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Your ref: P J Wassenaar /
Our ref:

15 December 2020

**THE MINISTER OF POLICE
PRETORIA**

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Sir / Madam

**MINISTER OF POLICE / DISASTER MANAGEMENT ACT 57 of 2002: AMMENDED REGULATIONS
ISSUED IN TERMS OF SECTION 27 (2) AS PUBLISHED ON 15 DECEMBER 2020**

- 1 We act on instructions of Sakeliga NPC ("our client").
- 2 It is our instructions that the Minister of Police on 15 December 2020 made the following statement regarding the amended lockdown regulations published by the Minister of Cooperative Governance and Traditional Affairs (COGTA), with reference to the *policing* of businesses under the newly published regulations:

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Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB);

Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD) , Sylvia Adriana Venter (LLB)

• Reg: 2012/030418/21

DocDate 20200620

[...] if you break the law of your business [sic] for the first time [you will be issued a ticket for R5,000.00. If you repeat, suspend your business for seven days, if you repeat, we suspend your business three months [sic] [...] So, people that are breaking the laws, people of the malls that allow people to go there without masks, deal with management and tell them that malls and supermarkets face the danger of shutting down.

- 3 The statement is *ultra vires* and will constitute an inchoate and unlawful instruction by the Minister Police to the members of the South African Police Service (SAPS) in the event of same being distributed to members as a standing order. The Minister of Police's statement screams of a callous disregard for basic constitutional rights, freedoms, and norms. The statement is not aligned with the standards of professionalism and conduct expected from the SAPS and its head.
- 4 The amended lockdown regulations published by COGTA do not grant the Minister of Police the powers to order members of the SAPS to *close down businesses* as a result of a contravention of the lockdown regulations. Even if such a provision existed, same would be unconstitutional and unlawful. The Minister of Police and members of the SAPS do not constitute a law on their own and have no power to *penalise* businesses and/or repeat offenders in the manner described by the Minister of Police on 15 December 2020. Any such action would constitute a flagrant disregard for the rule of law and due process.
- 5 The penalty provisions in the amended lockdown regulations do not authorise the SAPS to become both judge and jury to an offence. The law relating to the lockdown regulations requires that the SAPS conduct themselves professionally and that an arrest only be made if a person refuses to comply with the regulations after receiving a lawful instruction / warning and if no alternative means to secure a person's attendance in court is available. In the event of a lawful arrest or warning to appear in court having been issued, the matter becomes a criminal procedure issue before a court of law. The SAPS does not have the power to close done businesses without a court order.
- 6 Our client finds COGTA's attempt to place the burden of policing the State's policies regarding the combating of COVID 19 on businesses, to be misplaced and unconstitutional. Although it is near impossible for business owners and managers to always enforce strict compliance of the regulations, it is unreasonable to hold business criminally liable for the enforcement of these specific regulations in the event of autonomous third-party actors failing to comply. Business is not equipped to enforce these policies.

- 7 Our client needs to make it abundantly clear – any arrests or business closures made because of the statement of the Minister of Police on 15 December 2020 and/or as a result any subsequent instruction given by the Minister of Police and/or senior member of the SAPS, will in our client’s view constitute unlawful arrest and will expose the State (and specifically the taxpayer) to damages claims. Our client in any event reserves the right to approach the High Court for an urgent interdict in the event that the Minister of Police fails to provide the undertakings set out in this demand.
- 8 Our client requires that the Minister of Police provide the following undertakings:
 - 8.1 The Minister of Police and SAPS will communicate to all SAPS members that no member of the SAPS has the authority to summarily shut down or close any business without a court order;
 - 8.2 That the Minister of Police and SAPS undertake to immediately circulate to SAPS members updated standing orders regarding the application and enforcement of the lockdown regulations / measures, and that a copy of such standing orders be provided to our client;
 - 8.3 That the Minister of Police withdraw his statement of 15 December 2020;
- 9 We require a reply by no later than 12h00 on 18 December 2020.

Yours faithfully


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Elektronies geteken
Electronically signed