CHAPTER 15 TRADING ON NATIONAL ROAD OR IN BUILDING RESTRICTION AREA

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15.1 FOLLOWING

15.1.1 In terms of the Act, no person may, without the SANRAL's written permission or contrary to that permission:

15.1.1.1 carry on any trade; or

15.1.1.2 expose, offer or manufacture for sale any goods on a national road or in a building restriction area.

15.1.2 Although the words ‘trade’ or ‘trading’ are undefined in the Act, the words may be given their ordinary meaning of “buying and selling goods and services”.

15.1.3 A person who had already been carrying on the business in question on a date immediately before the road was declared a national road may continue to do so without requesting the permission of the SANRAL.

15.1.4 However, if the SANRAL requests such a person, in writing, to discontinue the business undertaking by a certain date, the person must do so. If the person continues business after the specified date, he or she will be guilty of an offence.

15.1.5 A person who commits any of the above-mentioned acts (carrying on trade, exposing, offering or manufacturing for sale any goods on a national road or in a building restriction area) without the required written permission is guilty of an offence.

15.1.6 A person found guilty of this offence may be punished with a term of imprisonment not longer than three months, or a fine.

15.2 AUTHORITY OF THE SANRAL

15.2.1 The Act empowers various persons to implement section 52 of the Act.

15.2.2 These persons (referred to as “the competent officials”) include:

15.2.2.1 any employee of the SANRAL;

15.2.2.2 any person authorised in writing by the SANRAL for the said purpose;

15.2.2.3 any employee of a municipality designated or appointed to perform law enforcement functions on a national road by virtue of an agreement entered into between the SANRAL and the municipality;

15.2.2.4 any employee of a province designated or appointed to perform law enforcement functions on a national road by virtue of an agreement entered into between the SANRAL and the Premier of the Province.
15.2.2.5 any person who, in terms of a road traffic law, is a traffic officer for the purpose of the road traffic law⁸.

15.2.3 Municipal employees appointed to exercise the law enforcement power provided for in section 52 may only do so on those national roads which fall within their own municipal area. The same restriction applies to provincial employees appointed for the purpose of this law enforcement function.

15.2.4 A competent official who, on reasonable grounds, suspect that a person has performed an act for which the SANRAL’s written permission is required in terms of section 52¹⁰ is authorised to demand that the person produce such permission immediately¹¹.

15.2.5 If the person fails to produce the written permission, or if the competent official suspects on reasonable grounds that a person has performed on a national road or in a building restriction area any act that is unlawful in terms of section 52, the competent official may demand that the person furnish his full name and residential address immediately¹².

15.2.6 Failure to furnish this information is an offence¹³ which is punishable, upon conviction, with a term of imprisonment not longer than three months, or a fine¹⁴.

15.2.7 The competent official also has the power to order that person to remove, from the national road or building restriction area, the following:

15.2.7.1 every article employed in the commission of the act¹⁵;

15.2.7.2 every article which he or she reasonable suspects to be destined for use in the performance of the prohibited act by that person¹⁶;

15.2.7.3 any structure, tent, vehicle, implement or other object in, on or with which that act has been performed, or in or on which there is such an article, or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of an act which will be in contravention of section 52(1)¹⁷.

15.2.8 Upon failure to obey such an order given by a competent official, a person is guilty of an offence¹⁸ and liable to punishment with a term of imprisonment not longer than three months, or a fine¹⁹.

15.2.9 The competent official may also personally remove from the national road or
the building restriction area any article, structure, tent, vehicle, implement or other object mentioned above or found on the national road or in the building restriction area in circumstances reasonably related to a contravention of section 52(1).

15.3 RESTRICTIONS PLACED ON THE SANRAL

15.3.1 The Constitution states 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”.

15.3.2 The question arises whether certain provisions of section 52 of the Act contravenes this constitutional right. For example, a person who avers that her chosen trade or occupation is to sell goods on the side of a national road or in a building restriction area may argue that the provisions of section 52, prohibiting her from doing so, infringes her constitutional right to freedom of trade, occupation and profession.

15.3.3 Even if section 52 is considered to infringe section 22 of the Constitution, this would be a reasonable and justifiable limitation of a person’s right to freedom of trade, occupation and profession due to, inter alia, issues of public safety and attempts to reduce the number of deaths on national roads. As such, section 52 of the Act should constitute a reasonable and justifiable limitation (in accordance with section 36 of the Constitution) when taking into account all relevant factors, including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and its purpose and less restrictive means to achieve the purpose.

15.3.4 The implementation of section 52 of the Act by the SANRAL must take into account constitutional restrictions on the exercise of administrative powers.

15.3.5 The constitutionally entrenched right to administrative action provides as follows:

15.3.5.1 Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

15.3.5.2 Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

15.3.5.3 National legislation must be enacted to give effect to these rights.

15.3.6 At present the Promotion of Administrative Justice Act, Act 3 of 2000 (hereinafter referred to as “PAJA”) gives effect to section 33 of the Constitution. This Act may be regarded as a code of administrative practice and procedure since it prescribes the minimum requirements for administrative legality and procedure.

15.3.7 PAJA defines administrative action to mean any decision taken, or any failure to take a decision, by an organ of state when exercising a power in terms of the Constitution or a provincial constitution or exercising a public power or performing a

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19 Section 22 of the Constitution of the Republic of South Africa, Act 108 of 1996
public function in terms of any legislation.  

15.3.8 The term is also wide enough to include a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision which adversely affects the rights of any person and which has a direct, external legal effect. It is submitted that the SANRAL is an organ of state, alternatively that it exercises a public power or performs a public function and that, in the circumstances, PAJA is applicable.  

15.3.9 Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.  

15.3.10 A fair administrative procedure depends on the circumstances of each case. In order to give effect to the right to procedurally fair administrative action, an administrator (such as a competent official referred to in section 52 of the Act) must give a person:  

15.3.10.1 adequate notice of the nature and purpose of the proposed administrative action;  

15.3.10.2 a reasonable opportunity to make representations;  

15.3.10.3 a clear statement of the administrative action;  

15.3.10.4 adequate notice of any right of review or internal appeal, where applicable; and  

15.3.10.5 adequate notice of the right to request reasons.  

15.3.11 In order to give effect to the right to procedurally fair administrative action, the competent official may, in his or her or its discretion, also give a person an opportunity to:  

15.3.11.1 obtain assistance and, in serious or complex cases, legal representation;  

15.3.11.2 present and dispute information and arguments; and  

15.3.11.3 appear in person.  

15.3.12 If it is reasonable and justifiable in the circumstances, a competent official may depart from any of the requirements referred to above. In determining whether a departure is reasonable and justifiable, a competent official must take into account all relevant factors, including:  

15.3.12.1 the objects of the empowering provision;  

15.3.12.2 the nature and purpose of, and the need to take, the administrative action;  

15.3.12.3 the likely effect of the administrative action;  

15.3.12.4 the urgency of taking the administrative action or the urgency of the matter; and  

15.3.12.5 the need to promote an efficient administration and good governance.
15.4 POLICIES AND PROCEDURES IN RESPECT OF ILLEGAL TRADERS

15.4.1 The SANRAL must seek the cooperation and assistance of municipalities, provincial traffic authorities and the South African Police Services to prevent illegal trading within national roads and building restriction areas.

15.4.2 Where possible, the SANRAL should enter into agreements with municipalities and the Premiers of provinces in terms of which such municipality or provincial authority is authorised and undertakes to perform law enforcement functions on national roads.

15.4.3 If it comes to the attention of the SANRAL that persons may be trading illegally within a national road or a building restriction area, then the SANRAL, a duly authorised agent, or a duly authorised municipal or provincial employee (who undertakes law enforcement functions on national roads by agreement with the SANRAL) (“the competent official”) must attend on the site and demand that the persons, who are alleged to be trading illegally, immediately produce proof that they have the written permission of the SANRAL to trade within the national road or building restriction area.

15.4.4 If such persons are unable to produce such proof or if the competent official suspects that such persons are trading illegally, then the competent official must:

15.4.4.1 demand that the persons' full names and residential addresses be furnished immediately;

15.4.4.2 order that the persons remove from the national road or building restriction area:

15.4.4.2.1 every article with or in respect of which illegal trading has been perpetrated or which the competent official suspects on reasonable grounds will be used for illegal trading;

15.4.4.2.2 any structure, tent, vehicle, implement or other object in, on or with which provincial authority is authorised and undertakes to perform law enforcement functions on national roads.

15.4.5 A notice should also be served on illegally within a national road or a building restriction area, then the SANRAL, a duly authorised agent, or a duly authorised municipal or provincial employee (who undertakes law enforcement functions on national roads by agreement with the SANRAL) referred to in section 52(1) (“the competent official”) must attend on the site and demand that the persons, who are alleged to be trading illegally, immediately produce proof that they have the written permission of the SANRAL to trade within the national road or building restriction area.

15.4.5.1 lodge a complaint with the South African Police Services and request that such traders be prosecuted for a contravention of the Act;

15.4.5.2 if necessary, apply to the High Court for an order that the traders remove any articles being sold, and structures, tents, vehicles and other implements on or in which trading is taking place;

15.4.5.3 if necessary, apply to the High Court for an order that the traders be interdicted and restrained from trading further within the...
national road and building restriction area.

15.4.6 If the traders are not present overnight, then the SANRAL must obtain the assistance of the South African Police Services or, if necessary, a security firm, to prevent the traders from resuming their activities during daylight.

15.4.7 If articles used, or which could be used, in the perpetration of illegal trading are abandoned in the national road or building restriction area, they should be removed by the competent official. It is important to note that goods in the possession of a person may not be removed from that person without an order of court.

15.4.8 In situations where traders have established themselves more permanently, the SANRAL must appoint a security firm to:

15.4.8.1 prevent any further persons from trading in the area;

15.4.8.2 undertake a survey of all persons illegally trading in order to obtain their full names and identity numbers;

15.4.8.3 take photographs of the trading activities and problems this causes on the national road or within the building restriction area;

15.4.8.4 demolish any structures in the area which were previously used for illegal trading but which have been abandoned;

15.4.8.5 observe the activities being undertaken in the area and to report on any illegal activities with a view to arranging intervention by the South African Police Services.

15.4.9 If the illegal traders refuse to comply with the terms of the notice, then a complaint must be submitted to the South African Police Services and they must be requested to immediately proceed with the prosecution of the illegal traders for a contravention of the Act.

15.4.10 If the South African Police Services are unable or unwilling to take action against the illegal traders, then application must be made to the High Court for an order giving directions on the service of application papers on the traders.

15.4.11 Prior to the commencement of any legal action, the written approval of SANRAL’s Chief Executive Officer must be obtained. The Chief Executive Officer must also be informed of any evictions arising from a response to illegal trading.

15.4.12 In the event that it is necessary to proceed with an application to court, the person signing affidavits on behalf of the SANRAL must have delegated responsibility to do so.

15.4.13 The SANRAL must instruct their attorneys to prepare application papers which must be served on the illegal traders in accordance with the terms of the order of court giving directions on service.

15.4.14 If the application to the High Court is successful, the order of court must be served.
by the Sheriff of the High Court. It may be necessary to arrange for the South African Police Services and/or a security firm to assist the Sheriff to execute the order of court.

15.4.15 After the illegal traders have been removed from the national road and building restriction area, the area must be cleared and cleaned and thereafter monitored to ensure that the traders do not return.

15.5 ANNEXURES

15.5.1 Precedent of a notice to be served on an illegal trader;

15.5.2 Example of standard conditions for a farm stall
15.5 ANNEXURES

Annexure 15.5.1 Precedent of a notice to be served on an illegal trader

NOTICE TO VACATE NATIONAL ROAD AND BUILDING RESTRICTION AREA

In terms of section 52(1) of the South African National Roads Agency Limited and National Roads Act, 7 of 1998, no person may without the SANRAL’s written permission carry on any trade or expose, offer or manufacture for sale any goods on a national road or in a building restriction area.

It has come to the attention of the South African National Roads Agency Limited (“the SANRAL”) that you are trading on a national road or in a building restriction area without the permission of the SANRAL.

We hereby give you notice that unless you immediately cease trading within the national road and building restriction area, we shall:

(a) lodge a complaint with the South African Police Services and request that you be prosecuted for a contravention of Act 7 of 1998;

(b) if necessary, apply to the High Court for an order that you remove any articles being sold, and structures, tents, vehicles and other implements on or in which trading is taking place;

(C) if necessary, apply to the High Court for an order that you be interdicted and restrained from trading further within the national road and building restriction area.
15.5 ANNEXURES

Annexure 15.5.2 Example of standard conditions for a farm stall

The South African National Roads Agency Limited (SANRAL) approved your application in terms of Section 44 and 48 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act 7 of 1998), on …………………………….., subject to the following conditions:

1. Building Restriction Area

The farm stall shall be erected at a distance of not less than 30 (thirty) metres, measured from the national road reserve boundary.

2. Design and Development of terrain

2.1 The design of the pavement of the access road between the surface of the national road and the national road reserve boundary shall be of the latest standard as that of the national road.

2.2 The requirements of the Geometric Design Manual G2 of SANRAL shall be complied with regarding the design of the access road.

2.3 No freestanding advertising will be allowed in the vicinity of the proposed farm stall.

2.4 No additional access to or egress from the national road will be permitted.

2.5 Access shall be obtained only from the existing entrance of the applicant.

3. Construction of farm stall

3.1 The applicant shall at his own cost and without compensation relocate the road reserve boundary fence for a distance of 40 (forty) metres opposite the farm stall in a funnel shape to nearest corners of the farm stall.

3.2 The applicant shall at his own cost erect corner posts and stays at the corners where the fence has been relocated and attach the road reserve boundary fence thereto.

3.3 The applicant shall clear and maintain the area between the national road carriageway and the farm stall in order that vehicles may have free use thereof.
3.4. A contractor approved by the SANRAL shall install drainage pipes within the national road reserve over the full distance of 40 (forty) metres where the fence has been relocated at the applicant's cost.

3.5. All work shall be carried out to the satisfaction and according to the requirements of the said Regional Manager.

4. **Trading**

4.1. The farm stall shall be used only for the displaying and selling of the farm produce and for no other purpose without written approval of the SANRAL.

4.2. All trading from the existing farm stall shall immediately be discontinued on the completion of the new farm stall.

5. **Cost and Indemnity**

5.1. The SANRAL shall not be involved in any expenditure in connection with the erection of the farm stall or fence and shall not be responsible or liable for any financial expenditure or loss in the event of the SANRAL ordering the removal or shifting or relocation of anything related to this approval.

5.2. The applicant shall indemnify the SANRAL against, and hold it harmless from any claims or damages which may be instituted or suffered by any person, including legal costs, as a result of the erection, use or removal of the structure or fence or as a result of any failure by the applicant to comply with any of the conditions contained herein or property maintain or render the farm stall, fence and entrance safe.

5.3. The SANRAL accepts no financial responsibility or liability for any claim from the applicant which may arise from the lapsing of the approval.

6. **Lapsing of Approval**

This approval shall lapse

6.1. unless the farm stall is completed within the period of ............... months from the date of approval by the SANRAL. The applicant may, however, prior to the date of expiry, apply in writing to the SANRAL for an extension of the completion period;

6.2. in the event of the applicant not complying with any of the conditions as herein imposed by the SANRAL;
6.3. if the farm stall is no longer operated by the applicant personally; and

6.4. if any produce other than farm produce is being sold or displayed within the national road reserve.

Notification of Commencement and Completion

7.1. The applicant shall at least 14 (fourteen) days prior to the commencement of the work advise the Regional Manager of the SANRAL stationed at Cape Town in writing of the date upon which the work shall be commenced with.

7.2. The said Regional Manager shall also be advised in writing, within 30 (thirty) days after the completion of the work of the date upon which the work has been completed.

8. Additional Legal Requirements

8.1. This approval shall bind any successor-in-title to the land to which this approval relates.

8.2. This approval does not exempt the applicant from the provisions of any other Act.