



The Honourable President of the Republic
of South Africa
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cc: Minister Dr Nkosazana Dlamini Zuma
Minister of Cooperative Governance and Traditional Affairs
Email: info@coqta.gov.za

cc: National Coronavirus Command Council
Email: Corona19ters@labour.gov.za

Your Ref:
Our Ref: Mr ET Mabuza/Mr T Sibuyi
Date: Saturday, April 11, 2020

Dear Honourable President,

Gauteng Liquor Forum // COVIC-19 Coronavirus Lockdown

1. We act on behalf of the Gauteng Liquor Forum (“our clients” or “GLF”) in this matter.
2. The GLF is a non-profit organisation of stakeholders made up of associations of mostly township based Shebeens and Taverns, representing approximately 20,000 micro and small businesses around Gauteng. GLF is made of the following organisations:
 - 2.1. Boksburg Vosloorus Food and Beverage Association;
 - 2.2. Diepsloot Liquor Traders;

- 2.3. Katlehong Liquor Traders;
 - 2.4. Kwa-Thema Tsakane Duduza;
 - 2.5. Langeville Liquor Traders;
 - 2.6. Mogale City Liquor Traders;
 - 2.7. National Tourism Hospitality Association;
 - 2.8. Orange Farm Liquor Traders;
 - 2.9. Sedibeng Liquor Traders;
 - 2.10. South African Leisure Tourism and Hospitality Association;
 - 2.11. Yeoville Traders; and
 - 2.12. Gauteng Liquor and Informal Business Association.
3. These member associations operate mainly in the townships and predominantly support township-based business owners, the vast majority of whom are tavern owners, liquor outlets and shebeen owners located in Gauteng.
 4. Our clients have always been responsible liquor traders and operate according to their own code of conduct and under applicable liquor laws and regulations. They do not sell alcohol to minors, pregnant women, people who are highly intoxicated or people in uniform.
 5. Self-evidently, the said members operate their businesses in the pursuance not only of their financial wellbeing but also in the exercise and protection of their legal and constitutional rights, as more specifically defined in section 22 of the Constitution of the Republic of South Africa, which provides that:

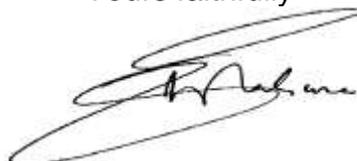
“Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.”

6. On 25 March 2020 the second COVID-19 Regulations (the “**lockdown regulations**”) were promulgated to apply from 26 March 2020 until 16 April 2020 during the lockdown period (the “**lockdown period**”). The lockdown period has now been extended to 30 April 2020.
7. More importantly the lockdown regulations restrict the movements of persons and goods. In particular, regulation 11B(1)(b) provides that all businesses and other entities shall cease operations during lockdown, save for essential services and goods.
8. The essential services and goods are defined as those contained in Annexure B to the lockdown regulations. In respect of essential goods, Annexure B refers to any food products, including non-alcoholic beverages.
9. Regulation 11B(1)(e) provides that any place not involved in the provision of essential service or goods must remain closed to all persons during the lockdown.
10. It is exactly the prohibition on the selling of alcohol by our clients during the lockdown period which is at the epicentre of the present challenge by our clients.
11. Since the declaration of the national state of disaster on 15 March 2020, our clients’ businesses have been gravely affected by the prohibition on a total ban of selling of alcohol. The extension of the lockdown period to 30 April 2020 will most likely ruin their businesses. They do not have access to other means of surviving, while the lockdown continues.
12. Our clients do not take any objection to the necessity to take measures to ensure that the spread of the virus is contained, and the virus is eliminated. Our clients are concerned that the Regulations are unconstitutional as a whole and there is no authority under the law and the Constitution to issue the Regulations. It is also notable that the entire framework for disaster management is not subject to any Parliamentary scrutiny and the risk for abuse of power is manifest.

13. Our clients also submit that even if there is authority to issue the Regulations, the total ban on the selling of alcohol is unreasonable and it has no rational connection to the mischief which is sought to be prevented. Public statements which have been made by senior members of Cabinet suggest that the alcohol ban is being used to achieve ends which are not related to combating Covid-19. We also submit that there are less restrictive measures which could have been out in place to prevent or alleviate the spread of the disease.
14. Our clients would have readily accepted the limitation on their trading hours as was the case when the first Covid-19 Regulations were published on 18 March 2020. However, a total ban on the selling of alcohol unduly and unlawfully infringes on their section 22 constitutional rights. These Regulations were also not passed pursuant to any consultation process. Our clients have rights to be consulted when decisions of this magnitude are taken given the adverse economic impact. Given the urgency, even a shortened process of consultation on the issue of banning of alcohol could have sufficed, but there has been no consultation at all. Even when the President announced an extension to the lockdown period, no opportunity was given for representations to be made on the issue of relaxing some of the draconian provisions such as the total ban on alcohol and cigarettes. As a consequence of the manner in which these Regulations were passed, there have been several changes in the Regulations and confusion as to the meaning of some of the vague and ambiguous portions thereof.
15. For the record, Regulation 8 of the first Covid-19 Regulations dealt with the limitation on the sale, dispensing or transportation of liquor as follows:
 - “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 COVIC-19: Provided that adequate space is available and that all directions in respect of hygienic conditions and limitation of exposure to persons with COVIC-19 are adhered to.”*
 - (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.”*
16. In our respectful submission this regulation achieved a proper balance between the interests of our clients and the need to prevent or alleviate the spread of the virus.
17. In the circumstances, we are instructed to demand, as we hereby do, that the Minister of Cooperative Governance and Traditional Affairs should immediately and forthwith remove, amend or lift the regulation which places a total ban of the selling of alcohol.
18. Unless we receive the written undertaking from the Honourable President by no later than 12h00 on Tuesday 14 April 2020, our clients will have no option but to approach court on urgent basis for appropriate relief.
19. All our clients’ rights are reserved.

Yours faithfully



MABUZA ATTORNEYS