(ii) in the case of the designation or appointment of a local authority as licensing authority for an area comprising the area of jurisdiction of another local authority or any part thereof, that other local authority;

(iii) in the case of the appointment of a person or body as licensing authority for an area comprising the area of jurisdiction of a local authority or any part thereof, that local authority.

(2) An Administrator may at any time, after consultation with the relevant licensing authority, amend or withdraw a notice under subsection (1) by notice in the *Official Gazette*.

(3) No person shall, with effect from the date specified in a notice under subsection (1) in respect of a specific licensing authority, carry on any business in the area of that licensing authority-

*(a)* unless, in the case of a business referred to in item 1 (1) or 2 of Schedule 1, he is the holder of an apposite licence issued to him by the licensing authority in respect of the business premises concerned;

*(b)* unless, in the case of a business referred to in item 3 (1) of Schedule 1, he is the holder of a hawker's licence issued to him by the licensing authority;

*(c)* contrary to a condition.

[Date of commencement of sub-s. (3): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(4) A licensing authority shall, subject to the provisions of subsection (6), issue a licence which is properly applied for unless-

*(a)* in the case of a business referred to in item 1 (1) or 2 of Schedule 1, the business premises do not comply with a requirement relating to town planning or the safety or health of the public of any law which applies to those premises;

*(aA)* in the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public;

[Para. *(aA)* inserted by s. 2 *(a)* of Act 186 of 1993 (wef 29 December 1993).]



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*(b)* in the case of a business referred to in item 2 of Schedule 1, the licensing authority is satisfied that-

(i) the applicant, whether or not he is or will be in actual and effective control of the business; or

(ii) if another person is or will be so in control, that other person,

is not a suitable person to carry on the business, whether by reason of his character, having regard to any conviction recorded against him, his previous conduct or for any other reason;

*(c)* in the case of an application for a hawker's licence, such a licence of which the applicant concerned was the holder, was withdrawn under subsection (9) at any time during the preceding 12 months.

[Date of commencement of sub-s. (4): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(5) *(a)* For the purposes of subsection (4) *(b)*, a licensing authority may ask the South African Police for a report stating particulars of all convictions (if any) recorded against an applicant concerned or against any person referred to in subsection (4) *(b)* (ii).

*(b)* For the purposes of such a report any member of the South African Police may require the applicant or person concerned to furnish such information and particulars (including any finger-print, palm-print or foot-print) as that member may consider necessary.

[Date of commencement of sub-s. (5): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(6) In considering an application for a licence, a licensing authority may-

*(a)* grant the application on condition that-

(i) the business premises concerned shall, before the licence is issued, comply with a requirement contemplated in subsection (4) *(a)* stipulated by the licensing authority and made known in writing to the applicant;

(ii) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place referred to in subsection (4) *(aA)* shall, before the licence is issued, comply with a requirement contemplated in that subsection so stipulated and made known; or

*(b)* issue the licence subject to any condition therein specified in terms of which the licence holder shall in connection with the business premises or any such apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place-

(i) comply with a specific requirement contemplated in subsection (4) *(a)* or *(aA)*, as the case may be; or

(ii) within a specified period comply with such a requirement.

[Sub-s. (6) substituted by s. 2 *(b)* of Act 186 of 1993 (wef 29 December 1993).]

[Date of commencement of sub-s. (6): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(7) A licensing authority may, on application by a licence holder, by way of endorsement on the licence-

*(a)* amend a condition;

*(b)* extend the period referred to in subsection (6) *(b)* (ii);

*(c)* revoke a condition;

*(d)* indicate that a condition specified in the licence has been complied with.

[Date of commencement of sub-s. (7): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(8) *(a)* A licensing authority may at any time, after giving the licence holder concerned a reasonable opportunity to be heard, if it considers it necessary on the ground of changed circumstances in relation to a business or the relevant business premises, by way of endorsement on the licence concerned amend a condition or impose a condition referred to in subsection (6) *(b)*.

*(b)* For the purposes of paragraph *(a)*, a licensing authority may require a licence holder in writing to produce his licence to the licensing authority.

[Date of commencement of sub-s. (8): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(9) A licensing authority may at any time, after giving the licence holder concerned a reasonable opportunity to be heard, withdraw or suspend a licence-

*(a)* on the ground that the business premises do not comply with a requirement contemplated in subsection (4) *(a)*;

*(b)* on the ground that the licence holder failed to produce his licence to the licensing authority within 14 days after the receipt of a written request referred to in subsection (8) *(b)*;

*(c)* in the case of a business referred to in item 2 of Schedule 1, if the licensing authority is satisfied that, if application had been made at that time for the licence concerned, the application could have been refused by virtue of subsection (4) *(b)*;

*(d)* in the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, on the ground that-

(i) any foodstuff sold by the licence holder does not comply with a requirement of a law relating to the health of the public;

(ii) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public.

[Sub-para. (ii) substituted by s. 2 *(c)* of Act 186 of 1993 (wef 29 December 1993).]

[Date of commencement of sub-s. (9): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(10) When a licensing authority decides to refuse an application for a licence, or to grant such an application subject to a condition contemplated in subsection (6) *(a)*, or to issue a licence subject to a condition, or to amend or impose a condition under subsection (8), or to withdraw or suspend a licence, it shall as soon as practicable-

*(a)* notify the applicant or licence holder concerned in writing of its decision;

*(b)* furnish the applicant or licence holder concerned in writing with the reasons for its decision;

*(c)* inform the applicant or licence holder concerned in writing of his right of appeal under section 3.

[Sub-s. (10) substituted by s. 2 *(d)* of Act 186 of 1993 (wef 29 December 1993).]

[Date of commencement of sub-s. (10): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(11) The issue of a licence shall not relieve the licence holder of complying with any law or legal requirement in connection with the business or premises concerned.

[Date of commencement of sub-s. (11): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

**3 Appeals**

(1) Any person who feels himself aggrieved by a decision of a licensing authority may appeal against the decision in accordance with the provisions of a regulation contemplated in section 6 (1) *(a)* (vi).

(2) If a licensing authority fails to make a decision on any application in terms of this Act within 21 days after the receipt of the application or within such extended period as may be agreed upon between the licensing authority and the applicant concerned, it shall for the purposes of this section be presumed that the application was refused by the licensing authority.

[Date of commencement of s. 3: in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal:



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**4 Amendment of Schedule 2**

(1) The Minister may, whenever he deems it necessary or expedient in the public interest or for the better attainment of the objects of this Act, amend Schedule 2 by notice in the *Gazette*, by altering or adding any item.

(2) Different amendments may be so effected in respect of different areas.

**5 Penal provisions**

(1) Any person who contravenes a provision of section 2 (3) shall be guilty of an offence and liable on conviction-

*(a)* to a fine not exceeding R1 000 or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment; and

*(b)* to an additional fine not exceeding R10 for every day on which the offence continues.

(2) *(a)* When a person in control of a business, or a director, manager, employee or agent, of a licence holder performs any act which it would be an offence under subsection (1), read with section 2 (3) *(c)*, for that licence holder to perform himself, the licence holder shall be deemed to have performed the act himself, and shall be liable on conviction to the penalties mentioned in subsection (1), unless he proves to the satisfaction of the court that-

(i) in performing the act the person in control, or the director, manager, employee or agent, was acting without his knowledge or permission;

(ii) all reasonable steps were taken by him to prevent the performance of any act of the kind in question; and

(iii) it was not within the scope of the authority or the course of employment of the person in control, or the director, manager, employee or agent, to perform any act of the kind in question.

*(b)* The fact that a licence holder issued instructions forbidding any act referred to in subsection (1), shall not by itself be accepted as sufficient proof that he took all steps referred to in paragraph *(a)* (ii).

*(c)* When a licence holder is by virtue of the provisions of paragraph *(a)* liable for anything done by any other person, that other person shall also be liable as if he were the licence holder.

(3) In any prosecution for an offence referred to in subsection (1), an allegation in the charge concerned that-

*(a)* any goods with which a business was carried on or which were used in connection with a business were or were not of a particular kind, class, type or description;

*(b)* any place is situate in a particular area;

*(c)* any person was in control of a business or was a director, manager, employee or agent of a licence holder,

shall be presumed to be correct unless the contrary is proved.

(4) A fine imposed or bail estreated in respect of an offence under subsection (1), shall accrue-

*(a)* where the offence was committed within the area of jurisdiction of a local authority, to that local authority;

*(b)* in any other case, to the Administrator concerned.

[Date of commencement of s. 5: in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

**6 Regulations**

(1) An Administrator may make regulations for his province regarding-

*(a)* the attainment of the objects of sections 2 and 3, including, without prejudice to the generality of the aforegoing-

(i) the constitution of any body appointed as a licensing authority;

(ii) the powers, duties and functions of licensing authorities;

(iii) applications that are required or permitted to be made for the purposes of the said sections;

(iv) the issuing, amendment, suspension, withdrawal and transfer of licences;

(v) the issuing of duplicates of licences;

(vi) appeals in terms of section 3, including the referral of appeals to appeal committees, and the constitution, functions and procedures, and the legal effect of findings, of such committees;

(vii) the liability of any person for reasonable expenses in respect of inspections or the performance of any other act in relation to any matter specified in this paragraph;

(viii) the appointment of inspectors, and their powers, duties and functions;

(ix) the provision of administrative services to licensing authorities;

(x) the delegation or assignment by a licensing authority of its powers or duties;

(xi) any matter which in terms of this Act is required or permitted to be prescribed by regulation;

*(b)* (i) the disposal of any goods, receptacle, vehicle or movable structure removed and impounded as contemplated in section 6A (1) *(d)* (ii);

(ii) the liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;

[Para. *(b)* substituted by s. 3 (1) *(a)* of Act 186 of 1993 (wef 29 December 1993).]

*(c)* in connection with any matter contemplated in paragraph *(a)*, the powers, duties and functions of local authorities in relation to any such matter, including the power to make by-laws in respect thereof and so to enact, subject to the provisions of this Act, such penal, differential and exempting provisions as may be deemed necessary.

[Para. *(c)* substituted by s. 3 (1) *(b)* of Act 186 of 1993 (wef 29 December 1993).]

(2) Different regulations may be made in respect of different businesses, areas or local authorities.

(3) A regulation may prescribe penalties not exceeding a fine of R1 000 or imprisonment for a period of three months for any contravention of or failure to comply with its provisions.

(4) *(a)* The Administrator shall, not less than one month before promulgating a regulation under subsection (1), cause a draft of the regulation to be published in the *Official Gazette*, together with a notice declaring his intention to issue such a regulation and inviting interested persons to furnish him with comments thereon or representations in connection therewith.

*(b)* If the Administrator determines upon any alteration on a draft regulation so published, as a result of comments or representations furnished to him in respect thereof, it shall not be necessary to publish the alteration in terms of this subsection before the amended draft is promulgated as a regulation.

[Sub-s. (4) substituted by s. 3 (1) *(c)* of Act 186 of 1993 (wef 29 December 1993).]

(5) The provisions of any law which warrants the seizure of articles, including Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall not apply in respect of the seizure of anything-

*(a)* which is concerned in or suspected to be concerned in the commission of an offence-



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(i) in terms of this Act or in terms of a by-law contemplated in section 6A (1); and

[Sub-para. (i) substituted by s. 3 (1) *(d)* of Act 186 of 1993 (wef 29 December 1993).]



(ii) relating to the carrying on of the business of street vendor, pedlar or hawker;

*(b)* which may afford evidence of the commission or suspected commission of such an offence; or

*(c)* which is intended to be used or is suspected to be intended to be used in the commission of such an offence.

[Date of commencement of sub-s. (5): in Natal: 1 July 1992; in the Cape Province: 28 August 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(6) A regulation shall in the province concerned have legal effect as if it were a proclamation issued by the Administrator under section 14 (2) *(a)* of the Provincial Government Act, 1986 (Act 69 of 1986).

**6A Powers of local authority**

(1) *(a)* A local authority may, with the approval of the Administrator, make by-laws regarding-

(i) the supervision and control of the carrying on of the business of street vendor, pedlar or hawker;

(ii) the restriction of the carrying on of such business-

*(aa)* in a garden or park to which the public has a right of access;

*(bb)* on a verge as defined in section 1 of the Road Traffic Act, 1989 (Act 29 of 1989), contiguous to-

(A) a building belonging to, or occupied solely by, the State or the local authority concerned;

(B) a church or other place of worship;

(C) a building declared to be a national monument under the National Monuments Act, 1969 (Act 28 of 1969);

*(cc)* in an area declared or to be declared under subsection (2) *(a)*;

(iii) the prohibition of the carrying on of such business-

*(aa)* in a garden or park as contemplated in subparagraph (ii) *(aa)*;

*(bb)* on a verge so defined as contemplated in subparagraph (ii) *(bb)*;

*(cc)* in an area declared or to be declared under subsection (2) *(a)*;

*(dd)* at a place where-

(A) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;

(B) it causes an obstruction to vehicular traffic; or

(C) it substantially obstructs pedestrians in their use of a sidewalk as defined in section 1 of the Road Traffic Act, 1989;

*(ee)* on a verge so defined contiguous to a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, pedlar or hawker concerned, without the consent of that person;

*(ff)* on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.

*(b)* A by-law made under this subsection, other than a by-law contemplated in paragraph *(a)* (ii), shall not-

(i) restrict the carrying on of the business of street vendor, pedlar or hawker to-

*(aa)* specified hours or places; or

*(bb)* specified goods or services;

(ii) impose a restriction or requirement in relation to a street vendor, pedlar or hawker that is not in terms of any other by-law or regulation of the local authority concerned imposed in relation to a person carrying on business in the same goods and services on fixed premises: Provided that this subparagraph shall not prevent the making of a by-law which is necessitated by reason of the business concerned being carried on elsewhere than on fixed premises.

*(c)* No by-law made under this subsection shall-

(i) require a street vendor, pedlar or hawker to hold a licence, permit, authority, certificate or approval in respect of such business: Provided that a by-law may prohibit a person from carrying on such business on any stand or in any area contemplated in subsection (3) *(b)* if he is not in possession of proof that he has hired such stand or area from the local authority concerned or that it has otherwise been allocated to him;

(ii) prohibit the carrying on of such business-

*(aa)* within a specified distance from any specified place or point;

*(bb)* at any place for longer than a specified period;

*(cc)* if the business concerned is not periodically moved from place to place;

(iii) protect any person against trade competition, except to the extent contemplated in paragraph *(a)* (iii) *(ee)*.

*(d)* A by-law made under this subsection-

(i) may, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding three months;

(ii) may provide for the removal and impoundment by an officer of any goods, receptacle, vehicle or movable structure-

*(aa)* which he reasonably suspects is being used or intended to be used or has been used in or in connection with the carrying on of the business of street vendor, pedlar or hawker; and

*(bb)* which he finds at a place where in terms of a by-law under subsection (1) *(a)* (ii) or (iii), the carrying on of such business is restricted or prohibited and which, in his opinion, constitutes an infringement of such by-law,

whether or not such goods, receptacle, vehicle or movable structure is in the possession or under the control of any person at the time of such removal or impoundment.

(2) *(a)* A local authority may, subject to the provisions of paragraphs *(b)* up to and including *(j)*, by resolution declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendor, pedlar or hawker may be restricted or prohibited.

*(b)* A motion that steps be taken to declare an area under this subsection shall be dealt with at a meeting of the local authority.

*(c)* Before such a motion is adopted, the local authority shall have regard to the effect of the presence of a large number of street vendors, pedlars or hawkers in that area and shall consider whether-

(i) more effective supervision or control in that area, including negotiations with any person carrying on in that area the business of street vendor, pedlar or hawker or their representatives, will make such declaration unnecessary; and

(ii) the intended restriction or prohibition will drive out of business a substantial number of street vendors, pedlars or hawkers.

*(d)* If such a motion is adopted the local authority shall cause a plan to be prepared showing the position of the area concerned.

*(e)* On completion of the said plan the local authority shall cause to be published in a newspaper circulating in the area of jurisdiction of that local authority, a notice setting out its intention to effect the restriction or prohibition concerned as well as its reasons therefor, stating that the said plan is open for inspection at a place and during the hours mentioned in the notice and calling upon any person who has any objection to the intended restriction or prohibition to submit in writing to the local authority within a period mentioned in the notice, which



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period shall not be shorter than 21 days following the day upon which the notice appeared in the newspaper, such objection or objections.

*(f)* The local authority shall, at least 21 days before the last day on which objections may be submitted in terms of such notice, cause a copy of the said notice to be displayed at a suitable place in or near the area concerned.

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*(g)* The local authority shall consider every objection submitted in terms of paragraph *(e)* or *(f)* and may thereafter resolve on the declaration of the area concerned.

*(h)* The local authority shall cause the declaration to be published in the *Official Gazette*, and such declaration shall take effect on the date of such publication.

*(i)* The local authority shall forthwith after the publication referred to in paragraph *(h)*, submit to the Administrator a copy of the plan of the area, the notice published in the newspaper in terms of paragraph *(e)*, the notice published in the *Official Gazette* in terms of paragraph *(h)* and all objections received, together with its comments thereon.

*(j)* The Administrator may within a period of 60 days after such submission and after consultation with the local authority concerned, by notice in the *Official Gazette* amend or revoke the declaration concerned.

*(k)* Notwithstanding the provisions of section 17C (2) of the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983), a local authority shall not authorize any committee of, or any officer or employee in the service of, the local authority to perform any duty assigned to the local authority by or under paragraph *(b)*, *(c)* or *(g)*.

(3) Notwithstanding the provisions of any other law, a local authority may-

*(a)* by resolution, after compliance *mutatis mutandis* with the provisions of subsection (2) *(b)* up to and including *(h)*, lease any verge as defined in section 1 of the Road Traffic Act, 1989, or any portion thereof, to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier;

*(b)* (i) set apart by resolution and demarcate stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority or on any other property in the occupation and under the control of the local authority; and

(ii) in like manner extend, reduce or disestablish any such stand or area;

*(c)* by agreement let or otherwise allocate any stand or area demarcated under paragraph *(b)* (i) or otherwise established for such purposes.

(4) *(a)* An Administrator may, in respect of any area outside the area of jurisdiction of a local authority-

(i) make regulations regarding supervision and control of the carrying on of the business of street vendor, pedlar or hawker, the restriction on the carrying on of such business as referred to in subsection (1) *(a)* (ii) and the prohibition of the carrying on of such business as referred to in subsection (1) *(a)* (iii), and the provisions of subsection (1) *(b)*, *(c)* and *(d)* shall *mutatis mutandis* apply in respect of such regulations;

(ii) subject to the provisions of paragraphs *(c)* and *(d)*, declare any place in such area to be an area in which the carrying on of such business may be restricted or prohibited;

(iii) lease any verge as referred to in subsection (3) *(a)*, or any portion thereof, to the owner or occupier of the contiguous land on the condition so referred to;

(iv) set apart and demarcate stands and areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the Administrator or the Provincial Administration concerned or on any other property in the occupation and under the control of the Administrator or such Provincial Administration and in like manner extend, reduce or disestablish any such stand or area so set apart or demarcated;

(v) by agreement let or otherwise allocate any stand or area demarcated under subparagraph (iv) or otherwise established for such purposes.

*(b)* Different regulations may be made under paragraph *(a)* (i) in respect of different areas.

*(c)* Before the Administrator makes a declaration as contemplated in paragraph *(a)* (ii), he shall-

(i) have regard to the effect referred to in subsection (2) *(c)* and consider the factors contemplated in subsection (2) *(c)* (i) and (ii);

(ii) cause a plan to be prepared as referred to in subsection (2) *(d)*;

(iii) cause a notice to be published as referred to in subsection (2) *(e)*;

(iv) cause a notice to be displayed as referred to in subsection (2) *(f)*;

(v) consider every objection submitted in terms of paragraphs (iii) and (iv).

*(d)* After the Administrator has made such declaration, he shall cause it to be published in the *Official Gazette*, and such declaration shall take effect on the date of such publication.

[S. 6A inserted by s. 4 of Act 186 of 1993 (wef 29 December 1993).]

**7 Repeal and amendment of laws**

(1) Subject to the provisions of subsections (2), (3), (4) and (5)-

*(a)* the provisions of any ordinance of a province in relation to an institution or body referred to in section 84 (1) *(f)* of the Provincial Government Act, 1961 (Act 32 of 1961), are hereby repealed in so far as they confer a power to make by-laws or regulations prohibiting the carrying on of any business unless a licence, permit, authority, certificate or approval has been issued or granted in respect of the business concerned;

*(b)* the laws mentioned in Schedule 3 are hereby repealed or amended to the extent indicated in the third column of that Schedule.

(2) The repeal or amendment by subsection (1) of any particular law shall take effect in a province on a date determined by the Administrator by proclamation in the *Official Gazette*.

(3) Different dates may under subsection (2) be so determined in respect of different laws, different provisions of such laws, different areas of jurisdiction of different local authorities, or different defined areas.

(4) An Administrator may in any such proclamation enact such transitional provisions and savings as he may in connection with any particular law or provision thereof, or any regulation or by-law made thereunder, deem necessary.

(5) The amendment of a provision of an ordinance of a province by subsection (1) shall not affect the powers conferred upon the Administrator by section 14 (2) *(a)* of the Provincial Government Act, 1986 (Act 69 of 1986), in relation to the amendment, repeal or substitution of that or any other provision of that ordinance.

**8 Short title and commencement**

(1) This Act shall be called the Businesses Act, 1991.

(2) Subsections (3) up to and including (11) of section 2, and sections 3, 5 and 6 (5), shall come into operation in a province on a date fixed by the State President, after consultation with the Administrator, by proclamation in the *Gazette*.

(3) Different dates may under subsection (2) be fixed in respect of different provisions of this Act, different areas of jurisdiction of different local authorities, or different defined areas.

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## Schedule 1
## BUSINESSES IN RESPECT OF WHICH A LICENCE IS REQUIRED

(Section 2)

[Schedule 1 amended by s. 5 of Act 186 of 1993 (wef 29 December 1993) and by s. 34 of Act 65 of 1996 (wef 16 January 1998).]

**Item 1: Sale or supply of meals or perishable foodstuffs**

(1) The carrying on of business by the sale or supply to consumers of-

*(a)* any foodstuff in the form of meals for consumption on or off the business premises; or

*(b)* any perishable foodstuff.

(2) For the purposes of subitem (1) **'perishable foodstuff'** means any foodstuff or category of foodstuffs declared by an Administrator by notice in the *Official Gazette* to be a perishable foodstuff in the province concerned for the purposes of this item.

[Subitem (2) substituted by s. 5 of Act 186 of 1993 (wef 29 December 1993).]

**Item 2: Provision of certain types of health facilities or entertainment**

The carrying on of business by-

*(a)* providing turkish baths, saunas or other health baths;

*(b)* providing massage or infra-red treatment;

*(c)* making the services of an escort, whether male or female, available to any other person;

*(d)* keeping three or more mechanical, electronic or electrical contrivances, instruments, apparatus or devices which are designed or used for the purpose of the playing of any game or for the purpose of recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disc therein or in an appliance attached thereto or in any other manner;

*(e)* keeping three or more snooker or billiard tables;

*(f)* keeping or conducting a night club or discothèque;

*(g)* keeping or conducting a cinema or theatre;

*(h)* conducting adult premises referred to in section 24 of the Films and Publications Act, 1996.

[Para. *(h)* added by s. 34 of Act 65 of 1996.]

**Item 3: Hawking in meals or perishable foodstuffs**

(1) The carrying on of business, whether as principal, employee or agent, by selling any foodstuff in the form of meals or any perishable foodstuff-

*(a)* which is conveyed from place to place, whether by vehicle or otherwise;

*(b)* on a public road or at any other place accessible to the public; or

*(c)* in, on or from a movable structure or stationary vehicle,

unless the business is covered by a licence for a business referred to in item 1 of this Schedule.

(2) For the purposes of subitem (1) **'perishable foodstuff'** means any foodstuff or category of foodstuffs declared under item 1 (2) of this Schedule to be a perishable foodstuff.

## Schedule 2
## BUSINESSES EXCLUDED FROM BUSINESSES REFERRED TO IN SCHEDULE 1

1. A business which is carried on by the State or a local authority.

2. A business which is carried on by a charitable, religious, educational, cultural or agricultural association, organization or institution of a public nature, if all profits derived from the business are devoted entirely to the purposes of that or any other such association, organization or institution.

3. In the case of a business referred to in item 1 (1) of Schedule 1, such a business which is carried on-

*(a)* by a social, sports or recreation club which is a non-proprietary club and restricts the business to the sale or supply to its members and their guests of foodstuffs for consumption on or in the business premises;

*(b)* by or on behalf of an employer for an employee as such of the employer.

4. A business referred to in item 1 (1) *(a)* of Schedule 1, if the meals concerned are prepared and sold in a private dwelling.

5. In the case of a business referred to in item 1 (1) *(b)* of Schedule 1, the sale of a perishable foodstuff referred to in that item, by a person who belongs to a category of persons which the Minister, in the relevant notice under item 1 (2) of that Schedule, has exempted from the provisions of section 2 (3) of this Act, read with the said item 1 (1) *(b)*, in relation to the perishable foodstuff concerned.

## Schedule 3
## LAWS REPEALED OR AMENDED

(Section 7)

[Schedule 3 amended by s. 93 (1) of Act 93 of 1996.]

**[NB:** The dates of commencement in the various provinces of the amendment or repeal of the laws mentioned in this Schedule are as follows: 1 January 1992 in the Cape Province (Administrator's Proclamation 83 of 1991 in Cape *Official Gazette* 4723 of 15 November 1991), 1 July 1993 in the Orange Free State (Administrator's Proclamation 20 of 1993 in OFS *Official Gazette* 27 of 25 June 1993), 1 April 1994 in Natal (Administrator's Proclamation 7 in Natal *Official Gazette* 4952 of 24 February 1994), and 25 April 1994 in the Transvaal (Administrator's Proclamation 29 in Tvl *Official Gazette* 4992 of 13 April 1994).**]**

**[NB:** Schedule 3 has been amended by s. 10 of the Transformation of Certain Rural Areas Act 94 of 1998, a provision which will be put into operation by proclamation.**]**

| No. and year | Title | Extent of repeal or amendment |
|---|---|---|
| **Cape of Good Hope** | | |
| Ordinance 16 of 1976 | Shop Hours Ordinance, 1976 | **1** Amends section 1, as follows: paragraph *(a)* inserts the definition of 'hawker'; paragraph *(b)* deletes the definition of 'Licences Ordinance'; paragraph *(c)* deletes the definition of 'public holiday'; paragraph *(d)* substitutes paragraphs *(a)* and *(b)* of the definition of 'shop'; and paragraph *(e)* deletes the definition of 'weekday'.<br><br>**2** Amends section 4, as follows: paragraph *(a)* substitutes subsection (1) *(a)*; paragraph *(b)* deletes |



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| | | |
|---|---|---|
| | | subsection (1) *(b)*, *(c)*, *(d)* and *(e)*; and paragraph *(c)* substitutes subsection (2).<br><br>**3** Repeals sections 5 and 6.<br><br>**4** Substitutes section 7.<br><br>**5** Repeals sections 8, 9 and 10.<br><br>**6** Amends section 11, as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)*; paragraph *(b)* substitutes subsection (1) *(b)*; paragraph *(c)* inserts subsection (1) *(bA)*; paragraph *(d)* substitutes subsection (1) *(eA)*; paragraph *(e)* deletes subsection (3); and paragraph *(f)* deletes subsection (5).<br><br>**7** Amends section 13 (2) by substituting the words preceding paragraph *(a)*.<br><br>**8** Repeals section 14.<br><br>**9** Amends section 20 by deleting subsections (2), (4) and (5). |
| Ordinance 17 of 1981 | Licences Ordinance, 1981 | Repeals the whole. |
| Ordinance 12 of 1985 | Licences Amendment Ordinance, 1985 | Repeals the whole. |
| Ordinance 19 of 1986 | Licences Amendment Ordinance, 1986 | Repeals the whole. |
| **Natal** | | |
| Act 24 of 1878 | Law to provide for the better Observance of the Lord's Day, commonly called Sunday | Repeals the whole. |
| Ordinance 11 of 1973 | Licences and Business Hours Ordinance, 1973 | **1** Amends section 1 by deleting all the definitions, except the definitions of 'Administrator', 'business hours', 'closed', 'closed hours and open hours', 'goods' and 'shop'.<br><br>**2** Repeals Chapters II to V inclusive.<br><br>**3** Amends section 30, as follows: paragraph *(a)* substitutes the words preceding paragraph *(a)*; and paragraph *(b)* deletes paragraph *(l)*.<br><br>**4** Amends section 31 by substituting subsection (1).<br><br>**5** Repeals section 33.<br><br>**6** Amends section 34 by substituting subsection (1).<br><br>**7** Repeals sections 36, 37 and 38.<br><br>**8** Amends section 39, as follows: paragraph *(a)* deletes subsection (2); paragraph *(b)* amends subsection (3); and paragraph *(c)* deletes subsection (6).<br><br>**9** Repeals sections 40 and 41.<br><br>**10** Amends section 42 by deleting subsections (2), (3) and (4).<br><br>**11** Repeals sections 43, 44 and 45.<br><br>**12** Amends section 46 by deleting subsections (1) and (3).<br><br>**13** Amends section 48 by deleting subsections (1) and (2).<br><br>**14** Repeals sections 49 and 50.<br><br>**15** Amends section 52 by deleting the words 'Licences and'. |



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| | | |
|---|---|---|
| | | **16** Repeals Schedule I. |
| | | **17** Amends the long title. |
| Ordinance 22 of 1985 | Statutory Bodies (Periods of Office) Ordinance, 1985 | Repeals section 8. |
| **Orange Free State** | | |
| Ordinance 19 of 1952 | Shop Hours Ordinance, 1952 | **1** Amends section 1, as follows: paragraph *(a)* substitutes the definition of 'hawker'; paragraph *(b)* deletes the definition of 'licence'; and paragraph *(c)* substitutes the definition of 'normal trading times'. |
| | | **2** Repeals section 4. |
| | | **3** Substitutes the schedule set out in the annexure to this Schedule for the first schedule. |
| Ordinance 8 of 1972 | Licences Ordinance, 1972 | Repeals the whole. |
| Ordinance 14 of 1974 | Licences Amendment Ordinance, 1974 | Repeals the whole. |
| Ordinance 7 of 1977 | Licences Amendment Ordinance, 1977 | Repeals the whole. |
| Ordinance 5 of 1981 | Licences Amendment Ordinance, 1981 | Repeals the whole. |
| Ordinance 8 of 1984 | Licences Amendment Ordinance, 1984 | Repeals the whole. |
| Ordinance 14 of 1986 | Licences Amendment Ordinance, 1986 | Repeals the whole. |
| **Transvaal** | | |
| Ordinance 19 of 1974 | Licences Ordinance, 1974 | Repeals the whole. |
| Ordinance 17 of 1979 | Licences Amendment Ordinance, 1979 | Repeals the whole. |
| Ordinance 10 of 1980 | Licences Amendment Ordinance, 1980 | Repeals the whole. |
| Ordinance 5 of 1982 | Licences Amendment Ordinance, 1982 | Repeals the whole. |
| Ordinance 12 of 1985 | Licences Amendment Ordinance, 1985 | Repeals the whole. |
| Ordinance 8 of 1986 | Shops Hours Ordinance, 1986 | **1** Amends section 1, as follows: paragraph *(a)* deletes the definition of 'auctioneer'; paragraph *(b)* substitutes the definition of 'hawker'; paragraph *(c)* substitutes the definition of 'normal trading times'; and paragraph *(d)* deletes the definition of 'public holiday'. |
| | | **2** Amends section 6, as follows: paragraph *(a)* deletes subsection (1) *(b)*; paragraph *(b)* substitutes in subsection (1) the words following paragraph *(b)*; paragraph *(c)* substitutes in subsection (2) the words preceding paragraph *(a)*; paragraph *(d)* deletes subsection (2) *(b)*; and paragraph *(e)* deletes subsection (4). |
| | | **3** Amends section 7 by deleting subsections (2), (3) and (4). |
| | | **4** Repeals section 8. |
| | | **5** Amends section 9, as follows: paragraph *(a)* amends subsection (1); paragraph *(b)* amends subsection (2); and paragraph *(c)* deletes subsection (3). |
| | | **6** Amends section 11 (1), as follows: paragraph *(a)* substitutes paragraph *(c)*; and paragraph *(b)* deletes paragraph *(d)*. |
| | | **7** Amends section 14 (1) by deleting paragraph *(e)*. |



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| | | |
|---|---|---|
| | | **8** Amends Schedule I by amending item 9. |
| | | **9** Amends Schedule II by amending item 3. |
| **Republic** | | |
| Act 8 of 1917 | Lord's Day Act (Natal) Amendment Act, 1917 | Repeals the whole. |
| Act 38 of 1927 | Black Administration Act, 1927 | Amends section 30 (2) by deleting paragraph *(o)*. |
| Act 101 of 1965 | Medicines and Related Substances Control Act, 1965 | **1** Amends section 22A, as follows: paragraph *(a)* substitutes subsection (1); paragraph *(b)* deletes subsection (2); and paragraph *(c)* substitutes in subsection (3) the words preceding the proviso. |
| | | **2** Amends section 35 (1), as follows: paragraph *(a)* deletes paragraph (xiii); and paragraph *(b)* substitutes paragraph (xvi). |
| Act 65 of 1976 | Financial Relations Act, 1976 | **1** Repeals section 12. |
| | | **2** Amends Schedule 1 by deleting paragraph 7. |
| | | **3** Amends Schedule 2 by substituting paragraph 8. |
| Act 102 of 1982 | Black Local Authorities Act, 1982 | **1** Amends section 56 (1) by deleting paragraph *(oA)*. |
| | | **2** Amends the Schedule by amending item 14. |
| Act 9 of 1987 | Rural Areas Act (House of Representatives), 1987 | **1** Amends section 26 by deleting paragraph *(m)*. |
| | | **2** Amends section 27, as follows: paragraph *(a)* amends paragraph 14; paragraph *(b)* deletes paragraphs (15) and (16); paragraph *(c)* substitutes paragraph (26); and paragraph *(d)* deletes paragraph (59). |
| | | **3** Repeals section 39. |
| **[NB:** This item has been deleted by s. 10 of the Transformation of Certain Rural Areas Act 94 of 1998, a provision which will be put into operation by proclamation.**]** | | |
| Act 29 of 1989 | ..... | ..... |
| [Item deleted by s. 93 (1) of Act 93 of 1996.] | | |
| Proclamation 208 of 1989 | Removal of certain licensing and shop hours restrictions on economic activities | Repeals the whole. |

**ANNEXURE**
**(Substitution of First Schedule to Ordinance 19 of 1952, OFS)**
[Not reproduced.]

## BUSINESSES AMENDMENT ACT 186 OF 1993[1]

[ASSENTED TO 14 DECEMBER 1993] [DATE OF COMMENCEMENT: 29 DECEMBER 1993]

(see s. 7 of this Act)

*(Afrikaans text signed by the Acting State President)*

**published in**

*GG* 15374 of 29 December 1993

**ACT**

**To amend the Businesses Act, 1991, so as to amend a certain definition; to make further provision regarding the grounds on which applications for certain licences may be refused; to further regulate the obligation of a licensing authority to furnish reasons for certain decisions; to further regulate the power of an Administrator to make regulations; and to empower a local authority to make by-laws regarding the carrying on of the business of street vendor, pedlar or hawker; to amend certain laws; and to provide for matters connected therewith.**



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BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

1 This Act has been updated to include all available historical commencement details



**1**

Amends section 1 of the Businesses Act 71 of 1991 by substituting the definition of 'regulation'.

**2**

Amends section 2 of the Businesses Act 71 of 1991, as follows: paragraph *(a)* inserts subsection (4) *(aA)*; paragraph *(b)* substitutes subsection (6); paragraph *(c)* substitutes subsection (9) *(d)* (ii); and paragraph *(d)* substitutes subsection (10).

**3**

(1) Amends section 6 of the Businesses Act 71 of 1991, as follows: paragraph *(a)* substitutes subsection (1) *(b)*; paragraph *(b)* substitutes subsection (1) *(c)*; paragraph *(c)* substitutes subsection (4); and paragraph *(d)* substitutes subsection (5) *(a)* (i).

(2) The regulations made by the Administrator of the Cape of Good Hope under section 6 (1) *(b)* of the Businesses Act, 1991 (Act 71 of 1991), as it existed immediately before the commencement of this section, with the exception of regulations made under section 6 (1) *(b)* (ii) or (iii) of the said Act as it so existed, shall, in so far as they apply-

(i) in the area of a local authority, be deemed to have been made under section 6A (1) of the said Act;

(ii) outside such an area, be deemed to have been made under section 6A (4) *(a)* (i) of the said Act,

and shall remain in force until amended or repealed by the local authority or Administrator concerned under the said subsection [sic] 6A (1) or (4) *(a)* (i), as the case may be.

**4**

Inserts section 6A in the Businesses Act 71 of 1991.

**5**

Amends Schedule 1 of the Businesses Act 71 of 1991 by substituting item 1 (2).

**6 Repeal or amendment of certain laws, and savings**

(1) The laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) By-laws or regulations made under a provision of a law repealed by, or deleted by virtue of an amendment in terms of, subsection (1) shall, notwithstanding such repeal or deletion, remain in force-

*(a)* until the date on which such by-laws or regulations are repealed or substituted by by-laws or regulations made under section 6 of the Businesses Act, 1991 (Act 71 of 1991), by the local authority or Administrator concerned; or

*(b)* until a date six months after the commencement of this Act,

whichever is the earlier date.

**7 Short title**

This Act shall be called the Businesses Amendment Act, 1993.

**Schedule**
**LAWS REPEALED OR AMENDED**

(Section 6)

| No. and year | Title | Extent of repeals or amendments |
|---|---|---|
| *Natal* | | |
| Ordinance 11 of 1973 | Licences and Business Hours Ordinance, 1973 | Amends section 45 (1) by deleting paragraph *(f)*. |
| Ordinance 25 of 1974 | Local Authorities Ordinance, 1974 | Amends section 266 (1) *(u)* by deleting subparagraph (viii). |
| *Orange Free State* | | |
| Ordinance 8 of 1962 | Local Government Ordinance, 1962 | Amends section 146 by deleting subsection (19). |
| Ordinance 8 of 1972 | Licences Ordinance, 1972 | Amends section 38 (1) by deleting paragraphs *(n)* and *(o)*. |
| *Transvaal* | | |
| Ordinance 17 of 1939 | Local Government Ordinance, 1939 | **1** Repeals section 65. |
| | | **2** Amends section 79 (14) by deleting paragraph *(g)*. |
| | | **3** Amends section 80 by deleting subsection (73). |
| Ordinance 19 of 1974 | Licences Ordinance, 1974 | **1** Amends section 61 (1) by deleting paragraph *(k)*. |
| | | **2** Amends section 63 (1) by deleting paragraph *(b)*. |



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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Before the Honourable …….

On 26 May 2020

**Case Number:**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

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**DRAFT ORDER**

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Having heard counsel for the Applicant, the following order is made:

1. A declaratory order is issued to the effect that the sixth respondent has no authority to issue "*Essential Services Permits / Certificates*" to enable any company or close corporation to conduct emergency or permitted service in terms of the Regulation issued under the Disaster Management Act, Act 57 of 2002 and published as Government Notice R480 on 29 April 2020, ("the Regulations");

2. A declaratory order is issued that the South African Police Service and any other enforcement agency mandated to enforce the Regulations, have no authority to demand from any person, an "*Essential/Permitted Service Permits / Certificates*" issued by the Sixth Respondent;

3. A declaratory order is issued to the effect that the Respondents have no authority to direct any other Organ of State to issue "*Essential/Permitted Service Permits / Certificates*" pursuant to the National State of Disaster;

4. A declaratory order is issued to the effect that no enforcement agency, mandated to enforce the Regulations issued pursuant to the Declaration of a National State of Disaster, including the South African Police Service, may require an permit save those provided for in the Regulations in order to render a necessary or permitted service as described therein;

5. The Directions issued by the Seventh Respondent on 12 May 2020, under Government Notice R522, in Government Gazette 34406 are declared illegal and invalid;

6. The 6th and 7th Respondents are ordered to pay the costs of the application, including the costs occasioned by the employment of senior counsel.

BY THE COURT

REGISTRAR

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**CASE NO: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | **APPLICANT** |
| **and** | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | **1ST RESPONDENT** |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | **2ND RESPONDENT** |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | **3RD RESPONDENT** |
| **THE MINISTER OF POLICE** | **4TH RESPONDENT** |
| **THE NATIONAL COMMISSIONER OF POLICE** | **5TH RESPONDENT** |
| **THE COMMISSION FOR INTERLLECTUAL PROPERTY AND COMPANIES** | **6TH RESPONDENT** |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | **7TH RESPONDENT** |
| **THE NATIONAL COMMAND CENTRE** | **8TH RESPONDENT** |
| **THE MINISTER OF HEALTH** | **9TH RESPONDENT** |

**FILING NOTICE**

**DOCUMENT FILED** : **ANSWERING AFFIDAVIT ON BEHALF OF THIRD AND SEVENTH RESPONDENTS**

: **UNSIGNED CONFIRMATORY AFFIDAVIT ON BEHALF OF 1st ,2nd ;4th AND 5th RESPONDENTS**

**FILED BY** :

THE RESPONDENT'S ATTORNEY
**THE STATE ATTORNEY**
SALU BUILDING, GROUND FLOOR
316 THABO SEHUME STREET
P.O. BOX X91
PRETORIA
**REF: 1603/2020/Z42/DM**
TEL: (012) 309-1572/
Cell:0768926024
ENQ: T MUKASI
FAX: 086 406 6203
E-MAIL: TMukasi@justice.gov.za

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
**PRETORIA**

AND TO: **KRIEK WASSENAAR AND VENTER INC.**
APPLICANT'S ATTORNEYS
**1ST FLOOR, NOREX HOUSE, 79 RAUCHAVENUE**
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rohann@kriekprok.co.za
REF: P WASSENAAR/ QB0693

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
| **NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

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**RESPONDENTS' ANSWERING AFFIDAVIT**

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I, the undersigned,

**LIONEL OCTOBER**

state the following under oath:

MM

1 I am the Director General of Trade, Industry and Competition ("the Department"). The Minister of Trade, Industry and Competition ("the Minister") is cited as the third respondent in this application. I am duly authorised to depose to this affidavit on behalf of the Minister and the Department.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct. Where I rely on other respondents for information, their confirmatory affidavits will be filed together with this affidavit.

3 I depose to this affidavit on behalf of the respondents. The Minister of Small Business Development ("SBD") will also depose to an answering affidavit dealing with the Directions issued by her on 6 April 2020 and on 12 May 2020.

4 I have read the founding affidavit in this application, deposed to by Mr Pieter Jacobus le Roux. Any allegation in Mr Le Roux's affidavit, that is not dealt with specifically below, is denied.

5 I have structured this affidavit in four parts.

5.1 First, I deal with the issue of urgency. The respondents contend that the application is not urgent and ought to be struck from the roll.

5.2 Second, I deal with the applicant's lack of *locus standi* to bring this application.

NH

5.3 Third, I deal with the context within which the Companies and Intellectual Property Commission ("CIPC"), the sixth respondent, issues the certificates that are in issue in the application, and the role of the South African Police Service (SAPS) in that regard.

5.4 Finally, I deal with the remaining allegations in the affidavit of Mr Le Roux, to the extent required.

**Lack of urgency**

6 Mr Le Roux argues that this matter warrants an urgent hearing because "*the measures against which these proceedings are aimed, will by [the time a hearing in due course is held] have expired, with lasting damage to the rights of those affected by them.*"

7 This is not true for a number of reasons.

7.1 The measures against which the proceedings are aimed are: (a) the certificates issued by the CIPC; and (b) Directions issued by the Minister of SBD on 12 May 2020.

7.2 Since 25 March 2020, the applicant has been aware that certain businesses are encouraged to enter basic information online so that they can be issued (again online) with a certificate by the CIPC, indicating that they have registered to continue trading in terms of the applicable regulations during the lockdown.

7.3 It was also made clear in the Minister's announcement, on 26 March 2020, that a CIPC certificate does not constitute



NM

permission to operate during the lockdown, and that companies should be guided by the regulations in force as to whether their businesses fall within the categories of business permitted to operate.

7.4 On 16 April 2020, when the lockdown was extended to 30 April 2020, it was announced by Department that companies with CIPC certificates would be required to display new certificates which would be available for download from 16 April 2020 and would be sent to companies by the weekend. The Department also emphasised "*that possession of the CIPC certificate is still subject to the company fully complying with the applicable Lockdown Regulations and is a record of the company's details, and does not in itself constitute the right to continue operating during the period.*"

7.5 The applicant took no steps in March or April 2020 to challenge the issuing of the CIPC certificates, or the reliance placed by the SAPS on these certificates.

7.6 In addition, the first Directions issued by the Minister of SBD in terms of the Regulations of 18 March 2020 (annexure "C" to the affidavit of Mr Le Roux) were issued on 6 April 2020. A copy of the Directions of 6 April 2020 is annexed hereto, marked "**EP1**".

7.7 The applicant took no steps during April 2020 to challenge the first Directions issued by the Minister of SBD.

NM

7.8 The application was only issued on 18 May 2020, calling upon the respondents, if they intend to oppose, to notify the applicant's attorneys by close of business on 18 May 2020, and to file our answering affidavits by close of business on 19 May 2020.

7.9 No case is made out by the applicant as to why the application could not be brought in March or early April 2020, nor are any reasons put forward to explain why the applicant waited for more than seven weeks before launching this application.

7.10 Officials from the Department met with Mr Le Roux, and others who said that they represented Sakeliga, on 24 April 2020. The meeting was held over the video conferencing facility, Zoom, and was intended to establish a line of communication between Sakeliga and the Department, and to ensure that matters which required urgent attention could be addressed that way.

7.11 The Department has established similar platforms with other business organisations, as well as trade unions. Where such business organisations have felt that their members have been unfairly treated, the Department used these lines of communication to address issues of concern.

7.12 The Sakeliga representatives had this platform available to them, but they decided not to take the opportunity. Had they brought any issues to our attention the Department could have dealt with them in a collaborative manner.

NN

7.13 It is clear that the issue of the CIPC certificates is not an urgent one. If it could be put on hold for more than seven weeks, there is no reason why a hearing in due course could not afford the applicant substantial relief. Similarly, the issue of the Directions issued by the Minister of SBD is not urgent. In this instance, the application was launched six weeks after the Minister first issued Directions.

7.14 Furthermore, there is no reason why the respondents have had to be put under such pressure to file an answering affidavit.

7.15 The CIPC certificates and the Directions issued by the Minister of SBD do not affect the vested rights of those permitted to trade in terms of the Regulations. Anyone, who is permitted to trade in terms of the Regulations and who is unlawfully interfered with or unlawfully arrested by a member of the SAPS, will be entitled to sue for damages. If the Regulations do expire before a hearing in due course is held, an action for damages will not be affected.

7.16 It is not insignificant that the applicant has only managed to cite one example of alleged unlawful conduct on the part of a SAPS official.

8 There is no basis for this Court to entertain this application on an urgent basis. If there is any urgency (which is denied) then it is self-created. The respondents submit that the application ought to be struck from the roll for lack of urgency, with costs including the costs of two counsel.

NM

**Lack of *locus standi***

9 Mr Le Roux states that he is the Chief Executive Officer of the applicant, describing it as a non-profit company "*with a membership and donor base of 17 000 businesspeople, companies and business organisations, and a network of more than 40 000 subscribers.*"

10 Mr Le Roux has produced no evidence regarding the existence of the applicant, its founding documents, its membership and donor base, or its subscribers. There is no indication as to whom specifically its members, donors or subscribers are.

11 Furthermore, nothing is said about the applicant's constitutional make up, what powers are devolved upon Mr Le Roux and others in its structures, or on what basis it purports to act in the public interest. Nor is there any indication that Mr Le Roux is properly authorised, either to depose to an affidavit, or to institute this application, on behalf of the applicant.

12 I am advised that the applicant was required to establish its *locus standi* in its founding affidavit. It has not done so. The applicant therefore lacks *locus standi* to bring this application.

**The CIPC certificate**

13 In terms of the Regulations of 18 March 2020, the Minister was empowered to issue directions. On 19 March 2020, the Minister issued directions that are not relevant to this application (annexure "D" to the affidavit of Mr Le Roux). He was again empowered to issue directions in terms of the Regulations of 29 April 2020, a copy of which is annexed



MM

hereto, marked "EP2".

14 On 23 March 2020, the President announced that a full lockdown of economic and social activities would take effect from midnight on 26 March 2020, with exceptions for specified essential services. Regulations were subsequently drafted to give effect to this announcement.

15 On 25 March 2020, the Minister requested that the CIPC provide an on-line service to companies currently registered under the Companies Act, to register as essential services, for reasons as will be set out hereunder. As an undertaking of this size and magnitude needed to be put in place at short notice, the Minister took the view that it should not be put as an obligation on businesses and that a direction under the Regulations would therefore not be warranted. The Department spokesperson issued a media statement (annexure "H1" to the affidavit of Mr le Roux) to publicise the service, in which it was announced that businesses entitled to provide essential services under the Regulations of 18 March 2020 (as amended on 25 March 2020) would be required to apply to the CIPC for a certificate that would allow them to continue trading. After the statement had been issued, it was realised that the statement mistakenly stated that the CIPC certificate was required as proof that the business had been given government approval to trade.

16 The Minister therefore requested the issue of a further statement (annexure "H2" to the affidavit of Mr Le Roux), on 26 March 2020, to clarify the position. In that statement, it was made clear that possession of a CIPC certificate does not constitute permission to operate during the



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lockdown and that companies should be guided by the Regulations as to whether they are permitted to operate. Only those companies that were permitted by the Regulations to operate (essential services) were urged to register with the CIPC. The statement further noted: "it is not a requirement that companies complete registration before the lockdown begins".

17 On 27 March 2020, in a press briefing after the first day of the lockdown, the Minister further clarified the role of CIPC certificate. He indicated that a facility through the CIPC website (www.bizportal.gov.za) was introduced so that companies could register to indicate that they are essential services, and so that the Department could create a national list of essential services.

18 Already at that stage, more than 50 000 companies had registered their businesses as providers of essential services and goods through the lockdown period. These companies employ approximately 1.5 million workers in essential industries from food production and retail to cleaning materials, medical and pharmaceutical products, and other necessary products and transport.

19 In the same press briefing, the Minister further clarified that the registration portal is only for registered companies operating in South Africa. He indicated that Healthcare professionals registered with the Health Professions Council of South Africa (HPCSA), sole proprietors who provide essential goods and services (like spaza shops), and small-scale farmers would not register through the Bizportal website.

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20 At the start of the lockdown many companies, who provided essential services and were therefore permitted to operate, requested that they be able to log their details with Government. This was welcomed because it enabled the Minister and the Department to keep an accurate database of those companies that are supplying essential services. This was done in part to help identify companies in the supply of essential goods and services to the public during the lockdown, and thus provide the Department with the necessary information to assist in unblocking issues related to the supply of essential goods and services. There are more than 475 000 companies who have since registered on the database.

21 The CIPC certificate (annexure "J" to the affidavit of Mr Le Roux) makes it clear that possession of the certificate "*is still subject to the business complying with the definition of an Essential Service business in terms of the applicable Regulations.*" This is because all that the CIPC certificate certifies is "*that the business ... has registered as an Essential Service business during the lockdown period as announced by the President of the Republic on 23 March 2020.*" The CIPC certificate does not purport to authorise the business to operate. Compliance with the Regulations is still the only basis upon which companies are permitted to operate. This message also appears on the screen after a company has successfully entered the very basic information that is required for registration.

22 The CIPC certificate also serves as a guideline for SAPS officials and others to identify a business that is providing an essential service. The SAPS officials are required at all times to enforce the law, including the

Regulations promulgated during the lockdown. In the early stages of the lockdown, the Department played an important role in ensuring that SAPS officials and other enforcement officers understood which kinds of businesses were operating as essential services. The Department also worked closely with the business and labour representatives on unblocking issues relating to essential services to enable food and health supply-lines to be functional.

23 The process of obtaining a CIPC certificate was designed to be, and is, as simple as it can be. All a designated representative of a company, which provides an essential service, has to do is to enter certain basic information online, following which the CIPC certificate is issued. This happens automatically. Initially the certificate was only emailed to the designated recipient, however later a download option was also made available. The certificate can serve as *prima facie* proof to SAPS officials that the management of the business has determined that in their opinion, they are permitted by the Regulations to operate. SAPS officials are entitled to investigate further as to whether the business is permitted to operate.

24 When the lockdown was extended to 30 April 2020, the Department issued a further statement (annexure "K" to the affidavit of Mr Le Roux). It was made clear in the statement that companies which were already registered with the CIPC should display a new certificate as from Monday, 20 April 2020. There was nothing that these companies were required to do, other than replacing their existing certificate with the new certificate

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that would be emailed to them by the weekend. It was also stated that registered companies could download the new certificate from the *BizPortal* website as from 16 April 2020. Once again, officials of the SAPS would be told about the new certificate that companies would be displaying as *prima facie* proof that the management asserted that the Regulations permitted them to operate during the extended lockdown.

25 The statement stated clearly:

25.1 *"The department reminds the public that possession of the CIPC certificate is still subject to the company fully complying with the applicable Lockdown Regulations and is a record of the company's details, and does not in itself constitute the right to continue operating during the period."*

25.2 *"The CIPC certificate is a reference to the legal registration of the company in terms of the Companies Act, 2008 (Act No. 71 of 2008) and a record of registration to the CIPC. It does not give a firm or individual a right to trade if that company does not fall into an Essential Service as defined in the Lockdown Regulations."*

26 The CIPC continues to receive registration applications from companies that are permitted to operate in terms of the lockdown Regulations. To date, more than 475 000 companies have been issued CIPC certificates.

**The affidavit of Mr Le Roux**

27 I am advised that it is not necessary for me to deal expressly with each allegation in Mr Le Roux's affidavit. Where I do not deal expressly with an

allegation that is inconsistent with what I have stated elsewhere in this affidavit, I deny the allegation.

*Ad paragraph 7*

28 In addition to being responsible for the administration of the Competition Act 89 of 1998, the Minister has much broader responsibilities, which include all industrial activity in the Republic and our trade with international partners.

*Ad paragraph 12*

29 The National Coronavirus Command Centre ("NCCC") is not a juristic person and ought not to have been cited. It is a committee of Cabinet.

*Ad paragraph 14*

30 The respondents submit that the application ought to be dismissed with costs, including the costs of two counsel.

*Ad paragraphs 21 - 27*

31 To the extent that these paragraphs correctly reflect the applicable law, they are admitted.

32 The remaining allegations in these paragraphs are denied.

*Ad paragraph 36*

33 I submit that the ordinary grammatical meaning of "*direction*" includes "*control*", "*guidance*", "*leadership*" and "*order*".

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34 I deny the allegations in this paragraph.

*Ad paragraph 50*

35 The position was clarified in the public statement issued on 26 March 2020 (annexure "H2" to the affidavit of Mr Le Roux).

*Ad paragraphs 51 - 52*

36 The CIPC is an agency of the Department. One of its many functions is to maintain a data base of companies registered in South Africa.

37 I submit that the issuing of certificates, in the context described above, falls comfortably within its scope of activity.

*Ad paragraph 63*

38 Mr Le Roux has not provided any evidence of essential service providers who were unable to download a CIPC certificate, and who suffered harm as a result.

39 Where an essential service provider is unable, during the lockdown, to produce a CIPC certificate to a SAPS official, the service provider would have to furnish other proof that it provides essential services as defined in the Regulations.

40 Accordingly, the allegations in this paragraph are denied.

*Ad paragraph 64*

41 I submit that Mr Le Roux is conflating the CIPC certificate with the permit that is required to perform an essential service under alert level 5, and an

essential or permitted service under alert level 4.

42 Enterprises not registered as companies or close corporations, such as sole proprietors, only require a permit which is issued by the head of an institution, which could be issued to themselves and/or to the persons in their employ.

43 I therefore deny the allegations in this paragraph.

*Ad paragraphs 74 - 75*

44 I submit that Mr Le Roux is conflating the position of business owners and their employees. As I have stated, business owners are required to establish that they are entitled to operate under the Regulations, while employees of essential services providers are only required to possess a permit issued by the head of the institution.

45 I deny the remaining allegations in these paragraphs.

46 *Ad Annexure "N1"*

46.1 I am advised that it is improper to rely on media reports in lieu of evidence.

46.2 I cannot respond in court papers to media reports.

46.3 I therefore deny the allegations.

47 *Ad Annexure "N2"*

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47.1 The deponent does not state whether his service is provided only to essential service provides, and if so, why he did not inform the SAPS Captain that his laundry performs services to essential service providers.

47.2 If he was not performing such services, he would not have been entitled to operate under alert level 5 or 4.

*Ad paragraph 90*

48 I deny that the applicant has established a clear right to the relief sought in the Notice of Motion.

*Ad paragraph 91*

49 I deny that Mr Le Roux has adduced any evidence of an infringement of a clear right.

*Ad paragraph 92*

50 I deny that the applicant has no alternative remedy.

51 Most of the respondents only received notification of the offer to mediate when the application was served upon them. However, the Minister of SBD became aware of the offer when the letter of letter of 13 May 2020 was brought to her attention. The State Attorney recorded this in a letter to the applicant's attorneys, dated 19 May 2020, a copy of which is

annexed hereto, marked "**EP3**". In his letter of 19 May 2020, the State Attorney stated that the respondents accepted the offer of mediation.

52 The applicant's attorneys responded to the State Attorney in a letter of 20 May 2020, agreeing to mediation but attached specific conditions. A copy of the letter is annexed hereto, marked "**EP4**".

53 The State Attorney responded on 20 May 2020, indicating that he would communicate forthwith with the Office of the Solicitor General. A copy of that letter is annexed hereto, marked "**EP5**". On the same day, the State Attorney referred the matter to the Office of the Solicitor General. A copy of the referral is annexed hereto, marked "**EP6**".

54 On 22 May 2020, the Solicitor General confirmed that the matter has been referred to the Arbitration Foundation of South Africa ("AFSA") to facilitate the mediation. A copy of the email from the Solicitor General is annexed hereto, marked "**EP7**".

55 On 23 May 2020, the applicant's attorneys wrote to the State Attorney to state that their client is not prepared to continue with the mediation on the ground of alleged partiality on the part of the Solicitor General. A copy of the email from the applicant's attorneys, setting out their position, is annexed hereto, marked "**EP8**".

56 I am advised that the challenge to the mediation process is without any proper basis. It is still open to the applicant to embrace mediation as a

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means of resolving the issues that concern it. AFSA has confirmed this morning, 25 May 2020, that retired judges, Tuchten J and Bertelsmann J, are available, at no cost to the parties, to act as mediators. The applicant can choose which of these retired judges it wishes to act as mediator.

*Ad paragraph 93*

57 I submit that this Court ought to exercise its discretion by denying the relief sought. I am also advised that the interdict sought is unwarranted and framed in such wide terms that it seeks to prohibit the respondents and others from performing their duties.

**Conclusion**

58 The respondents request that this Court strike the urgent application from the roll with costs, including the costs of two counsel, alternatively that this Court dismiss the application with costs, such costs to include the costs of two counsel.

LIONEL OCTOBER

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 25th day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August

1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full names: NTEVHELENI F NDOU

Address:

Capacity:

NDOU NTEVHE ATTORNEYS
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ANNEXURE "EP1"



GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

NO. R. 460 06 APRIL 2020

**DIRECTIONS ISSUED IN TERMS OF REGULATION 10(8) OF THE REGULATIONS MADE UNDER SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002 (ACT NO. 57 OF 2002): MEASURES TO PREVENT AND COMBAT THE SPREAD OF COVID-19**

I, Ms Khumbudzo Ntshavheni, MP, the Minister of Small Business Development, in terms of regulation 10(8) of the Regulations published in Government Gazette No.43107, Government Notice No. 318 of 18 March 2020, and made in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), hereby issue the Directions set out in the Schedule hereto in order provide guidance on implementation of the provisions of essential goods and services.

MS KHUMBUDZO NTSHAVHENI, MP
MINISTER OF SMALL BUSINESS DEVELOPMENT
DATE:

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## SCHEDULE

**Definitions**

1. In these Directions, a word or expression bears the meaning assigned to it in the Regulations promulgated in Government Gazette No. 43107, Government Notice No.R318 of 18 March 2020 and in the Regulations promulgated in Government Gazette No. 43148, Government Notice No.398 of 25 March 2020, in terms of section 27(2) of the Disaster Management Act, 2002, and unless the context otherwise indicates—

**"lockdown Regulations"** means the regulations published in Government Gazette No. 43148, Government Notice No.398 of 25 March 2020

1.1 These Directions are issued in order to assist SMMEs operating grocery stores including the corner shops, spaza shops, fruit and vegetable stores, to comply with the lockdown Regulations. The Informal Food Traders as referred to in the Regulations are limited to Fruit and Vegetable informal traders and the *Langanas*, who operate in the Northern Cape and Western Cape.

1.2 In terms of the lockdown Regulations, all enterprises operating within the borders of the Republic of South Africa are expected to close during the lockdown period except for enterprises which are designated as providers of essential goods and services as per Annexure B to the lockdown Regulations.

1.3 All enterprises must ensure that the absolute minimum number of staff necessary to safely operate the enterprises are at work during the

lockdown period. Furthermore, employers are encouraged to provide transport for their employees during the lockdown period.

1.4 The grocery stores outlined in paragraph 1.1 above are permitted to operate during the lockdown period irrespective of the nationality of their owners provided that they adhere to the following:

1.4.1 All spaza shop owners and informal food traders must hold permits issued by their respective local municipalities allowing them to trade, in line with the provisions of the Business Act, 71 of 1991 as amended;

1.4.2 No person may stay overnight in a grocery store in contravention of the Food Safety and Health Standards;

1.4.3 Only the sale of foodstuff and basic necessities is permitted, grocery stores must not sell products or goods that are prohibited by the lockdown Regulations;

1.4.4 The grocery stores must uphold the health and hygiene requirements by:

1.4.4.1 Maintaining a social distance amongst customers and between the trader and customer of at least one metre;

1.4.4.2 Disinfecting and sanitising trading spaces in line with the Directions issued by the Department of Health;

1.4.5 Spaza shop owners and informal food traders currently trading without permits may apply for temporary permits, and in case of non-South African citizens, the business owner–

(a) must have been lawfully admitted into the Republic and must hold a valid passport with a visa issued by the Department of Home

Affairs in terms of section 10 of the Immigration Act, 2002 (Act No. 13 of 2002), authorising him or her to operate a business; or

(b) must alternatively, hold an asylum seeker's permit issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), which allows him or her to work. Permission to operate will be linked to the period covered by the asylum seeker's permit.

## 2. MANDATORY IDENTIFICATION REQUIRED BY STAFF WORKING DURING THE LOCKDOWN PERIOD

2.1 All staff must at all times carry a permit to perform essential services contemplated regulation 11(B)(3) of the lockdown Regulations.

2.2 A stamp or authorised signature on the permit contemplated in regulation 11(B)(3), to perform essential services, is acceptable.

All staff must at all times carry a positive photo identification such as an identity document, passport or permit, issued by the Department of Home Affairs.

## 3. CONTACT DETAILS IN THE EVENT OF SMALL BUSINESSES WISHING TO CLARIFY THEIR STATUS AS RENDERING ESSENTIAL SERVICES OR PROVIDING ESSENTIAL GOODS

3.1 SMMEs may contact the **Department of Small Business Development (DSBD)** on 0860 663 7867 for more information or alternatively send their queries to info@dsbd.gov.za

4.1 These Directions come into operation on the date of publication in the Government Gazette.

**Ms Khumbudzo Ntshavheni**

**Minister for Small Business Development**

**Date:**



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## ANNEXURE C FORM 1
## PERMIT TO PERFORM ESSENTIAL SERVICE REGULATION 11B (3)

Please note that the person to whom the permit is issued must at all times carry a form of identification to be presented together with this permit. If no identification is presented the person to whom the permit is issued will have to return to his or her place of residence during the lockdown.

| | | | | |
|---|---|---|---|---|
| **Surname** | | | | |
| **Full names** | | | | |
| **Identity number** | | | | |
| **Contact details** | **Cell nr.** | **Tel nr (w)** | **Tel no(H)** | **Email-address** |
| **Physical address of institution** | | | | |

**Hereby certify that:**

| | |
|---|---|
| **Surname** | |
| **Full names** | |
| **Identity number** | |

**Signed at**_____ **on this the** _____ **day of** _____ **2020**

| **Official stamp of the institution** |
|---|
| |

_____
**Signature of Head of institution**



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ANNEXURE "EP2"



GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

NO. R. 480 29 APRIL 2020

DISASTER MANAGEMENT ACT, 2002
REGULATIONS ISSUED IN TERMS OF SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002

I, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002), having declared a national state of disaster, published in Government Gazette No. 43096 on 15 March 2020, hereby in terms of section 27(2) of the Disaster Management Act, 2002, after consultation with the relevant Cabinet members, make the Regulations in the Schedule.

NC Zuma

DR NKOSAZANA DLAMINI ZUMA, MP
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
DATE: 29 · 04 2020.

SCHEDULE
CLASSIFICATION OF REGULATIONS

CHAPTER 1
DEFINITIONS AND APPLICATION

1. Definitions
2. Repeal and transitional provisions
3. Application of Regulations

CHAPTER 2
GENERAL PROVISIONS APPLICABLE DURING NATIONAL STATE OF DISASTER

4. Authority to issue directions
5. General measures to contain the spread of COVID-19
6. Refusal of medical examination, prophylaxis, treatment, isolation and quarantine
7. Isolation or quarantine of persons
8. Contact tracing
9. Redirection of resources

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## CHAPTER I

## DEFINITIONS AND APPLICATION

**Definitions**

1. In these Regulations, unless the context otherwise indicates—

'adequate space' means not more than one person per one and a half metres of floor space;
'Alert Level' means the determination made under subregulation 3(2);
'clinical case' means a patient that presents with clinical signs and symptoms of COVID-19;
'Constitution' means the Constitution of the Republic of South Africa, 1996;
'COVID-19' means the Novel Coronavirus (2019-nCov2) which is an infectious disease caused by a virus that has previously not been scientifically identified in humans, which emerged during 2019 and was declared a global pandemic by the WHO in 2020;
'Criminal Procedure Act' means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
'directions' means the directions contemplated in section 27(2) of the Act, issued by a Cabinet member relating to his or her line functions, after consultation with the Cabinet members responsible for cooperative governance and traditional affairs and justice and correctional services;
'donor' means an individual, corporation or organisation that is a contributor of cash, kind and/or other assets;
'enforcement officer' includes a member of the South African Police Service, the South African National Defence Force, metro police, traffic officers, immigration inspectors; and a peace officer as defined in section 1 of the Criminal Procedure Act;
'essential goods for import' means the goods listed in Annexure B;
'essential services' means the services listed in Annexure D;
'gathering' means any assembly, concourse or procession in or on—
*(a)* any public road, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996); or
*(b)* any other building, place or premises, including wholly or partly in the open air, and including, but not limited to, any premises or place used for any sporting, entertainment, funeral, recreational, religious, or cultural purposes; but excludes a workplace and a place of residence for those persons ordinarily residing at the residence;
'health protocols' means the COVID-19 health protocols determined by the Director General of Health;
'head of an institution' means the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution;
'institution' means any public or private institution, including a sole practitioner and any other business owned and operated by a single person, that is engaged in the supply or distribution of a good or service as set out in the Table 1, or which regulates such supply or distribution, including professional regulatory bodies designated in directions made in terms of regulation 4 of the Regulations;
'institutions of higher learning' means 'higher education college' and 'higher education institution' as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);
'isolation' means separating a sick individual with a contagious disease from healthy individuals

that are not infected with such disease in a manner that aims to prevent the spreading of infection or contamination;
'laboratory confirmed case' means a patient who has been diagnosed with COVID-19 by means of a laboratory diagnostic method approved by the Department of Health;
'liquor' means—

(a) any liquor product, as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989);
(b) beer or traditional African beer; or
(c) any other substance or drink declared to be liquor under the Liquor Act, 2003 (Act No. 59 of 2003), but does not include methylated spirits;

'lockdown' means the period between 23H59 on 26 March 2020, until 23H59 on 30 April 2020,
'movement' means entering or leaving a place of residence or, in the case of people not ordinarily resident in the Republic, their place of temporary residence while in the Republic.
'national state of disaster' means the national state of disaster declared by Government Notice No. R. 313 of 15 March 2020;
'permitted goods' means Part E in the Table 1;
'permitted goods for export' means the goods listed in Annexure C;
'permitted services' means the services permitted in Table1;
'quarantine' means the restriction of activities or separation of a person, who was or may potentially have been exposed, to COVID-19 and who could potentially spread the disease to other non-exposed persons, to prevent the possible spread of infection or contamination to healthy individuals;
'school' means a school as defined in section 1 of the South African Schools Act, 1984 (Act No. 84 of 1996);
'the Act' means the Disaster Management Act, 2002 (Act No. 57 of 2002); and
'WHO' means the World Health Organisation.

**Repeal and transitional provisions**

2. (1) The regulations published by Government Notice No. 318 of 18 March 2020, as amended by Government Notice Nos. R. 356 of 25 March 2020, R.419 of 26 March 2020, R. 446 of 2 April 2020, R. 465 of 16 April 2020 and R. 471 of 20 April 2020, are hereby repealed.

(2) Despite the repeal of the regulations referred to in subregulation (1), any regulation, for purposes of the disposal of any investigation, prosecution or any criminal or legal proceedings or the appointment made in regulation 9(13), remains in force as if such regulation had not been repealed.

(3) Despite the repeal of the regulations referred to in subregulation (1), all directions issued in terms of these Regulations shall continue to apply unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.

**Application of Regulations**

3. (1) Chapters 1 and 2 of these Regulations will apply for the duration of the national state of disaster.

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(2) The Cabinet member responsible for cooperative governance and traditional affairs shall, upon the recommendation of the Cabinet member responsible for health and in consultation with Cabinet, declare which of the following alert levels apply, and the extent to which they apply at a national, provincial, metropolitan or district level:

(a) 'Alert Level 1' as determined by Cabinet;
(b) 'Alert Level 2' as determined by Cabinet;
(c) 'Alert Level 3' as determined by Cabinet;
(d) 'Alert Level 4' as determined by Cabinet; and
(e) 'Alert Level 5' as determined by Cabinet.

(3) The Cabinet member responsible for health shall issue directions on the criteria that will guide the determination of alert levels;

(4) The detail of permissions and prohibitions for each Alert Level will be set out in the different Alert levels.

## CHAPTER 2
## GENERAL PROVISIONS APPLICABLE DURING NATIONAL STATE OF DISASTER

**Authority to issue directions**

4. (1) The Cabinet member responsible for health may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in any area of the Republic of South Africa, which directions may include the—
  (i) recruitment and training of human resources from the Department of Health, and other entities responsible for the handling of COVID-19 mortal remains;
  (ii) deployment of human resources from the Department of Health to identified sites to render services;
  (iii) sourcing of human resources from the Expanded Public Works Programme, retired health professionals and Non-Governmental Organisations to render services in identified sites;
  (iv) provision of health equipment, sanitation materials and medical supplies;
  (v) identification and establishment of mortuaries that will accommodate all COVID-19 mortal remains;
  (vi) disposal of COVID-19 mortal remains; and
(b) vary the directions referred to in paragraph (a) as the circumstances require.

(2) The Cabinet member responsible for justice and correctional Services may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all Correctional Centres and Remand Detention Facilities in the Republic of South Africa;
(b) where appropriate, issue directions to address, prevent and combat the spread of COVID-19 in all courts and court precincts in the Republic of South Africa;
(c) issue directions for voluntary alternative dispute resolution mechanisms, pursuant to regulationn13, to resolve COVID-19 disputes and related matters; and
(d) vary the directions referred to in paragraphs (a) to (c) as the circumstances require.

(3) The Cabinet members responsible for basic and higher education may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all schools and institutions of higher learning; and

(b) vary the directions referred to in (a) as the circumstances require.

(4) The Cabinet member responsible for police may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all police stations, police precincts, and holding cells; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(5) The Cabinet member responsible for social development may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in all Department of Social Development facilities; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(6) The Cabinet member responsible for trade, industry and competition may —

(a) issue directions to—

(i) protect consumers from excessive, unfair, unreasonable or unjust pricing of goods and services during the national state of disaster; and

(ii) maintain security and availability of the supply of goods and services during the national state of disaster;

(b) issue directions to address, prevent and combat the spread of COVID-19; and

(c) vary the directions referred to in paragraphs (a) and (b) as the circumstances require.

(7) The Cabinet member responsible for transport may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in matters falling within his or her mandate; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(8) The Cabinet member responsible for home affairs may issue directions to allow a person to enter or exit the Republic for emergency medical attention for a life-threatening condition, or for a South African, or foreign national to be repatriated to their country of nationality or permanent residence.

(9) The Cabinet member responsible for small business may—

(a) issue directions to address, prevent and combat the spread of COVID-19 in matters falling within his or her mandate; and

(b) vary the directions referred to in paragraph (a) as the circumstances require.

(10) Any Cabinet member may issue and vary directions, as required, within his or her mandate, to address, prevent and combat the spread of COVID-19, and its impact on matters relevant to their portfolio, from time to time, as may be required, including—

(a) disseminating information required for dealing with the national state of disaster;

(b) implementing emergency procurement procedures;

(c) taking any other steps that may be necessary to prevent an escalation of the national state of disaster, or to alleviate, contain and minimise the effects of the national state of disaster; or

(d) taking steps to facilitate international assistance.

(11) All directions issued in terms of these Regulations shall continue to apply unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.

(12) Directions with regard to health and social services and trade, industry and competition may be issued to designate services which are necessary to provide or maintain essential health and social services and international trade or industrial activities.

(13) Directions may be issued and varied, as required, to address, prevent and combat the spread of COVID-19, from time to time, including—

*(a)* disseminating information required for dealing with the national state of disaster;

*(b)* implementing emergency procurement procedures;

*(c)* taking any other steps that may be necessary to prevent an escalation of the national state of disaster, or to alleviate, contain and minimise the effects of the national state of disaster; or

*(d)* taking steps to facilitate international assistance.

(14) All directions issued in terms of these Regulations shall continue to apply unless, varied, amended or withdrawn by the Cabinet member responsible for such directions.

**General measures to contain the spread of COVID-19**

8. (1) A person must wear a cloth face mask or a homemade item that covers the nose and mouth when in a public place, or another appropriate item to cover the nose and mouth.

(2) No person will be allowed to use any form of public transport, or enter a building, place or premises, if they do not wear a cloth face mask or a homemade item that covers the nose and mouth when in a public place, or another appropriate item to cover the nose and mouth.

(3) An employer must provide every employee who may come into direct contact with members of the public as part of their duties with a cloth face mask to cover his or her nose and mouth or a homemade item that covers the nose and mouth when in a public place, or another appropriate item to cover the nose and mouth.

(4) Every business premises, including, but not limited to, a supermarket, shop, grocery store, retail store, wholesale produce market or pharmacy shall—

*(a)* determine their area of floor space in square metres;

*(b)* based on the information contemplated in paragraph *(a)*, determine the number of customers and employees that may be inside the premises at any time with adequate space available;

*(c)* take steps to ensure that persons queuing inside or outside the premises are able to maintain a distance of one and a half metres from each other;

*(d)* provide hand sanitisers for use by the public and employees at the entrance to the premises; and

*(e)* assign, in writing, an employee or any other suitable person, as the compliance employee, who must ensure—

(i) compliance with the measures provided for in paragraphs *(a)* to *(d)*; and

(ii) that all directions in respect of hygienic conditions and limitation of exposure to persons with COVID-19 are adhered to.

(5) All employers must, adopt measures to promote physical distancing of employees, including—

*(a)* enabling employees to work from home or minimising the need for employees to be physically present at the workplace;

*(b)* the provision for adequate space;

(c) restrictions on face to face meetings;
(d) special measures for employees with known or disclosed health issues or comorbidities, or with any condition which may place such employees at a higher risk of complications or death if they are infected with COVID-19;
(e) special measures for employees above the age of 60 who are at a higher risk of complications or death if they are infected with COVID-19.

(6) The requirements as set out in subregulation (4) applies with the necessary changes, to any other building that is not provided for by subregulation (4).

(7) All courier and delivery services shall provide for minimized personal contact during delivery.

**Refusal of medical examination, prophylaxis, treatment, isolation and quarantine**

8. (1) No person who has been confirmed as a clinical or a laboratory confirmed case as having contracted COVID-19, or who is suspected of having contracted COVID-19, or who has been in contact with a person who is a carrier of COVID-19, may refuse to—
(a) submit to a medical examination, including, but not limited to, the taking of any bodily sample which is authorised in law;
(b) be admitted to a health establishment or a quarantine or isolation site; or
(c) submit to mandatory prophylaxis, treatment, isolation or quarantine, in order to prevent transmission:

Provided that if a person does not comply with the instruction or order of the enforcement officer, that person must be placed in quarantine for a period not exceeding 48 hours, pending a warrant being issued by a competent Court, on application by an enforcement officer for the medical examination contemplated in paragraph (a).

(2) A warrant contemplated in subregulation (1) may be issued by a magistrate, if it appears from information on oath or affirmation by an enforcement officer—
(a) that a person is confirmed as having been infected with COVID-19;
(b) who is on reasonable grounds suspected of having contracted COVID-19, or who has been in contact with, or who is on reasonable grounds suspected as having been in contact with a person who is a carrier of, or infected with COVID-19.

(3) The warrant may impose restrictions on the powers of the enforcement officer as the magistrate may deem fit.

(4) A warrant issued in terms of this regulation remains in force until—
(a) it is executed;
(b) it is cancelled by the person who issued it or, if such person is not available, by any other magistrate;
(c) the expiry of ninety days from the date of its issue; or
(d) the purpose for the issuing of the warrant has lapsed,

whichever occurs first.

**Isolation or quarantine of persons**

7. (1) Any person who is a clinical case, or who is on reasonable grounds suspected to be infected or contaminated with COVID-19, or who has been in contact with a person who is infected or contaminated with COVID-19, must comply with—

*(a)* an oral instruction of, or a written direction, issued by a medical practitioner, a person authorised by the medical practitioner, a nurse or an enforcement officer to subject himself or herself to screening to determine his or her COVID-19 status; or

*(b)* a written direction, issued by a medical practitioner, a person authorised by the medical practitioner, a nurse or an enforcement officer to—

(i) voluntarily travel to or be taken to a health establishment or any other place for purposes of isolation or quarantine; or

(ii) quarantine himself or herself in accordance with the instructions of such medical practitioner or person authorised by him or her, or a nurse,

pending the determination of his or her COVID-19 status, as a precautionary measure to contain the transmission of COVID-19.

(2) If a person refuses to quarantine himself or herself, or travel to a site of isolation or quarantined facility as directed, a magistrate in whose jurisdiction such a person is, must make an order as contemplated in Form 1 of Annexure A, to compel such a person to quarantine himself or herself, travel to such site of isolation, quarantined facility, or medical screening.

(3) The—

*(a)* Cabinet member responsible for public works and infrastructure;

*(b)* member of the provincial Executive Council responsible for public works; or

*(c)* accounting officers of municipalities,

must identify and make available sites to be used as isolation and quarantine facilities as the need arises and provide a list thereof to the Department of Health for resourcing.

**Contact tracing**

8. (1) In this regulation—

*(a)* "COVID-19 Tracing Database" means the database established by the National Department of Health in terms of subregulation (2); and

*(b)* "COVID-19 Designated Judge" means a judge designated in terms of subregulation (13).

(2) The National Department of Health shall develop and maintain a national database to enable the tracing of persons who are known or reasonably suspected to have come into contact with any person known or reasonably suspected to have contracted COVID-19.

(3) The COVID-19 Tracing Database shall include all information considered necessary for the contact tracing process to be effective, including but not limited to:

*(a)* the first name and surname, identity or passport numbers, residential address and other address where such person could be located, and cellular phone numbers of all persons who have been tested for COVID-19;

*(b)* the COVID-19 test results of all such persons; and

*(c)* the details of the known or suspected contacts of any person who tested positive for COVID-19.

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(4) The information contained in the COVID-19 Tracing Database and any information obtained through this regulation is confidential.

(5) No person may disclose any information contained in the COVID-19 Tracing Database or any information obtained through this regulation unless authorized to do so and unless the disclosure is necessary for the purpose of addressing, preventing or combatting the spread of COVID-19.

(6) Where any person is to be tested for COVID-19, the person taking the sample for purposes of testing must obtain as much of the following information as is available at the time of taking the sample—

(a) the first name and surname, identity or passport number, residential address, and cellular phone numbers of the person tested; and

(b) a copy or photograph of the passport, driver's licence, identity card, identity book of the person tested;

and promptly submit this information, along with any information it has regarding likely contacts of the person tested, to the Director-General: Health for inclusion in the COVID-19 Tracing Database.

(7) Where any laboratory has tested a sample for COVID-19, the laboratory must promptly transmit to the Director-General: Health, for inclusion in the COVID-19 Tracing Database—

(a) all details the laboratory has, including the first name and surname, identity or passport numbers, residential address and cellular phone numbers, regarding the person tested;

(b) the COVID-19 test result concerned.

(8) The National Institute for Communicable Diseases (NICD) must transmit to the Director-General: Health, for inclusion in the COVID-19 Tracing Database—

(a) all details the NICD has, including the first name and surname, identity or passport numbers, residential address and cellular phone numbers of any person tested for COVID-19;

(b) the results of the COVID-19 test concerned; and

(c) any information the NICD has regarding likely contacts of the person tested.

(9) Every accommodation establishment must, promptly after the coming into force of this regulation, transmit to the Director-General: Health, for inclusion in the COVID-19 Tracing Database, the following information regarding every person staying at the accommodation establishment during the period of lockdown—

(a) the first name and surname, identity or passport number, residential address and cellular phone numbers of the person concerned; and

(b) a copy or photograph of the passport, driver's licence, identity card or identity book of the person concerned.

(10) The Director-General: Health may, in writing and without prior notice to the person concerned, direct an electronic communications service provider licensed under the Electronic Communications Act, 2005 (Act No. 36 of 2005) to provide him or her, for inclusion in the COVID-19 Tracing Database, with such information as that electronic communications service provider has available to it regarding—

(a) the location or movements of any person known or reasonably suspected to have contracted COVID-19; and

*(b)* the location or movements of any person known or reasonably suspected to have come into contact, during the period 5 March 2020 to the date on which the national state of disaster has lapsed or has been terminated, with a person contemplated in subparagraph *(a)*,

and the electronic communications service provider must promptly comply with the directive concerned.

(11) The information referred to in subregulation (10)—

*(a)* may only be obtained in relation to the location or movements of persons during the period 5 March 2020 to the date on which the national state of disaster has lapsed or has been terminated;

*(b)* may only be obtained, used or disclosed by authorised persons and may only be obtained, used and disclosed when necessary for the purposes of addressing, preventing or combatting the spread of COVID-19 through the contact tracing process;

*(c)* where relevant to the contact tracing process, must be included in the COVID-19 Tracing Database; and

*(d)* apart from what is included in the COVID-19 Tracing Database, may only be retained by the Director-General: Health for a period of six weeks after being obtained and shall thereafter be destroyed.

(12) Nothing in this regulation entitles the Director-General: Health or any other person to intercept the contents of any electronic communication.

(13) The Cabinet member responsible for justice and correctional services has, in terms of section 7(1)*(a)* read with paragraph *(d)* of the definition of 'service' in section 1(1) of Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), appointed a Constitutional Court Judge who has been discharged from active service to perform service as a COVID-19 Designated Judge as provided for in the Regulations.

(14) The Director-General: Health must file a weekly report with the COVID-19 Designated Judge setting out the names and details of all persons whose location or movements were obtained in terms of subregulation (10)*(a)* and 10*(b)* respectively.

(15) The COVID-19 Designated Judge may make such recommendations to the Cabinet members responsible for cooperative governance and traditional affairs, health and justice and correctional services as he or she deems fit regarding the amendment or enforcement of this regulation in order to safeguard the right to privacy while ensuring the ability of the Department of Health to engage in urgent and effective contact tracing to address, prevent and combat the spread of COVID-19.

(16) The Director-General: Health shall, within six weeks after the national state of disaster has lapsed, or has been terminated, notify every person whose information has been obtained in terms of subregulation (10) that information regarding their location or movements was obtained in terms of subregulation (10).

(17) Within six weeks after the national state of disaster has lapsed or has been terminated—

*(a)* the information on the COVID-19 Tracing Database shall be de-identified;

*(b)* the de-identified information on the COVID-19 Tracing Database shall be retained and used only for research, study and teaching purposes;

*(c)* all information on the COVID-19 Tracing Database which has not been de-identified shall be destroyed; and

(d) the Director-General: Health shall file a report with the COVID-19 Designated Judge recording the steps taken in this regard, and the steps taken pursuant to subregulation (16).

(18) Upon receipt of the report in subregulation (17)(d), the COVID-19 Designated Judge shall be entitled to give directions as to any further steps to be taken to protect the right to privacy of those persons whose data has been collected, which directions must be complied with.

(19) The report required by subregulation (17)(d) and any directions given in terms of subregulation (18) shall be tabled in Parliament.

**Release of resources**

9. (1) The Department of Defence must, for the duration of the declared national state of disaster, within its available resources—

(a) release and mobilise available resources, including human resources, stores, equipment, ships, aircraft platforms, vehicles and facilities; and

(b) ensure the delivery of essential services,

as may be required, to prevent, limit, contain, combat and manage the spreading of COVID-19.

(2) National organs of state must, within their available resources, release their personnel for the rendering of emergency services, as contemplated in section 27(2)(b) of the Act.

(3) Institutions within national, provincial and local government must make resources, other than funding, available to implement these Regulations or directions issued in terms of section 27(2) of the Act regarding the national state of disaster.

(4) Institutions within national, provincial and local government must—

(a) make funding available; and

(b) as far as possible, without affecting service delivery in relation to the realisation of the rights contemplated in sections 26 to 29 of the Constitution, shift funding, within its budget to implement these Regulations or directions issued in terms of section 27(2) of the Act, regarding the national state of disaster.

(5) The National Treasury and provincial treasuries must take the necessary steps in terms of applicable legislation to implement these Regulations and directions issued in terms of section 27(2) of the Act, in relation to the national state of disaster.

(6) Donor funding received by institutions, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999) or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), to assist with the national state of disaster must be—

(a) paid into the Reconstruction and Development Fund, established by the Reconstruction and Development Fund Act, 1994 (Act No. 7 of 1994); and

(b) used strictly for purposes of implementing these Regulations and directions issued in terms of section 27(2) of the Act in relation to the national state of disaster.

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**Shelters and sites identified by the State during national state of disaster**

10. (1) The State shall identify—

(a) temporary shelters for homeless people that comply with the necessary health protocols and adequate spacing standards as provided for in guidelines published by the Director General of Health; and

(b) temporary sites for quarantine and self-isolation that comply with the necessary health protocols and adequate spacing standards, as provided for in guidelines published by the Director General of Health, for persons who cannot isolate or quarantine in their homes.

(2) The provision of the State's resources contemplated in subregulation (1) shall be for the duration of the national state of disaster, and the use thereof will be subject to conditions determined by the Cabinet member responsible for such resources.

**Emergency Procurement Procedures**

11. Emergency procurement for institutions is subject to—

(a) the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the applicable emergency provisions in the Regulations or Instructions made under section 76 of that Act; and

(b) the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the applicable emergency provisions in the Regulations made under that Act.

**Powers and indemnity**

12. These Regulations do not limit any powers or indemnities of security services provided for in any law.

**Resolution of disputes**

13. (1) The parties to a civil dispute against the State or any organ of State, which may potentially result in litigation, may—

(a) either before or after the commencement of litigation but before the granting of judgment by the court, agree to refer the dispute to mediation; or

(b) before the commencement of litigation, agree to refer the dispute to arbitration.

(2) Where the parties agree to mediation or arbitration:

(a) the Office of the Solicitor General shall assist the parties in coordinating and overseeing the process; and

(b) the parties may agree that a judge who has retired from active service shall act as the mediator or arbitrator as the case may be, in which event no fees shall be payable to such mediator or arbitrator.

(3) The Office of the State Attorney in whose area of jurisdiction a dispute arises shall immediately upon knowledge of such dispute engage the party raising the dispute, or such party's legal representative, in considering mediation or arbitration.

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**Offences and penalties**

14. (1) Any person who intentionally misrepresents that he, she or any other person is infected with COVID-19 is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) Any person who publishes any statement, through any medium, including social media, with the intention to deceive any other person about—

(a) COVID-19;

(b) COVID-19 infection status of any person; or

(c) any measure taken by the Government to address COVID-19,

commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months, or both such fine and imprisonment.

(3) Any person who intentionally exposes another person to COVID-19 may be prosecuted for an offence, including assault, attempted murder or murder.

(4) A person who fails to comply with—

(a) an obligation imposed in terms of regulation 8(5),8 (9), 8(11), 8(17); or

(b) a direction issued in terms of regulation 8(10) or 8(18);

of these Regulations commits an offence and is, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

## CHAPTER 3
## ALERT LEVEL 4

**Determination of Alert Level**

15. (1) The Cabinet member responsible for cooperative governance and traditional affairs, in terms of regulation 3(2), declares, upon the recommendation of the Cabinet member responsible for health, and in consultation with Cabinet, that Alert Level 4 will be applicable from 1 May 2020 in the Republic of South Africa and will remain in force up to the declaration of different Alert Levels for the duration of the national state of disaster.

(2) The regulations set out in this Chapter apply during Alert Level 4.

**Movement of persons**

16. (1) Every person is confined to his or her place of residence.

(2) A person may only leave their place of residence to—

(a) perform an essential or permitted service, as allowed in Alert Level 4;

(b) go to work where a permit which corresponds with Form 2 of Annexure A, has been issued;

(c) buy permitted goods;

(d) obtain services that are allowed to operate as set out in Table 1 to the Regulations;

(e) move children, as allowed;

(f) walk, run or cycle between the hours of 06H00 to 09H00, within a five kilometre radius of their place of residence: Provided that this is not done in organised groups.

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(3) Every person is confined to his or her place of residence from 20H00 until 05H00 daily, except where a person has been granted a permit to perform an essential or permitted service as listed in Annexure D, or is attending to a security or medical emergency.

(4) Movement between provinces, metropolitan areas and districts are prohibited except—

(a) for workers who have a permit to perform an essential or permitted service who have to commute to and from work on a daily basis;

(b) the attendance of a funeral, as allowed;

(c) the transportation of mortal remains; and

(d) for learners who have to commute to and from school or higher education institutions on a daily basis during periods when those institutions are permitted to operate.

(5) Any person who was not at their place of residence, or work before the lockdown period and who could not travel between provinces, metropolitan and district areas during the lockdown, will be permitted, on a once-off basis, to return to their places of residence or work and will be required to stay in such place until the end of Alert Level 4.

(6) All industries, businesses, entities, both private and in the public sector, which are permitted to operate during Alert Level 4, must—

(a) designate a COVID-19 compliance officer who will oversee the:
  (i) implementation of the plan referred to in subregulation (b); and
  (ii) adherence to the standards of hygiene and health protocols relating to COVID-19 at the workplace;

(b) develop a plan for the phased in return of their employees to the workplace, prior to reopening the workplace for business, which plan must correspond with Annexure E and be retained for inspection and contain the following information:
  (i) which employees are permitted to work;
  (ii) what the plans for the phased-in return of their employees to the workplace are;
  (iii) what health protocols are in place to protect employees from COVID-19; and
  (iv) the details of the COVID-19 compliance officer;

(c) phase in the return of their employees to work to manage the return of employees from other provinces, metropolitan and district areas; and

(d) develop measures to ensure that the workplace meets the standards of health protocols, adequate space for employees and social distancing measures for the public and service providers, as required.

(5) The Cabinet member responsible for home affairs, or a person designated by him or her, may allow a person to enter or exit the Republic for emergency medical attention for a life-threatening condition, or for a South African, or foreign national to be repatriated to their country of nationality or permanent residence.

(6) All foreign tourists who arrived in the Republic prior to the lockdown period, which ended on 30 April 2020, and who remained in the Republic, must remain in their place of temporary residence in the Republic for the duration of Alert Level 4, as the case may be, and may be subject to screening for COVID-19 and be quarantined or isolated as required: Provided that the evacuation of foreign tourists where arrangements, including an arrangement for the evacuation by air charter, has been made by the relevant embassy, may be allowed: Provided further that a tourist is escorted to the point of exit where he or she may be screened again.

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**Movement of children**

17. (1) The movement of children between co-holders of parental responsibilities and rights or a caregiver, as defined in section 1(1) of the Children's Act, 2005 (Act No. 38 of 2005), in the same metropolitan area or district municipality is allowed subject to the following if the co-holders of parental responsibilities and rights or a caregiver is in possession of—

(a) a court order; or

(b) a parental responsibilities and rights agreement or parenting plan, registered with the family advocate

(c) a permit issued by a magistrate where which corresponds with Form 3 of Annexure A if the documentation in paragraphs (a) and (b) is not available.

(2) The movement of children between co-holders of parental responsibilities and rights or a caregiver, as defined in section 1(1) of the Children's Act, 2005 (Act No. 38 of 2005), between different metropolitan areas, district municipalities or provinces is allowed if the co-holders of parental responsibilities and rights or a caregiver is in possession of a permit, issued by a magistrate which corresponds with Form 3 of Annexure A.

(3) Any child who was not at the residence of their primary caregiver before the lockdown period and who could not travel between provinces, metropolitan and district areas during the lockdown will be permitted, on a once-off basis, to return to the residence of their primary caregiver if the co-holders of parental responsibilities and rights or a caregiver is in possession of a permit issued by a magistrate which corresponds with Form 3 of annexure A.

(4) The household to which the child has to move, must be free of COVID-19.

(5) (a) Before a magistrate issues a permit referred to in regulation 17(1)(c), he or she must be provided with—

(i) a birth certificate or certified copy of a birth certificate of the child or children to prove a legitimate relationship between the co-holders of parental responsibilities and rights; and

(ii) written reasons why the movement of the child is necessary.

(b) Before a magistrate issues a permit referred to in 17(2) or (3), he or she must be provided with—

(i) A court order

(ii) a parental responsibilities and rights agreement or parenting plan registered with the family advocate or

(iii) a birth certificate or certified copy of a birth certificate of the child or children to prove a legitimate relationship between the co-holders of parental responsibilities and rights; and

(iv) written reasons why the movement of the child is necessary.

**Attendance of funerals**

18. (1) Movement between a province, metropolitan area or district by a person wishing to attend a funeral shall only be permitted if that person so wishing to attend the funeral is a—

(a) spouse or partner of the deceased;

(b) child of the deceased, whether biological, adopted or stepchild;

(c) child-in-law of the deceased;

(d) parent of the deceased whether biological, adopted or stepparent;

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(e) sibling, whether biological, adopted or stepbrother or sister of the deceased; or
(f) grandparent of the deceased;

(2) Attendance at a funeral is limited to 50 people and will not be regarded as a prohibited gathering.

(3) Night vigils at a funeral is banned.

(4) During a funeral, all hygienic conditions and distancing measures must be adhered to for the limitation of exposure of persons at the funeral to COVID-19.

(5) Each person, whether traveling alone or not, wishing to attend a funeral and who has to travel between districts, or between provinces to attend a funeral must obtain a permit which corresponds substantially with Form 4 of Annexure A, from his or her nearest magistrate's office or police station to travel to the funeral and back.

(6) The head of court, or a person designated by him or her, or a station commander of a police station or a person designated by him or her, may issue the permit to travel to a funeral.

(7) Upon a request for a permit to attend a funeral, a person requesting a permit must produce a death certificate or a certified copy of the death certificate to the head of court, or a person designated by him or her, or a station commander of a police station or a person designated by him or her: Provided that where a death certificate is not yet available, and the funeral must be held within 24 hours in keeping with cultural and religious practices, the person requesting the permit must make a sworn affidavit which corresponds with Form 5 of Annexure A, together with a letter from a cultural or religious leader confirming the need for the funeral within 24 hours.

(8) Only two family members or a person with a close affiliation to the deceased may, with the required permits, be present in the vehicle transporting the mortal remains to the metropolitan or district area, or province where the funeral will take place: provided that the cause of death of the deceased being transported is non-COVID-19 related.

(9) The Regulations for the use of public transport must be strictly adhered to when travelling.

(10) A copy of the permit issued and the death certificate or sworn affidavit made, must be kept safely by the head of court, or station commander of a police station for record keeping for a period of three months after the national state of disaster has ended, where after it may be destroyed.

(11) All forms must be completed in full, including full names, identification or passport numbers and full contact details as required in the form and failure to do so will result in the form being rejected as invalid.

**Prohibition on evictions**

19. A competent court may grant an order for the eviction of any person from land or a home in terms of the provisions of the Extension of Security of Tenure Act 62 of 1997 and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998: Provided that any order of eviction shall be stayed and suspended until the last day Alert Level 4, unless a court decides that it is not just and equitable to stay and suspend the order until the last day of the Alert Level 4 period.

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**Public transport**

20. (1) The Minister of Transport must, after consultation with the Cabinet members responsible for cooperative governance and traditional affairs, health, police and justice and correctional services, issue directions for the resumption of different modes of public transport to cater for the gradual return to work of people, in respect of —

*(a)* rail, bus services, taxi services;

*(b)* e-hailing services; and

*(c)* private vehicles.

(2) The directions to be issued by the cabinet member responsible for Transport must set out the hygienic conditions that must be adhered to and steps to be followed for the limitation of exposure of members of the public using public transport to COVID-19.

**Closure of borders**

21. All borders of the Republic remain closed during the period of Alert Level 4, except for ports of entry designated by the Cabinet member responsible for home affairs and for the transportation of fuel, cargo and goods during the period of Alert Level 4.

**Transportation of cargo**

22. (1) Rail, ocean, air and road transport is permitted for the movement of cargo to other countries and within the Republic of South Africa, subject to national legislation, for the transportation of the following goods—

*(a)* essential goods for import as set out in Annexure B to the Regulations;

*(b)* the import of materials and components required for manufacturing activities allowed under Alert Level 4;

*(c)* cargo at ports of entry;

*(d)* goods cleared at ports of entry for removal in transit through the Republic destined for neighboring countries;

*(e)* permitted goods for export as set out in Annexure C to the Regulations;

*(f)* transport of goods within the Republic of South Africa; and

*(g)* any other goods as set out in Directions by the relevant Cabinet member; taking into account health risks, constrained capacity at ports of entry and other factors relevant to the health, public order and economic effects of Covid-19.

(2) The Cabinet member responsible for transport, may, after consultation with the Cabinet members responsible cooperative governance and traditional affairs, trade, industry and competition, health, justice and correctional services and public enterprises, issue directions relating to sea cargo operations and air freight operations.

**Gatherings**

23. (1) All gatherings are banned, except—

*(a)* for funerals;

*(b)* when at a workplace; or

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(c) when buying or obtaining goods and services, as allowed in Table 1.

(2) An enforcement officer must, where a gathering takes place—

(a) order the persons at the gathering to disperse immediately; and

(b) if the persons refuse to disperse, take appropriate action, which may, subject to the Criminal Procedure Act, include arrest and detention.

**Places and premises closed to the public**

24. (1) Any place or premises normally open to the public where religious, cultural, sporting, entertainment, recreational, exhibitional, organisational or similar activities may take place, is closed.

(2) Any place or premises normally open to the public or where people may gather, are prohibited. These include—

(a) public parks, sports grounds and fields, beaches and swimming pools;

(b) flea markets;

(c) fêtes and bazaars;

(d) night clubs;

(e) casinos;

(f) hotels, lodges, bed and breakfasts, *airbnbs*', timeshare facilities and resorts, and guest houses, except to the extent that they are required for remaining tourists confined to hotels, lodges and guest houses;

(g) private and public game reserves except to the extent that they are required for remaining tourists confined to private and public game reserves;

(h) holiday resorts except to the extent that they are required for remaining tourists confined to such holiday resort;

(i) taverns and *shebeens*, or similar establishments;

(j) theatres and cinemas; and

(k) museums.

(3) Persons rendering security and maintenance services may continue to perform these services at the places or premises listed in this regulation.

(4) The Cabinet member responsible for cooperative governance and traditional affairs may, by direction in the Gazette, determine any other place or premises that must be closed, if there is a risk to any person or members of the public being exposed to COVID-19.

**Controlled visits by members of the public**

25. All visits by members of the public to—

(a) Correctional Centres;

(b) Remand Detention Facilities;

(c) Police Holding Cells;

(d) Military Detention Facilities;

(e) Health establishments and facilities, except to receive treatment or medication in accordance with health protocols; and

(f) Facilities controlled or managed by the Department of Social Development, including Child and Youth Care Centres, shelters, One Stop Centres, and Treatment Centres,

will be allowed to the extent and in the manner as directed by the Cabinet member responsible for cooperative governance and traditional affairs after consultation with the Cabinet members responsible for health, police and justice and correctional services.

**Sale, dispensing or transportation of liquor**

26. (1) The sale, dispensing and distribution of liquor is prohibited.

(2) The transportation of liquor is prohibited, except where alcohol is required for industries producing hand sanitizers, disinfectants, soap, alcohol for industrial use and household cleaning products.

(3) The transportation of liquor for export purposes is permitted.

(4) No special or events liquor licenses may be considered for approval during the duration of the national state of disaster.

**Tobacco products, e-cigarettes and related products**

27. The sale of tobacco, tobacco products, e-cigarettes and related products is prohibited.

**Operation of economic sectors**

28. (1) Businesses and other entities as set out in Table 1 may commence operations.

(2) Every person in control of a retail store or institution must—

(a) take steps to ensure that customers keep a distance of at least one and a half metres from each other, and that all directions in respect of health protocols and social distancing measures COVID-19, are adhered to; and

(b) designate a compliance official to ensure that the safety controls are strictly adhered to, and display the name of the official prominently in the store or in a visible area.

(3) Retail stores selling goods as provided for the Table 1 are prohibited from selling other goods that are not permitted in terms of the Table 1.

(4) Persons performing essential services or permitted services, must be duly designated in writing by the head of an institution, or a person designated by him or her, on a form that corresponds with Form 2 in Annexure A: Provided that Cabinet member responsible for small enterprises may issue directions in respect of small and micro enterprises, co-operatives, informal traders and spaza shops in respect of those entities.

**Energy and petroleum products supply**

29. To ensure the continuous supply of energy and petroleum products to society as referred to in Table 1—

(a) collieries that supply Eskom may continue to operate at full capacity; and

**TABLE 1**
**ALERT LEVEL 4**

All persons who are able to work from home should do so.
Persons in the following list of industries and activities will be permitted to perform work outside the home, and to travel to and from work, under Alert Level 4, subject to—

*(a)* strict health protocols, and social distancing rules;
*(b)* return to work to be phased in to enable measures to make the workplace COVID-ready; and
*(c)* return to work to be done in a manner that avoids and reduces risks of infection.

| PERMISSIONS AND PROHIBITIONS | |
|---|---|
| **PART A** | **AGRICULTURE, HUNTING, FORESTRY AND FISHING** |
| 1 | All agriculture, hunting, forestry and fishing, bee-keeping, including preparation, cultivation, harvesting, storage, transport of live animals and auctions (subject to health directions) and related agricultural infrastructure and services (including research, inspection, certification and quality control).<br>All fishing, operation of fish hatcheries and fish farms, on such conditions as may be issued in directions by the cabinet members responsible for the environment, forestry and fisheries.<br>Harvesting and storage activities essential to prevent the wastage of primary agricultural, fishing and forestry goods.<br>Export of all agricultural, agro-processed, fishing and forestry products. |
| **PART B** | **ELECTRICITY, GAS AND WATER SUPPLY** |
| 1. | All electricity, gas and water supply is permitted. |
| **PART C** | **MANUFACTURING** |
| 1 | Manufacture of wholesale and retail products permitted to be sold under Alert Level 4, and all input products, permitted scaling up to full employment, except where otherwise indicated, and subject to strict health protocols. |
| 2 | Manufacture of paper and paper products, excluding stationery, permitted scaling up to full employment and subject to strict health protocols. |
| 3 | Manufacture of plastics and packaging, including glass, plastic bottles and containers, permitted scaling up to full employment and subject to strict health protocols. |
| 4 | Petroleum refineries, smelters, and furnaces, permitted scaling up to full employment and subject to strict health protocols. |
| 5 | Manufacture of winter clothing, footwear, bedding and heaters (and all inputs required, including textiles) permitted, commencing at 25% and scaling up to 50% employment and subject to strict health protocols. |
| 6 | Manufacturing of automotives, steel and other metals, rail and ship-building (including components), scaling up in phases to 50% employment and subject to strict health protocols. |
| 7 | Stationery production, scaling up in phases to 50% employment and subject to strict health protocols. |
| 8 | Cement, other construction material, and hardware, scaling up in phases to 50% employment and subject to strict health protocols. |
| 9 | All other manufacturing, scaling up to 30% employment and subject to strict health protocols. |

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|---|---|
| PART D | CONSTRUCTION AND RELATED SERVICES (INC. TRADES PERSONS) |
| 1 | Civil engineering for public works projects (including water, energy, sanitation). |
| 2 | Public works civil engineering and construction works. |
| 3 | Road and bridge projects, including local road repairs |
| 4 | Critical maintenance and repairs. |
| PART E | WHOLESALE AND RETAIL TRADE, COVERING STORES, SPAZA SHOPS, E-COMMERCE AND INFORMAL TRADERS |
| 1 | Food products, including non-alcoholic beverages and animal food. |
| 2 | The sale of hot cooked food, only for home delivery. |
| 3 | Toilet Paper, sanitary pads, sanitary tampons, and condoms. |
| 4 | Hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment. |
| 5 | Products for the care of babies and toddlers. |
| 6 | Personal toiletries, including haircare, body, face, hand and foot care products, roll-ons, deodorants, dental care products. |
| 7 | Medical and Hospital Supplies, medicine, equipment and personal protective equipment. |
| 8 | Fuel and lighting, including coal, wood, paraffin and gas. |
| 9 | Airtime and electricity. |
| 10 | Hardware, components and supplies. |
| 12 | Components for vehicles undergoing emergency repairs |
| 13 | Chemicals, packaging and ancillary products used in the production of any these products listed in Part E. |
| 14 | Textiles required to produce face masks and other personal protective equipment and winter clothing. |
| 15 | Winter clothing, footwear, bedding and heaters and the components and fabrics required to manufacture these. |
| 16 | Children's clothing and fabrics and components required to manufacture these. |
| 17 | Stationery and educational books. |
| 18 | Personal ICT equipment including computers, mobile telephones and other home office equipment. |
| 19 | No sale of liquor permitted. |
| 20 | Directions may permit the incremental expansion of e-Commerce, taking into account the need to limit the extent of movement on the road, contact between people, law-enforcement challenges and the impact on other businesses. |
| PART F | INFORMATION AND COMMUNICATION SERVICES |
| 1 | All telecommunication services and infrastructure. |
| 2 | Information and Communication Technology services for all private and business customers. |
| 3 | Postal services and courier services for all permitted Alert Level 4 services. |
| PART G | MEDIA AND ENTERTAINMENT SERVICES |
| 1 | Online services. |
| 2 | Productions for local broadcast and live streaming of creative sector services in support of COVID-19 subject to directions. |
| 3 | Newspapers and broadcasting. |
| PART H | FINANCIAL AND BUSINESS SERVICES |
| 1 | Employees should work from home where possible. |
| 2 | Essential financial services may operate, subject to directions issues by the relevant Cabinet member, including the following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial |

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|---|---|
| | Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:<br>i. the banking environment (including the operations of mutual banks, co-operative banks, co-operative financial institutions and the Postbank);<br>ii. the payments environment;<br>iii. the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);<br>iv. the insurance environment;<br>v. the savings and investment environment;<br>vi. pension fund administration;<br>vii. outsourced administration;<br>viii. medical schemes administration; and<br>ix. additional services designated in terms of regulation 11B (4A) (e) (i).<br>The services listed above may not include debt collection services. |
| 3 | Services necessary for the provision of social grants. |
| 4 | Private security services may operate. |
| 5 | Implementation of payroll systems. |
| 6 | Car sales under specific directions |
| 7 | Chauffeur services, rental of motor vehicles, driven vehicles, machinery and equipment, and of goods to support other Alert Level 4 services. |
| 8 | Call centres, for local and all international markets, may operate subject to directions issues by the relevant cabinet members. |
| 9 | Other professional services may operate only where work-from-home is not possible, and only to support other Alert Level 4 services. |
| PART I | ACCOMMODATION AND FOOD SERVICE ACTIVITIES PERMITTED |
| 1 | Accommodation not permitted, except for quarantine and essential services |
| 2 | Restaurants only for food delivery services (9H00-19H00) and subject to restriction on movement (no sit down or pick-up allowed). |
| PART J | TRANSPORT, STORAGE AND COMMUNICATION SERVICES PERMITTED |
| 1 | Ocean, rail, road and air transport of goods permitted only for activities set out in Regulation 22(1). |
| 2 | Public rail, minibus taxi and bus services will resume at Alert Levels and on terms as will be set out in Directions, based on the progressive increase in commuter numbers during the various phases. |
| 3 | E-hailing services subject to restrictions on capacity and times, and for permitted activities only. |
| 4 | Transport and logistics in respect of specified cargo specified in J1, and permitted retail goods to neighbouring countries, which shall include all goods imported via SA ports of entry, for re-export to neighbouring countries. |
| PART K | MINING AND QUARRYING |
| 1 | Coal production for Eskom scaling up to full employment. |
| 2 | Open-cast mining scaling up to a baseline of 50% and thereafter scaling up to full employment. |
| 3 | All other mining starting in batches scaling up towards 50% employment. |
| PART L | REPAIR AND RELATED EMERGENCY SERVICES PERMITTED |
| 1 | Tow trucks and vehicle recovery services. |
| 2 | Emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work. |
| 3 | Emergency automobile repairs for all persons. |
| PART M | SUPPLY CHAINS |

| | |
|---|---|
| 1 | Production, manufacturing, supply, logistics, transport, delivery and critical maintenance and repair of goods and services (including components and equipment) required for the production or rendering of permitted goods and services |
| 2 | All workplaces or premises must have care and maintenance that is essential to the prevention of the destruction or significant impairment of working areas, plant, machinery or inventory, or to permit orderly wind down arrangements, on such conditions as may be issued by means of directions by the relevant cabinet members. |
| PART N | PRIVATE HOUSEHOLDS' EMPLOYMENT |
| 1 | Live-in staff, and staff providing care to the sick, mentally ill, elderly, people with disabilities and children. |
| PART O | PUBLIC ADMINISTRATION, GOVERNMENT SERVICES AND OTHER ARMS OF THE STATE<br>Only essential government and administration services may operate, including: |
| 1 | Disaster management services. |
| 2 | Licensing, permitting, deeds, masters offices, birth and death certificates, replacement identification documents |
| 3 | Any other service designated by the Executive Authority, HODs, Heads of Courts, and Heads of other Chapter 9 Institutions. |
| 4 | Essential municipal services. |
| 5 | Services related to the functioning of courts; the State Capture Commission. |
| 6 | Essential SARS services defined by the Commissioner of SARS, |
| 7 | Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services. |
| 8 | Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament. |
| 9 | Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector and the Independent Electoral Commission. |
| PART P | HEALTH, SOCIAL AND PERSONAL SERVICES |
| 1 | Medical and veterinary services permitted. |
| 2 | Cleaning, sanitation, pest control, sewerage, waste and refuse removal services. |
| 3 | Recycling of glass, paper, plastic, metal, tyres and such others as determined by directions, are permitted at 50% capacity. Informal recyclers will be permitted to resume operations. |
| 4 | All Social work, counselling, services supporting gender based violence, care and relief activities permitted. |
| 5 | Wildlife Management, Anti-poaching, Animal Care and Veterinary services. |
| 6 | Funeral services, including morbuaries services and the transportation of mortal remains. |
| 7 | Trade union essential staff for workers covered by Alert Level 4, subject to Directions. |
| PART Q | EDUCATION SERVICES |
| 1 | Permitted on dates and schedule set out separately. |

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**ANNEXURE A**
**FORM 1**
**ORDER FOR A PERSON TO GO TO A SITE OF ISOLATION, QUARANTINE FACILITY, OR FOR A PERSON TO GO FOR MEDICAL EXAMINATION**
Regulation 7(2)

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF _____ HELD AT _____ ON THIS _____ DAY OF _____ 2020.**

**BEFORE ME _____ MAGISTRATE FOR THE AFOREMENTIONED DISTRICT IN CHAMBERS**

**WHEREAS** it appears that _____ (name of person)
Being a person:

☐ who has been clinically, or by a laboratory, confirmed as having COVID-19

☐ who is suspected of having contracted COVID-19

☐ who has been in contact with a person who is a carrier of COVID-19

and who has refused to —

☐ submit to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so;

☐ be admitted to a site to be used as isolation or a quarantine facility; or

☐ submit to mandatory prophylaxis, treatment, isolation or quarantine or isolation in order to prevent transmission.

I hereby issue an order for the submission of the said person to a medical examination, including the taking of any bodily sample by a person authorised in law.

..... DATE .....
**MAGISTRATE**

***NOTE:*** *This order remains in force until —*
*(a) it is executed;*
*(b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;*
*(c) a period of ninety days has lapsed from the date of its issue; or*
*(d) the purpose for the issuing of the order has lapsed.*

Signed at _____, on this the _____ day of _____ 2020.

*Official stamp of institution*

**FORM 2**
**PERMIT TO PERFORM AN ESSENTIAL OR PERMITTED SERVICE**
**Regulations 16(2)(b) and 25(4)**

- *Please note that the person to whom the permit is issued must at all times present a form of identification together with this permit. If no identification is presented, the person to whom the permit is issued will have to return to his or her place of residence during Alert Level 4.*

I, being the head of institution, with the below mentioned details,

| | | | | |
|---|---|---|---|---|
| **Surname** | | | | |
| **Full names** | | | | |
| **Identity number** | | | | |
| **Contact details** | **Cell nr.** | **Tel Nr(W)** | **Tel Nr(H)** | **e-mail address** |
| | | | | |
| **Physical Address of institution** | | | | |

Hereby certify that the below mentioned official/employee is performing services in my institution

| | |
|---|---|
| **Surname** | |
| **Full names** | |
| **Identity number** | |
| **Place of residence of employee** | |

Signed at _____ on this the _____ day of _____ 2020.

_____
*Signature of Head of Institution*

*Official stamp of Institution*

**FORM 3**

**PERMIT FOR THE MOVEMENT OF CHILDREN TO TRAVEL TO ANOTHER PROVINCE/METROPOLITAN AREA/DISTRICT**
**Regulation 17(1)(c)**

***Note: This permit and any form of identification must be in the possession of the person to whom this permit is issued***

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF _____ HELD AT _____ ON THIS _____ DAY OF _____ 2020.**

**BEFORE ME _____ MAGISTRATE FOR THE AFOREMENTIONED DISTRICT IN CHAMBERS**

I, hereby issue this permit for travel to the following person:

| | | | | | |
|---|---|---|---|---|---|
| Full names: | | | | | |
| Surname: | | | | | |
| Identity number: | | | | | |
| Address of place of residence: | | | | | |
| Province of residence: | | | | | |
| Contact details: | Cell nr | | Tel No (h) | | e-mail address |
| Metropolitan area/district travelling to: | | | | | |
| Province travelling to: | | | | | |
| Date of travel to: | | | | | |
| Date of return travel: | | | | | |
| Name of child concerned (*must correspond with the birth certificate*): | | | | | |
| Reason for movement of child(ren): | | | | | |

**I also declare that the above-mentioned person presented the documentation as required by *regulation 17(5).**

**Signed at _____ this _____ day of _____ 2020.**

_____
***Magistrate issuing***

***Official stamp***

**FORM 4**

**PERMIT TO TRAVEL TO ANOTHER PROVINCE/METROPOLITAN AREA/DISTRICT FOR A FUNERAL**

*Regulations 16(5)*

*(To be completed by the head of court or a station commander or a person designated by him or her respectively.)*

I, _____ *(full names of *head of court, or a person designated by him or her / station commander of a police station or a person designated by him or her)* for—

(a) the Magistrate's court for the district of _____;

(b) the police station at _____,

hereby issue this permit for travel to another district/province, to the following person:

| | | | | | |
|---|---|---|---|---|---|
| Full names: | | | | | |
| Surname: | | | | | |
| Identity number | | | | | |
| Address of place of residence: | | | | | |
| Province of residence: | | | | | |
| Contact details: | Cell nr | | Tel No (h) | | e-mail address |
| Metropolitan area/district travelling to: | | | | | |
| Province travelling to: | | | | | |
| Date of funeral: | | | | | |

I also declare that the above-mentioned person presented the *death certificate/certified copy of the death certificate/affidavit to me.

Signed at _____ this _____ day of _____ 2020.

_____

**Person issuing permit*

*Official stamp*

**FORM 5**

**SWORN AFFIDAVIT BY PERSON WHO WISHES TO ATTEND A FUNERAL IN ANOTHER PROVINCE/METROPOLITAN AREA/DISTRICT**

**Regulations 18(7)**

*Note: 1. A person giving false information on this affidavit shall be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.*

*2. This affidavit may only be sworn to or affirmed at a magistrate's court or police station.*

I,

| | | | | | |
|---|---|---|---|---|---|
| Full names: | | | | | |
| Surname: | | | | | |
| Identity number | | | | | |
| Address of place of residence: | | | | | |
| Province of residence: | | | | | |
| Contact details: | Cell nr | | Tel No (h) | | e-mail address |
| District of funeral: | | | | | |
| Province in which funeral will take place: | | | | | |

Hereby declare under oath with regards to the deceased:

| | | | | |
|---|---|---|---|---|
| Names of deceased: | | | | |
| Surname of deceased: | | | | |
| Relationship/Affiliation to the deceased(eg spouse/parent) | | | | |
| I am not in possession of the death certificate for the reasons set out, and a copy of the letter from a cultural or religious leader is attached: | Yes | | No | |
| Date of funeral: | | | | |
| Province in which funeral will take place: | | | | |
| *City/town/village of funeral: | | | | |

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***OATH/AFFIRMATION**

I,_____(full names), identity number _____, hereby declare under *oath/affirmation that the above-mentioned information is true and correct.

Signed at_____on this _____day of _____2020.

_____

*Signature of person making affidavit*

**CERTIFICATION**

I hereby certify that before administering the *oath/taking the affirmation, I asked the deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

(a) Do you know and understand the contents of the above declaration?
Answer: _____

(b) Do you have any objection to taking the *oath/affirmation?
Answer: _____

( Do you consider the *oath/affirmation to be binding on your conscience?
Answer: _____

I hereby certify that the deponent has acknowledged that *he/she knows and understands the content of this declaration which was *sworn to/affirmed before me, and the deponent's signature was placed thereon in my presence.

Signed at_____this_____day of_____2020__
*Justice of the Peace/Commissioner of Oaths

Full names: _____
Designation: _____
Business address: _____
_____
_____

*Delete which is not applicable".

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## ANNEXURE B
## ESSENTIAL GOODS FOR IMPORT
Regulation 22(1)

| | ESSENTIAL GOODS FOR IMPORT |
|---|---|
| 1. | Food products, including non-alcoholic beverages and animal feed . |
| 2. | Sanitary pads, sanitary tampons, condoms. |
| 3. | Hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment, excluding cloth face masks. |
| 4. | Products for the care of babies and toddlers. |
| 5. | Personal toiletries, including haircare, body and face care products, roll-ons, deodorants, and dental care products. |
| 6. | Medical and hospital supplies, medicine, equipment and personal protective equipment (excluding cloth face masks). |
| 7. | Fuel, including coal, wood, paraffin and gas. |
| 8. | Hardware, components and supplies. |
| 9. | Components for aftersales vehicles services. |
| 10. | Chemicals, packaging and ancillary products used in the production of any these products. |
| 11. | Textiles required to produce face masks, and other personal protective equipment. |
| 12. | ICT equipment to facilitate work-from-home arrangements including computers, mobile telephones and other home office equipment. |

## ANNEXURE C
## PERMITTED GOODS FOR EXPORT
Regulation 22(1)(e)

| | PERMITTED GOODS FOR EXPORT |
|---|---|
| 1. | Agricultural, agro-processing, forestry and fishing products |
| 2. | Manufacturing products and mining products permitted for production under the Alert Level 4 table subject to directions issued by the relevant Minister |

## ANNEXURE D
## ESSENTIAL SERVICES

A: Essential and permitted services referred to in section 16(3) of the Regulation shall refer to:

(a) the list of essential services as set out in B below; and

(b) such other service as are set out in Alert Level 4 and where the technological, industrial, structural or similar requirement of the service necessitates a continuous or shift operation, as set out in directions, as set out below.

B Essential services means the services as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and designated in terms of section 71(8) of the Labour Relations Act, 1995 (and which designation remains valid as at the date of publication of this regulation), and as listed below:

1. Medical, Health (including Mental Health), Laboratory and Medical services and the National Institute for Communicable Diseases;
2. Disaster Management, Fire Prevention, Fire Fighting and Emergency services;
3.1 *(a)* The following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:
   (i) the banking environment (including the operations of mutual banks, co-operative banks, co-operative financial institutions and the Postbank);
   (ii) the payments environment;
   (iii) the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);
   (iv) the insurance environment;
   (v) the savings and investment environment;
   (vi) pension fund administration;
   (vii) outsourced administration;
   (viii) medical schemes administration; and
   (ix) additional services set out in directions.
   *(b)* The services listed in paragraph *(a)* may not be construed to include debt collection services.
3.2 Services necessary for the provision of social grants.
4. Production and sale of the goods listed in Annexure B;
5. Whole sale and retail stores for re-stocking;
6. Electricity (including vital demand management services), water, gas and fuel production, supply and maintenance;
7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance of the Department of Public Service and Administration, including Social Grant Payments and pension payments;
8. Essential municipal services;

9. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;
10. Funeral and cremation services, including mortuaries services and the transportation of mortal remains;
11. Wildlife Management, Anti-poaching, Animal Care and Veterinary services;
12. Newspaper, broadcasting and telecommunication infrastructure and services, including call centres critical for the support of such services;
13. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;
14. Cleaning, sanitation, pest control, sewerage, waste and refuse removal services;
15. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;
16. Essential SARS services defined by the Commissioner of SARS;
17. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;
18. Postal services and courier services related to transport of medical products;
19. Private security services;
20. Air-traffic Navigation, Civil Aviation Authority, air charters, Cargo Shipping and dockyard services;
21. Gold, gold refinery, coal and mining;
22. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown;
23. Production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment;
24. Transport services for persons rendering essential services and goods, and transportation of patients;
25. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament;
26.1 Commissioners of the South African Human Rights Commission, Gender Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Protector and Deputy Public Protector and the Independent Electoral Commission; and
26.2 Services rendered by the institutions referred to in item 26.1
27. Transport and logistics in respect of cargo and goods as set out in Part A to neighbouring countries;
28. Tow trucks and vehicle recovery services;
29. Call centres necessary to provide health, safety, social support, government and financial services, debt restructuring for consumers of retailers, and access to short-term insurance policies as a result of reduced income or loss of income;
30. Harvesting and storage activities essential to prevent the wastage of primary agricultural goods;
31. Implementation of payroll systems to the extent that such arrangement has not been made, to ensure timeous payments to workers; and

32. Critical maintenance services which cannot be delayed for more than 21 days and are essential to resume operations;
33. Trades necessary for the rendering of emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work;
34. Trades necessary for emergency automobile repairs for persons rendering essential services;
35. Information and Communication Technology services rendered to entities and institutions engaged in delivering essential services in terms of these Regulations.

## ANNEXURE E
## WORKPLACE PLANS
### Regulation 15(5)(b)

A COVID-ready Workplace Plan must be developed prior to the reopening of an enterprise employing persons or serving the public.

For small businesses, the plan can be basic reflecting the size of the business, while for medium and larger businesses, a more detailed written plan should be developed given the larger numbers of persons at the workplace.

The Plan for medium and large businesses must include the following:

1. The date the business will open and the hours of opening;
2. The timetable setting out the phased return-to-work of employees, to enable appropriate measures to be taken to avoid and reduce the spread of the virus in the workplace;
3. The steps taken to get the workplace COVID-19 ready;
4. A list of staff who can work from home; staff who are 60 years or older; and staff with comorbidities who will be required to stay at home or work from home;
5. Arrangements for staff in the establishment:
   (a) sanitary and social distancing measures and facilities at the entrance and exit to the workplace;
   (b) screening facilities and systems;
   (c) the attendance-record system and infrastructure;
   (d) the work-area of employees;
   (e) any designated area where the public is served;
   (f) canteen and bathroom facilities;
   (g) testing facilities (for establishments with more than 500 employees);
   (h) staff rotational arrangements (for establishments where fewer than 100% of employees will be permitted to work).
6. Arrangements for customers or members of the public, including sanitation and social distancing measures.

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ANNEXURE "EP3"

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## Pretoria

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Docex: 298

19 MAY 2020

Enquiries: T MUKASI
Email: tmukasi@justice.gov.za

My Ref: 1603/2020/Z42/DM
Your Ref: P WASSENAAR/ QB0693

**KRIEK WASSENAAR AND VENTER INC.**
**1ST FLOOR, NOREX HOUSE, 79 RAUCHAVENUE**
GEORGEVILLE, PRETORIA, 0184
EMAIL: pieterk@kriekprok.co.za;
peter@kriekprok.co.za
rohann@kriekprok.co.za

Dear Sir,

**URGENT APPLICATION: SAKELIGA NPC V THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS**

1. We refer to above matter and to your letters dated 2 May 2020, 5 May 2020 and 13 May 2020, which are attached to your client's application at pages 146 to 152.

2. Our clients apologise for not responding to your letters. Regarding the first two letters (2 and 5 May 2020), unfortunately the email addresses that you used did not reach the relevant people. As a result, the two letters did not come to the attention of our clients. Regarding the third letter (13 May 2020), it was only received by the Minister of Small Business Development. The rest of our clients only saw the letters and became aware of your request for mediation when the

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urgent application was served on them.

3. Your offer to resolve the dispute by mediation has not been rejected. We stress that, in all matters of this type, our clients are keen to avoid litigation. Had our clients received your letters when they were sent, they would have accepted your offer and agreed to mediation. Accordingly, our clients accept your offer to refer this dispute to mediation in terms of Regulation 13 of the Regulations issued on 29 April 2020 in *Government Gazette* 43258, Government Notice 480 ("the Regulations").

4. Without wishing to bypass the process provided for in Regulation 13, our clients are confident that a meeting between the parties will assist in resolving the dispute. To that end, our clients propose a meeting on Friday, 22 May at 11:00 with you and your client and representatives of the respondents. We propose that the meeting be conducted via Zoom. If your clients agree to the meeting, I will email you the Zoom meeting link before 09:00 on Friday morning.

5. Alternatively, if you wish immediately to conduct the mediation under the auspices of the Office of the Solicitor General, in accordance with Regulation 13, we confirm that our clients are amendable to this process and will make themselves available.

6. Please would you respond by no later than 12:00 on Thursday, 21 May 2020.

Yours sincerely

**T MUKASI**
**For: STATE ATTORNEY (PRETORIA)**

ANNEXURE "EP4"

KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: PJ Wassenaar/es/QB0693
Your ref: 1603/2020/Z42/DM

20 May 2020

**THE STATE ATTORNEY**
**PRETORIA**

**By e-mail:** tmukasi@justice.gov.za
PaMokoena@justice.gov.za

Sir,

**URGENT APPLICATION: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS**

1. We refer to your letter of 19 May 2020.

2. Our client is still willing to agree to a mediation in terms of regulation 13, subject however to the following:

   2.1. That the process be facilitated by the new Solicitor-General as required by the regulations;

   2.2. That a retired judge be appointed by agreement between the parties and that said retired judge act as a mediator;

   2.3. That the mediation be initiated and finalised by no later than close of office hours on Friday, 22 May 2020;

   2.4. That the mediation be without prejudice of rights and conducted without limiting our client's right to proceed with the urgent application on 26 May 2020.

3. Even though our client is amenable to attempt mediation with government with the hope that the parties can resolve the dispute to the benefit of the public and specifically the business community, our client has no intention to allow government to use the regulation 13 mediation process as a mechanism to derail and delay the urgent application.

4. If your client wants to proceed with mediation, we request that your offices communicate with the office of the Solicitor-General for the matter to be properly facilitated in terms of the regulations. Kindly provide us with the nomination list of retired judges as soon as possible. Please also inform us of your client's intentions and a proposed date for mediation by no later than close of office hours today.

5. We note that your clients have failed to file opposing affidavits as required by the notice of motion. Kindly note that we will be preparing the court file for lodgement on 21 May 2020 in terms of the Practice



(t) (+27) 12 756 7566 (f) (+27) 86 596 8799 (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria 0184
(p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Lede van die Vereniging van Regsluí vir Afrikaans

Direkteure / Directors: Johan Kriek (B Proc, LLM), Peter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by: Tertia Johanna Wassenaar (LLB)
Konsultante / Consultants: Catharina Elisabeth Pienaar (BA, BCur, LLB, LLM, PhD), Sylvia Adriana Venter (LLB)
• Reg. 2012/030418/21

Directives of this division of the High Court. Our client's rights remain strictly reserved. Our client does not condone the late filing of affidavits.

6. Feel free to contact writer if you wish to discuss the matter.

Yours faithfully,

KRIEK WASSENAAR & VENTER INC
PETER WASSENAAR – DIRECTOR
(t) 086 596 8516
(e) peter@kwv-inc.com

ANNEXURE "EP5"

# Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

Salu Building
Ground Floor
316 Thabo Sehume Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1572
(Secretary): (012) 309 1557
(076) 892 6024
Fax/Faks: 086 406 6203
Direct Fax:
Docex: 298

20 MAY 2020

Enquiries: T MUKASI
Email: tmukasi@justice.gov.za

My Ref: 1603/2020/Z42/DM
Your Ref: P WASSENAAR/ QB0693

KRIEK WASSENAAR AND VENTER INC.
1ST FLOOR, NOREX HOUSE, 79 RAUCHAVENUE
GEORGEVILLE, PRETORIA, 0184
EMAIL: pieterk@kriekprok.co.za;
peter@kriekprok.co.za
rohann@kriekprok.co.za

Dear Sir,

**URGENT APPLICATION: SAKELIGA NPC V THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS**

**Urgent application: Sakeliga NPC v The President of the Republic of South Africa and Others**

1. We refer to your letter dated 20 May 2020.

2. Our clients agree to a mediation of this matter in terms of Regulation 13. Our office will forthwith communicate with the office of the Solicitor-General as contemplated in the regulation. We trust that a mediator will be appointed as soon as possible so that the mediation can commence and be finalised without delay.

3. Regarding the filing of our clients' answering affidavit, we point out that it is not for your client to condone the late filing of affidavits. Your client was fully aware of the position before the end of March 2020 but chose to initiate its urgent application over the past weekend, giving our clients two days within which to respond to its lengthy affidavit. Clearly, the time period imposed by your client is unreasonable.

4. Your client has cited nine respondents. We and our counsel are in the process of consulting with our clients and drafting the answering affidavit. Our clients are taking the matter seriously and have not delayed in formulating a response to your client's application. We will file the answering affidavit as soon as it is ready for filing.

5. We will keep you informed of developments as soon as we have more information.

Yours sincerely

**T MUKASI**
**For: STATE ATTORNEY (PRETORIA)**

NM

ANNEXURE "EP6"

# Office of the State Attorney
## Pretoria

Private Bag X 91
PRETORIA
0001

Salu Building
Ground Floor
316 Thabo Sehume Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1572
(Secretary): (012) 309 1557
(076) 892 6024
Fax/Fake: 086 406 6203
Direct Fax:
Docex: 298

20 MAY 2020

Enquires: T MUKASI
Email: tmukasi@justice.gov.za

My Ref: 1603/2020/Z42/DM
Your Ref: NEW REFERAL

**MR PANDELANI F**
**THE SOLICITOR GENERAL**
**PRETORIA**

Dear Sir,

**URGENT APPLICATION: SAKELIGA NPC V THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS**

1. Above matter bear reference.

2. In the above matter, our office acts for the President of the Republic of South Africa and 8 others in an application where Sakeliga NPC is seeking a declaratory orders and related relief as a result of the provisions of the regulations which came into effect from the 29th April 2020.

3. We have since written a letter to the attorneys acting for the applicant requesting them to agree to refer the matter to mediation as provided for in regulation 13(3) and they have since responded to the letter with an indication that they are amendable to having the matter mediated. The two letters are attached hereto for your consideration.

MM

4. We direct this letter to you in terms of regulation 13(2) wherein we request your assistance in terms of regulation13(2)(a).

5. Hope you find the above in order and wait to hear from you.

Yours sincerely



**T MUKASI**
**For: STATE ATTORNEY (PRETORIA)**

NM

ANNEXURE "EP7"

**Mukasi Terrence**

**From:** Pandelani Fhedzisani
**Sent:** Friday, May 22, 2020 3:42 PM
**To:** Mukasi Terrence; peter@kriekprok.co.za; pieterk@kriekprok.co.za; rohann@kriekprok.co.za
**Cc:** Julia le Roux (julia@arbitration.co.za); Phahlane Mohube
**Subject:** RE: SAKELIGA NPC vs THE PRESODENT OF RSA AND OTHERS

Dear Colleagues,

Kindly note that the Office of the Solicitor General has received a request to facilitate mediation as envisaged in section 13 of the Regulations. With particular reference to the contents of the letter dated 20 May 2020 by Applicant's attorneys, the OSG records as follows:

(1) The *conditions precedent* for the holding of the mediation as contained in the letter aforesaid are as onerous as they equally are unconscionable.
(2) Mediation envisaged in the Regulations is by arrangement done through and under the auspices of the Arbitration Foundation of South Africa (AFSA) at no cost to the parties. It is unfair on both the office of the Solicitor General and AFSA to expect mediation to occur at such a short notice.
(3) To this end, it remains the facilitator's view that mediation should not be intended to merely tick-the boxes but should be approached by both parties in good faith.

To the aforegoing, the parties are advised that it was impossible to facilitate mediation within a strict short period of time as required by applicant's attorneys. Equally, the facilitator cannot give assurances that then meditation as requested would be concluded before the 26 May 2020 or that the conduct of the mediation would not impact on the case as enrolled.

Notwithstanding the herein aforesaid, parties are advised that a request has been made to AFSA to accord to the parties mediation as requested. AFSA shall be communicating to all parties copied herein on the further handling of the matter. Any communication arising from or relating to the captioned matter should be in writing for the benefit of all parties copied in this email.

Kind regards
FR Pandelani
Office of the Solicitor General

---

**From:** Mukasi Terrence
**Sent:** Wednesday, 20 May 2020 14:37
**To:** Pandelani Fhedzisani
**Cc:** peter@kriekprok.co.za; pieterk@kriekprok.co.za; rohann@kriekprok.co.za
**Subject:** SAKELIGA NPC vs THE PRESODENT OF RSA AND OTHERS

Good afternoon.

We attach hereto our letter to you and the letters exchanged between the parties as well as the application served by the applicant.

Kindly assist in this regard



NN

*TERRENCE MUKASI*

*Senior Assistant State Attorney*
*Salu Building*
*Floor 20, Room 2035*
*316 Thabo Sehume street, Pretoria*
*Private Bag X91, Pretoria, 0001*

Tel: +27[012]309 1572
Fax: 086 406 6203
Mobile: +2776 892 6024
Mailto:TMukasi@justice.gov.za



NM

**Mukasi Terrence** **ANNEXURE "EP8"**

**From:** peter@kriekprok.co.za
**Sent:** Saturday, May 23, 2020 12:06 PM
**To:** Pandelani Fhedzisani; Mukasi Terrence; pieterk@kriekprok.co.za; rohann@kriekprok.co.za
**Cc:** 'Julia le Roux'; Phahlane Mohube
**Subject:** RE: SAKELIGA NPC vs THE PRESODENT OF RSA AND OTHERS

Good day,

1) I refer to the email received from the office of the Solicitor-General on 22 May 2020.

2) Our client does not intend to respond to each and every averment contained in the email. The email however necessitates that our client corrects certain material inaccuracies.

3) Regulation 13 was introduced on 30 April 2020. On 2 May 2020 our client requested the offices of the Solicitor-General as well as various ministries responsible for the management of the COVID 19 regulations and directives to initiate mediation regarding the various permit systems employed.

4) Our client's urgent application was only brought after government, notwithstanding our earlier request for mediation to which we received no response, proceeded on 12 May 2020 to publish an even more draconian permit system directive.

5) Notwithstanding the fact that the matter was already *sub judice*, our client agreed to the State Attorney's request on 19 May 2020 for mediation, but subject to the process being disposed of in a manner that would not derail the urgency of our urgent application. Our client has been more than accommodating towards government. We also point out that our client sought in correspondence, meetings and other interaction with government over the course of more than two months now to avoid litigation, to no avail.

6) The Solicitor-General's response is unwarranted. My client takes exception to the allegation made that my client's approach to date constitutes *unconscionable* conduct. The further allegation that that our client is merely attempting to *tick-the-boxes* is even more shocking seeing that our client was the original party to request mediation only to receive a response from the Solicitor-General twenty days after the original request. Regulation 13 is not a formal pre-trial requirement and there are no boxes for our client to merely tick. The response received goes against the face of the goodwill shown by our client to date.

7) It appears to our client that the Solicitor-General is unable to impartially manage a government-facilitated mediation process as one would have hoped to glean from the wording of regulation 13. It is unacceptable for the facilitator to make himself a party to the dispute.

8) The process requires agreement between the parties. Our client will not subject itself to a mediation process where the facilitator identified to *assist the parties* sees himself as either a referee, or alternatively the protector of the government's interests in the matter. Our client concludes from your letter that the Solicitor-General has formed a detrimental, and may I say improper, view of our client's conduct as well as the urgency of our case. If nothing else, this mediation process deployed by government will only result in further delays and is grossly unequipped to effectively respond to urgent public disputes.



NH

9) Our client takes exception to the lack of urgency in the conduct of the office of the Solicitor-General and the state generally, given the material harm daily befalling businesses and the public under the lockdown regulations.

10) There is no agreement between the parties regarding mediation. Our client is proceeding with our preparation for the urgent application on 26 May 2020.

Yours faithfully / Die uwe

Peter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

**From:** Pandelani Fhedzisani <FhePandelani@justice.gov.za>
**Sent:** Friday, 22 May 2020 15:42
**To:** Mukasi Terrence <TMukasi@justice.gov.za>; peter@kriekprok.co.za; pieterk@kriekprok.co.za; rohann@kriekprok.co.za
**Cc:** Julia le Roux (julia@arbitration.co.za) <julia@arbitration.co.za>; Phahlane Mohube <MPhahlane@justice.gov.za>
**Subject:** RE: SAKELIGA NPC vs THE PRESODENT OF RSA AND OTHERS

Dear Colleagues,

Kindly note that the Office of the Solicitor General has received a request to facilitate mediation as envisaged in section 13 of the Regulations. With particular reference to the contents of the letter dated 20 May 2020 by Applicant's attorneys, the OSG records as follows:

(1) The *conditions precedent* for the holding of the mediation as contained in the letter aforesaid are as onerous as they equally are unconscionable.
(2) Mediation envisaged in the Regulations is by arrangement done through and under the auspices of the Arbitration Foundation of South Africa (AFSA) at no cost to the parties. It is unfair on both the office of the Solicitor General and AFSA to expect mediation to occur at such a short notice.
(3) To this end, it remains the facilitator's view that mediation should not be intended to merely tick-the boxes but should be approached by both parties in good faith.

To the aforegoing, the parties are advised that it was impossible to facilitate mediation within a strict short period of time as required by applicant's attorneys. Equally, the facilitator cannot give assurances that then meditation as requested would be concluded before the 26 May 2020 or that the conduct of the mediation would not impact on the case as enrolled.

Notwithstanding the herein aforesaid, parties are advised that a request has been made to AFSA to accord to the parties mediation as requested. AFSA shall be communicating to all parties copied herein on the further handling of the matter. Any communication arising from or relating to the captioned matter should be in writing for the benefit of all parties copied in this email.

Kind regards
FR Pandelani



MN

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
| **NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

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**RESPONDENTS' ANSWERING AFFIDAVIT**

---

I, the undersigned,

**LINDOKUHLE MKHUMANE**

state the following under oath:

1 I am the Acting Director General in the Department of Small Business Development ("the Department"). The Minister of Small Business Development ("the Minister") is cited as the seventh respondent in this application. I am authorised to depose to this affidavit on behalf of the Minister and the Department.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read the answering affidavit in this matter, deposed to by the Director General of the Department of Trade, Industry and Competition. I confirm that the contents of that affidavit are true and correct insofar as they relate to the Directions issued by the Minister on 6 April 2020 and on 12 May 2020.

4 I have also read the founding affidavit in this application, deposed to by Mr Pieter Jacobus le Roux. Any allegation in Mr Le Roux's affidavit, that is not dealt with specifically below or in the affidavit of the Director General of Trade, Industry and Competition, is denied.

**The Directions of 12 May 2020**

5 Mr Le Roux contends that the Directions issued by the Minister on 12 May 2020 are unlawful and invalid. He says that the Directions create additional obligations on small businesses to acquire business licences or permits, and that the Minister does not have the authority to impose these alleged additional obligations.

6 I am advised that these contentions are without merit and that they are based on a misreading of the Directions.

*No additional obligations are created by the Directions*

7 The Directions of 12 May 2020 were issued by the Minister to provide guidance to micro and small businesses, permitted to operate under alert level 4, on how to comply with the lockdown Regulations.

8 The Directions extended the category of micro and small businesses that previously were allowed to operate under alert level 5. The previous Directions issued by the Minister under alert level 5 are annexed to the affidavit of the Director General of Trade, Industry and Competition, marked "**EP1**". Under alert level 5, only certain micro and small businesses were permitted to operate, including grocery stores, corner shops, spaza shops, fruit and vegetable stores, and fruit and vegetable informal traders and *Langanas* from the Northern and Western Cape.

9 Micro and small businesses permitted to operate during this period (alert level 5) were required to hold permits issued by their local authorities in line with the provisions of the Business Act 71 of 1991. Spaza shop owners and informal food traders who were trading without permits were permitted to apply for temporary permits. Non-South African citizens who were trading without permits were required to be in possession of a valid passport and a valid visa issued by the Department of Home Affairs. Alternatively, they were required to hold an asylum seeker's permit issued in terms of section 22 of the Refugees Act No 130 of 1998, which allowed them to work. Permission to operate was linked to the period

covered by the asylum seeker's permit.

10 Staff working in micro and small businesses permitted to operate under alert level 5 were required to carry a permit to perform essential services as provided for in Regulation 11(B)(3) of the lockdown Regulations.

11 The Directions of 12 May 2020 extended the category of micro and small businesses, that were permitted to operate under alert level 4, to include:

11.1 Small scale bakeries and confectionaries;

11.2 Small scale hardware stores;

11.3 Informal restaurants and *shisanyamas* for home delivery only;

11.4 Artisans rendering emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repairers, tow truck drivers, motor mechanics, including small scale vehicle service centres, workshops, small scale motor body repair shops, and fitment centres;

11.5 Sole traders within the clothing and textile and confectionary business; and

11.6 Cooperatives operating under permitted businesses in line with the Regulations.

12 As with the 6 April 2020 Directions, the 12 May 2020 Directions required the extended category of businesses to be in possession of permits to trade issued in accordance with the Business Act, or a business licence

or trading permit issued by a relevant municipal authority. The process outlined in paragraph 11 of the Directions provided an alternative way for micro and small businesses, who were not in possession of such permits, to apply for them.

13 The requirement for a business licence or trading permit did not amount to an additional condition imposed by the Minister. Nor did it create an additional burden or obstacle on micro and small businesses. The Minister simply restated the existing legal position. In the ordinary course, these types of businesses must be licensed to operate.

**The affidavit of Mr Le Roux**

14 I am advised that it is not necessary for me to deal expressly with each allegation in Mr Le Roux's affidavit. Where I do not deal expressly with an allegation inconsistent with the answering affidavit of the Director General of the Department of Trade, Industry and Competition, or inconsistent with what I have stated elsewhere in this affidavit, I deny the allegation.

*Ad paragraph 36*

15 I submit that the ordinary grammatical meaning of "*direction*" includes "*control*", "*guidance*", "*leadership*" and "*order*".

16 I deny the allegations in this paragraph.

*Ad paragraph 77*

17 I deny that the Directions are vague. The definitions of the various types of enterprises are well known to business owners who operate in these sectors and are set out in the Schedule to the National Small Enterprise Act No 102 of 1996, annexed hereto, marked **"KN1"**.

18 In addition, the licences issued to micro and small businesses define whether the business is micro, small, or medium.

19 I therefore deny the allegations in this paragraph.

*Ad paragraph 78*

20 It is not a requirement of the Directions that every enterprise must have a licence in terms of the Business Act.

21 Clause 12 of the Directions provides for the furnishing of alternative documents by the head of a small business or a sole proprietor.

22 I therefore deny the allegations in this paragraph.

*Ad paragraph 79*

23 All the enterprises referred to herein require permission to operate in the ordinary course.

24 I therefore deny the allegations in this paragraph.

*Ad paragraph 84*

25 Mr Le Roux is once again conflating the issue of registration with the form issued by the head of an institution.

26 I therefore deny the allegations in this paragraph.

*Ad paragraphs 87 - 89*

27 The media article and affidavits attached to Mr Le Roux's affidavit do not prove the allegations in these paragraphs.

28 The Regulations, the CIPC certificate, and the Directions issued by the Minister do not obstruct or hinder those enterprises who are entitled to operate from doing so during the lockdown.

29 *Ad Annexure "N1"*

29.1 I am advised that it is improper to rely on media reports in lieu of evidence. I cannot respond in court papers to media reports.

29.2 I therefore deny the allegations.

30 *Ad Annexure "N3"*

30.1 The deponent appears not to have familiarised himself with the Directions issued by the Minister.

30.2 I submit that the Directions are clear and self-explanatory.

31 *Ad Annexure "N4"*

31.1 The deponent appears not to have familiarised himself with the Directions issued by the Minister.

31.2 I submit that the Directions are clear and self-explanatory.

32 *Ad Annexure "N5"*

32.1 The deponent appears not to have familiarised himself with the Directions issued by the Minister.

32.2 I submit that the Directions are clear and self-explanatory.

33 *Ad Annexure "N6"*

33.1 The deponent has not furnished sufficient information to explain why the municipality refused to allow her to trade outside of established supermarkets.

33.2 Had the deponent been in possession of a valid permit prior to the lockdown, she would have been entitled to continue trading.

34 I therefore deny the remaining allegations in these paragraphs.

**Conclusion**

35 The respondents request that this Court strike the urgent application from the roll with costs, including the costs of two counsel, alternatively that this Court dismiss the application with costs, such costs to include the costs of two counsel.

**LINDOKUHLE MKHUMANE**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 25th day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full names: NEMUKONGWE LUFUNO
Address: ARCHIBOLD
~~Capacity:~~ OFFICE NO 611 & 612
JSL TOWERS
259 PRETORIOUS STREET

Capacity: Attorney

NEMUKONGWE ATTORNEYS INC
OFFICE NO 611 & 612, JSL TOWERS
259 PRETORIOUS STREET, PRETORIA
CELL: 082 973 1673
Email: lanemukongwe@gmail.com

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

NO. R. 450 06 APRIL 2020

**DIRECTIONS ISSUED IN TERMS OF REGULATION 10(8) OF THE REGULATIONS MADE UNDER SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002 (ACT NO. 57 OF 2002): MEASURES TO PREVENT AND COMBAT THE SPREAD OF COVID-19**

I, Ms Khumbudzo Ntshavheni, MP, the Minister of Small Business Development, in terms of regulation 10(8) of the Regulations published in Government Gazette No.43107, Government Notice No. 318 of 18 March 2020, and made in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), hereby issue the Directions set out in the Schedule hereto in order provide guidance on implementation of the provisions of essential goods and services.

MS KHUMBUDZO NTSHAVHENI, MP
MINISTER OF SMALL BUSINESS DEVELOPMENT
DATE:

[redacted]

12-85

## SCHEDULE

**Definitions**

1. In these Directions, a word or expression bears the meaning assigned to it in the Regulations promulgated in Government Gazette No. 43107, Government Notice No.R318 of 18 March 2020 and in the Regulations promulgated in Government Gazette No. 43148, Government Notice No.398 of 25 March 2020, in terms of section 27(2) of the Disaster Management Act, 2002, and unless the context otherwise indicates—

**"lockdown Regulations"** means the regulations published in Government Gazette No. 43148, Government Notice No.398 of 25 March 2020

1.1 These Directions are issued in order to assist SMMEs operating grocery stores including the corner shops, spaza shops, fruit and vegetable stores, to comply with the lockdown Regulations. The Informal Food Traders as referred to in the Regulations are limited to Fruit and Vegetable informal traders and the *Langanas*, who operate in the Northern Cape and Western Cape.

1.2 In terms of the lockdown Regulations, all enterprises operating within the borders of the Republic of South Africa are expected to close during the lockdown period except for enterprises which are designated as providers of essential goods and services as per Annexure B to the lockdown Regulations.

1.3 All enterprises must ensure that the absolute minimum number of staff necessary to safely operate the enterprises are at work during the

lockdown period. Furthermore, employers are encouraged to provide transport for their employees during the lockdown period.

1.4 The grocery stores outlined in paragraph 1.1 above are permitted to operate during the lockdown period irrespective of the nationality of their owners provided that they adhere to the following:

1.4.1 All spaza shop owners and informal food traders must hold permits issued by their respective local municipalities allowing them to trade, in line with the provisions of the Business Act, 71 of 1991 as amended;

1.4.2 No person may stay overnight in a grocery store in contravention of the Food Safety and Health Standards;

1.4.3 Only the sale of foodstuff and basic necessities is permitted, grocery stores must not sell products or goods that are prohibited by the lockdown Regulations;

1.4.4 The grocery stores must uphold the health and hygiene requirements by:

1.4.4.1 Maintaining a social distance amongst customers and between the trader and customer of at least one metre;

1.4.4.2 Disinfecting and sanitising trading spaces in line with the Directions issued by the Department of Health;

1.4.5 Spaza shop owners and informal food traders currently trading without permits may apply for temporary permits, and in case of non-South African citizens, the business owner–

(a) must have been lawfully admitted into the Republic and must hold a valid passport with a visa issued by the Department of Home

Affairs in terms of section 10 of the Immigration Act, 2002 (Act No. 13 of 2002), authorising him or her to operate a business; or

(b) must alternatively, hold an asylum seeker's permit issued in terms of section 22 of the Refugees Act, 1998 (Act No. 130 of 1998), which allows him or her to work. Permission to operate will be linked to the period covered by the asylum seeker's permit.

## 2. MANDATORY IDENTIFICATION REQUIRED BY STAFF WORKING DURING THE LOCKDOWN PERIOD

2.1 All staff must at all times carry a permit to perform essential services contemplated regulation 11(B)(3) of the lockdown Regulations.

2.2 A stamp or authorised signature on the permit contemplated in regulation 11(B)(3), to perform essential services, is acceptable.

All staff must at all times carry a positive photo identification such as an identity document, passport or permit, issued by the Department of Home Affairs.

## 3. CONTACT DETAILS IN THE EVENT OF SMALL BUSINESSES WISHING TO CLARIFY THEIR STATUS AS RENDERING ESSENTIAL SERVICES OR PROVIDING ESSENTIAL GOODS

3.1 SMMEs may contact the **Department of Small Business Development (DSBD)** on 0860 663 7867 for more information or alternatively send their queries to info@dsbd.gov.za

4.1 These Directions come into operation on the date of publication in the Government Gazette.

**Ms Khumbudzo Ntshavheni**

**Minister for Small Business Development**

**Date:**

320
12-90



# ANNEXURE C FORM 1
# PERMIT TO PERFORM ESSENTIAL SERVICE REGULATION 11B (3)

Please note that the person to whom the permit is issued must at all times carry a form of identification to be presented together with this permit. If no identification is presented the person to whom the permit is issued will have to return to his or her place of residence during the lockdown.

| | | | | |
|---|---|---|---|---|
| Surname | | | | |
| Full names | | | | |
| Identify number | | | | |
| Contact details | Cell nr. | Tel nr (w) | Tel no(H) | Email-address |
| Physical address of institution | | | | |

Hereby certify that:

| | |
|---|---|
| Surname | |
| Full names | |
| Identity number | |

Signed at _____ on this the _____ day of _____ 2020

| Official stamp of the institution |
|---|
| |

_____
Signature of Head of institution

12-90

ANNEXURE "RNT"

321

# NATIONAL SMALL ENTERPRISE ACT NO. 102 OF 1996

[View Regulation]

[ASSENTED TO 12 NOVEMBER, 1996]
[DATE OF COMMENCEMENT: 27 JUNE, 1997]

*(Afrikaans text signed by the President)*

This Act has been updated to *Government Gazette* 42304 dated 15 March, 2019.

**as amended by**

National Small Business Amendment Act, No. 26 of 2003

National Small Business Amendment Act, No. 29 of 2004

Government Notice No. 399 in *Government Gazette* 42304 dated 15 March, 2019

## GENERAL NOTE

**In terms of s. 6 of Act No. 29 of 2004 the expression "small business" wherever it occurs, is substituted with the expression "small enterprise".**

## ACT

**To provide for the establishment of the Advisory Body and the Small Enterprise Development Agency; to provide guidelines for organs of state in order to promote small enterprise in the Republic; and to provide for matters incidental thereto.**

[Long title substituted by s. 8 of Act No. 26 of 2003 and by s. 4 of Act No. 29 of 2004.]

## ARRANGEMENT OF SECTIONS


CHAPTER 1

1. Definitions

CHAPTER 2
MINISTER'S POWER TO FACILITATE AND ESTABLISH ADVISORY BODY

2. Minister's power to facilitate and establish Advisory Body
3. Minister's duty to determine Constitution of Advisory Body
4. .....
5. .....
6. .....
7. .....
8. .....

CHAPTER 3
SMALL ENTERPRISE DEVELOPMENT AGENCY

9. Establishment of Small Enterprise Development Agency
9A. Objectives of Agency
10. Functions of Agency
11. Constitution of Board and appointment of members of Board
12. Terms of office of non-executive members of Board
13. Remuneration and allowances of members of Board
13A. Conflict of interest
13B. Resignation of members of Board
13C. Termination of appointment of members of Board
13D. Meetings of Board
13E. Conduct of meetings
13F. Resolution without meeting
13G. Directives issued by Minister
13H. Chief Executive Officer

**21. Repeal of laws.**—(1) Subject to subsection (2), the Small Business Development Act, 1981 (Act No. 112 of 1981), the Small Business Development Amendment Act, 1984 (Act No. 54 of 1984), and the Small Business Development Amendment Act, 1990 (Act No. 16 of 1990), are hereby repealed.

(2) Section 2A of the Small Business Development Act, 1981, remains in force until a date determined by the Minister by notice in the *Gazette*, which date shall not be earlier than 12 months after the date of commencement of this Act.

**22. Short title and commencement.**—This Act is called the National Small Enterprise Act, 1996, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

[Short title and commencement substituted by s. 5 of Act No. 29 of 2004.]

## Schedule

[Schedule substituted by s. 7 of Act No. 26 of 2003 and by GN 399 of 15 March, 2019.]

(See definition of "small enterprise" in section 1)

| *Column 1* | *Column 2* | *Column 3* | *Column 4* |
|---|---|---|---|
| *Sectors or subsectors in accordance with the Standard Industrial Classification* | *Size or class of enterprise* | *Total full-time equivalent of paid employees* | *Total annual turnover* |
| Agriculture | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 35,0 million<br>≤ 17,0 million<br>≤ 7,0 million |
| Mining and Quarrying | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 210,0 million<br>≤ 50,0 million<br>≤ 15,0 million |
| Manufacturing | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 170,0 million<br>≤ 50,0 million<br>≤ 10,0 million |
| Electricity, Gas and Water | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 180,0 million<br>≤ 60,0 million<br>≤ 10,0 million |
| Construction | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 170,0 million<br>≤ 75,0 million<br>≤ 10,0 million |
| Retail, motor trade and repair services | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 80,0 million<br>≤ 25,0 million<br>≤ 7,5 million |
| Wholesale | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 220,0 million<br>≤ 80,0 million<br>≤ 20,0 million |
| Catering, Accommodation and other Trade | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 40,0 million<br>≤ 15,0 million<br>≤ 5,0 million |
| Transport, Storage and Communication | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 140,0 million<br>≤ 45,0 million<br>≤ 7,5 million |
| Finance and Business Services | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 85,0 million<br>≤ 35,0 million<br>≤ 7,5 million |
| Community, Social and Personal Services | Medium<br>Small<br>Micro | 51 – 250<br>11 – 50<br>0 – 10 | ≤ 70,0 million<br>≤ 22,0 million<br>≤ 5,0 million |

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
| **NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**CASSIUS REGINALD LUBISI**

state the following under oath:

1 I am the Director General of the Presidency of the Republic of South Africa. The President is cited as the first respondent in this application. I am authorised to depose to this affidavit on his behalf.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read Mr Le Roux's founding affidavit, as well as the answering affidavits deposed to by the Director General of the Department of Trade, Industry and Competition, and the Director General of the Department of Small Business Development, on behalf of the respondents.

4 I understand that this affidavit will be served and filed together with the two answering affidavits. I confirm that the contents of their affidavits are true in so far as they relate to the President.

**CASSIUS REGINALD LUBISI**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the ____ day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

Full names:

Address:

Capacity:

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

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| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
| **NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**AVRIL WILLIAMSON**

state the following under oath:

1 I am the Director General of the Department of Cooperative Governance and Traditional Affairs ("the Department"). The Minister of Cooperative Governance and Traditional Affairs ("the Minister") is cited as the second respondent in this application. I am authorised to depose to this affidavit on behalf of the Minister.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read Mr Le Roux's founding affidavit, as well as the answering affidavits deposed to by the Director General of the Department of Trade, Industry and Competition, and the Director General of the Department of Small Business Development, on behalf of the respondents.

4 I understand that this affidavit will be served and filed together with the two answering affidavits. I confirm that the contents of the affidavits are true in so far as they relate to the Minister and the Department.

_____

**AVRIL WILLIAMSON**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the ____ day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

Full names:

Address:

Capacity:

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

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| and | |
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| **MINISTER OF POLICE** | Fourth Respondent |
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| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**KEHLA JOHN SITHOLE**

state the following under oath:

1 I am the National Commissioner of the South African Police Service ("SAPS"). I am cited as the fifth respondent in this application. The fourth respondent is the Minister of Police ("the Minister"). I am also authorised to depose to this affidavit on behalf of the Minister.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read Mr Le Roux's founding affidavit, as well as the answering affidavits deposed to by the Director General of the Department of Trade, Industry and Competition, and the Director General of the Department of Small Business Development, on behalf of the respondents.

4 I confirm that the contents of the two answering affidavits are true and correct in so far as they relate to the Minister and the SAPS.

_____

**KEHLA JOHN SITHOLE**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the ____ day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

Full names:

Address:

Capacity:

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
| **NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**REGINALD CASSIUS LUBISI**

state the following under oath:

1 I am the Director-General in the Presidency of the Republic of South Africa. The President is cited as the first respondent in this application. I am authorised to depose to this affidavit on his behalf.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read Mr Le Roux's founding affidavit, as well as the answering affidavits deposed to by the Director-General of the Department of Trade, Industry and Competition, and the Director-General of the Department of Small Business Development, on behalf of the respondents.

4 I understand that this affidavit will be served and filed together with the two answering affidavits. I confirm that the contents of their affidavits are true in so far as they relate to the President.

**REGINALD CASSIUS LUBISI**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 25th day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

AMU NWANDZU
PRACTISING ATTORNEY
COMMISSIONER OF OATHS - EX OFFICIO
867 STANZA BOPAPE STREET
AP LEDWABA OFFICE PARK, ARCADIA 0002
TEL: 012 321 0719
FAX: 086 762 2566 CELL: 079 569 6230



AMU NWANDZU
PRACTISING ATTORNEY
COMMISSIONER OF OATHS - EX OFFICIO
867 STANZA BOPAPE STREET
AP LEDWABA OFFICE PARK, ARCADIA 0002
TEL: 012 321 0719
FAX: 086 762 2566 CELL: 079 569 6230

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
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| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

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**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**KHEHLA JOHN SITHOLE**

state the following under oath:



14 J.S

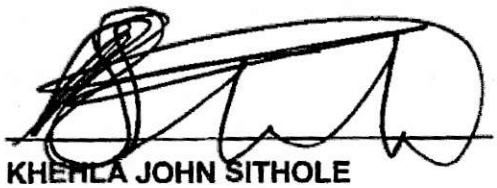
ME

1 I am the National Commissioner of the South African Police Service ("SAPS"). I am cited as the fifth respondent in this application. The fourth respondent is the Minister of Police ("the Minister"). I am also authorised to depose to this affidavit on behalf of the Minister.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read Mr Le Roux's founding affidavit, as well as the answering affidavits deposed to by the Director General of the Department of Trade, Industry and Competition, and the Director General of the Department of Small Business Development, on behalf of the respondents.

4 I confirm that the contents of the two answering affidavits are true and correct in so far as they relate to the Minister and the SAPS.



KHEHLA JOHN SITHOLE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 26th day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

ME



**NDOU NTEVHE ATTORNEYS**
PRACTISING ATTORNEY OF R.S.A
COMMISSIONER OF OATHS
OFFICE 101,250 PRETORIUS
250 PRETORIUS STREET
PRETORIA, GAUTENG, 0001

**COMMISSIONER OF OATHS**

Full names:

Address:

Capacity:



12-106

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 22352/20

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **MINISTER OF POLICE** | Fourth Respondent |
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| **MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |
| **MINISTER OF HEALTH** | Ninth Respondent |

---

## CONFIRMATORY AFFIDAVIT

---

I, the undersigned,

**AVRIL WILLIAMSON**

state the following under oath:

1 I am the Director General of the Department of Cooperative Governance and Traditional Affairs ("the Department"). The Minister of Cooperative Governance and Traditional Affairs ("the Minister") is cited as the second respondent in this application. I am authorised to depose to this affidavit on behalf of the Minister.

2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or so apparent from the context. I believe the contents to be true and correct.

3 I have read Mr Le Roux's founding affidavit, as well as the answering affidavits deposed to by the Director General of the Department of Trade, Industry and Competition, and the Director General of the Department of Small Business Development, on behalf of the respondents.

4 I understand that this affidavit will be served and filed together with the two answering affidavits. I confirm that the contents of the affidavits are true in so far as they relate to the Minister and the Department.

**AVRIL WILLIAMSON**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 26th day of MAY 2020, the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

SUID-AFRIKAANSE POLISIEDIENS
AFDELING: SIGBARE POLISIËRING
2020 -05- 26
DIVISION: VISIBLE POLICING
SOUTH AFRICAN POLICE SERVICE

**COMMISSIONER OF OATHS**

Full names: MOSES SANATSANE MATHIS

Address: 255 PAUL KRUGER STREET
3rd PRESIDIA BUILDING, PRETORIA

Capacity: COLONEL

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Third Respondent |
| **THE MINISTER OF POLICE** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eight Respondent |
| **THE MINISTER OF HEALTH** | Ninth Respondent |

---

**FILING NOTICE**

---

**DOCUMENTS TO BE FILED:**

- **APPLICANT'S REPLYING AFFIDAVIT**

**FILED BY:** **KRIEK WASSENAAR AND VENTER INC**

**APPLICANT'S ATTORNEYS**

1ST FLOOR, NOREX HOUSE, 79 RAUCH AVENUE

GEORGEVILLE, PRETORIA

(T) (+27) 12 803 4719 (C) 0829204474

(E) peter@kriekprok.co.za

**REF: P WASSENAAR /QB0693**

**TO: THE REGISTRAR OF THE HIGH COURT**

**PRETORIA**

**AND TO:** **THE STATE ATTORNEY**

**ATTORNEYS FOR THE RESPONDENTS**

SALU BUILDING, GROUND FLOOR,

316 THABO SEHUME STREET, PRETORIA

(T) 012 309 1572 (C) 076 892 6024

(E) TMukasi@justice.gov.za

**Ref: T Mukasi / 1603/2020/Z42/DM**

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

**Case Number: 22352/2020**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** | First Respondent |
| **THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | Second Respondent |
| **THE MINISTER OF TRADE AND INDUSTRY** | Third Respondent |
| **THE MINISTER OF SAFETY AND SECURITY** | Fourth Respondent |
| **THE NATIONAL COMMISSIONER OF POLICE** | Fifth Respondent |
| **THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES** | Sixth Respondent |
| **THE MINISTER OF SMALL BUSINESS DEVELOPMENT** | Seventh Respondent |
| **THE NATIONAL COMMAND CENTRE** | Eighth Respondent |

---

**REPLYING AFFIDAVIT**

---

I, the undersigned,

**PIETER JACOBUS LE ROUX**

Make oath and state:

1. I am the Chief Executive Officer of the applicant.

2. The facts deposed to herein are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3. Where I make submissions of a legal nature, I do so on the advice of the applicant's legal advisers, which advice I accept as correct.

4. I have read the answering affidavits of Lionel October and Lindokuhle Mkhumane and wish to respond thereto as is set out below.

5. I have also read the unsigned affidavits of Cassius Reginald Lubisi, Avril Williamson, and Kehla John Sithole and wish to point out that no regard should be had to them because they are not signed or commissioned.

**AD THE ANSWERING AFFIDAVIT OF LIONEL OCTOBER**

6. Mr October states that he is the Director General of Trade, Industry and Competition. He deals with the permit system set up through the CIPC.

7. I deny that Mr October is entitled to depose to an affidavit in respect of the functioning of the CIPC, but submit that the fact that he does so, illustrates the disregard shown by the Department for the legal principles that govern them. Section 185(2)(b) of the Companies Act, 2008, enjoins the CIPC to be

independent and subject only to the Constitution, the law, and any policy statement, directive or request of the Minister in terms of the Companies Act.

8. Mr October, as Director General of that Department arrogates to himself the authority to speak on behalf of the CIPC. He then proceeds to defend a permit system, which has been disclaimed by the Commissioner himself (See page 02-114). I submit that this conduct shows either a disregard for the legal prescripts regulating his department or a lack of understanding thereof.

9. The gravamen of the DTI's proposition is that the CIPC "Essential Services Certificate" system was created for statistical purposes only. It serves no purpose to assist a businessperson to carry on his or her legal business. It is not required for that purpose. He does not deny that the issue of such certificates are not sanctioned by the Companies Act or any other law. His sole excuse for that system is that it assisted the Minister to "unblock issues" with the SAPS, and to make enforcement officers understand "which kinds of businesses were operating as essential services".

10. I submit that that statement is ludicrous and illustrates the paternalistic thinking of the Minister: the Regulations, as I have demonstrated in my founding affidavit, created a self-regulating permit system, whereby a businessperson, as "Head of Institution" must determine whether his or her business complies with the definition of "Essential Service". The certificate system sought to replace that decision with one that required certification by the CIPC, initially by

public and open directive and thereafter in more concealed terms and in practice.

11. I have opened the Bizportal after receipt of the Answering Affidavit and found an opening statement thereon reading as follows:

*"Those businesses (i.e. providing essential services) need to apply for a certificate in order to trade..."*

12. A screenprint of the opening page of the website taken on 25 May 2020 is attached hereto as **annexure "R1".**

13. The Bizportal is still available for the issue of such "certificates" and they are issued on a daily basis.

14. In the light of the deponent's admission that the certificates are not sanctioned by the Companies Act or the Regulations, I have instructed the applicant's legal representatives to also apply for an order directing the CIPC to cease issuing such certificates forthwith, since they are not sanctioned by any law, and serve no legitimate governmental purpose.

15. The deponent also attacks the application on the basis of:

a. Urgency;

b. Locus standi;

16. The attack on urgency is founded on the allegation that the "Essential Services Certificates" were introduced shortly after the introduction of the lockdown. To that, the argument, which is not advanced by the Respondents, but which I was advised to deal with, can be added that the country is but days away from Level 3, which does not appear to require any permit system such as under Levels 5 or 4. I submit that the imposition of the Certification system has been as illegal then as it is now and as it will be during the final stages of the State of Disaster. It is also common cause that government has repeatedly warned that Level 4 or Level 5 could at any point be reinstituted for some or all of the country, should government consider it necessary. The downgrading to Level 3 does not affect the illegality of the certification system, nor its harm and threat of harm to the public. I need to point out that the CIPC certification system forms an integral part of the illegal intrusion into the conduct of legal business, of which the Directions issued by the Minister of Small Business Development constitutes the most egregious excess. It is that which made the matter urgent, and not the CIPC certificates only.

17. I challenge the Minister to immediately direct the CIPC, in terms of section 185(2)(b)(ii) to discontinue the illegal use of Bizportal for the issue of "Essential Services Certificates", failing which it will be submitted that it is the stubborn defence by the Minister of an illegal system, which fuels the urgency of the matter.

18. The deponent also attacks the locus standi of the applicant. He says that the applicant, which I expressly identified in paragraph 4 of my founding affidavit as "**SAKELIGA NPC**, a non-profit company with limited liability duly incorporated in terms of the Company Laws of the Republic of South Africa and registered under registration number 2012/043725/08 and with registered address at 117 Gerhardt Street, Die Hoewes, Extension 158, Centurion, Gauteng Province" has produced no evidence of its existence, its founding documents, its documents or donor base or its subscribers. This is an astounding statement coming from the person whose department controls the very records which he says I should have produced. I point out that the deponent does not deny the statements made in paragraphs 16 – 20 of my founding affidavit, wherein the applicant's locus standi was methodically explained.

19. I specifically draw attention to the Constitutional Court's decision regarding locus standi in constitutional matters in Kruger v President of the Republic of South Africa and Others (CCT 57/07) [2008] ZACC 17; 2009 (1) SA 417 (CC); 2009 (3) BCLR 268 (CC) (2 October 2008), where the Court held:

*Nevertheless, in my view, we should adopt a generous approach to standing in this case. In so doing, I am mindful of the fact that constitutional litigation is of particular importance in our country where we have a large number of people who have had scant educational opportunities and who may not be aware of their rights. Such an approach to standing will facilitate the protection of the Constitution.*

20. I submit that this is a general truth, judging from the supporting affidavits filed herein, across all segments of the population.

21. Be that as it may, I have been advised, *ex abundanti cautela,* to attach hereto proof of registration of the applicant, extracts of its memorandum of incorporation and a resolution adopted by the applicant in terms of which I was mandated to depose to the founding affidavit and this one. (**Annexures "R2", "R3"** and **"R4"**)

22. I shall now deal with the affidavit of the Director General of the Department of Small Business Development.

23. The deponent shows no appreciation of the powers of the Minister in respect of the Constitution, the DMA, the Regulations or the Businesses Act. The deponent does not answer to any of the complaints raised by the applicant in the founding affidavit. The deponent's attack is solely based on the Minister's conduct prior to the issue of the impugned directions, which, in my respectful submission, has nothing to do with the issues at hand.

24. The deponent admits that the requirement of a business licence or trading permit was laid down in the Directions, for the trades mentioned therein, but disingenuously states that it does not constitute an "additional requirement".

25. That statement is simply not true.

26. The Minister, on 6 April 2020, issued Directions (purportedly under Regulation 10(8) of the Lockdown Regulations. (Page 12/85). Direction 1.1 states that they were issued "to assist SMME's operating grocery stores including the corner

shops, spaza shops, fruit and vegetable stores, to comply with the Lockdown Regulations." It then defines its application to "Informal Traders" which were defined as "Fruit and Vegetable Informal Traders and the Langanas trading in the Northern Cape".

27. Those concerns are sub-species of the food supply chain which were allowed to trade in terms of the Lockdown Regulations.

28. In Direction 1.4.5 the Minister states that "Spaza shop owners and informal food traders currently trading without **permits** may apply for permits". The Directions do not state whence those "permits' could be obtained. It is assumed that those permits are those already provided for in the Regulations.

29. The Directions of 12 May 2020 are infinitely wider than those issued on 6 April 2020. The latter includes:

    a. Small scale bakery and confectioneries;

    b. Small scale hardware stores;

    c. Informal and micro restaurants and shisanyamas;

    d. All tradesmen and artisans' businesses

    e. Sole traders in the clothing and textile business.

30. For those "business licences" are required, in addition to those provided for in the Regulations.

31. I also point out that no affidavit was filed in opposition to the application, by the CIPC, who should have done so, should it independently have wished to challenge the relief sought.

32. I consequently submit that the 3rd respondent's opposition to the application is entirely spurious and disingenuous and should evoke the displeasure of the Court in no uncertain terms.

33. Restaurants, including informal and micro restaurants and shisanyamas were not entitled to trade during lockdown, at all, and were only recently allowed to sell food on a delivery only basis. In terms of the Businesses Act they do require licences to trade. Those licencing systems are operated on a local authority level, over which the Minister has no legal control. They are enforced by local authorities and not by the SAPS.

34. All bakeries and confectioneries, in so far as they sell foodstuffs in the form of meals for consumption on or off the premises, need business licences. The Directions impermissibly limits and expands the ambit of the Businesses Act: they exclude all such enterprises which are not considered "small scale" and includes those who sell food, but not meals.

35. The Directions, however, impermissibly include hardware stores, and tradesmen and artisans, who are not required to or even entitled to apply for such permits, but are now required by the Directions to do so.

36. Those Directions are not merely a re-enactment of the 6 April Directions, but an impermissible extension thereof.

37. They are also not limited to the Lockdown or Level 4. They derive their authority from the general part of Regulation 480, which applies to the entire State of Emergency, and not only level 4. The downgrading to Level 3, therefore does not affect them.

38. I submit that the persistence by the 7th Respondent in her opposition to the application, in the face of the clear illegality of the measures, is vexatious and to be deprecated by the Court.

39. In the premises, I reiterate the relief sought in the Notice of Motion.

DEPONENT

Thus signed and sworn to before me on this the 26th day of **MAY 2020**, the Deponent having acknowledged that he knows and understands the content of the above affidavit, the regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full names:

Capacity:

Designation:

Address:

NIEL DU PLESSIS
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY, REPUBLIC OF SOUTH AFRICA
1250 PRETORIUS STREET, HATFIELD, PRETORIA

# ESSENTIAL SERVICE BUSINESSES

## Essential Service Businesses

The President of South Africa has declared a National Lockdown from 26 March 2020 until 16 April 2020. During that period only businesses that provide esse services are allowed to open and trade. Those businesses need to apply to for a certificate in order to trade. Supplying incorrect information is a criminal offe and will lead to prosecution.

**All enterprises operating within the borders of the Republic of South Africa are expected to be closed during the lockdown period. Only enterprises which produce and/or provide, and/or distribute goods and services listed below are exempted from the restrictions contemp in the regulation issued in terms of the Disaster Management Act. Note, absolute minimum staff necessary to operate safely.**

Businesses can only apply if they belong to this list of essential services categories:

- Agriculture, hunting, forestry, fishing
- Electricity, Gas, Water supply
- Manufacturing
- Construction and related services
- Wholesale, Retail trade, Spaza shops
- Information and Communication services
- Media and Entertainment
- Financial and Business services
- Accommodation for quarantine, essential services
- Food services (Deliveries)
- Transport, Storage, Communication services
- Mining and Quarrying
- Repair and Related Emergency services
- Supply Chain
- Health, Social and Personal services

**List above not not inclusive of subcategories. See full list below.**

Please refer to the regulations **here (files/regulations.pdf)** and the latest amendments to the regulations [LEVEL 4] **here (files/regulations_amendments.pdf)** before you apply. The documents have for a comprehensive list of critical services required during the imposition of restricted movement.

New Application
(essential_service_apply.aspx)

Edit Application
(essential_service_edit.aspx)

Download Certificate
(essential_service_cert.aspx)



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**Annexure R2** **COR15.2**

## Certificate issued by the Companies and Intellectual Property Commission on Thursday, July 25, 2019 08:03
## Certificate of Confirmation

Companies and Intellectual Property Commission
a member of the dti group

| | |
|---|---|
| Registration number | **2012 / 043725 / 08** |
| Enterprise Name | **SAKELIGA NPC** |
| Enterprise Shortened Name | **None provided.** |
| Enterprise Translated Name | **None provided.** |
| Registration Date | **02/03/2012** |
| Business Start Date | **02/03/2012** |
| Enterprise Type | **Non Profit Company** |
| Enterprise Status | **In Business** |
| Financial year end | **December** |
| Main Business/Main Object | |
| Postal address | **GERHARDTSTRAAT 117**<br>**DIE HOEWES UITBREIDING 158**<br>**CENTURION**<br>**GAUTENG**<br>**0157** |
| Address of registered office | **GERHARDTSTRAAT 117**<br>**DIE HOEWES UITBREIDING 158**<br>**CENTURION**<br>**GAUTENG**<br>**0157** |
| Location of Company Records | ALL COMPANY RECORDS<br>**426 KINGS HIGHWAY** |

The Companies and Intellectual Property Commission
of South Africa
P.O. BOX 429, PRETORIA, 0001, Republic of South Africa. Docex 256, PRETORIA.
Call Centre Tel 086 100 2472, Website www.cipc.co.za

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COR15.2

LYNNWOOD
GAUTENG
0081

Companies and Intellectual Property Commission

a member of the dti group

The Companies and Intellectual Property Commission
of South Africa
P.O. BOX 429, PRETORIA, 0001, Republic of South Africa. Docex 256, PRETORIA.
Call Centre Tel 086 100 2472, Website www.cipc.co.za

K 2 0 1 2 0 4 3 7 2 5

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COR15.2

# Certificate issued by the Companies and Intellectual Property Commission on Thursday, July 25, 2019 08:03
# Certificate of Confirmation

Companies and Intellectual Property Commission
a division of the dti group

Registration number **2012/043725/08**

Enterprise Name **SAKELIGA NPC**

Name

Postal Address

## Active Directors / Officers

| Surname and first names | ID number or date of birth | Director type | Appoint-ment date | Addresses |
|---|---|---|---|---|
| LE ROUX, PIETER JACOBUS | 8402105255087 | Director | 21/11/2017 | Postal: GIRALDA FLATS 404, 230 STEGER STREET, GROENKLOOF, GAUTENG, 0027<br>Residential: GIRALDA FLATS 404, 230 STEGER STREET, GROENKLOOF, GAUTENG, 0027 |
| LERM, CHRISTIAAN PHILIPPUS | 5612105021080 | Director | 01/06/2017 | Postal: POSTNET SUITE 300, PRIVATE BAG X4, WIERDA PARK, GAUTENG, 0149<br>Residential: 1143 NELSON WOODS ZWARTKOPS GHOLF E, EXT 3 228 ASHWOOD AVENUE, CLUBVIEW CENTURION, GAUTENG, 0157 |
| NAUDE, PIETER ALBERT | 5312045160086 | Director | 08/03/2016 | Postal: POSTNET SUITE 322, PRIVATE BAG X31, KNYSNA, WESTERN CAPE, 6570<br>Residential: 533 YELLOWWOOD CRESCENT, BRENTON ON SEA, KNYSNA, WESTERN CAPE, 6571 |
| VLOK, NICHOLAAS HOUGH | 5605125013087 | Director | 08/03/2016 | Postal: P O BOX 414, KOSTER, KOSTER, NORTH WEST, 0348<br>Residential: 30 WILLOW DRIVE, IRENE VILLAGE FARM, IRENE VILLAGE FARM, GAUTENG, 0157 |
| ESTERHUIZEN, ARINA STOKER | 8706230025086 | Company Secretary | 16/02/2017 | Postal: P O BOX 11275, HATFIELD, 0028<br>Residential: 426 KING'S HIGHWAY, LYNNWOOD, PRETORIA, 0040 |
| BRINK, ANDRIES | 7411205046081 | Director | 17/09/2013 | Postal: 188 FREDERICK DRIVE, NORTHCLIFF, NORTHCLIFF, GAUTENG, 2195<br>Residential: 188 FREDERICK DRIVE, NORTHCLIFF, NORTHCLIFF, GAUTENG, 2195 |



13-16

COR15.2

# Certificate issued by the Companies and Intellectual Property Commission on Thursday, July 25, 2019 08:03

## Certificate of Confirmation

Companies and Intellectual Property Commission

A member of the dti group

### Active Directors / Officers

| Surname and first names | ID number or date of birth | Director type | Appoint-ment date | Addresses |
|---|---|---|---|---|
| PRETORIUS, DANIEL JOHANNES | 6703255149083 | Director | 04/12/2012 | Postal: P O BOX 390, MARAISBURG, MARAISBURG, GAUTENG, 1700<br>Residential: 235 FEATHERBROOKE ESTATE, KRUGERSDORP, KRUGERSDORP, GAUTENG, 1739 |
| DU PLESSIS, BERNARD | 6607215003084 | Director | 02/03/2012 | Postal: 42 VALLEY CRESCENT, STAND 1827, HIGHVELD X 7, GAUTENG, 1827<br>Residential: 42 VALLEY CRESCENT, STAND 1827, HIGHVELD X 7, GAUTENG, 1827 |
| PRETORIUS, MARIO BRONN | 5703135011082 | Director | 02/03/2012 | Postal: 23 ROYAL CHALICE CRESCENT, MOOIKLOOF ESTATE, KLOOFSIG, GAUTENG, 0081<br>Residential: 23 ROYAL CHALICE CRESCENT, MOOIKLOOF ESTATE, PRETORIA, GAUTENG, 0081 |
| DE VILLIERS, DAVID JACOBUS | 5406075085088 | Director | 02/03/2012 | Postal: P O BOX 4945, PRETORIA, PRETORIA, GAUTENG, 0001<br>Residential: 214 MCKENZIE STREET, BROOKLYN, BROOKLYN, GAUTENG, 0181 |

# Annexure R3 COR15.2

Companies and Intellectual Property Commission
a member of the dti group

Date: 25/07/2019

Our Reference: 111856985
Box: **212129**
Sequence: **13**

PETER JOHANNES WASSENAAR
To be collected: KWV123

**RE: Amendment to Company Information**
**Company Number: 2012/043725/08**
**Company Name: SAKELIGA NPC**

We have received a COR15.2 (Amendment of Memorandum of Incorporation) from you dated 17/07/2019.

The Amendment of Memorandum of Incorporation (1) was accepted and placed on file.

Yours truly

**Commissioner: CIPC**
KXA KXA

**Please Note:**

The attached certificate can be validated on the CIPC web site at www.cipc.co.za.
The contents of the attached certificate was electronically transmitted to the South African Revenue Services.



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SAKELIGA

# REPUBLIEK VAN SUID-AFRIKA
## MAATSKAPPYEWET, 71 VAN 2008

## AKTE VAN OPRIGTING VAN 'N MAATSKAPPY SONDER WINSOOGMERK MET LEDE

## SAKELIGA NPC
**REG: 2012/043725/08**
(hierna die "Maatskappy" genoem)

Hierdie Akte van Oprigting ("Akte") is behoorlik aanvaar by wyse van 'n Spesiale Resolusie van Direkteure kragtens die Maatskappyewet 71 van 2008 ("die Wet") tydens 'n vergadering van die Direksie gehou te PRETORIA op 28 Mei 2019 2019 en is vir identifikasiedoeleindes deur die Voorsitter van die Direksie onderteken.

Kragtens artikel 16(9)(b)(i) van die Wet sal hierdie Akte van krag kom met die liassering daarvan.

**VOORSITTER**

teenstrydigheid effektiewelik aan te spreek, en

3.3.3. Die aksies neem wat binne hul uitsluitlike diskresie nodig is om die oortreding, botsing en/of teenstrydigheid aan te spreek, wat insluit maar nie beperk is tot die voorstel van wysigings tot die Akte en die belê van 'n spesiale Ledevergadering ten einde daardie wysigings goed te keur.

## 4. DOELSTELLINGS EN MAGTE VAN DIE MAATSKAPPY

4.1. Ter nakoming van artikel 1 van bylaag 1 tot die Wet, verklaar die Maatskappy hiermee die volgende hoofdoelstellings:

4.1.1. Die bevordering van konstitusionele orde, vryemarkbeginsels en 'n kapitaalkragtige, regverdige, en volhoubare sake-omgewing in die Republiek;

4.1.2. Die skepping van 'n selfstandige sakegemeenskap in die Republiek;

4.1.3. Die behoud van eiendomsreg, holisties gesien, ooreenkomstig die Grondwet van die Republiek;

4.1.4. Om, sonder inperking, bydraes en skenkings te doen tot die Helpende Hand Beursfonds en/of die Solidariteit Helpende Hand NPC;

4.1.5. Om kollektief namens Lede, ondersteuners en die publiek met Owerhede te onderhandel en verhoudinge met Owerhede asook plaaslike, nasionale en internasionale instansies en persone te beding te einde die doelstellings van die Maatskappy te bevorder;

4.2. Die Maatskappy verklaar hiermee die volgende aanvullende doelstellings, maar sonder inperking van die algemene aard van die Maatskappy hoofdoelstellings:

4.2.1. Om as 'n openbare sakewaghond wat fokus op die regte en belange van sy Lede, ondersteuners en lede van die publiek in die algemeen, op te tree;

4.2.2. Om ondersoek in te stel oor gevalle waar die regte van Lede, ondersteuners asook die publiek oor die algemeen, geskend en/of ingeperk word, en om waar nodig ook op te tree ten einde daardie regte te beskerm of te bevorder.

4.3. Die volgende magte word ook, sonder inperking van die algemene magte van die Maatskappy soos uitgeoefen Direksie kragtens die Wet, aan die Maatskappy verleen:

4.3.1. Om deur selfregulering en privaat institusionele infrastruktuur 'n alternatiewe

sake-omgewing te skep waarbinne ekonomiese aktiwiteit voortgesit kan word;

4.3.2. Om die Maatskappy se Lede, ondersteuners en lede van die publiek in die uitoefen van hul belange en regte, hetsy op plaaslike, nasionale of internasionale vlak, by te staan, te adviseer, te ondersteun en/of te verteenwoordig.

4.3.3. Om die publiek oor die algemeen by te staan met die bevordering van hul regte op 'n plaaslike, nasionale en internasionale vlak;

4.3.4. Om 'n vrye, onafhanklike en goedgunstige sake-omgewing in die Republiek te beskerm, stimuleer en waar nodig te skep;

4.3.5. Om regsgedinge in te stel, daartoe toe te tree, om sake te opponeer en/of te verdedig, om as *amicus curiae* in sake op te tree, deel te neem aan appèlle, hersienings, en om voor enige Owerheid te verskyn, submissies te maak, te argumenteer, op te tree, teen te staan en/of te ondersteun.

4.3.6. Om met die Owerhede, politieke partye, lede van die sakewêreld, die media asook enige ander lid van die publiek te kommunikeer, te onderhandel, in te debat te tree en om ook waar nodige daardie persone en/of instansies te voorsien met voorstelle, vertoë, submissies, verslae, argument en/of inligting.

4.3.7. Om navorsing ter bevordering van hierdie doelstellings te doen asook om inligting in te samel, statistiek op te bou, te verwerk en te publiseer;

4.3.8. Om onafhanklike regsadvies oor enige saak wat enige doelstelling van hierdie Akte raak, te bekom en waar nodig om ook regsverteenwoordiging aan te stel om die Maatskappy te verteenwoordig in die bevordering van hierdie doelstellings.

4.3.9. Om met ander organisasies of persone met soortgelyke doelstellings te onderhandel, ooreenkomste te sluit, projekte te hardloop, sake te bevorder, befondsing te voorsien, befondsing te ontvang, ondersteuning te bied en/of te affilieer.

4.3.10. Om deel te neem in die bestuur, beheer of aktiwiteite van enige ander organisasie wat soortgelyke doelstellings as die van die Maatskappy het en om in hulle te belê, belange te bekom en/of om vennootskappe of samewerkingsooreenkomste met hulle aan te gaan.

4.3.11. Om enige persoon of organisasie te vergoed vir hul dienste gelewer aan of

SAKELIGA

namens die Maatskappy.

4.3.12. Om skenkings te maak en te ontvang;

4.3.13. Om eiendom te bekom, te huur, te besit en/of te vervreem.

4.3.14. Om intellektuele goedere en/of enige ander bate ten behoewe van die Maatskappy te bekom, te ontwikkel of te huur;

4.3.15. Om fondse te ontvang, op te bou, te belê, te bestuur en te gebruik;

4.3.16. Om oor die algemeen binne die uitsluitlike diskresie van die Direksie, wat ook 'n wye diskresie is om die Maatskappy te bestuur, te administreer en tot voordeel van Lede uit te bou hiermee ontvang, te handel.

## 5. WYSIGING VAN AKTE EN DOELSTELLINGS

5.1. Die Direksie sal nie die bevoegdheid hê om hierdie Akte te wysig nie.

5.2. Hierdie Akte mag slegs met 'n spesiale meerderheid op 'n Ledevergadering gewysig word.

## LIDMAATSKAP

## 6. LEDE

6.1. Slegs Stemgeregtigde Lede word geag Lede binne die definisie van artikel 1 van die Wet te wees. Geen ander persoon, desondanks die feit dat daar moontlik 'n vorm van Nie-stemgeregtigde lidmaatskap aan die persoon toegeken word, sal geag word 'n Lid van die Maatskappy kragtens hierdie Akte te wees nie.

6.2. Slegs natuurlike persone sal kwalifiseer vir Stemgeregtigde Lidmaatskap.

6.3. Geen Stemgeregtigde Lid sal daarop geregtig wees om sy/haar Lidmaatskap aan enige ander persoon te sedeer of te bemaak nie.

6.4. Die lidmaatskap van enige Stemgeregtigde Lid sal by regswerking outomaties beëindig word met daardie Lid se afsterwe

6.5. Alle Lede moet hulself vereenselwig met die doelstellings van die Maatskappy.

6.6. Slegs Stemgeregtigde Lede mag:

# Annexure R4

**SAKELIGA NPC**
**REG: 2012/043725/08**

**EXTRACTS OF MINUTES OF MEETING OF DIRECTORS HELD AT CENTURION ON 26 NOVEMBER 2019**

| **PRESENT:** | NAME: - | CAPACITY |
|---|---|---|
| | **ANDRIES BRINK** | **DIRECTOR** |
| | **DAVID JAKOBUS DE VILLIERS** | **DIRECTOR** |
| | **BERNARD DU PLESSIS** | **DIRECTOR** |
| | **CHRISTIAAN PHILIPPUS LERM** | **DIRECTOR** |
| | **MARIO BRONN PRETORIUS** | **DIRECTOR** |
| | **NICOLAAS HOUGH VLOK** | **DIRECTOR / CHAIRMAN** |
| | **PIETER JACOBUS LE ROUX** | **DIRECTOR / CEO** |

**RESOLVED:**

1) That the Board hereby delegates to the Company's chief executive officer (CEO), **PIETER JACOBUS LE ROUX**, the authority to authorise the Company to institute, defend and / or to participate in any legal proceedings (whether as a party or *amicus* curiae), which includes but is not limited to appeals and/or reviews of any matter, and/or the right to have the Company appear, argue, act, support and/or oppose any matter before any State authority or judicial body, as is set out in the Company's objectives.

2) The Board hereby authorises the CEO to represent the Company in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of the Company as its lawful representative.

3) The CEO is furthermore duly authorised to incur costs on behalf of the Company and to appoint, instruct and direct attorneys, experts and/or consultants to assist the Company with any matters relating to paragraph 1) above.

4) The CEO is hereby granted all necessary powers to take any such further steps and to do all further necessary things on behalf of the Company in order to give effect to paragraphs 1) to 3) above.

5) The CEO may, within the sole discretion of the CEO, delegate all or some of his functions in terms of paragraphs 1) to 4) above to any such employees or agents of the Company as the CEO deems meet.

**CERTIFIED AT CENTURION ON** 26 November 2019.

**NICHOLAAS HOUGH VLOK**
**CHAIRMAN OF THE BOARD**

| | |
|---|---|
| **Citation** | 2004 (4) SA 125 (CC) |
| **Case No** | CCT 18/2003 |
| **Court** | Constitutional Court |
| **Judge** | Chaskalson CJ, Langa DCJ, Ackermann J, Goldstone J, Madala J, Mokgoro J, Moseneke J, Ngcobo J, O'regan J, Sachs J and Yacoob J |
| **Heard** | August 19, 2003 |
| **Judgment** | March 9, 2004 |
| **Counsel** | Anton Katz (with him J R Minnaar and D Borgstrom) for the applicants.<br>D N Unterhalter SC (with him A Annandale) for the respondents. |
| **Annotations** | Link to Case Annotations |

I

## Flynote : Sleutelwoorde

Constitutional law - Human rights - Rights of detainees - Constitutionality of ss 34(1), (2), (8) and (9) of Immigration Act 13 of 2002 - Illegal J



foreigners - Section 34(1) applying to illegal foreigners inside country while ss (8) confined to illegal foreigners who had not A yet formally entered country - Immigration officer empowered by s 34(1) to arrest and detain illegal foreigner who had already entered country - Immigration officer may in terms of ss (8) and (9) cause people, as alternative, to be detained elsewhere than on ship - Provision in s 34(2) for release within 48 hours not applicable to illegal foreigners detained on ship B in terms of ss (8) - On proper interpretation of s 34(8), no substance in contention that it offended rule of law in that it allows arbitrary detention at instance of immigration officer - Not arbitrary to cause detention of person who had just arrived at port of entry and who was reasonably suspected by immigration officer to be illegal foreigner - Reasonable suspicion by immigration officer constituting just cause for C detention - Reasonable and justifiable for person who arrived on ship at port of entry to be detained on it in order to leave when ship left - Section 35(2) safeguards of Constitution of the Republic of South Africa Act 108 of 1996 available to person detained on ship avoiding detention in intolerable or inhumane D circumstances - If circumstances of detention on ship rendering it impossible for s 35(2) to be complied with, immigration officer having no option but to cause detention at State facility in exercise of s 34(8) choice - Of some concern that no obligation on State to seek confirmation of detention by court order regardless of length of period of detention - No legitimate governmental purpose served by ensuring that this safeguard E was not applicable to person detained on ship in terms of s 34(8) - To extent that this had not been done, Court considering limitation not justified - No justification for striking down whole section - Reading-in making provision for obtaining Court order if detention for longer than 30 calendar days - Constitutional validity of s 34(2) having to be considered in context of this remedy having been F granted - Detention of illegal foreigners on ship not being limited to 48 hours reasonable in context of s 34(1)*(a)* safeguard being applicable - Sections 34(1), (2), (8), as amended, and (9) not unconstitutional.

## Headnote : Kopnota

The applicants sought confirmation of a High Court order declaring certain provisions of the Immigration Act 13 of 2002 (the Act) G unconstitutional. The government opposed the 14-1

application and appealed against the judgment. The relevant provisions were all part of s 34 of the Act, which was concerned with the way in which illegal foreigners were to be removed from the country and the way in which they were to be treated pending their removal or deportation. The distinction between ss (1) and ss (8) was that the former applied to illegal H foreigners inside the country, while the latter was confined to illegal foreigners who had not yet formally entered South Africa but were still at 'ports of entry'. Ports of entry through which people could enter South Africa were airports and seaports on the one hand, and border posts on the other. The distinction between the two was that people arriving by air or sea were already physically inside the country when I their conveyance arrived but they could not go beyond a restricted area until and unless the immigration officer allowed them to do so. At border posts, however, the position was less clear. The person wishing to enter our country was arguably outside the country until let in by the immigration officer. Section 34(1) empowered an immigration officer to ensure that an illegal foreigner who had already entered the country in the sense of being J



beyond the restricted area at a port of entry was deported. To that end, the person concerned might be arrested and A detained. Sections 34(8) and (9), concerned with illegal foreigners at ports of entry, were different. The immigration officer might, as an alternative to detention on the ship, cause the people to be detained elsewhere than on a ship. Subsection (9) provided that people detained in terms of ss (8) were deemed to have been detained by the master. Section 34(2) in effect provided, subject to certain exceptions, that B people arrested in terms of the Act must be released within 48 hours. This protection was not applicable to illegal foreigners detained on a ship in terms of ss (8). The five safeguards expressly mentioned in s 34(1) as applying to people already in the country and detained in terms of ss (4) were also not expressly mentioned in s 34(8).

In argument before the High Court the applicants attacked the constitutionality of ss (1), (2), (8) and (9) of s 34 of the Act. The C High Court had found s 34(8) to be arbitrary and to be constitutionally invalid. This declaration of invalidity was suspended for a year. The High Court further held that s 34(2) was also constitutionally invalid, but only in that it did not confer on detainees on a ship the right to be released within 48 hours. The High Court's interpretation of the section was that the immigration officer D needed only to say to the person recently arrived at the port of entry, or to the person in charge of the ship by which the person arrived, that the person concerned was an illegal foreigner. According to the High Court, the dire consequences of ss (8) followed inexorably upon a mere statement to this effect by an immigration officer. On this interpretation of the subsection, it would matter not whether the person had a valid South African passport, or whether the person, if a foreigner, was in possession of unchallengeable documentation E authorising his or her presence inside South Africa. The say-so of the immigration officer, even if baseless and wholly untrue, was not only the dominant consideration, but one which, without more, resulted in the detention and removal of the person about whom the statement was made. The applicants supported this interpretation of the subsection by the High Court. If this construction was correct, any s 34(8) detention would be arbitrary and the subsection would be F unconstitutional.

*Held*, that this was not the way in which the section should be interpreted. Section 8 of the Act required the Department of Home Affairs and the immigration officer on duty to inform the person of the determination and the reasons for doing so. If the say-so of the officer could by itself trigger the detention, the officer would be G hard put to give any reasons at all for the determination. An immigration officer could give reasons for the determination only if there were reasons for that determination. There could be no adequate reason for the determination unless there were factors sufficient for the immigration officer reasonably to suspect that the person who had just arrived at the port of entry was an illegal foreigner. Interpreted in this way, the section required, at the very least, that there had to H be reason to suspect that the person concerned was an illegal foreigner. Any other interpretation would be inconsistent with the very purpose of the legislation. (Paragraphs [29] and [30] at 139E - H.)

*Held*, further, that, if there was a reasonable interpretation that, without unduly straining the language, preserved the constitutionality of the section, this Court should embrace it. The section could reasonably be construed as requiring the immigration I officer to have reason to suspect that the person in respect of whom a declaration was made, was indeed an illegal foreigner. (Paragraph [31] at 139H - 140B.)

*Held*, further, that the applicants' contention that s 34(8) offended the rule of law in that it allowed arbitrary detention at the instance of an immigration J

officer had no substance in the context of the section as it had been interpreted in this judgment. A It was not arbitrary to cause the detention of a person who had just arrived at a port of entry in South Africa, and who was reasonably suspected by an immigration officer on duty at the port of entry to be an illegal foreigner. Indeed, reasonable suspicion by an immigration officer constituted just cause for the detention. (Paragraph [32] at 140C - E.) B
*Held*, further, that s 34(1) was concerned with a situation different from that contemplated by s 34(8). Subsection (8), in part, was concerned with and authorised the detention of people suspected of being illegal foreigners on a ship by which they arrived. Section 34(1) was designed to cater for the situations in which illegal foreigners were detained in a facility over which the government had control and which was serviced or frequented by State officers. Thus, for example, people detained on a ship could not 'at any time request any officer C attending' to them that their detention be confirmed by a court in compliance with s 34(1)*(b)*. There was no officer attending to them on a ship. The government had correctly conceded that s 34(1)*(c)* could not be applied because the person detained on a ship could not be said to have been arrested. There was also the consideration that ss *(e)* of s 34(1) referred to prescribed standards of detention which again suggested a State D facility. Finally, the provisions in s 34(8) did not expressly make the s 34(1) protection available to a person detained on a ship. (Paragraph [39] at 141D/E - 142A.)
*Held*, further, that s 35(2) of the Constitution of the Republic of South Africa Act 108 of 1996 applied to 'everyone' and the High Court was correct in finding that its protection extended to E illegal foreigners. The rights of the person were therefore limited in that a suspected illegal foreigner might be detained on a ship and denied the safeguards provided for in s 34 except that mentioned in 34(1)*(a)*. (Paragraph [41] at 142E/F - F/G.)
*Held*, further, that it was reasonable and justifiable for a person who arrived on a ship at a port of entry to be detained on it so F that she or he left the country when the ship left. The fact that the s 35(2) safeguards of the Constitution were available to the person detained on a ship avoided detention in intolerable or inhumane circumstances. If the circumstances of detention on a ship rendered it impossible for s 35(2) to be complied with, the immigration officer would have no option but to cause the detention of the suspected illegal foreigner at a State facility in the exercise of the s 34(8) G choice. (Paragraph [42] at 142G - I.)
*Held*, further, that it was of some concern that there was no obligation on the State to seek confirmation of the detention by a court order regardless of the length of the period for which that person was detained on the ship. In other words, there was no s 34(8) equivalent to the s 34(1)*(d)* requirement that a detention which went beyond 30 days had to be confirmed by a court order obtained H at the instance of the State. On balance, no legitimate governmental purpose was served by ensuring that this safeguard was not applicable to a person detained on a ship in terms of s 34(8). To the extent that this had not been done, the limitation was not justified. The section was in this way inconsistent with the Constitution. (Paragraph [43] at 142I - 143C/D.) (Madala J, Moseneke J concurring, dissented.) I
*Held*, further, that the second half of s 34(8), which authorised the immigration officer to cause the detention of a suspected illegal foreigner in a State facility, was subject to the provisions of s 34(1). All the safeguards were applicable and the conditions of s 36 of the Constitution were satisfied. (Paragraph [44] at 143D.)
*Held*, further, that s 34(8) had been found to be inconsistent with the Constitution J



in a very limited way. There was no justification for striking down the whole section. The least invasive A course was to read in the following sentence at the end of s 34(8): 'A person detained in terms of this section may not be held in detention for longer than 30 calendar days without an order of a court which may extend the detention for an additional period not exceeding 90 calendar days on reasonable grounds.' (Paragraph [45] at 143D/E - F.) B
*Held*, further, that the constitutional validity of s 34(2) had to be considered in the context of this remedy having been granted. The section had the consequence that a person detained on a ship in terms of s 34(8) would not be released after 48 hours. This was reasonable and justifiable bearing in mind that it applied to persons who had not formally entered South Africa and had no right to do so. It was reasonable that people who arrived in South Africa without the C necessary documents to enable their admission into the country be sent back to the ship in which they arrived. The date of departure of the ship was not under the control of the South African authorities. That the detention of illegal foreigners on a ship was not limited to 48 hours was therefore also reasonable particularly in the context that, according to the present

judgment, the s 34(1)*(a)* safeguard D would be applicable. (Paragraph [46] at 143F - I.) Appeal allowed.

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**Cases Considered**

Annotations

Reported cases

*BEF (Pty) Ltd v Cape Town Municipality and Others* 1983 (2) SA 387 (C): referred to E

*Canada (Minister of Justice v Borowski) (Borowski No 1)* [1981] 2 SCR 575 (64 CCC (2d) 97; 130 DLR (3d) 588): referred to

*Canadian Council of Churches v The Queen* (1992) 88 DLR (4th) 193: referred to

*De Beer NO v North-Central Local Council and South-Central Local Council and Others (Umhlatuzana Civic Association* F *Intervening)* 2002 (1) SA 429 (CC) (2001 (11) BCLR 1109): dictum in para [24] applied

*De Lange v Smuts NO and Others* 1998 (3) SA 785 (CC) (1998 (7) BCLR 779): dictum in para [22] applied

*De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others* 2004 (1) SA 406 (CC) (2003 (2) SACR 445; 2003 (12) BCLR 1333): dictum in para [56] applied G

*Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) (1996 (1) BCLR 1): dictum in para [234] applied

*Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC) (2000 (2) SACR 349; 2000 (10) BCLR H 1079): dictum in paras [22] - [26] applied

*Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another* 1998 (1) SA 745 (CC) (1997 (12) BCLR 1655): referred to

*Lawyers for Human Rights and Another v* I *Minister of Home Affairs and Another* 2003 (8) BCLR 891 (T): reversed on appeal

*National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) (2000 (1) BCLR 39): dictum in para [74] applied

*Ngxuza and Others v Permanent Secretary, Department of Welfare, Eastern Cape, and Another* 2001 (2) SA 609 (E): referred to J

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*Patel and Another v Minister of Home Affairs and Another* 2000 (2) SA 343 (D): dictum at 349I applied A

*Prince v President, Cape Law Society, and Others* 2002 (2) SA 794 (CC) (2002 (3) BCLR 231): dictum in para [45] applied

*Roodepoort-Maraisburg Town Council v Eastern Properties (Prop) Ltd* 1933 AD 87: referred to B

*S v Makwanyane and Another* 1995 (3) SA 391 (CC) (1995 (2) SACR 1; 1995 (6) BCLR 665): dictum in para [104] applied

*S v Manamela and Another (Director-General of Justice Intervening)* 2000 (3) SA 1 (CC) (2000 (1) SACR 414; 2000 (5) BCLR 491): dictum in paras [32] - [33] applied

*S P Gupta and Others v Union of India and Others* (1982) 2 SCR 365 (AIR 1982 SC 149): referred to C

*Tettey and Another v Minister of Home Affairs and Another* 1999 (3) SA 715 (D): referred to

*Wood and Others v Ondangwa Tribal Authority and Another* 1975 (2) SA 294 (A): referred to.

**Statutes Considered**

Statutes

The Constitution of the Republic of South Africa Act 108 of 1996, ss 35(2), 36: see *Juta's*

*Statutes of* D *South Africa 2002* vol 5 at 1-148, 1-149

The Immigration Act 13 of 2002, s 34(1), (2), (8) and (9): see *Juta's Statutes of South Africa 2002* vol 5 at 2-63.



**Case Information**

Application for the confirmation of a High Court order declaring certain provisions of the Immigration Act 13 of 2002 E unconstitutional together with an appeal against such High Court order. The facts and issues appear from the judgment of Yacoob J.

Anton Katz (with him *J R Minnaar* and *D Borgstrom*) for the applicants. F

*D N Unterhalter SC* (with him *A Annandale*) for the respondents.

*Cur adv vult.*

*Postea* (March 9). G

**Judgment**

Yacoob J:

[1] The first applicant is Lawyers for Human Rights, a non-governmental, non-profit organisation working in South Africa. The second applicant is Ann Francis Eveleth, a foreign national. The first and second respondents are the Minister of Home Affairs and the H Director-General of that department. They are referred to in this judgment as the government.

[2] The applicants seek confirmation of a High Court order declaring certain provisions of the Immigration Act[1] (the Act) unconstitutional.[2] The government opposes the application and appeals against the judgment. I

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**2004 (4) SA p131**

YACOOB J

[3] A brief description of the way in which relevant provisions of the Act to be considered inter-relate will facilitate an A understanding of the issues to be decided. The provisions are all part of s 34 of the Act. That section is concerned with the way in which illegal foreigners are to be removed from the country and the way in which they are to be treated pending their removal or deportation. Since all the provisions are concerned with illegal foreigners it is useful to start by considering who illegal foreigners are. B

[4] The Act distinguishes between 'foreigners' and 'illegal foreigners'. A foreigner 'means an individual who is neither a *citizen* nor a *resident*, but is not an *illegal foreigner*'.[3] An illegal foreigner 'means a *foreigner* who is in the C *Republic* in contravention of *this* Act and includes a *prohibited* person'.[4] Section 10 of the Act provides that a foreigner may be admitted, enter and sojourn in this country only if in possession of a temporary residence permit. Sections 11 to 23 thereafter make provision for the circumstances in which various categories of people may get temporary residence permits for numerous purposes including holiday, work, study, D asylum and medical treatment. Illegal foreigners therefore constitute a limited category of people. An illegal foreigner is either a prohibited person[5] or a person who comes into the country or tries to enter without any permit at all or any consent or authorisation. It may be mentioned that the scheme of the Act is such that all permits and authorisations[6] must be issued in writing. E

[5] Subsections (1), (2), (8) and (9) of s 34 of the Act are important. Subsection (1) provides:

> 'Without need for a warrant, an immigration officer may arrest an *illegal foreigner* or cause him or her to be arrested, and shall, irrespective of whether such *foreigner* is arrested, F deport him or her or cause him or her to be deported and may, pending his or her *deportation*, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the *Department* determined by the *Director-General*, provided that the *foreigner* concerned -
>
> *(a)* shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in G terms of *this Act*;
>
> *(b)* may at any time request any officer attending to him or her that his or her detention for the purpose of *deportation* be confirmed by warrant of a *Court*, which, if not issued within 48 hours of such request, shall cause the immediate release of such *foreigner*;
>
> *(c)* shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when H possible, practicable and available in a language that he or she understands.

*(d)* may not be held in detention for longer than 30 calendar days without a



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warrant of a *Court* which on good and reasonable grounds may extend such detention for an adequate period not A exceeding 90 calendar days, and

*(e)* shall be held in detention in compliance with minimum *prescribed* standards protecting his or her dignity and relevant human rights.'

Section 34(2) provides:

'The detention of a person in terms of *this* Act elsewhere than on a *ship* and for purposes other than his or B her *deportation* shall not exceed 48 hours from his or her arrest or the time at which such person was taken into custody for examination or other purposes, provided that if such period expires on a non-court day it shall be extended to four pm of the first following court day.'

Subsection (8) provides:

'A person at a *port of entry* who has been notified by an immigration officer that he or she is an *illegal* C *foreigner* or in respect of whom the immigration officer has made a declaration to the *master* of the *ship* on which such *foreigner* arrived that such person is an *illegal foreigner* shall be detained by the *master* on such *ship* and, unless such *master* is informed by an immigration officer that such person has been found not to be an *illegal foreigner*, such *master* shall remove such person from the *Republic*, provided that an immigration officer may cause such person to be detained elsewhere than on such D *ship*, or be removed in custody from such *ship* and detain him or her or cause him or her to be detained in the manner and at a place determined by the *Director-General*.'

Section 34(9) to the extent relevant provides:

'The person referred to in the preceding subsection shall, pending removal and while detained as contemplated in that subsection, E be deemed to be in the custody of the *master* of such *ship* and not of the immigration officer or the *Department*, and such *master* shall be liable to pay the costs of the detention and maintenance of such person while so detained if the *master* knew or should reasonably have known that such person was an *illegal foreigner* . . . .'

[6] As I have already mentioned, s 34 is concerned only with F illegal foreigners and their treatment. The distinction between ss (1) and ss (8) is that the former applies to illegal foreigners inside the country while the latter is confined to illegal foreigners who have not yet formally entered South Africa but are still at 'ports of entry'. G

[7] There are two kinds of ports of entry through which people can enter South Africa. We have airports and seaports on the one hand, and border posts on the other. The distinction between the two is this. People arriving by air or sea are already physically inside the country when their conveyance arrives but they cannot go beyond a restricted area until and unless the immigration officer allows them to do so. At border posts, however, the position is less clear. The person wishing H to enter our country is arguably outside the country until let in by the immigration officer. In both categories of ports of entry, however, the immigration officer checks whether a foreigner has the necessary valid document to enter. A person who has must be allowed to enter South Africa formally. If not, other steps must be taken. I

[8] Section 34(1) empowers an immigration officer to ensure that an illegal foreigner who has already entered the country in the sense of being beyond the restricted area at a port of entry is deported. To that end, the person concerned may be arrested and detained. People arrested and J



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detained for the purpose of deportation must be notified of the decision to deport them and of their right to appeal. They may A request their detention be confirmed by an order of court and must be informed of these rights. Finally, an illegal foreigner already inside the country may not be held for more than 30 days without a confirmatory court order and must be held in compliance with certain 'minimum prescribed standards'. B

[9] Sections 34(8) and (9), concerned with illegal foreigners at ports of entry, are different. The immigration officer at the port of entry must notify the people concerned or declare to the master of the ship on which they arrive that they are illegal foreigners. The master of the ship is then obliged to detain those people on the ship and remove them from the country unless the master is informed by the C immigration officer that the people have been found not to be illegal

foreigners. The immigration officer may, as an alternative to detention on the ship, cause the people to be detained elsewhere than on a ship. Subsection (9) provides that people detained in terms of ss (8) are deemed to have been detained by the master. D

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[10] Section 34(2) in effect provides, subject to certain exceptions, that people arrested in terms of the Act must be released within 48 hours.[7] This protection is not applicable to illegal foreigners detained on a ship in terms of ss (8). The five safeguards expressly mentioned in E s 34(1)[8] as applying to people already in the country and detained in terms of ss (4) are also not expressly mentioned in s 34(8).

[11] Two further matters must be mentioned to complete this overview of the provisions relevant to the predicament of illegal foreigners at ports of entry. The first is that the word 'ship' is F widely defined and includes, at the very least, all modes of transport by which people may arrive at ports of entry.[9] I will, in the rest of this judgment use the word 'ship' in this wider sense. Secondly, s 8(1) and (2) of the Act require the Department of Home Affairs to inform people of any determination adverse to them and of the 'related motivation'. That person then has G a right to 'make representations' against that determination before it is finally made and, if finally made, to appeal against it to the Director-General and, ultimately, to the Minister of Home Affairs.[10] Subsection (4) provides that a person may not be deported until the relevant H



decision is final.[11] However, although A ss (5)[12] expressly preserves the ss (2) right of appeal, it renders the decision of an immigration officer refusing a foreigner entry into the country (at a port of entry and therefore in terms of s 34(8)) final for purposes of deportation.

Proceedings in the High Court B

[12] The proceedings in the High Court were impelled by the detention of the second applicant at a time when the Aliens Control Act,[13] the predecessor of the Act, was in force. The Act had been passed by Parliament but had not yet been brought into force. The High Court application therefore challenged the constitutional validity of provisions in both the Aliens Control Act C and the Act still to come into force. By the time the case was argued however, the Aliens Control Act had been repealed and the Act had come into force. The Aliens Control Act challenges therefore fell away.

[13] In argument before the High Court the applicants attacked the constitutionality of ss (1), (2), (8) and (9) of s 34 of the Act. D The government disputed the standing of both first and second applicants and contended for the constitutional validity of all the impugned provisions. The High Court concluded that both applicants did have standing conferred upon them by s 38 of the Constitution of the Republic of South Africa Act 108 of 1996.[14] It held that the challenges to ss 34(1) and 34(9) were without merit. The E judgment interpreted s 34(8) to mean that the detention of an illegal foreigner is triggered solely by an immigration officer informing the person who has arrived at the port of entry, or the master of the ship, that he or she is an illegal foreigner, regardless of the absence of any justification for the statement. The High Court found s 34(8) to be arbitrary, to infringe s 12 of the F



Constitution and to be constitutionally invalid. This declaration of invalidity was suspended A for a year. Finally, the High Court held that s 34(2) was also constitutionally invalid, but only in that it did not confer the right for detainees on a ship to be released within 48 hours.

Standing B

[14] Section 38 of our Constitution introduces a radical departure from the common law in relation to standing. Indeed, the terms of the section limit considerably the degree to which an analysis of the standing jurisprudence in other countries can be of real assistance. The section provides: C

> 'Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

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*(a)* anyone acting in their own interest;

*(b)* anyone acting on behalf of another person who cannot act in their own name; D

*(c)* anyone acting as a member of, or in the interest of, a group or class of persons;

*(d)* anyone acting in the public interest; and

*(e)* an association acting in the interest of its members.'

14-8

[15] Subsection *(d)* expressly allows court proceedings by individuals or organisations acting in the public interest. Public E interest standing is given in addition to those provisions that allow for actions to be instituted on behalf of other persons and on behalf of a class. Subsection *(d)* therefore connotes an action on behalf of people on a basis wider than the class actions contemplated in the section. The meaning and reach of the standing conferred by this paragraph must be determined against this background. F

[16] In her judgment in *Ferreira v Levin*[15] O'Regan J advocated the following approach to determine the reach of the provision in the interim Constitution equivalent to s 38*(d)* of the Constitution as well as whether and when a person or organisation could be said to have G been acting in the public interest in a particular case:

> 'This Court will be circumspect in affording applicants standing by way of s 7(4)*(b)*(v) and will require an applicant to show that he or she is genuinely acting in the public interest. Factors relevant to determining whether a person is genuinely acting in the H public interest will include considerations such as: whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the Court and the opportunity that those persons or groups have had to present evidence and argument to the Court. These factors will need to be considered in the light of the facts and circumstances of each I case.'[16]

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YACOOB J

[17] I agree in substance with this approach. Although it forms part of a minority judgment it is not inconsistent with anything A said in the majority judgment on the issue of standing. The majority affirmed that courts should adopt a broad rather than a narrow approach to standing to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled.[17] It was not necessary for them, however, to deal with public interest standing, for in their view the applicant in that case had the right B under s 7(4)*(b)* of the interim Constitution to bring the constitutional challenge in his own interest. The standing provisions in the interim Constitution and s 38 of the Constitution are for all practical purposes the same and the approach advocated by O'Regan J is therefore equally applicable to s 38*(d)*. C

[18] The issue is always whether a person or organisation acts genuinely in the public interest. A distinction must however be made between the subjective position of the person or organisation claiming to act in the public interest on the one hand, and whether it is, objectively speaking, in the public interest for the particular proceedings to be brought. It is ordinarily not in the public interest D for proceedings to be brought in the abstract. But this is not an invariable principle. There may be circumstances in which it will be in the public interest to bring proceedings even if there is no live case. The factors set out by O'Regan J help to determine this question. The list of relevant factors is not closed. I would add that the degree of E vulnerability of the people affected, the nature of the right said to be infringed, as well as the consequences of the infringement of the right are also important considerations in the analysis.

[19] The rights implicated here are those in s 12 and s 35(2) of the Constitution. Section 12 provides: F

'(1) Everyone has the right to freedom and security of the person, which includes the right -

*(a)* not to be deprived of freedom arbitrarily or without just cause;

*(b)* not to be detained without trial;

*(c)* to be free from all forms of violence from either public or private sources; G

*(d)* not to be tortured in any way; and

*(e)* not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right -

*(a)* to make decisions concerning reproduction;

14-8

*(b)* to security in and control over their body; and H

*(c)* not to be subjected to medical or scientific experiments without their informed consent.' 14-9

Section 35(2) provides:

'(2) Everyone who is detained, including every sentenced prisoner, has the right - I

*(a)* to be informed promptly of the reason for being detained;

*(b)* to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;

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**2004 (4) SA p137**

YACOOB J

*(c)* to have a legal practitioner assigned to the detained person by the State and at State expense, if substantial A injustice would otherwise result, and to be informed of this right promptly;

*(d)* to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

*(e)* to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at State expense, of adequate accommodation, nutrition, reading material and B medical treatment; and

*(f)* to communicate with, and be visited by, that person's -

(i) spouse or partner;

(ii) next of kin;

(iii) chosen religious counsellor; and

(iv) chosen medical practitioner.' C

[20] The provisions challenged in the High Court are of immense public importance, being concerned with a delicate issue that has implications for the circumstances in and the extent to which we restrict the liberty of human beings who may be said to be illegal foreigners. The determination of this question could adversely affect not only the freedom of the people concerned but also their dignity as D human beings. The very fabric of our society and the values embodied in our Constitution could be demeaned if the freedom and dignity of illegal foreigners are violated in the process of preserving our national integrity.

[21] Moreover, many of the people who arrive at a port of entry without being entitled to any of the large variety of residence permits E allowed by the Act may be vulnerable and poor without support systems, family, friends or acquaintances in South Africa. Their understanding of the South African legal system, its values, its laws, its lawyers and its non-governmental organisations may be limited indeed. Finally, it is apparent that in most cases, the ship that brought the affected F person into the country would depart within a few days, and in many cases in under 24 hours of its arrival.

[22] In these circumstances, the possibility that the people affected by these provisions will challenge their constitutionality is remote. They may well have left the country before the constitutional challenge could or would materialise even if it is assumed that they G would have the resources, knowledge, power or will to institute appropriate proceedings. If s 34(8) of the Act is unconstitutional, hundreds of vulnerable people could be detained unconstitutionally for short times before their removal from South Africa without the constitutionality of these provisions ever being tested. This is not in H the public interest. It is therefore, objectively speaking, in the public interest for these proceedings to be brought. The constitution of the first applicant records commitment to a principal objective, which is to 'promote, uphold, foster, strengthen and enforce in South Africa all human rights, including civil rights, political rights and I socio-economic rights'. The first applicant accordingly acts genuinely in the public interest and has standing.

[23] The involvement of the second applicant in the proceedings would have resulted only in a minimal increase in the costs of the proceedings. There is therefore no need to determine whether she has standing. J

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**2004 (4) SA p138**

YACOOB J

[24] It may in any event be incumbent on this Court to deal with the substance of a [illegible]e 14-9

concerning the constitutionality of A legislation that reaches this Court pursuant to s 172(2) of the Constitution. This is because a High Court has already declared a particular provision to be inconsistent with the Constitution. There are good public policy reasons to suggest that the uncertainty in relation to constitutional consistency ought not to be allowed to prevail. There is therefore a strong argument that the purpose of s 172(2) of the Constitution is to ensure that the uncertainty B generated by the High Court decision of unconstitutionality is eliminated and that the substance of the debate raised by the declaration is finally determined. I need say no more about this.

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Applicability of the Bill of Rights C

[25] The government contended that our Bill of Rights does not accord protection to foreign nationals at ports of entry who have not yet been allowed formally to enter the country. It was accordingly suggested that the provisions in issue cannot be found to be inconsistent with D the Constitution. The government relied on s 7(1) of the Constitution which enshrines the rights of all the people 'in our country'.[18] We were urged to find that people at ports of entry who have not yet been allowed formally to enter South Africa, are not 'in our country' within the meaning of the subsection. E

[26] It is neither necessary nor desirable to answer the general question as to whether the people to whom s 34 of the Act applies are beneficiaries of all the rights in the Constitution. It is apparent from this judgment that the rights contained in s 12 and s 35(2)[19] of the Constitution are implicated. The only relevant question in this case therefore is whether these F rights are applicable to foreign nationals who are physically in our country but who have not been granted permission to enter and have therefore not entered the country formally. These rights are integral to the values of human dignity, equality and freedom that are fundamental to our constitutional order. The denial of these rights to human beings who are physically inside the country at sea- or airports G merely because they have not entered South Africa formally would constitute a negation of the values underlying our Constitution. It could hardly be suggested that persons who are being unlawfully detained on a ship in South African waters cannot turn to South African courts for protection, or that a person who commits murder on board a ship in South African waters is not liable to prosecution in a South H African court.

[27] Once it is accepted, as it must be, that persons within our territorial boundaries have the protection of our courts, there is no reason why 'everyone' in ss 12(2) and 35(2) should not be given its ordinary meaning. When the Constitution intends to confine rights to citizens it I



says so. All people in this category are beneficiaries of s 12 and s 35(2). It is not necessary in this case to answer the A question whether people who seek to enter South Africa by road at border posts are entitled to the rights under our Constitution if they are not allowed to enter the country.

High Court's interpretation of s 34(8) B

[28] The High Court's interpretation of the section has been referred to earlier. It is that the immigration officer need only say to the person recently arrived at the port of entry, or to the person in charge of the ship by which the person arrived, that the person concerned is an illegal foreigner. According to the High Court, the dire consequences of ss (8) follow inexorably upon a mere statement to C this effect by an immigration officer. On this interpretation of the subsection, it would matter not whether the person had a valid South African passport, or whether the person, if a foreigner, was in possession of unchallengeable documentation authorising his or her presence inside South Africa. The say-so of the immigration officer, even if baseless and wholly untrue, is not only the dominant D consideration, but one which without more, results in the detention and removal of the person about whom the statement is made.

[29] The applicants supported this interpretation of the subsection by the High Court. If this construction is correct, any E s 34(8) detention would be arbitrary and the subsection would be unconstitutional. In my view, however, this is not the way in which the section should be interpreted.

[30] A determination that a person is an illegal foreigner adversely affects that person. Section 8 of the Act requires the Department of Home Affairs, and the immigration officer on duty at F

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behalf of the department at the port of entry, to inform the person of the determination and the reasons for doing so.[20] If the say-so of the officer can by itself trigger the detention, the officer would be hard put to give any reasons at all for the determination. An immigration officer can give reasons for the determination only if there are reasons for that determination. There can be no adequate reason for the determination G unless there are factors sufficient for the immigration officer to reasonably suspect that the person who has just arrived at the port of entry is an illegal foreigner. Interpreted this way, the section requires, at the very least, that there must be reason to suspect that the person concerned is an illegal foreigner. Any other interpretation would be inconsistent with the very purpose of the legislation. H

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[31] If there is a reasonable interpretation which, without unduly straining the language preserves the constitutionality of the section, this Court should embrace it.[21] This Court should also adopt a reasonable I



interpretation that results in unconstitutionality to a limited extent as opposed to one that results A in the provision being wholly unconstitutional. The section can reasonably be construed as requiring the immigration officer to have reason to suspect that the person in respect of whom a declaration is made, is indeed an illegal foreigner. I am satisfied for reasons that follow that, if that construction of the section is adopted, its provisions will not be wholly inconsistent with the Constitution, but B inconsistent only to a limited extent. It is therefore the interpretation that should be adopted.

Arguments by applicants and the justification analysis

[32] The applicants contend that s 34(8) offends the rule of law in that it allows arbitrary detention at the instance of an immigration C officer. The contention would have had substance on the interpretation afforded to the subsection by the High Court. However, it has no substance in the context of the section as it has been interpreted in this judgment. It is not arbitrary to cause the detention of a person who has just arrived at a port of entry in South Africa, and who is D reasonably suspected by an immigration officer on duty at the port of entry to be an illegal foreigner. Indeed, reasonable suspicion by an immigration officer constitutes just cause for the detention.

[33] The applicants also rely on that part of s 12 of the Constitution which guarantees the right to freedom and security of the E person and prohibits the detention of any person without trial. They are right when they contend that s 34(8) limits the right to freedom and the right not to be detained without trial. The person who arrives in the country can be detained once the immigration officer reasonably suspects that that person is an illegal foreigner. The justification analysis is therefore necessary. F

[34] Section 36 of the Constitution provides:

> '(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including - G
>
> *(a)* the nature of the right;
>
> *(b)* the importance of the purpose of the limitation;
>
> *(c)* the nature and extent of the limitation;
>
> *(d)* the relation between the limitation and its purpose; and
>
> *(e)* less restrictive means to achieve the purpose. H
>
> (2) Except as provided in ss (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.'

[35] This Court has held that s 36 requires a proportionality analysis. The nature and importance of the right must be measured against the purpose and extent of the limitation taking into account I whether a less severe limitation might have been sufficient adequately to serve the government's purpose.[22]



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[36] The rights relied upon have both a procedural and substantive component.[23] The importance of the A right to freedom and, in particular, not to be detained without trial can never be overstated. The right has particular significance in the light of our history during which illegitimate detentions without trial of many effective opponents of the pre-1994 government policy of apartheid abounded.[24] We must never again allow a situation in which that is countenanced. B

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[37] Section 34(8) applies only to people reasonably suspected of being illegal foreigners. The purpose of the provision is plain. It is to prevent people from gaining entry into the country illegally. The importance of the purpose of the provision can also not be gainsaid. C

[38] The applicants contended that the provision was particularly invasive because a person suspected of being an illegal foreigner would not have the protection either of the safeguards mentioned in s 34(1) of the Act[25] or of the protection afforded by s 35(2) of the Constitution.[26] The government submitted on the other hand that the protection afforded by both provisions is D applicable to a s 34(8) detainee. The applicability of each must be separately determined.

[39] Section 34(1) is concerned with a situation different from that contemplated by s 34(8). Subsection (8), in part, is concerned with and authorises the detention of people suspected of being illegal foreigners on a ship by which they arrived. It will be remembered that s 34(8) gives immigration officers a choice. They can either be E content with the detention of the people concerned on the ship, or cause people to be detained elsewhere. Section 34(1) is designed to cater for the situations in which illegal foreigners are detained in a facility over which the government has control and which is serviced or frequented by State officers. Thus, for example, people detained on a ship cannot 'at any time request any officer attending' to them that F their detention be confirmed by a court in compliance with s 34(1)*(b)*. There is no officer attending to them on a ship. The government correctly concedes that s 34(1)*(c)* cannot be applied because the person detained on a ship cannot be said to have been arrested.[27] There is also the consideration that para *(e)* of s 34(1) refers to prescribed G standards of detention which again suggests a State facility. Finally, the provisions in s 34(8) do not



expressly make the s 34(1) protection available to a person detained on a ship.

[40] It was submitted on behalf of the government that the A s 34(1) protection or conditions apply to any person who is caused to be detained by the immigration officer. The argument goes that it is the immigration officer who causes the detention of the suspected B illegal foreigner on a ship in terms of s 34(8). It is true that immigration officers cause the detention of people on a ship in a broad sense. All the officer does is to make the relevant statement after forming a reasonable suspicion. But the question we have to answer is whether immigration officers who make such a statement cause the detention of people within the meaning of s 34(1). Section 34(1) C authorises immigration officers to cause the detention of illegal foreigners at a place under the control of the administration of the department. Immigration officers must be responsible for the detention in the sense that they must make arrangements for that detention to take place within a State facility. This is confirmed by the use of the words 'cause such person to be detained' in the second half of D s 34(8) which has nothing to do with detention on a ship. The subsection makes a distinction between the detention of suspected people by the master on a ship on the one hand and detention at the instance of the immigration officer who 'may cause such person to be detained elsewhere' in a State facility on the other. Section 34(1) applies to detention in a State facility but it does not apply to E detention on a ship.

[41] The next issue is whether s 35(2) of the Constitution is applicable.[28] Section 35(2) applies to 'everyone' and the High Court was correct in finding that its protection extends to illegal foreigners. Otherwise the subsection would be inconsistent with the Constitution. The rights of the person F are therefore limited in that a suspected illegal foreigner may be detained on a ship and denied the safeguards provided for in s 34 except that mentioned in s 34(1)*(a)*. It will be recalled that s 8 requires the immigration officer to provide information as to the adverse determination and the reasons for it although this is not required to be done in writing. G

[42] It is reasonable and justifiable for a person who arrives on a ship at a port of entry to be detained on it so that she or he leaves the country when the ship leaves. The fact that the s 35(2) safeguards of the Constitution are available to the person detained on a ship avoids

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detention in intolerable or inhumane circumstances. If H the circumstances of detention on a ship render it impossible for s 35(2) to be complied with, the immigration officer will have no option but to cause the detention of the suspected illegal foreigner at a State facility in the exercise of the s 34(8) choice.

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[43] It is, however, of some concern that there is no obligation I on the State to seek confirmation of the detention by a court order regardless of the length of the period for which that person is detained on the ship. In other words, there is no s 34(8) equivalent to the s 34(1) *(d)* requirement

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that a detention which goes beyond 30 days must be confirmed by a court order obtained at the A instance of the State. It is true that, in most cases, ships at ports of entry would depart much less than 30 days after arrival. A ship would rarely remain at a port of entry for longer than 30 days. But this rarity is really a factor against the government. The less B frequently the period of 30 days is likely to be exceeded, the less burdensome it is for a requirement of this kind to be imposed upon the government and the more unreasonable it is that the government is not obliged to approach a court if the detention went beyond 30 days. On balance, no legitimate governmental purpose is served by ensuring that this safeguard is not applicable to a person detained on a ship in terms of s 34(8). To the extent that this has not been done, I C consider that the limitation is not justified. The section is in this way inconsistent with the Constitution.

[44] The second half of s 34(8) which authorises the immigration officer to cause the detention of a suspected illegal foreigner in a State facility is subject to the provisions of s 34(1). All the safeguards are applicable and the conditions of s 36 of the D Constitution are satisfied.

Remedy

[45] Section 34(8) has been found to be inconsistent with the Constitution in a very limited way. There is no justification for striking down the whole section. The least invasive course[29] is to read in the following sentence E at the end of s 34(8):

> 'A person detained in terms of this section may not be held in detention for longer than 30 calendar days without an order of a court which may extend the detention for an additional period not exceeding 90 calendar days on reasonable grounds.' F

[46] The constitutional validity of s 34(2) must be considered in the context of this remedy having been granted. The section has the consequence that a person detained on a ship in terms of s 34(8) will not be released after 48 hours. This is reasonable and justifiable bearing in mind that it applies to persons who have not formally entered South Africa and have no right to do so. It is reasonable that G people who arrive in South Africa without the necessary documents to enable their admission into the country be sent back to the ship in which they arrived. The date of departure of the ship is not under the control of the South African authorities. That the detention of illegal foreigners on a ship is not limited to 48 hours is therefore also H reasonable particularly in the context that, according to this judgment, the s 34(1)*(a)* safeguard will be applicable.

[47] The following order is made:

1. The appeal succeeds. I
2. The order of the High Court is set aside and replaced by the following order:

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2.1 Section 34(8) of Act 13 of 2002 is inconsistent with the A Constitution because it does not allow the protection afforded to a detainee in terms of s 34(1)*(d)* to a person detained on a ship in terms of ss (8).

2.2 The following sentence is to be read in at the end of s 34(8) of Act 13 of 2002: B

> 'A person detained in terms of this section may not be held in detention for longer than 30 calendar days without an order of a court which may extend the detention for an additional period not exceeding 90 calendar days on reasonable grounds.'

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2.3 There is no order as to costs. C

3. The order of the High Court is not confirmed except to the extent indicated by [illegible] of this order.

4. There is no order as to costs.

Chaskalson CJ, Langa DCJ, Ackermann J, Goldstone J, Mokgoro J, Ngcobo J, O'Regan J and Sachs J concurred in the judgment D of Yacoob J.

Madala J:

Introduction E

[48] The applicants approach this Court seeking confirmation in terms of s 172(2)*(a)* of the Constitution, of the following order made by the Pretoria High Court (the Court *a quo*):[30]

'1. That the words ''*elsewhere than on a ship and*'' in s 34(2) of the Immigration Act 13 of 2002 are declared inconsistent with the Constitution and therefore invalid. F

2. Section 34(8) of the Immigration Act 13 of 2002 is declared inconsistent with the Constitution and therefore invalid.

3. That the order of invalidity is suspended for a period of one year from the date of the order. G

4. That the respondents are ordered to pay the applicants' costs.'

[49] The first applicant in this matter, Lawyers for Human Rights, is a juristic person who claims to be acting in the public interest in terms of s 38*(d)* of the Constitution. It has its head office in Pretoria. It is a non-profit, non-governmental H organisation, whose principal aims and objectives as stated in its constitution are to promote, uphold, foster, strengthen and enforce human rights in South Africa.

[50] The second applicant, Ann Francis Eveleth, is a foreign national who was arrested and detained without trial for some seven days in terms of certain provisions of the now repealed Aliens Control I Act,[31] but who has since been released pending the determination of her status.

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[51] The first respondent is the Minister of Home Affairs and the second respondent the Director-General of the Department of A Home Affairs. They oppose the relief sought by the applicants and have further sought leave to appeal against the decision of the High Court.

The High Court judgment

[52] In the Court *a quo* the applicants attacked the constitutional validity of ss 34(1), 34(1)*(d)*, 34(2), 34(8) B and 34(9) of the Immigration Act 13 of 2002 (the IA). They also attacked certain provisions of the now repealed Aliens Control Act. Certain words only in s 34(2) and the whole of s 34(8) of the IA were held to be inconsistent with the Constitution and were thus declared invalid. The Court *a quo* further ordered that the invalidity of s 34(8) be suspended for a period of one year from the date of the C said order. It is the order made in respect of those sections that the applicants seek to confirm in these proceedings.

[53] The respondents' grounds of appeal, among others, are the following: D

*(a)* Section 34(8) of the IA does not offend against the procedural safeguards which form part of the rights in s 12(1)*(a)* and *(b)* of the Constitution, nor is it arbitrary.

*(b)* The Court *a quo* failed to have regard to reg 39 promulgated under the IA when interpreting s 34(8). E

*(c)* The Court *a quo* failed to appreciate that the powers which an immigration officer enjoys are exercised subject to the constraints of the Constitution, so that s 34(8) does not violate the rule of law. F

*(d)* The Court *a quo* erred in finding that there is nothing in the IA which ensures that notification or a declaration is made only in respect of persons who are at least reasonably suspected of being illegal foreigners. The powers given to immigration officers to convey such information or make such G declarations are thus arbitrary, because the purpose of the power given to immigration officers to notify or make a

declaration is not rationally related to the purpose of ensuring that illegal foreigners do not enter the country.

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*(e)* The Court *a quo* erred in failing to find that it is proper to differentiate between the constitutionality of the power as conferred in legislation and the exercise of that power. The mere fact that there could be an improper exercise of the power, such H as would make the conduct unconstitutional, does not mean that the enabling legislation automatically falls foul of the Constitution.

*(f)* The Court *a quo* erred in finding that any declaration or notification made by an immigration officer in terms of s 34(8) of the IA, must be made with reference to the definition of I such person in s 1.

*(g)* The Court *a quo* also erred in failing to appreciate that s 34(8) of the IA does not offend against the procedural safeguards which form part of the rights conferred in s 12(1)*(b)* of the Constitution. J

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MADALA J

*(h)* The learned Judge in the Court *a quo* failed to appreciate that the provisions of s 34(2) were not A inconsistent with the Constitution.

[54] I now turn to the issues raised by this case.

Applicability of the Constitution

[55] The respondents contended that the Constitution had no application to 'illegal foreigners' as defined in the IA. This B submission is in line with the respondents' submission that the rights contained in the Constitution are available only to citizens of the Republic. The respondents sought to distinguish the cases of *Patel and Another v Minister of Home Affairs and Another*[32] and *Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another*[33] on the basis that the C applicants in those cases were within the Republic, and had been so resident for some time on the strength of residence permits.

[56] They contended further that a person cannot be 'in our country' according to s 7 of the Constitution until he or she has been given authority to enter either in terms of the IA itself or by an D immigration officer.

[57] The Constitution applies to the exercise of all public power within the Republic. In my view the Constitution also applies in this case.

Impugned provisions E

[58] Specifically, the sections which are challenged in this Court are s 34(2) and 34(8).

Section 34(2)

[59] Section 34(2) provides that: F

> 'The detention of a person in terms of this Act *elsewhere than on a ship and* for purposes other than his or her deportation shall not exceed 48 hours from his or her arrest or the time at which such person was taken into custody for examination or other purposes, G provided that if such period expires on a non-court day it shall be extended to four pm of the first following court day.'

(My emphasis.)

Section 34(8)

[60] The next impugned provision is s 34(8) which provides that:

> 'A person at a port of entry who has been notified by an H immigration officer that he or she is an illegal foreigner or in respect of whom the immigration officer has made a declaration to the master of the ship on which such foreigner arrived that such person is an illegal foreigner shall be detained by the master on such ship and, I unless such master is informed by an immigration officer that such person has been found not to be an illegal foreigner, such master shall remove such person from the Republic, provided that an immigration officer may cause such person to be detained elsewhere than on such ship, or be removed in J

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custody from such ship and detain him or her or cause him or her to be detained in the manner and at a

place determined A by the Director-General.'

[61] These impugned sections form part of a cluster of provisions which deal with the enforcement and monitoring of the implementation of the IA. Section 34 deals with the detention and deportation of illegal foreigners. The applicants contended in the Court *a quo*, and repeated the same assertions in this Court, that these provisions B violate fundamental rights to freedom and security of the person; not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial,[34] and the rule of law. They further contended that there is no justification for the deprivation or limitation of these fundamental rights. C

[62] In respect of s 34(2) the words 'elsewhere than on a ship and' were declared to be inconsistent with the Constitution. Section 34(8) was struck down as a whole.

Standing D

[63] It was contended on behalf of the respondents that the applicants did not have standing to bring these proceedings to the High Court or to this Court. As stated earlier the applicants submitted that they were bringing the application in the public interest, in terms of s 38*(d)* of the Constitution.[35] The respondents argued that the first applicant had not set out a E sufficient basis for claiming to act in the public interest, that it was not genuinely acting in the public interest, and further that the inference was unavoidable that the first applicant was merely championing the cause of the second applicant.

[64] In response to the respondents' contention that on a proper interpretation of s 38*(d)* only citizens are entitled F to bring proceedings to a court in terms of this subsection, it was argued that the rights contained in the Bill of Rights were also available to foreign nationals who are in the Republic unless the Constitution specifically states otherwise. Accordingly, it was contended that if she was not acting in the public interest, she was at the very least acting in her own interest. G

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MADALA J

[65] The respondents contested the correctness of the decision of the Court *a quo* in holding that the first A applicant was acting in the public interest. While accepting that nothing precludes an individual whose rights are or may be affected from challenging the provisions of the alleged offending legislation in the normal way, the respondents contended that the second applicant has no standing to challenge the impugned legislation in this case in B the public interest.

[66] The respondents further argued that since the second applicant was already in the country, the provisions sought to be challenged in this Court could hardly affect her. Therefore, the first applicant could not be said to be acting in the public interest, there being no member of the public who was directly affected by the impugned provisions. C

[67] In other words the applicants, so it was argued, were embarking on an abstract or academic exercise. No individuals could be said to have had their rights infringed or threatened in this application, and because of that the applicants had not established that they have standing. It is indeed the position that it may not D necessarily be in the public interest to determine abstract questions where there is no evidence that conduct amounting to an infringement of the Constitution has or is likely to be committed.

[68] This brings me to a consideration of the meaning and import of public interest standing. It is difficult to lay down hard and fast E rules for the test of public interest standing, precisely so because the words 'in the public interest' are often not capable of being defined in a precise and objective manner. Therefore, each case or situation will require a thorough and careful consideration of the impact of the alleged violation upon the particular persons, or groups of persons concerned. F

[69] Does this mean that anyone can bring any action at any time on any matter and ask a court to adjudicate such action in the public interest? If this were to be allowed, would there be an end to litigation allegedly in the public interest? How has the question of standing been handled in other jurisdictions? G

[70] At common law, standing in the public interest required that the person who sues must have an interest in the subject-matter of the suit, and that that interest had to be a direct and not a remote interest. This pre-constitutional position was based on a restrictive approach to

standing in general and public interest standing in that an H applicant could not approach the court on the basis that the respondent is contravening the law and that it is in the public interest that the court should grant appropriate relief.[36]

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[71] With the advent of our constitutional democracy more vistas I have been opened as more and more people become aware of their constitutional rights and become vigilant to infringements or threats of infringement

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of such rights.[37] Even before the new Constitution came into being our courts had started to be A accommodative of the rights of people by adopting a less restrictive approach to standing. In *Wood and Others v Ondangwa Tribal Authority and Another*,[38] the Appellate Division granted standing to church leaders by allowing them to claim an interdict on behalf of, and in the interests of a large, vaguely defined group of persons who feared summary punishment as a result of B illegal arrests based on their political affiliation. The Court was of the opinion that it would be impractical to expect the people under threat to approach the Court themselves. This less restrictive approach was, however, limited to matters involving violation of life, liberty or physical integrity.[39] C

[72] The applicants submitted that this Court should follow the wider approach suggested in *Ferreira v Levin*.[40] The respondents, on the other hand, argued for a narrower approach that takes into account the importance of the factual matrix of each particular case. The factual matrix, according to the respondents, is a basis of what would determine what public interest is. Although the need for the D development of the test was emphasised, I am inclined to endorse the suggestion that we follow the broader approach. As to whether a person is genuinely acting in the public interest, O'Regan J, in *Ferreira v Levin* held that it would not be necessary to point to the infringement or threat to the right of a particular person for public interest standing, but that it will be sufficient to allege, E objectively speaking, that the impugned statute is in breach of a right. She held further:

> 'This Court will be circumspect in affording applicants standing by way of s 7(4)*(b)*(v) and will require an applicant to show that he or she is genuinely acting in the public interest. Factors relevant to determining whether a person is genuinely acting in the F public interest will include considerations such as: whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the Court and the opportunity that those persons or groups have had to present evidence and argument to the Court. These factors will need to G be considered in the light of the facts and circumstances of each case.'[41]

[73] To these guidelines I would add that a further and important factor to be taken into account in deciding whether a party has public-interest standing is the egregiousness of the conduct complained of. H

[74] Section 38 introduces far-reaching changes to our approach to

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standing which takes account of, among other things, the A vulnerability of the people previously disadvantaged by apartheid, their socio-economic plight and a concomitant desire to correct the wrongs perpetrated against them over a long period of time.

[75] *Hogg*[42] maintains that: B

> 'Restrictions on standing are intended to:
>
> (i) avoid opening of the floodgates to unnecessary litigation;
>
> (ii) to ration scarce judicial resources by applying them to real rather than hypothetical disputes;
>
> (iii) to place limits on the exercise of judicial power by precluding rulings that are not needed to resolve disputes; C
>
> (iv) to avoid the risk of prejudice to persons who would be affected by a decision but are not before the court;
>
> (v) to avoid the risk that cases will be inadequately presented by parties who have no real interest ...

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the outcome; and

(vi) to avoid the risk that a court will reach an unwise decision of a question that comes before it in a hypothetical or abstract form, D lacking the factual context of a real dispute.'

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[76] Canadian Courts will as a general rule grant standing as a matter of discretion[43] to a plaintiff who establishes that:

*(a)* the action raises a serious legal question;

*(b)* the plaintiff has a genuine interest in the resolution of the question; and E

*(c)* there is no other reasonable and effective manner in which the question may be brought to Court.

[77] In India, the traditional rule regarding standing is that judicial redress is available only to a person who has suffered a legal injury as a result of a violation of his or her legal right or legally F protected interest by the impugned action of the State, public authority, or any other person; or to a person who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest.[44]

[78] I do not think that this preliminary objection by the respondents that the applicants have no standing is well founded G and must, as a consequence, be rejected. I have no doubt that the first applicant is genuinely acting in the public interest and therefore has standing to bring these proceedings in the public interest.

[79] Every government needs to be able to regulate the entry, continued residence of foreign nationals within its borders, and to H have the power to deal with illegal immigrants who are in the country. In terms of South African law and the Constitution, persons within the Republic of South Africa are either citizens or non-citizens. Those that are non-citizens are either in the country lawfully - that is they have the necessary permits to I

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remain in the country or are in the country without valid papers. It is this group of persons, so-called illegal immigrants who are targeted by A the impugned provisions. The Constitution[45] provides that rights contained in the Bill of Rights are guaranteed to foreign nationals as well as citizens unless the contrary emerges from the Constitution.[46] Foreign nationals will have standing where rights are threatened or infringed. In the circumstances, I conclude that the second applicant has standing to B launch these proceedings.

[80] Even in spite of the foregoing it must be borne in mind that these are confirmation proceedings. The application must be dealt with on its merits so that finality can be reached in respect of the Court *a quo's* findings. C

The scheme of the Immigration Act

[81] The IA is designed to provide for the regulation of admission of persons to the Republic and their departure from the Republic and for matters connected therewith. It is intended to put in place a new system of immigration control within a culture of human rights. It is further intended to ameliorate the harshness of immigration laws which D *were* obtained during the apartheid regime and which were therefore forged in the crucible of racial exclusion. It is intended to mark a departure of the new democratic order from South Africa's unsavoury past. E

[82] Section 8[47] contains an appeals procedure which has been instituted to adjudicate on decisions of the Department which may culminate in F

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deportation, with the exception only that those decisions taken at the port of entry, preventing entry, are A not stayed pending the various levels of appeal contemplated in this section.

[83] Section 10, which has been described as pivotal to immigration control, provides that a foreign immigrant may upon admission enter and sojourn in the Republic if he or she is in B possession of a temporary residence permit.

[84] A further section in the IA which must be mentioned is s 34. In s 34(1)[48] are to be found the safeguards that ensure the treatment of foreign nationals with dignity and in a humane manner. It will be noted that it is in this section C that a court is specifically involved quite early after the person concerned has been detained. Section 34(1)*(b)* of the IA indicates that anyone arrested and detained is entitled to have his or her detention confirmed by a warrant of a court issued within 48 hours. In terms of s 34(1) the right to a court warrant applies both in respect of those who are detained by an immigration officer as well as D those who have been 'caused' by an immigration officer to be detained. Among the latter class of persons are those contemplated in s 34(8) of the IA, ie persons who are 'caused' to be detained by an immigration officer.

[85] A significant feature, not unexpected, of the impugned provisions is their inter-relatedness. That demands that they be considered together E



MADALA J

and not in isolation. This approach is necessitated by the fact that the whole scheme of the IA must be viewed as a whole A in order to determine the manner in which it deals with illegal foreigners.

Challenge to s 34(8)

[86] In challenging the constitutionality of this section the applicants submitted that the section was overbroad and gave sweeping B powers to the immigration officer. The applicants further alleged that the section unjustifiably infringes or threatens the rights protected in s 12(1)*(a)* and *(b)* of the Constitution in that it amounts to arbitrary deprivation of freedom and a procedurally unfair detention without trial. Furthermore, the applicants submitted that the section violated the doctrine of the rule of law protected in C s 1 of the Constitution. By reason of the foregoing the applicants submitted that s 34(8) of the IA was unconstitutional and invalid.

[87] The Court *a quo* held that the powers of the immigration officers were arbitrary in that there was nothing in the IA to ensure that the notification and declaration of a person to be an D illegal foreigner were made only in respect of persons reasonably suspected of being illegal foreigners. It was of the opinion that the discretion was exercised without any guidelines. It also held that there was no proper sifting mechanism or procedural safeguards such as are found in s 34(1). E

[88] In the absence of such safeguards, so the Court *a quo* held, s 34(8) limited the right contained in s 12(1)*(a)* and *(b)* of the Constitution which seeks to prohibit arbitrary detention without trial. It also held that the provisions of s 34(1)*(a)* - *(e)* cannot be applicable to s 34(8) as such an interpretation would unduly strain the context of the two subsections. F

[89] The suggestion that an immigration officer will act arbitrarily is without foundation. It should be noted that this power, and ultimately the discretion, to notify and declare a person an illegal immigrant finds its roots in the IA. Section 3(1)*(g)*[49] of the IA sanctions the power to apprehend, detain and deport an illegal foreigner.[50] This discretion when exercised in respect of s 34(8) is narrowly tailored in that it can only be G exercised in respect of a person who is in fact an illegal foreigner as defined by the IA. To further ensure that the powers are not arbitrary, the IA provides that any power that is exercised by the immigration officer is an exercise of a discretion which is subject to review by an H immigration court which will determine its reasonableness and consistency with the IA.[51] All this constitutes just cause in that the aim is to carry out a legitimate government object of immigration control. I therefore find that the power exercised in terms of this subsection does not offend against s 12(1)*(a)* of the Constitution. I



MADALA J

[90] Earlier on I stated that what is important is that each of the provisions of s 34 should not be read in isolation, but must be A read together if they are to make sense. The respondents argued that the procedural safeguards contained in s 34(1) of the IA are accorded to those detained in terms of s 34(8). This, they submitted, is because detention pursuant to s 34(8) is at the behest of an B immigration officer; hence it is under the control and administration of the Department. During the hearing the respondents further submitted that the detention in s 34(1)

is broad enough in that it is detention for the purposes of prosecution and deportation whereas the detention in s 34(8) was for the purposes of deportation only. C

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[91] I agree with the respondents in this regard. Indeed, among the persons who have been 'caused' by an immigration officer to be detained for purposes of deportation in s 34(1), are persons detained in terms of s 34(8) for the purposes of deportation. This makes the provisions of s 34(1)*(a)*, *(b)*, *(d)* and *(e)* applicable to s 34(8). Section 34(1)*(c)* is not applicable where there has been no arrest. D

[92] Section 34 further makes it clear that any person subject to deportation has the right to seek administrative review of the decision and can take the Department on review. The procedure for such review is set out in s 8 of the IA. Both detainees in terms of ss 34(1) and 34(8) are entitled to this protection. I therefore E conclude that s 34(8) does not offend the rights contained in s 12(1)*(b)* of the Constitution.

[93] Detention under the IA is intended to ensure that a person to be deported is indeed deported as effectively, efficiently and expeditiously as possible if found to be an illegal foreigner. The impugned section seeks to address the problem of illegal immigrants by F requiring the detention and removal of such person by the master of the ship that brought them to this country. This, in my view, is a fair and equitable arrangement in the circumstances. The master of the ship, it seems to me, has the responsibility not to bring illegal foreigners to this country. And, indeed, the illegal immigrant has no right to enter the Republic without authorisation. G

[94] The continued detention of a person on a ship depends on various factors and in particular, when the ship will leave harbour. But the illegal foreigner is not without remedy, because the IA has built-in safeguards of reasonableness and necessity as well as the H precepts of s 35 of the Constitution and the standards of international law.

[95] I am of the view that this impugned provision is not inconsistent with the Constitution. In the result, the challenge to this section fails.

Challenge to s 34(2) I

[96] It was argued on behalf of the applicants that, in terms of s 34(2), the exclusion of persons arrested and detained on a ship was unconstitutional and invalid. It was submitted that there was no procedural protection for persons held on a ship and that the exclusion of such persons from the requirements of s 34(2) left such persons without J

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MADALA J

procedural safeguards as required by s 12(1)*(b)* of the Constitution, and that to that extent, s 34(2) was inconsistent A with the Constitution. It was further argued that the 48-hour time limit of any detention, which accords with s 35(1) of the Constitution, is also specifically excluded by s 34(2). Consequently, a person could be detained for a considerable period of time without being brought before a judicial officer. B

[97] The respondents sought to meet this challenge by submitting that a person can only be detained on a ship pursuant to the provisions of s 34(8) of the IA. In that regard, so they submitted, the procedural safeguards provided by the IA itself and by the Constitution apply to detention on a ship. The reason for the exclusion referred to and complained about by the applicants in respect of C persons detained on a ship, is not far to find. The continued detention of the affected person on the ship is dependent upon when the ship will leave harbour. This may, naturally, depend on a variety of factors, so argued the respondents.

[98] The Court *a quo* held that the words 'elsewhere than on a ship and' should be deleted from s 34(2) as without the D protection of s 34(2) persons on a ship were deprived of the procedural protections guaranteed by s 12(1)*(b)* of the Constitution.

[99] I disagree with the findings of the Court *a quo* in this regard. A person can only be detained on a ship pursuant to the application of the provisions of s 34(8) of the IA. The IA, it should E be noted, has built-in procedural safeguards. Furthermore, there are requirements of s 35 of the Constitution regarding arrested and detained persons. In terms of s 34(1), an immigration officer may detain or cause to be detained an illegal foreigner pending his or her deportation for 30 days without a warrant of a court, and the period F can be extended to a period not exceeding 90 days by a court. This protection, in my view, relates to all s 34 detainees.

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[100] I therefore conclude that the words 'elsewhere than on a ship and' in s 34(2) pass constitutional muster. G

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Rule of law

[101] The applicants contended that the impugned sections violated the principle of the rule of law espoused in s 1 of the Constitution. They further submitted that it is a principle of the rule of law that laws must be stated in a clear and accessible manner. To this H contention, the respondents submitted that the principle of the rule of law is essentially that there must be a rational relationship between the scheme which legislation adopts and the achievement of a legitimate government purpose. They accordingly submitted that the powers granted in s 34(8) are not arbitrary and are rationally related I to the legitimate purpose of ensuring that illegal foreigners do not enter the country. The Court *a quo* held the view that the powers given to immigration officers in s 34(8) were arbitrary in that nothing in the IA ensured that notification or declaration is made in respect of people reasonably suspected of being J



illegal immigrants. It therefore proceeded to rule that the subsections were in conflict with A the rule of law and therefore unconstitutional.

[102] The principle of the rule of law will be violated if the powers granted to the immigration officer by s 34(8) are arbitrary. Having found that s 34(8) is constitutionally valid it follows that the challenge based on this principle must also fail. B

Order

[103] In the result I would make the following order:

1. The application for leave to appeal is granted. C
2. The application for confirmation of the order of the High Court is refused.
3. The respondents' appeal is upheld.
4. Each party is to pay its own costs.

Moseneke J concurred in the judgment of Madala J. D

Applicants' Attorneys: *Watters Attorneys*, Johannesburg. Respondents' Attorneys: *Larson Falconer Inc*, Johannesburg. E

1 Act 13 of 2002.
2 The judgment is reported as *Lawyers for Human Rights and Another v Minister of Home Affairs and Another* 2003 (8) BCLR 891 (T).
3 Section 1(1) of the Act.
4 *Id*.
5 A list of prohibited persons is set out in s 29 and includes for example people with infectious diseases.
6 There are other laws that make provision for foreigners being in South Africa. Some of them are South African Citizenship Act 88 of 1995, s 5; Defence Act 42 of 2002, s 20; Identification Act 68 of 1997, s 6 and Diplomatic Immunities and Privileges Act 37 of 2001.
7 There is a qualification not relevant to this judgment.
8 Paragraphs *(a)* to *(e)* of ss (1) quoted in full in para [5] above.
9 Section 1(1) defines ship as including 'any vessel, boat, aircraft or other *prescribed* conveyance'.
10 Subsections (1) and (2) of s 8 provide:
'(1) Before making a determination adversely affecting a person, the *Department* shall notify the contemplated decision and related motivation to such affected person and give such person at least ten calendar days to make representations, after which the *Department* shall notify such person that either such decision has been withdrawn or modified, or that it shall become effective, subject to ss (2).
(2) Within 20 calendar days of its notification, the person aggrieved by an effective decision of the *Department* may appeal against it -
*(a)* to the *Director-General*, who may reverse or modify it within ten calendar days, failing which the decision shall be deemed to have been confirmed; or
*(b)* within 20 calendar days of modification or confirmation by the Director-General, if any, to the *Minister*, who may reverse or modify it within 20 calendar days, failing which the decision shall be deemed to have been confirmed, and be final, provided that in exceptional circumstances or when such person stands to be deported as a consequence of such decision -
(i) the *Minister* may extend such deadline; and

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(ii) at the request of the *Department*, the *Minister* may request such person to post a bond to defray his or her *deportation* costs, if applicable; or
*(c)* within 20 calendar days of modification or confirmation by the *Minister*, if any, to a *Court,* which may set aside, reverse or modify it in accordance with its rules.'

[11] It reads:
'(4) Any person adversely affected by a decision of the *Department* shall be notified in writing of his or her rights under this section and other *prescribed* matters, and may not be deported before the relevant decision is final.'

[12] The section provides:
'(5) Notwithstanding ss (1), as soon as notified to the person concerned in terms of ss (4), the decision of an immigration officer refusing entry into the *Republic* shall be effective for the purpose of ss (1), and final for purposes of *deportation*, but subject to ss (2) and (3).'

[13] Act 96 of 1991.

[14] This section will be discussed in more detail later.

[15] *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) (1996 (1) BCLR 1).

[16] *Id* at para [234].

[17] *Id* at para [165].

[18] Section 7(1) provides:
'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.'

[19] See above para [19].

[20] Above at para [11].

[21] *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC) (2000 (2) SACR 349; 2000 (10) BCLR 1079) paras [22] - [26]; *De Beer NO v North-Central Local Council and South-Central Local Council and Others (Umhlatuzana Civic Association Intervening)* 2002 (1) SA 429 (CC) (2001 (11) BCLR 1109) para [24].

[22] *S v Makwanyane and Another* 1995 (3) SA 391 (CC) (1995 (2) SACR 1; 1995 (6) BCLR 665) para [104]; *S v Manamela and Another (Director-General of Justice Intervening)* 2000 (3) SA 1 (CC) (2000 (1) SACR 414; 2000 (5) BCLR 491) paras [32] - [33]; *Prince v President, Cape Law Society, and Others* 2002 (2) SA 794 (CC) (2002 (3) BCLR 231) para [45]; *De Reuck v Director of Public Prosecutions, Witwatersrand Local Division, and Others* 2004 (1) SA 406 (CC) (2003 (2) SACR 445; 2003 (12) BCLR 1333) para [56].

[23] *De Lange v Smuts NO and Others* 1998 (3) SA 785 (CC) (1998 (7) BCLR 779) para [22].

[24] *Id* at para [26].

[25] Above at para [5].

[26] Above at para [19].

[27] Section 34(1)*(c)* provides that an illegal foreigner arrested for the purpose of deportation
'. . . shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands'.

[28] See above at para [19].

[29] *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) (2000 (1) BCLR 39) para [74].

[30] The judgment is reported as *Lawyers for Human Rights and Another v Minister of Home Affairs and Another* 2003 (8) BCLR 891 (T).

[31] Act 96 of 1991.

[32] 2000 (2) SA 343 (D).

[33] 1998 (1) SA 745 (CC) (1997 (12) BCLR 1655).

[34] Section 12(1) provides that:
'Everyone has the right to freedom and security of the person, which includes the right -
*(a)* not to be deprived of freedom arbitrarily or without just cause;
*(b)* not to be detained without trial. . . .'

[35] Section 38 of the Constitution provides:
'Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -
*(a)* anyone acting in their own interest;
*(b)* anyone acting on behalf of another person who cannot act in their own name;
*(c)* anyone acting as a member of, or in the interest of, a group or class of persons;
*(d)* anyone acting in the public interest; and
*(e)* an association acting in the interest of its members.'

[36] Chaskalson *et al Constitutional Law of South Africa* (revision service 3, 1998) at 8-4. See also *Roodepoort-Maraisburg Town Council v Eastern Properties (Prop) Ltd* 1933 AD 87 at 101.

[37] See *Ngxuza and Others v Permanent Secretary, Department of Welfare, Eastern Cape, and Another* 2001 (2) SA 609 (E).

[38] 1975 (2) SA 294 (A).

[39] *Id* at 310G. Another decision which manifested the courts' willingness to depart from the traditional restrictive approach to public standing in particular, is *BEF (Pty) Ltd v Cape Town Municipality and Others* 1983 (2) SA 387 (C) at 400F, 401B - H.

[40] *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) (1996 (1) BCLR 1).

[41] *Id* at para [234].

[42] Hogg *Constitutional Law of Canada* 3rd ed (1992) at 1263.

[43] See for example *Canada (Minister of Justice v Borowski) (Borowski No 1*) [1981] 2 SCR 575 (64 DLR (3d) 97; 130 DLR (3d) 588). See also *Canadian Council of Churches v The Queen* (1992) 88 DLR (4th) 193.

44 *S P Gupta and Others v Union of India and Others* (1982) 2 SCR 365 at 520 (AIR 1982 SC 149).

45 Section 7(1) provides that:

'This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.'



46 Above n 32 at 349I; *Tettey and Another v Minister of Home Affairs and Another* 1999 (3) SA 715 (D) at 727C - 729E.

47 'Adjudication and review procedures

(1) Before making a determination adversely affecting a person, the Department shall notify the contemplated decision and related motivation to such affected person and give such person at least ten calendar days to make representations, after which the Department shall notify such person that either such decision has been withdrawn or modified, or that it shall become effective, subject to ss (2).

(2) Within 20 calendar days of its notification, the person aggrieved by an effective decision of the Department may appeal against it -

*(a)* to the Director-General, who may reverse or modify it within ten calendar days, failing which the decision shall be deemed to have been confirmed; or

*(b)* within 20 calendar days of modification or confirmation by the Director-General, if any, to the Minister, who may reverse or modify it within 20 calendar days, failing which the decision shall be deemed to have been confirmed, and be final, provided that in exceptional circumstances or when such person stands to be deported as a consequence of such decision -

(i) the Minister may extend such deadline; and

(ii) at the request of the Department, the Minister may request such person to post a bond to defray his or her deportation costs, if applicable; or

*(c)* within 20 calendar days of modification or confirmation by the Minister, if any, to a Court, which may suspend, reverse or modify it in accordance with its rules.

(3) If not appealed in terms of ss (2), a decision of the Department is final, subject to s 37 of this Act.

(4) Any person adversely affected by a decision of the Department shall be notified in writing of his or her rights under this section and other prescribed matters, and may not be deported before the relevant decision is final.

(5) Notwithstanding ss (1), as soon as notified to the person concerned in terms of ss (4), the decision of an immigration officer refusing entry into the Republic shall be effective for the purpose of ss (1), and final for purposes of deportation, but subject to ss (2) and (3).'

48 Section 34(1) provides:

'Without need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the Department determined by the Director-General, provided that the foreigner concerned -

*(a)* shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;

*(b)* may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by a warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;

*(c)* shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;

*(d)* may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and

*(e)* shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights.'

49 Section 3 of the IA deals with the powers of the Department.

50 An illegal foreigner is defined in s 1(xviii) as 'a foreigner who is in the Republic in contravention of this Act and includes a prohibited person'.

51 The Immigration Court is established in terms of s 37 of the IA.

F

**IN THE HIGH COURT OF SOUTH AFRICA**
**(GAUTENG DIVISION, PRETORIA)**

CASE NO: 22352/20

PRETORIA 28 MAY 2020

BEFORE THE HONOURABLE MR JUSTICE LOUW

In the matter between:

| | |
|---|---|
| SAKELIGA NPC | APPLICANT |
| and | |
| THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | 1ST RESPONDENT |
| THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS | 2ND RESPONDENT |
| THE MINISTER OF TRADE, INDUSTRY AND COMPETITION | 3RD RESPONDENT |
| THE MINISTER OF POLICE | 4TH RESPONDENT |
| THE NATIONAL COMMISSIONER OF POLICE | 5TH RESPONDENT |
| THE COMMISSION FOR INTELLECTUAL PROPERTY AND COMPANIES | 6TH RESPONDENT |
| THE MINISTER OF SMALL BUSINESS DEVELOPMENT | 7TH RESPONDENT |
| THE NATIONAL COMMAND CENTRE | 8TH RESPONDENT |
| THE MINISTER OF HEALTH | 9TH RESPONDENT |

HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of record

**IT IS ORDERED THAT**

1. It is declared that the Directions issued by the Minister of Small Business Development (the seventh respondent) on 12 May 2020 under Government Notice R522 in Government Gazette 34406 are illegal and invalid.

2. The seventh respondent to pay the applicant's costs relating to the relief sought in respect of the Directives issued by the seventh respondent on 12 May 2020, such costs to include the costs of senior counsel.




**BY THE COURT**

**REGISTRAR**
**AJ**

ATT: KRIEK WASSENAAR & VENTER
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