

LEGAL NOTE¹

DATE: 30th APRIL 2020

RE: NOTE ON THE IMPLICATIONS OF STATUTORY INSTRUMENT 96 OF 2020

1. BACKGROUND

- 1.1 COVID – 19 which has been declared as a pandemic has wreaked havoc across the globe and most governments have responded by declaring lockdowns and extending stimulus packages in a myriad ways to curb the spread of the virus and to assist enterprises.
- 1.2 In the same light, the President of Zimbabwe through Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020, Statutory Instrument 83 of 2020, declared a national lockdown to contain the spread of the COVID-19 with effect from the 30th March, 2020, to the 19th April, 2020. The national lockdown was further extended to the 3rd May, 2020 through the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) (Amendment) Order, 2020 (No. 3), Statutory Instrument 93 of 2020.
- 1.3 As a result of the lockdown, enterprises have cut down on operations, employees have had to stay at home and thus limiting income generation which in some instances has filtered to employees' salaries. To cushion the public from the effects of the lockdown, the President of Zimbabwe enacted Statutory Instrument 96 of 2020 cited as the Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020.

2. EXECUTIVE SUMMARY

¹ This note is for general information and should not be taken as absolute without consultation with ChimukaMafunga Commercial Attorneys and obtaining legal advice specific to consultant.

- 2.1 In terms of S2 of SI 96 of 2020 a protected tenant is a person occupying rented accommodation *for residential purposes* and the person is protected or granted deferral for payment of the rentals during the tenure of the lockdown;
- 2.2 In terms of S2 as read with S3 a protected mortgagor is a mortgagor protected from any legal proceedings to the extent that he or she is unable to pay rent during the period of the lockdown. (We assume that this means that the person would be unable to pay their mortgage due to the fact that they have not received rentals from their tenant).
- 2.3 The Statutory Instrument only protects tenants or mortgagors using premises for residential purposes only.
- 2.4 Parties are not released from their contractual and legal obligations. Their obligations are only deferred or suspended during the lockdown period.

3. THE ISSUES RAISED BY STATUTORY INSTRUMENT 96 OF 2020

- 3.1 In terms of the SI a ‘protected tenant’ means a person occupying rented accommodation **for residential purpose** and the person is protected or granted deferral during the tenure of the lockdown as stated above².
- 3.2 The SI further stipulate that the protected tenant will not be subjected to any legal proceedings for eviction or possession of the premises during the period of the lockdown, neither is the Landlord allowed to increase rentals during the same period³. Section 3(5) makes it clear that *‘this section applies to all contracts for the payment of rental for accommodation for residential purposes, whether the obligation to pay rental is statutory or contractual.’*
- 3.3 By implication, the import of SI 96 of 2020 is that it only applies to rentals for accommodation only and not commercial properties. The intention is to protect individuals in residential accommodation and neglects commercial tenancy.

² S2 as read with S3 (1) of the Regulations

³ S3 (1) (b) of the Regulations

- 3.4 S4 of the SI grants deferrals to mortgagors of residential properties who should not be subjected to legal proceedings for matters connected to the mortgage during the period of the lockdown.
- 3.5 However, it should be noted that this SI does not in any way release tenants or mortgagors from their contractual or statutory obligations, it only defers or suspends their obligation.
- 3.6 It should also be noted that if a tenant or mortgagor has capacity to pay in full or a proportion thereof he or she is not prohibited from doing so.
- 3.7 S5 and S6 further states that the deferred rentals or mortgage repayments shall be paid without interest or penalties for delayed payment after the lockdown and the amount for a month shall be paid in three equal instalments together with the payment or rentals for that current month.

4. CONCLUSION

- 4.1 From the above, Statutory Instrument 96 of 2020 is a welcome development, however it is lacking in that there is no moratorium afforded to commercial tenants even though they also experienced the effects of Covid -19 due to the mandatory lockdown.
- 4.2 It is our considered view that even though tenants of commercial properties are not within the ambit of this SI, the tenants to commercial properties should be able to negotiate and enter into arrangements with their landlords for rent deferrals using the guidelines set by this SI. The Landlords of commercial properties are not legally obliged to adhere to the guidelines though.
- 4.3 It is also our considered view that there is need for penal provisions in the event that residential tenants disregard the provisions of the SI.