



Dear Client / Geagte Kliënt

# Newsletter

## COVID-19 Regulations - A Test For Constitutional Freedom & Liberties

Die Corona-virus-pandemie, algemeen bekend as Covid 19, is die uitbreek van 'n virus wat na bewering vanuit China sy oorsprong gehad het vanwaar dit vinnig wêreldwyd versprei het. Om die verdere verspreiding te probeer bekamp, het die regering regoor die wêreld verreikende beperkings op die normale lewensstyl van burgers geplaas wat hul burgerregte en vryhede ernstig beïnvloed. Omdat die virus blykbaar versprei deur middel van kontak met besmette persone het die sosiale afstand die nuwe norm geword.

In an attempt to slow the spread in South Africa, our president has established the Presidents Co-ordinating Council (PCC), consisting of the president, a number of cabinet ministers, the Premiers of all 9 provinces, executive mayors and SALGA (South African Local Government Association) to advise him on actions to be taken. In addition the President established National, Provincial and Municipal Disaster Management Advisory Forums for technical advice. South Africa's response to COVID-19 is, however, said to be one of the hardest lockdowns in the world.

Die uitvloeisel van die President se voormelde beraadslaging met die rolspelers was dat hy terstond 'n *Nasionale Ramp* verklaar het (wat nie met die uitroep van *Noodtoestand* verwar moet word nie, alhoewel die maatreëls wat getref was, wesenlik ooreenstem met dié van laasgenoemde) ingevolge die bevoegdhede kragtens die Wet op Rampbestuur van 2002 (die Wet / the Act).



Extensive powers are given to the Minister of Cooperative Governance and Traditional Affairs under Section 27 (2) of the Act to publish regulations and give directives which literally affect the lives of every citizen. These powers are, however, subject to subsection 27 (3) which states that it may only be exercised to the extent that such regulations are

*“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.”*

Daar is geen argument dat die gemelde maatreëls, dus inderdaad, voorgehou kan word as regverdiging vir die beperking, of opskorting, van die regte en of vryhede van ons samelewing tydens hierdie pandemie nie. Ons samelewing moet egter, gerugsteun deur Artikel 27 se Grondwetlike instellings, noulettend waaksaam bly en geensins toelaat dat enige persoon of instelling sodanige maatreëls gebruik as 'n geleentheid om onderdrukkende regulasies onder 'n rookskerm daar te stel nie en dat die regulasies inderdaad daargestel was om die populasie te beskerm. Ons menseregte en vryhede moet te alle tye ten sterkste gerespekteer en beskerm word. Artikel 36 van ons Grondwet bepaal wel dat ons regte soms regtens beperk mag word, maar dit verplig die regering om altyd die minste beperkende maatreëls in te stel om die bedoelde uitkoms te bereik, dit wil sê, slegs sodanige maatreëls as wat die gemeenskap se beskermde regte en belange die minste skade sal aanrig moet ingestel word.

A Constitutional Court challenge by an NGO, Hola Bon Renaissance Foundation, to the announced lockdown by the president, was dismissed by a court ruling that it had no reasonable prospects of success. It should, however, be pointed out that there were several technical flaws in the application itself, which spoils any chances of a different outcome to such application. The Court did however point out that asking for an order declaring a State of Emergency to be unlawful when indeed no state of Emergency was declared, but rather one of Disaster, was a critical error in the application.

Die burgerregte-groep, Afriforum, het reeds aangedui dat hul die grondwetlikheid van regulasies, wat voorsiening maak vir Covid-19-kwarantynkampe, sal betwis op grond dat dit die basiese vryhede met betrekking tot menswaardigheid skend en ook dat dit onregverdigbaar, irrasioneel en drakonies van aard is. Hierdie regulasies maak voorsiening dat die staat enige persoon kan vervolg wat weier om, nadat hy positief getoets het vir COVID-19, verwyder te word na 'n staatsbeheerde kwarantynkamp, of gesondheidsfasiliteit, wat vir sodanige pasiënte ingerig gaan word. Dit magtig ook die staat voorts om alle besmette mense met geweld uit hul huise te verwyder en na sodanige fasiliteite oorgeplaas te word.

These and other actions by the state, have plummeted many South Africans into a state of utter confusion and virtual paralysis. Many ask whether we can trust the government not to abuse its powers to limit the rights of society, whether in general or selectively. Some even quote the recent example of a Cabinet minister who attended a birthday party of her friend in contravention of the lockdown but received a mere slap on the wrist and forfeiture of one month's salary. This while others were arrested and assaulted by police for merely being on the streets. Let us nevertheless remind ourselves that we live in a constitutional and not a parliamentary democratic sovereign state.

Bly sterk, hou by alle reëls sover moontlik en moet geen kans neem wat jou duur te staan kan kom nie. Kontak enige van ons prokureurs indien jy raad of hulp benodig.

Groete en Beste wense / Regards and best wishes.

**Hennie, Eberhard & Cheryl-Anne** | Directors



## Leases, Contracts and COVID-19: What is Force Majeure?

With many businesses locked into leases but struggling to pay rental as a result of the pandemic and its economic effects, landlords and tenants across the spectrum are wondering what their legal position is with “*force majeure*” being widely touted as a mechanism for tenants to escape their leases. If it is, a lot of landlords are going to be left high and dry; if it isn't, many cash-strapped tenants will be staring financial ruin in the face.

We discuss what *force majeure* means and the two scenarios that landlords and tenants should consider. We end off with “a practical template for negotiation” and the thought that these general principles apply to contracts generally and not just to property leases.

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## In tye van Groot Verandering, maak seker dat jou Testament op datum is!

Dit is 'n somber gedagte, maar ook 'n realiteit waarmee ons moet saamleef. Nie een van ons kan verseker weet wanneer ons ons laaste asem gaan uitblaas nie. Daarom is dit noodsaaklik om deurentyd 'n Testament in plek te hê wat geldig en op datum is –



selves in voorspoedige tye. So kan jy seker maak dat daar behoorlik na jou geliefdes omgesien word wanneer jy die dag nie meer daar is nie. Dit is veral belangrik in hierdie moeilike tyd, waar onsekerheid en die risiko om 'n dodelike siekte op te doen aan die orde van die dag is.

Maak die nodige tyd en oorweeg of sekere aspekte van jou Testament dalk hersiening nodig het. Om jou hiermee van hulp te wees, het ons 'n lys saamgestel met nege "sneller-gebeurtenisse" ("trigger events") om in gedagte te hou. Besluit dan of dit nodig is om jou Testament te hersien. Indien wel, lees gerus die laaste gedeelte van die artikel oor "Hoe om jou testament op te dateer".

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## South Africa's Land Registration System - Then & Now

South Africa has one of the best land registration systems in the world.

The roots of our registration of land system lie in the history of the Netherlands and the coming of the Dutch settlers to South Africa. Our system is therefore based on 16th century Dutch Law with later influences of English Law which have evolved into the system we have today.

In terms of Dutch law it was laid down that the alienation of land had to be executed in the presence of the commander of his delegates. And later it was to be executed before two members of the Court of Justice which took charge of the formalities prescribed for the transfer of all immovable property.

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## Egskeiding gedurende die Tyd van Inperking – Op watter gronde kan jy steun?

*Let wel: Indien jy nie persoonlik 'n artikel oor egskeiding nuttig sal vind nie, oorweeg dit om hierdie vir iemand aan te stuur wat dalk daarby kan baat vind.*

Die Nasionale Inperking het baie paartjies se verhoudings op die proef gestel. Hoewel meeste verhoudings hopelik sterker ander kant uitgekome het, sal daar ongelukkig ook paartjies wees wat 'n egskeiding oorweeg, hopelik as 'n laaste opsie.

Ons bespreek die drie gronde vir egskeiding ingevolge die Wet op Egskeiding. Ons kyk ook oorsigtelik na ander faktore wat in ag geneem moet word.



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## Our Directors





## Hennie van Zyl

DIRECTOR

021 180 4551 / 083 250 9501

[hvanzyl@vzk.co.za](mailto:hvanzyl@vzk.co.za)

[Full Bio →](#)



## Eberhard Kruger

DIRECTOR

021 180 4552 / 082 789 1706

[ekruger@vzk.co.za](mailto:ekruger@vzk.co.za)

[Full Bio →](#)



## Cheryl-Anne Ehrenreich

DIRECTOR

021 180 4564 / 082 783 7242

[cheryl@vzk.co.za](mailto:cheryl@vzk.co.za)

[Full Bio →](#)

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**VAN ZYL KRUGER INCORPORATED (REG. NO 2015/174073/21) (VAT NUMBER 413 0273 172)**

# VZK

[www.vzk.co.za](http://www.vzk.co.za)



Suite A4-2, Avanti Building, South Block,  
cnr Carl Cronje Drive & Bill Bezuidenhout Avenue, Bellville, Cape Town

[info@vzk.co.za](mailto:info@vzk.co.za) | Reception: 021 180 4550 | Fax: 021 180 4540

**DIRECTORS: H L VAN ZYL (B.PROC); E S KRUGER (B.COMM LL.B MPRE); C A EHRENREICH (BA.LL.B LL.M)**  
**ASSOCIATES: S JANSE VAN RENSBURG (B.COM LL.B); LI CHANTLER (B COMM LLB); D VAN ZYL (LL.B LL.M);**  
**M VAN DEN HEEVER (LL.B); A BARNARD (B.COM LL.B DIP.FINPLANNING).**  
**PRACTICE MANAGER: F BRAVENBOER (NDIP FIS).**  
**CONSULTANT: J A L VAN ZYL (B.JURIS LL.B); C I'ANSON-SPARKS Solicitor in England and Wales (LL.B(HONS), DIP LEGAL PRACTICE)**