



The Daily Maverick had a stark prediction this week: that three out of four small to medium sized enterprises in South Africa will not survive beyond July if the lock-down continues, in part because 68 percent of SMMEs which have applied for funding have been unsuccessful.

As we are daily learning, the impressive relief measures that President Ramaphosa recently announced are simply not getting to the people who most need them because of bureaucratic incompetence and, worse, dog in the manger attitudes of some in leadership who are seeking to stifle the good work being done by charities.

The latest alarming figures are drawn from a new survey conducted by an organisation known as the Heavy Chef Foundation which has also determined that one in three SMMEs has reduced salaries of their staff between 75 and 100 percent. It in large measure explains why we are seeing Great Depression-scale soup kitchens blossoming on the South African landscape.

In the face of this, it beggars belief that the ANC government is now moving to block charities from distributing food without their permission. We have long known that the government has created a vastly incompetent state, but to try and stop charities from operating in these circumstances goes far beyond incompetence. It surely must border on an official policy of genocide!

Dear President Ramaphosa, I and most of whom I speak for strongly supported you when you timeously led the nation into lock-down. But if you cannot control those who daily countermand your announcements and who callously seek to impose illogically draconian controls upon the people of South Africa, then you do not deserve to be our president, nor can your political party expect to remain in power for much longer.

It was thus no surprise to me this week when one donor - speaking I am sure for most of us who have tried to help out in this terrible time - remarked to me this week, "I don't trust the government-sponsored food distribution system so I am giving to private charities that are doing such good work."

Nearly everyone I know who has the means to help, has been giving of their money and their talents because they are that kind of people. It is the spirit that made South Africa great; the recognition that those who have the means to do so should help those less fortunate than themselves. It is a mind-set which has seen this country through so many previous crises. But some in government appear to want to change that spirit!

If our sources were merely rumour I would dismiss them out of hand as completely irrational, but reality appears to be stranger than fiction in South Africa today. Take for example the case of the Cradle of Hope in Krugersdorp, a charity which has been forced to go to court for permission to keep on giving sandwiches to the homeless.

As reported by the usually scrupulously correct Financial Mail, CEO Melodie van Brakel's problems began on May 7 when she applied for a permit to provide food parcels to community people suffering during the lockdown. The permit she was given said she could only provide food parcels of non-perishable items, which preferably had to be delivered. She tried to speak to the social development department's West Rand director Ndo Kobeli, who'd signed her permit, but she was told flatly, on May 11, she wasn't allowed to hand out sandwiches.

"The thing was, people were still coming to us every day asking for food — we even got death threats from two of them who said we didn't want to feed them anymore, which wasn't true," she says.

Frustrated, Van Brakel hung a sign on red cardboard on the shelter gate. It read: "The ANC government has forced us to stop feeding you. Please go to the DSD office at 16 Human Street to ask for food assistance, attention: Mrs Ndo Kobeli."

"Then all hell broke loose," she says. First, the police arrived the next day prepared, she believes, to arrest her, if she handed out food.

"Then a representative arrived from the ANC Youth League who told me [his organisation] was going to bus in supporters to riot unless I took the sign down. He said it was provocative, and I told him, 'good, I want it to be provocative,'" she says. The riot never happened, but nor did any breakthrough on feeding the community.

Last Thursday, the Cradle of Hope's lawyers sent a letter to Gauteng premier David Makhura, asking him to withdraw the "guidelines" and tell the police and other law enforcement "not to interfere with, or prohibit charity organisations" from distributing food to people in need. Van Brakel says she's had no response.

It is a story which must surely enrage all right-minded people. That it is not an isolated case is sufficient argument to accuse the government of illegitimacy and to demand that it rather hand over to an apolitical interim authority that can govern by consensus until such time as a fresh election can be called.

Meanwhile, the plight of small business in South Africa tells of an unprecedented crisis brought on by gross mismanagement, incompetence and, worse, the wholesale plunder of the fiscus which made a basket case of the economy even before Covid-19 burst onto the scene.

Recognising that on an international scale, small business is responsible for between sixty and seventy percent of all jobs, then it is no surprise that an unemployment rate worse than the Great Depression visited upon us is now unfolding all around us while a smug coterie of bureaucrats remains seeming impervious to expert opinion which in turn argues that no further health benefits can be gained from continuing the virus lock-down.

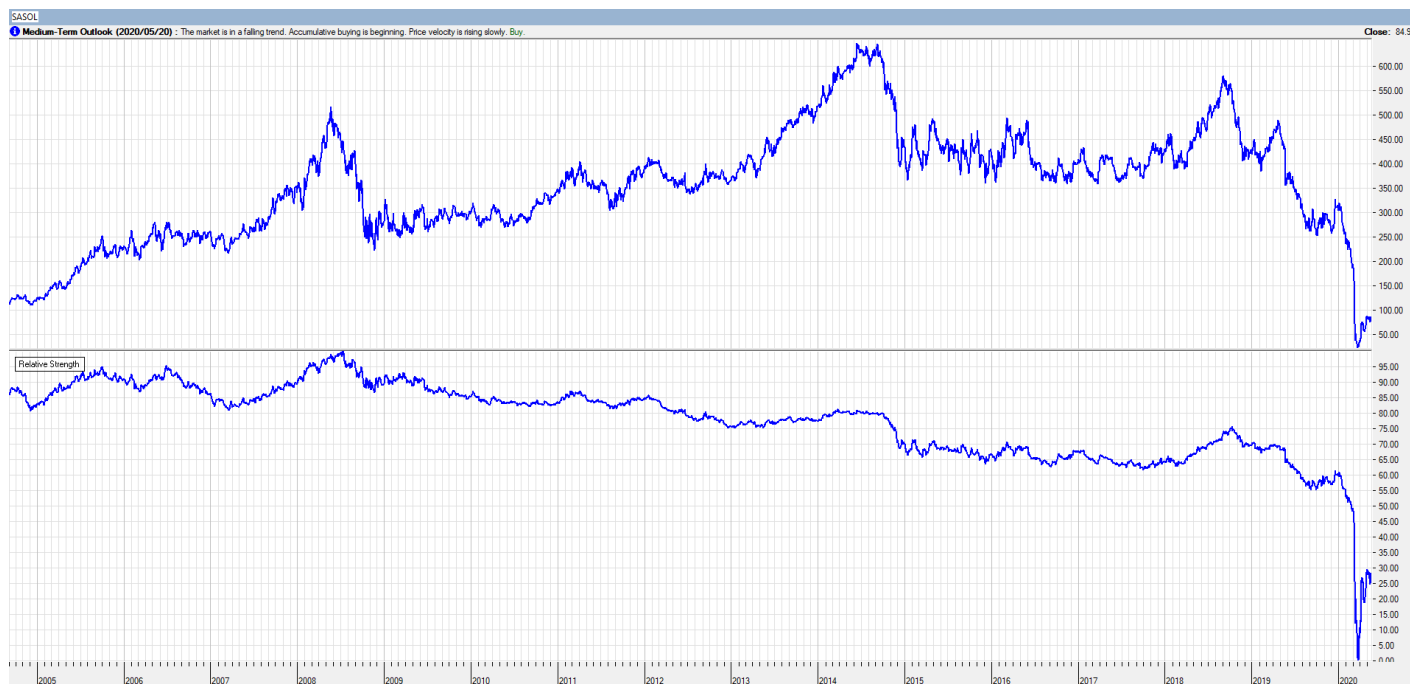
Monitoring as I do the daily financial results of all the major South African companies that are listed on the JSE, I am acutely aware that it is not just the SMMEs that are in crisis. The great majority of listed companies are withholding their dividends until such time as there is greater clarity on their way forward.

Inevitably then, another category of South Africans is daily joining the ranks of those who are uncertain of where their next meal is coming from; the army of pensioners who depend upon dividends to underwrite their pensions.

We at ShareFinder International are accordingly faced with a data-measuring dilemma for one of the primary tests we apply in determining the investment grading of listed companies is their history of dividend payment. Our dilemma dates back to the year 2007 when then blue-chip Sasol dipped into its reserves to give its shareholders a big dividend increase in order to sweeten the launch of a BEE share issue. The share price responded spectacularly to rise from a March low of R215 to peak at R514 on May 20 2008. But then a combination of a decline in profits and consequently depleted reserves obliged the company to cut its dividend which resulted in a significant share price decline to R221 on November 20.

However, the following year the company appeared to have resumed its loyalty to its shareholders and dividends began steadily rising once more. Thus, on the graph below the share price behaviour around the 2007 dividend began to look like a simple aberration. We accordingly decided to re-write the algorithm with which we determine our dividend growth statistics such that a dividend spike would simply be ignored provided corporate earnings per share remained steadily on track.

And that seemed to be the correct decision since thereafter the share price continued rising. However, as my graph shows, Sasol had in fact fatally damaged its reputation with major investors. In the graph composite, the topmost graph plots the daily share price but, more tellingly, the plot below that shows the share price relative to the JSE Industrial Index has fallen steadily since then.



The latest strong recovery of the relative strength graph suggests that the negative sentiment was grossly overdone for the past 20 months as the company struggled with cost over-runs at its Lake Charles chemical plant in the USA. But that does not change the fact that, by reneging on the unspoken pact between Blue Chip corporate and their shareholders that dividends will be at least maintained year after year, has seen Sasol punished every year since 2008.

To put a number on that fateful decision, Sasol shares have risen in price at a compound average rate of 4.2 percent each year since 2008 but, relative to the JSE Industrial Index they fell by 3.5 percent compound. One might thus conclude, by multiplying that 3.5 percent a year differential by the market capitalization of all the shares in issue, that Sasol's management lost out massively on their ability to raise money in the marketplace with which to fund their capital projects.

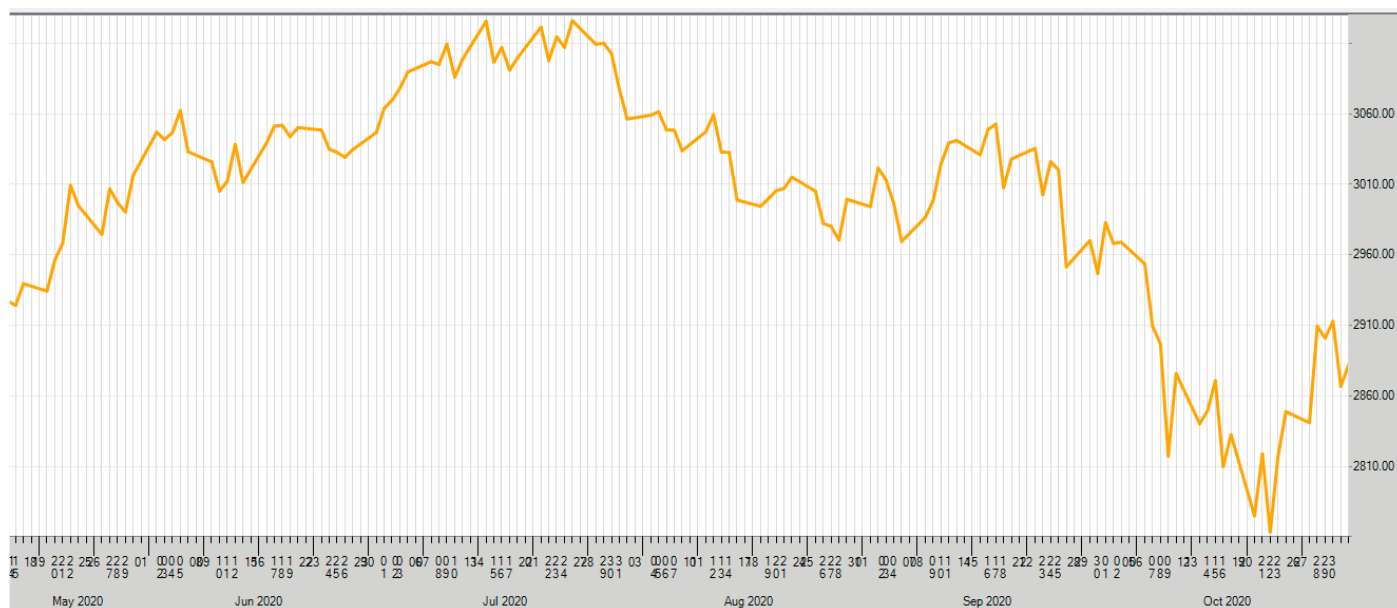
Using a mean price calculation, I determine that, notwithstanding the currently depressed state of the market, the shares are currently worth approximately R475 each and, since there are 632 290 000 in issue, that loss is equal to more than 10.5-trillion Rands which on their own could have financed the entire Lake Charles project. Clearly the 2008 board has something to answer for by its betrayal of market trust! So, with hindsight we were probably wrong to ignore the 2008 dividend event.

But now we face the aftermath of the Covid-19 share market crash and the observation of a majority of economists that South Africa is heading into a worse situation than the Great Depression. For now, the majority of listed companies are realistically postponing dividend payments on a wait and see basis. What should we accordingly do with ShareFinder's Quality List calculation?

On the evidence of Sasol's performance since 2008 we should punish every company that fails to pay out a final dividend by consigning them to our "Fallen From Grace" list. And I might note that Wall Street's Standard & Poors ratings agency is currently wrestling with the same decision in respect of the companies that make up its S&P500 Index. But if we do so it is very likely that there might be NO investment grade shares left!

Ah well. For those of you who read my 2019 book, *The Crash of 2020*, I did forecast then that the share market events that are now under way globally were likely to make the Great Depression look like just a dress rehearsal!

It is beginning to look like the current market recovery is a Cloud Cuckooland event. Consider what ShareFinder 6 predicts for Wall Street in the months ahead; that the recovery will continue until July 14 when a double top formation is likely followed by another plunge from July 27 to October 22.



Have a good weekend!

The month ahead:

New York's SP500: I correctly predicted volatile gains which I still expect until the end of July when the next sharp phase of weakness is likely.

London's Footsie: I correctly predicted the recovery which I still see lasting until the end of May followed by a downhill phase until early July and then another recovery until early October ahead of the next big down-turn.

Hong Kong's Hangsen: I correctly predicted the start of a long but volatile recovery until the end of December when the next down-turn is likely.

Japan's Nikkei: I correctly predicted modest gains which I see lasting until the first week of June and then it will be downhill until August before the next short up-surge until mid-September and then down-hill again until December.

Australia's All Ordinaries: I correctly predicted the end of the recovery. Now I see declines until the end of June followed by a brief two week up-surge in early July and then downhill again until the second week of August before the last up-surge until mid-September.

JSE Industrial Index: I correctly predicted declines which I expect to last until mid-June followed by a recovery until late July and then sideways until late October before going into a decline into the New Year.

Top 40 Index: I correctly predicted a decline which I see lasting until the end of June followed by a recovery until the first week of August when a decline is due until the end of the month before the next recovery until October end.

ShareFinder Blue Chip Index: I correctly predicted weakness in the new week followed by a volatile recovery beginning now until late July when a major decline is likely to begin.

Gold shares: I correctly predicted declines which I expect to last well into 2021.

Gold Bullion: I correctly predicted volatile weakness lasting until mid-June before a long recovery begins and is likely to continue well into 2021.

The Rand/US Dollar: I correctly predicted gains until the third week of May. Now I see a somewhat volatile sideways trend.

The Rand/Euro: I correctly predicted a volatile recovery which I still see lasting until mid-June followed by weakness until mid-July followed by gains until late October.

The Predicts accuracy rate on a running average basis since January 2002 has been 85.75%. For the past 12 months it has been 96.54%.

Richard Cluver

Helen Suzman Foundation approaches ConCourt to order Parliament oversight of Covid-19 response

By Marianne Thamm

The Helen Suzman Foundation has directly approached the Constitutional Court seeking an urgent order for the president, the Cabinet and the National Assembly to fulfil a constitutional duty to promulgate legislation regulating the state's response to Covid-19.

While Parliament might hold its first sitting under Covid-19 lockdown regulations on 27 May, the “exceptional circumstances” created by the global coronavirus pandemic did not preclude or frustrate Parliament from performing oversight.

So says Helen Suzman Foundation (HSF) director Francis Antonie in a founding affidavit to the Constitutional Court dated 20 May 2020. The HSF is seeking an order that Parliament had failed to fulfil its obligations under sections 42 (3), 44 (1), 55 (1) and 68 of the Constitution “to consider, initiate and prepare and pass legislation and regulate the state's response to the threat posed and harm caused by the SARS-CoV-2 and Covid-19”.

Parliament and Cabinet had also, said the HSF, “failed to fulfil their obligations, under section 7 (2) of the Constitution, to respect, protect, promote and fulfil the rights in the Bill of Rights, insofar as their legislative and executive responses to Covid-19 is concerned”.

The NGO has asked the court to direct Cabinet and Parliament “without delay”, to exercise constitutional powers, “for sake of preparing and initiating national legislation that has its purpose the regulation of the state's response to the threat posed and harm caused by Covid-19”.

It also seeks a declaration that the powers of the minister of cooperative governance and traditional affairs under the Disaster Management Act, 2002, “will terminate simultaneously with the passage of the legislation” under the relevant sections of the Constitution.

In court papers, the HSF set out how the exercise of power under the Disaster Management Act “has impacted and will, for an indefinite period of time, continue to impact in serious and irremediable ways, on almost every right that every citizen and resident has under the Constitution”.

The response to the threat and harm posed by the Covid-19 pandemic by “similarly constituted parliaments” like the UK and Scotland highlighted “the significance of this failure” with regard to South Africa.

“On 25 March 2020, in the space of days, the United Kingdom’s House of Commons and House of Lords passed a 342-page Coronavirus Act 2020. A week later on 1 April 2020, the Scottish Parliament passed an additional, supplementary Coronavirus Act totalling 70 pages.”

The experiences of other democracies not only laid bare the failure of South Africa’s Parliament to fulfil its constitutional duty to promulgate legislation that regulated the state’s response but also “preempted any suggestion that the exceptional circumstances created by the pandemic precludes or frustrates Parliament doing its duties”.

“If the Parliaments of the UK and Scotland, neither of which has operated in anything like harmonious unity over the past for years, could gather themselves in just days to legislate in the face of this pandemic, there is no reason that our own Parliament cannot now (two months later) do the same,” said Antonie.

“The HSF approaches this court, in other words, not because it advances a substantive view about what the state has done in response to Covid-19, but because it objects to how the state has responded – or, rather, how parts of the state have failed to respond.”

The HSF has cited the Speaker of the National Assembly, the president of the Republic of South Africa, the Cabinet of the Republic of South Africa, Chair of NCOP and the minister of cooperative governance and traditional affairs as respondents.

While seeking direct access to the Constitutional Court is only granted in exceptional circumstances “this is clearly such a case” said the HSF.

“The matter concerns the separation of powers, the failure of constitutional duties by two branches of our government, the principles of transparent, accountable and participatory democracy, and the rule of law.”

The HSF’s approach to the court was only concerned with constitutional principles and interpretation which did not require the hearing of oral evidence.

“Not only do the failures of Parliament and Cabinet strike at the structural heart of our constitutional order, in an area that impacts significantly and irremediably on all our basic rights, both Parliament and Cabinet appear to have consciously failed to perform their constitutional duties,” said Antonie.

Cabinet had also failed to “exercise its power under section 85 to prepare and initiate legislation, instead contenting itself with the process and the powers created by the Disaster Management Act, a structure that is inadequate, at every level, both procedural and substantive to continue dealing with Covid-19.”

Parliament, said Antonie, had gone into a three-week recess following the declaration of a State of Disaster, “exactly at the time when we needed it most. Despite having returned from long recess in mid-April and starting other business, including its legislative agenda, it has done nothing specific to consider, initiate or prepare national legislation that will regulate, at a general but adequately targeted or concrete level, the state’s response to Covid-19.”

Parliament’s response to requests for oversight had been met with the reply, said Antonie that, “In performing its constitutional obligations during this period, Parliament must not be seen as interfering with the responsibility of the Executive to implement measures for which the National State of Disaster has been declared.”

“This failure of duty is pronounced,” said Antonie.

The HSF quoted Chief Justice Mogoeng Mogoeng in *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* in which the Chief Justice described Parliament as “the embodiment of the centuries-old dreams and legitimate aspirations of all our people.

“It is the voice of all South Africans, especially the poor, the voiceless and the least remembered. It is the mouthpiece, the eyes and the service-delivery ensuring machine of the people. No doubt it is an irreplaceable feature of good governance in South Africa.”

Antonie said that in the midst of a national and global crisis “this irreplaceable voice of the people has, for two months, fallen silent. The time has come for it to speak again.”

The HSF was brining the application before the Constitutional Court under section 167 (4) (e) of the Constitution and Rule 11 of the Constitutional Court Rules, as a matter falling within its exclusive jurisdiction “insofar as Parliament has failed to fulfil its duties under sections 42 (3), 44 (1) 55 (1) and 68 of the Constitution, to consider issues and initiate and prepare and pass legislation relating to the threat posed and harm caused by Covid-19.”

The Covid-19 crisis had required difficult decisions and urgent responses about which reasonable people might disagree, said Antonie, adding that the HSF “respects the enormous burden that has fallen on the shoulders of the president and his government at this time”.

However, the application was “entirely and only about a narrow, but fundamental, question to do with the structure and location of power under the Constitution.”

“The HSF approaches this court, in other words, not because it advances a substantive view about what the state has done in response to Covid-19, but because it objects to how the state has responded – or, rather, how parts of the state have failed to respond.”

It was critical “that the proper location of that power be restored, not only in the present crisis (to ensure all the benefits that this court has stressed about the importance of deliberation in the legislative process), but from the long-term importance of our constitutional project.”

Parliament, said Antonie, had “abandoned the power vested in it by sections 43, 44 (1), 55 (1) and 68 of the Constitution to the minister, the president and Cabinet, who now more than two months on, continue to act unilaterally under section 27 of the Disaster Management Act to legislate every material aspect of everyone’s social, political and economic life in the Republic.”

The impact had not only been on the rights of “the entire populace” but had also been “to the detriment of fundamental constitutional principles held to be sacrosanct by this Court, and by which our rights are ordinarily best advanced and protected”.

These were the principles of multi-party, representative and participatory democracy, responsiveness, accountability and openness.

Antonie said the HSF’s case was “uncomplicated”.

“The Disaster Act, which redirects in a wholesale way, legislative and executive power in the minister can only operate for a very short period, namely until Parliament and Cabinet are positioned to reclaim their primary, constitutionally-mandated legislative and executive roles.”

This required both bodies to “actively to take steps to reach this state.” What the HSF feared was “a misunderstanding of the Disaster Act, as against the requirements of the Constitution. It is evident that Parliament and the National Executive believe that the Minister can exercise her power for as long as Covid-19 presents a threat.”

“This could be for months or even years, meaning that the state’s response to Covid-19 will remain exclusively within the subjective purview of the executive branch of government.”

Power needed to be returned to Parliament and the executive, said Antonie.

There would be no attack on the policy choices or value judgments that were embodied in regulations made and directions issued to date.

“The relief the HSF seeks does not concern the validity of any positive law made or conduct taken to date.” **DM**

The Daily Maverick