

COMMENTS ON 2010 FIFA WORLD CUP: SPECIAL MEASURES BILL, 2006

Introduction

Government Departments such as the dti and Home Affairs (DHA) have given Government Guarantees to FIFA in 2003. In terms of the dti Guarantee, the dti has to designate 2010 FIFA World Cup (World Cup) as a protected event in terms of the Merchandise Marks Act, 1941. Further, the dti has to see to it that there are no restrictions regarding the marketing, distribution and consumption of liquor around demarcated areas where the World Cup will take place. After Guarantees were given, several workshops were held with Local Organising Committee (LOC), FIFA representatives from Switzerland, Zurich and local FIFA lawyers. The purpose of the Workshops was to establish whether or not the dti has to amend any intellectual property (IP) legislation. In this regard, it was officially communicated to the Director General of Sports and Recreation that there is no need to amend any IP legislation (annexure A).

Later FIFA tried to amend section 15A of the Merchandise Marks Act dealing with "the creation of opportunities for businesses, in particular those from the previously disadvantaged communities". Amendment to this provision was going to deny the Government of South Africa to apply national policies relating to procurement, e.g. Broad Based Black Economic Empowerment Act (BBBEE) and National Procurement Act.

Further at several workshops the dti was asked if sections 12 and 13 of the Liquor Act do not need amendments as they may "impose restrictions". It was confirmed that there is no need to amend the Liquor Act as the provisions are effecting operational issues. This is so since a licence has to be issued by the competent authority taking into account prevailing national circumstances. Examples of such circumstances are application of BBBEE principles in licences and to restrict unacceptable conduct such as targeting minors when marketing liquor. It was further agreed in those workshops that the provincial liquor boards will act promptly dealing with temporary licences that have to be issued in relation to FIFA activities. FIFA could not come with an explanation when asked if it wants to evade the application of the BBBEE principles by seeking the amendment of the liquor legislation. The approach of the dti has been tested in the Merchandise Marks Act where there was an understanding with the LOC that business opportunities will have to be created during the awarding of tenders by the LOC/FIFA or Government. The sponsors e.g. Budweiser, when they distribute liquor in and around the stadia has to do this within the confines of the national and provincial policies. The view of the dti was communicated to the Director General of Sports and Recreation.

On 15 June 2006 the dti made a presentation to the Portfolio Committee for the Department of Sports and Recreation and there was an agreement that the provision of Clause 6 of the amended version should be removed in its entirety.

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Discussion of clauses pertaining to the dti legislation

1. Clause 2 of the Bill

This Clause deals with the power of the Minister in designating the World Cup as a protected event in terms of section 15A of the merchandise Marks Act. The Minister has already designated the World Cup as a protected event. The date for termination of the World Cup is six months after the final match of the tournament.

When this issue was pointed out to the Portfolio Committee for Sports and Recreation on 13 June 2006, the Committee and the Department of Sports and Recreation were agreeable to the dti approach. In this regard the Bill was amended accordingly (attached Bill, Clause 2, page 2).

2. Clause 6 of the Bill

The Clause deals with the need to amend sections 12 and 13 of the Liquor Act, and those of provincial liquor legislation. Section 12 of the Act provides in the main that the Minister must apply his mind to the application and may solicit further relevant information from the Applicant. If such information is not supplied within the prescribed period, the Minister shall not approve the application. The Applicant must be furnished with reasons if the application is not approved.

This is a good law and it has been shown during various consultations with FIFA and the Department of Sports and Recreation (DSR) that should not be viewed as a condition that may frustrate the liquor sponsor of FIFA. The official sponsor of FIFA may have to apply and the Minister or his representative must apply his mind. The provincial boards should also do the same. This clause is not there to frustrate normal activities of commerce. The official sponsor had already won the right to do business in and around the stadia and it would not serve any purpose to impose restrictions to a sole sponsor. However, the Minister and provincial boards are required to apply the provisions of section 12 together with the provisions of section 13, in particular, section 13(1)(a).

Section 13(1)(a) provides that registration of the applicant in terms of section 12 is dependent on the application of the fulfilment of the BBBEE criterion. The importation of liquor by the official sponsor should not be immune to the provisions of the BBBEE principles. This provision is not different from the requirement of section 15A of the Merchandise Marks Act. Section 15A requires the Minister to apply his mind before an event is designated a

protected event status that opportunities are created for businesses, in particular those from the previously disadvantaged communities. Application of section 15A has been adopted by the LOC that its procurement procedures will be in terms of the public sector procurement policies, i.e. application of BBBEE principles and rules of fairness and administrative justice.

The FIFA official sponsor should by now start to negotiate with the local businesses that can assist in the distribution of liquor in and around the demarcated areas. In doing so, the official sponsor should consider the provision of 13(1)(a). The official sponsor may choose to sell and distribute liquor itself or it may choose to license third parties to sell and distribute at the designated areas. The dti is interested in the application of the BBBEE principles when the official sponsor license third parties to sell and distribute liquor in and around stadia. If the official sponsor has already a licensee in South Africa, the licensee has to apply BBBEE principles in executing its functions within the country. The licensee may have to confer with customs officials and the National Department of Agriculture when importing liquor. The dti does not have a role in this regard.

Further South Africa expects all providers of liquor to encourage responsible drinking. It is expected that liquor will be consumed in a responsible manner in and around stadia. Food will be provided at a fee during the drinking time. Furthermore, marketing targeting minors is not tolerated. Marketing issues already protected in terms of section 15A of the Merchandise Marks Act applies. The provisions of Clause 6 (2)(b)(i) to (iv) or 3 (2)(b)(i) to (iv) of the Bill are very wide since such restrictions are not stated and defined.

On 15 June 2006, the dti made a presentation before the Portfolio of the DSR and it was pointed out that clause 6 of the Bill should be taken out in its entirety. The Committee was relieved in seeing that the dti was committed to national policies such as the application of the BBBEE principles. The Committee unanimously adopted the presentation of the dti. It was pointed out this matter does not need to be legislated in the Special Measures Bill, the official liquor sponsor of FIFA will have to negotiate with interested persons. The official sponsor should take into account national policies regarding issuance of procurement procedures regarding liquor distribution in and around demarcated areas. Negotiations can start now with interested parties and this will strengthen the hand of the official sponsor when making the application for registration of distribution and consumption of liquor. Alternatively, the licensee of the official sponsor should also see to it that national policies regarding procurement procedures are complied with.

In passing it was also agreed that responsible advertising by the official sponsor is expected and this is a good international norm. Advertising that targets minors or the under aged is not tolerated. This was acceptable to the Committee and it is not envisaged that the official sponsor had any intention of working outside the parameters of section 9 of the Liquor Act dealing with advertising of liquor.

In general the fact that the World Cup is a protected event confers enough protection regarding marketing of liquor in and around demarcated areas.

3. Conclusion

The provision of Clause 2 of the amended version of the Bill is supported. This is in line with the published Notice in terms of section 15A of the Merchandise Marks Act.

The provision of Clause 6 or 3 of the amended version of the Bill is not supported and should be removed from the Bill. The Committee also accepted this approach.

THANK YOU.