

GNR.358 of 24 March 2020: COVID-19 Block Exemption for the Retail Property Sector
(Government Gazette No. 43134)

Notice R.667	as amended by <i>Government Gazette</i> 43432	Date 11 June 2020
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DEPARTMENT OF TRADE AND INDUSTRY

I, Ebrahim Patel, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, hereby in terms of section 10 (10) read with section 78 (1) of the Competition Act, 1998 (Act No. 89 of 1998) as amended, make the regulations as set out in the Schedule hereto.

The purpose of the exemption is to strengthen the Government's programs designed to fight COVID-19, after having declared a National State of Disaster published in Government Notice No. 313 of *Government Gazette* No. 43096 on 15 March 2020.

The regulations will come into effect on the date of publication hereof in the *Gazette*.

(Signed)

MR EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION

SCHEDULE

1. Definition.—In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates—

- 1.1. **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.2. **“COVID-19”** means the 2019 novel coronavirus (SARS-COV 2/COVID-19);
- 1.3. **“Designated retail tenants”** means South African retail tenants that fall within the designated trading lines stipulated in Annexure A;
- 1.4. **“Minister”** has the same meaning as defined in the Act;
- 1.5. **“National Disaster Management Act”** refers to the National Disaster Management Act No. 57 of 2002, as amended;
- 1.6. **“Retail property landlords”** means those businesses that are involved in the supply of rentable space in the retail property sector such as retail shopping centres, among others. The categories of landlords may include, among others, real estate investment trust companies, property developers who own or operate retail shopping centres and other intermediaries through whom the letting of rentable space in the retail property sector is facilitated; and
- 1.7. **“South African retail tenant”** means a firm which is a retailer of goods or services that leases retail property from a retail property landlord, which is incorporated, established or formed under the laws of the Republic and whose place of effective management is within the Republic.

2. Purpose.—The purpose of these Regulations is to exempt a category of agreements or practices between designated retail tenants and the retail property landlords from the application of sections 4 and 5 of the Act in response to the declaration of

COVID-19 pandemic as a national disaster in terms of the Disaster Management Act, solely for the purpose of:

- 2.1. promoting concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the economic and social effects of the national disaster; and
- 2.2. enabling the retail property sector to minimise the negative impact on the ability of designated retail tenants, including small independent retailers, to manage their finances during the national disaster and be in a position to continue normal operations beyond the national disaster.

3. Category of agreements or practices exempted.—The Minister hereby exempts the following category of agreement or practice amongst and between designated retail tenants (as set out in Annexure A) and retail property landlords from the application of sections 4 and 5 of the Act, if undertaken at the request of, and in coordination with the Department of Trade, Industry and Competition, for the sole purpose of responding to the COVID-19 pandemic national disaster and which exclude communication and agreements in respect of prices unless specifically authorised by the Department of Trade, Industry and Competition:

- 3.1. Agreements or practices amongst and between designated retail tenants and retail property landlords with the sole purpose of ensuring the survival of tenants of retail properties during the COVID-19 national disaster, which are limited to agreements or practices in respect of:
 - 3.1.1. Payment holidays and/or rental discounts for tenants.
 - 3.1.2. Limitations on the eviction of tenants.
 - 3.1.3. The suspension or adjustment to lease agreement clauses that restrict the designated retail tenants from undertaking reasonable measures required to protect viability during the national disaster.
- 3.2. To qualify for an exemption, such agreements must extend to all South African retail tenants in the designated retail lines, including small, independent retailers, unless otherwise authorised by the Minister or the Competition Commission.

4. Scope of the exemption.—The scope of these Regulations is limited only to the agreements or practices specified under paragraph 3 which have the sole purpose of responding to the COVID-19 pandemic national disaster as set out in paragraph 2.

5. Amendments to Regulations.—Given the unpredictability of managing the COVID-19 pandemic, the areas of collaboration and designated retail tenant list exempted in these Regulations may be expanded or reduced by the Minister by notice published in the *Government Gazette* in terms of these Regulations.

6. To the extent that the retail property landlords and retail tenant of South Africa identify additional agreements or practices outside paragraph 3 that are necessary to achieve the purpose of these Regulations, they may request the Minister to expand the scope of the exemption.

7. Monitoring.—The retail property landlords and designated retail tenants who participate in any agreements or practices falling within the scope of these exemptions must keep minutes of meetings held and written records of such agreements or practices.

8. Short Title.—These Regulations shall be called the COVID-19 Block Exemption for the Retail Property Sector, 2020.

9. Commencement and duration.—These Regulations shall come into effect on the date of publication in the *Government Gazette*.

10. These Regulations shall remain in operation for as long as the declaration of the COVID-19 in terms of the National Disaster Management Act as a national disaster subsists, or until they are withdrawn by the Minister whichever comes earlier.

ANNEXURE A

[Annex. A substituted by GNR.667 of 11 June 2020.]

1. The designated trading lines for the purpose of the identification of designated retail tenants are—
 - 1.1. Cinema exhibition industry;
 - 1.2. Clothing, footwear and home textile retailers;
 - 1.3. Personal care services; or
 - 1.4. Restaurants.
 2. For purposes of this annexure—
 - 2.1. **“Cinema exhibition industry”** means establishments specialising in motion picture or videotape projection in cinemas, in the open air or in other projection facilities.
 - 2.2. **“Clothing, footwear and home textile retailers”** means retailers of wearable garments and products including menswear; ladieswear; children’s clothing; clothing for infants; sleepwear; underwear; intimate apparel, including lingerie; hosiery and socks; millinery (hats and caps); ties; school uniforms; sportswear; swimwear; protective clothing; workwear; hospital apparel; branded corporate wear; bespoke tailoring; footwear; and home textile products including sheets; pillows; towels; table cloths; carpets; terry towels; and blankets.
 - 2.3. **“Personal care services”** means retail outlets providing personal grooming services such as hairdressers, health and beauty salons.
 - 2.4. **“Restaurants”** means a business that prepares and serves food and drinks to customers.
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