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SOUTH AFRICAN CHAMBER OF BUSINESS

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Per telefax : 397 2211

The Secretary
Technical Committee on Fundamental Rights
During the Transition
Multi-Party Negotiating Process
Box 307
ISANDO
1600

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Dear Sir

FUNDAMENTAL RIGHTS - PROPERTY AND ECONOMIC ACTIVITY

I attach for the consideration of the Technical Committee a brief outline on matters concerning two issues which have been referred back for debate. They concern property rights and the right to economic activity - both issues of fundamental importance to business.

SACOB stresses that these issues must be addressed expeditiously by the MPNF. Further delay in the pronouncement of a decision on those two rights/freedoms will merely add to the erosion of business confidence.

Please acknowledge receipt of this document, by fax [011 726 1344] to the undersigned.

Yours faithfully

**W V LACEY
SENIOR ECONOMIST**

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INCORPORATING:

THE ASSOCIATION OF CHAMBERS OF COMMERCE AND INDUSTRY OF SOUTH AFRICA • THE SOUTH AFRICAN FEDERATED CHAMBER OF INDUSTRIES
Directors: Mr. J.H. Viljoen, Mr. G.J. Trollope, Mr. S. Sterling

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SUBMISSION TO THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION

1 INTRODUCTION

- 1.1 As a broad generality, the South African Chamber of Business [SACOB] is committed to assist in the building of institutions which help resolve social conflict and which promote those values basic to the western liberal tradition, such as justice, freedom, equality and security. To that end SACOB has committed itself to a Charter of Economic, Social and Political Rights. It has prepared a view on the Economic Aspects of a New Constitution [June 1991] and submitted a memorandum on Economic, Social and Political Rights to CODESA [March 1992]. SACOB believes that a new constitution should align itself to those basic tenets upon which a market-driven economy depends. The level and quality of future economic growth will depend largely upon which type of economic system and constitutional model emerges from the political bargaining process. Furthermore, it is the concern of business that there appears to be no sense of urgency in the Negotiating Forum in addressing these fundamental economic issues.
- 1.2 SACOB has studied the reports and recommendations from the Negotiating Council to the Negotiating Forum. In particular, it has noted the Executive Summary of the Technical Committee on Fundamental Rights during the Transition [Volume 2 - Supporting Documentation]. Of the 24 rights and freedoms considered by the Technical Committee, 18 have been decided upon. Of the remainder 3 have been referred back for debate, namely Property, Economic Activity and Life. On both Property and Economic Activity, SACOB would wish to outline its views for the consideration of the Technical Committee. The manner and speed with which the two issues are dealt with is particularly important and are crucial in the restoration of overall business confidence.

2. PROPERTY

- 2.1 Property relates not merely to a physical object but to a social order sanctioned by the State. Under the western liberal tradition such an order has developed over centuries and is fundamental to individuals associated with that tradition. The acceptance of the right and freedom to own property is consistent with the market economy philosophy. After all, the creation and execution of plans to produce depend upon a firm expectation about property rights. Trade in its essence is concerned with the exchange of those property rights. This view concedes to the State in limited circumstances the right to eminent domain, that is taking property for public use with just compensation. No one should be deprived of his or her property without due process of law and fair compensation.
- 2.2 In advocating the entrenchment of the right to private property in a Bill of Rights, SACOB acknowledges that discriminatory measures of the past have undermined overall respect for that principle. Corrective measures will be required which will not only redress such injustices, but will allow the market to operate in a way that will secure an equitable and efficient outcome. Failure to pursue such a course will result in continued opposition both to the principle of property rights and to the market-driven economic system.

3 ECONOMIC ACTIVITY

- 3.1 The events of the latter part of the century provide lessons for those wishing to increase the wellbeing of a society. Firstly, some form of democracy is required that will allow people a say over who rules them and who controls what they see, hear and think. Secondly, the market mechanism rather than the command economy has proved to be the more successful mechanism for determining what, where and how much should be produced. SACOB believes that the role of the politicians is to undertake such reforms that will transform those two key insights into a social arrangement that will lead to investment [domestic and foreign], the better use of resources, the appropriate degree of market specialisation, and elicit the commitment of all.

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3.2 Although the market economy provides scope for the discretionary conduct by individuals, SACOB accepts that there is no way that an individual's activities can be liberated and expanded without appropriate social controls. The function of those who control the use of political power is to devise ways in which the working rules encourage and support the willing and energetic participation of people. SACOB itself, through the National Economic Forum Initiatives, is searching for a form of group organisation which enlists the sustained, willing and energetic participation of business, labour and government in the economic process. Such cooperative endeavour is far removed from the command economy which suborns economic power to those who hold political power.

4 CONCLUSION

The success of any Constitutional model that emerges from the Multi-Party Negotiating Forum will be dependent upon the growth and performance of the South African economy. The quality of the political system and the "rules of the game" are of utmost concern to the business sector, both in South Africa and overseas. While SACOB accepts that no constitution can prescribe an economic system or policy, it is possible to define the social procedures under which any new constitution will operate. In this respect those elements fundamental to a market-driven economy and to the promotion of business confidence need to be safeguarded. These include the entrenchment of

- * the law of persons
- * the guarantee of property rights
- * the law of contract
- * the provision for inclusion of a Bill of Rights in the constitution.

JOHANNESBURG

14 JULY 1993

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