



Taxify South Africa (Pty) Ltd
2016/095400/07
Vat Reg: 4790281481

**TAXIFY SOUTH AFRICA (PTY) LTD'S COMMENTS AND PROPOSALS IN
RESPECT OF THE NATIONAL LAND TRANSPORT AMENDMENT BILL
("THE BILL")**

Taxify hereby provides comments and proposals with accompanying supporting motivation in respect of the aforementioned Bill.

Where Taxify makes proposals, it shall employ the track changes as used under the general explanatory note to the Bill.

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1. **AD SECTION 1C OF THE BILL (AMENDMENT OF SECTION 1 OF ACT 5 OF 2009) (“THE ACT”)**

COMMENT: Constitute additional features to be added to definition. The result hereof will make the definition less ambiguous and more specific to the nature and features of e-hailing services. Thus clearly defines e-hailing services as distinct from other categories.

1.1 PROPOSAL: Taxify proposes the addition of subsections and insertions of 1(d), (e), (f) and (g) as follows:

‘e-hailing services’

1(d) is available for hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator;

(e) neither the operator nor the driver charges the passengers individual fares;

(f) the person hiring the service has the right to decide the

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route, date and time of travel; and

(g) the passengers are conveyed to a common destination, and
includes vehicles hired with drivers contemplated in section
66A.

MOTIVATION:

1.1.1. E-hailing services are catered for in the Bill as a distinct category.

Therefore, the status of the category should be reinforced and strengthened to guard against ambiguity and misinterpretation at the point of application, consideration and granting of licenses by the Regulatory Entities.

1.1.2. The proposed additional aspects of the definition provide an appropriate description of the type, nature and modality adopted by e-hailing services.

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2. **AD SECTION 5 OF THE BILL (AMENDMENT OF SECTION 10 OF THE ACT)**

COMMENT: While this amendment is a step in the right direction to align the regulatory powers of the Member of the Executive Council (MEC) with that of the Minister as set out in Section 8 of the Act.

2.1. PROPOSAL: Taxify points out a possible apparent duplication, conflict or tautology between these Sections 8 and 10 of the Act, and Section 66A(5);

2.1 Proposes that the amendment should go further as suggested pertaining to Section 66A(5) herein below.

3. **AD PARAGRAPH 12 OF THE BILL (AMENDMENT OF SECTION 18 OF THE ACT)**

3.1 PROPOSAL: Taxify proposes the addition of a subsection 1A as follows:

“(1A) A Municipal Regulatory Entity or other regulatory entity

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must establish a process whereby interim licences are issued within 14 (fourteen) days which would be valid pending the final decision to be made by the Municipal Regulatory Entity referred to in subsection (1) where, for whatever reason, the decision to be taken referred to in subsection (1) has not yet been made after a week after the application for operating licence was received by the Municipal Regulatory Entity.”

3.2 MOTIVATION: Due to backlogs at various municipalities, operating licences often take unreasonably long to be issued to operators. This prejudices the ability of companies such as Taxify from enabling drivers to be economically active, contribute to the economy and earn an income. Due to the existing backlogs and extensive delays in the issuance of operators licences drivers are, commonly, often left unable to service a debt whereby the vehicle that is to be used in conducting the services was purchased. Providing for an

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interim measure, similar to temporary driver's licences, would ensure a fair and orderly process whereby an applicant for an operating licence may at least pending the outcome of the Municipal Regulatory Entity's ('MRE') decision, lawfully render services without fear of breaking any laws or prosecution.

4. **AD SECTION 40 OF THE BILL (AMENDMENT OF SECTION 66A OF THE ACT)**

4.1 PROPOSAL: That 66A(1)(b) be amended as follows:

“(b) the regulatory entity granting an operating licence for such service may specify, with regards to central business districts, highly traffic congested areas or specific areas of public spaces [the area] for picking up of passengers, subject to section 57(5).”

MOTIVATION: Section 40 as drafted appears to arise from a fundamental misunderstanding of the difference between e-hailing services and taxis, which, are enabled to pick up

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passengers from pre-determined locations, commonly known as “taxi ranks”. In the absence of such an amendment, Section 40 threatens to undermine both the special privileges of taxis by in effect creating ranks for drivers offering e-hailing services. This would be undesirable as drivers waiting in such locations would inevitably offer passengers services on a cash-in-hand basis, defeating the protections offered by e-hailing platforms such as real-time tracking of every journey and access to an in-app ‘panic button’ among other things.

In addition thereto such areas would inevitably become hot spots of pollution, as drivers would likely wait for fares with their engines running which should further not be incentivised.

Moreover limiting an e-hailing service provider to specific areas is a practical impossibility by the nature of the service and the technology involved, as well as the consumers in the market it services. E-hailing services are a fundamentally

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different service, thus not comparable to traditional taxi services and as such the present wording of the Bill would be impractical, outdated, and unenforceable. Taxify's proposed amendment ensures that the Regulatory Entity is able to provide a practical, reasonable and enforceable mechanism where matters of safety and traffic congestion may adequately inform areas of pick up to the benefit of the public, the service providers, and the applicable municipality without attempting to force e-hailing services to pick up from what is functionally indistinguishable from a taxi rank.

4.2 PROPOSAL: Repeal Section 66A(2).

MOTIVATION: This subsection becomes unnecessary in light of the abovementioned proposal and would otherwise, likewise, be impractical, unreasonable, and unenforceable.

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4.3. AD SECTION 40 OF THE BILL (AMENDMENT OF SECTION 66A OF THE ACT)

COMMENT: The requirements and standards for Metered Taxi Services set out in Section 66 of the Act should not be imposed on E-hailing services as this is a separate and distinct category as provided for in the Bill. Therefore a more appropriate framework should be provided for which does not impose the requirements

ALTERNATIVE PROPOSAL: Taxify proposes that Section 66A is amended by the addition and insertion of the following subsections:

Electronic Hailing Services

66A(2) If the operating licence specifies the area as envisaged in subsection (1)(b) such a vehicle may —

(c) leave the area or zone described in the operating licence

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if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return to that area empty; and

(d) pick up passengers outside that area or zone if the fare is pre-booked and the passengers will return to such area.

MOTIVATION:

4.3.1. Consistency in application of the current definition provided for in Section 1(c) of the Bill that caters for 'electronic hailing service or e-hailing service', which 'is available for hire while roaming'.

4.3.2. Emphasis is thus placed on the term 'roaming' and the use thereof in respect of defining the e-hailing service. The introduction and inclusion of the aforementioned subsections further supports and reinforces the correct application of the definition. Roaming implies that there is no limitation or prescription in terms of specific areas or the demarcation or classification of services according to predetermined routes or areas of

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operation.

4.3.3. Furthermore, area specification must not be used as a basis for granting or rejecting licence applications by prospective e-hailing services.

4.3.4. The provisions contained in the Bill at Section 66A(1), (2), (3), (8) uses aspects of the features and requirements imposed on metered taxi services per Section 66 of the Act including the proposed amendment thereto per the Bill. Given that e-hailing services are provided for in the Bill as a distinct category, it should not be informed by the prescripts for metered taxis

4.3.4. It therefore discriminates against e-hailing services on the basis of adopting and imposing a criteria commonly used for metered taxi services.

4.3.5. The Bill provides for a distinct category for e-hailing services, which must be applied accordingly and consistently as well as take into account the features of e-hailing services. Therefore there is no reasonable or

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rationale basis for using the metered taxis services category as a standard or benchmark informing the assignment of features and assessing the applicable criteria for applying and granting licenses inclusive compliance requirements of e-hailing services.

4.4. PROPOSAL: An amendment to Section 66A(5)(a) and (b) and insertion of subsections (9) to (12):

“(5) Subject to subsection (9):

...”

(9) No regulation may be made unless the Minister or the

MEC:

(a) has published:

(i) such draft regulation;

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(ii) a statement explaining the need for and the intended operation of the regulation;

(iii) a statement of the expected impact of the regulation;

(iv) a notice inviting submissions in relation to the regulation and stating where, how and by when submissions are to be made; and

(b) has, once submissions referred to in paragraph

(a) (iv) have been received and considered:

(i) a consultation report must be prepared which must include:

(aa) a general account of the issues raised in the submissions made during the consultation; and

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(bb) a response to the issues raised in the submissions;

(ii) submitted the regulation and the consultation report to Parliament or the applicable provincial legislature (hereinafter referred to as “the applicable legislature”), as the case may be, in terms of subsection 12.

(10) The period allowed for making submissions referred to in subsection (9) (a) (iv) must be at least six weeks.

(11) In deciding whether to make a regulation, the maker must take into account all submissions received by the expiry of the period referred to in section (10) and any deliberations of the applicable legislature.

(12) Before making a regulation in terms of subsection (5), the Minister or MEC, as the case may be, must submit

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the regulation to the applicable legislature, for a period of at least 30 days while the applicable legislature is in session, together with-

(a) the documents mentioned in subsection (9) (a); and

(b) a report on the consultation process referred to in subsection (9)(b)(i)."

MOTIVATION:

4.4.1. The proposed subsections (9) to (12) follow the general tenure of the wording of the provisions of Chapter 7, Part 1 of the Financial Sector Regulation Act 9 of 2017 and are commensurate with best practice in policy-making, namely ensuring that consultation and the necessary economic impact assessment is undertaken ahead of effecting regulatory change.

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4.4.2. Such prudent provisions by the legislature are particularly appropriate for regulations that may be prescribed for e-hailing services by virtue of the information technology revolution which is constantly evolving and developing and necessitates expert input from the very designers and technicians *au fait* with such technology to assist the minister or MEC to make appropriate practical and workable regulations, as well as providing the public who are more and more becoming technology conversant and make use thereof, with an opportunity to provide input on regulations which impact the very service that they intend to use. It is of no disrespect to Provincial and Municipal Regulatory Entities that find the regulation of cutting-edge technology a challenge and it is appropriate that where regulation is contemplated which could have an adverse affect on the ability of citizens to earn a legitimate living, that MREs and other

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regulatory entities should refer to the Department of Transport to obtain the benefit of its expertise and to ensure consistent application of the law from place to place.

4.4.3. Participants in the transport industry shall also be best able to convey their real, on-the-ground concerns relating to any proposed regulations or proposed resolutions thereto and thereby avoid needless conflict between different service providers, or service providers and authorities. It is appropriate that there is a legitimate role for the Minister the custodian of transport policy for South Africa and as an 'honest broker' between the parties involved in related industries that have been transformed at unprecedented speed by mobile internet technology.

4.4.4. Public participation in regulation is important, especially

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within the scope of information technology where social media and other applications are available and accessible to consumers at the touch of a screen and in the palm of their hands. It is thus imperative that the matters raised by the public as consumers are considered as it has a direct impact on their ability to use the application and access the service.

4.4.5. It is further, particularly, in the interests of South Africans in light of the Constitution founded on values that include responsiveness and openness (Section 1(d) of the Constitution) and in particular:

4.4.5.1. All spheres of government and all organs of state within each sphere must provide effective, transparent, accountable and coherent government for the Republic as a whole; and

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4.4.5.2. the Republic, the legislative authority of the national sphere of government is vested in Parliament and of the provincial sphere of government is vested in the provincial legislatures.

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