

BUSINESS FOR SA: SUPPLEMENTARY GUIDANCE NOTE

17 APRIL 2020

1. INTRODUCTION

- 1.1 On 16 April 2020, Minister Nkosazana Dlamini-Zuma promulgated a [further amendment](#) to the Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002 (**Lockdown Regulations**), to provide for the extension of the period of lockdown until 30 April 2020, as announced by President Cyril Ramaphosa last week.
- 1.2 This Guidance Note serves to supplement the Business for SA (**BSA**) [note of 2 April 2020](#) taking account of the latest amendments. It does not purport to constitute legal advice, which businesses are advised to procure if they are in any doubt as to their rights and obligations under the national state of disaster.

2. RECENT DEVELOPMENTS

- 2.1 Since BSA's note of 2 April, three other sets of regulations have been promulgated which may be relevant to certain businesses. These include two sets regulations promulgated by Trade & Industry Minister Ebrahim Patel under the Competition Act, 1998. The first, promulgated [on 3 April](#), aims to control excessive pricing through expedited complaints referral mechanisms to the Competition Tribunal. The second, promulgated [on 8 April](#), supplements [earlier regulations](#) to exempt further categories of agreements and practices in the healthcare sector from application of certain provisions of the Competition Act.
- 2.2 The third set of the relevant [regulations](#) was promulgated by Dr Keabetswe Modimoeng, the Acting Chairperson of the Independent Communications Authority of South Africa, to facilitate dissemination of information required for dealing with the national state of disaster and ensure the continuation of information communication technology (**ICT**) services.
- 2.3 These regulations should all be read together with the Lockdown Regulations as amended and any regulations promulgated prior to 2 April. The full list of regulations, directions and guidelines is provided on the [government website](#).
- 2.4 Several Ministers have also issued directions under regulation 10 of the Lockdown Regulations to provide greater detail to the COVID-19 response within their respective portfolios. Only directions officially promulgated have legal force or effect. Ministers' statements may guide their interpretation but are not legally binding. Furthermore, directions are subsidiary to regulations, meaning that regulations prevail in the case of any conflict with the directions. These directions subsist until they are amended or withdrawn.
- 2.5 The Minister of Trade and Industry has released [a statement](#) that companies relying on certificates issued via the website of the Companies and Intellectual Property Commission (**CIPC**) before 17 April 2020 are required to have new certificates for the extended lockdown period. These certificates will be emailed to companies which have previously registered and should replace previously issued certificates from 20 April 2020. Should a person register a company with CIPC in the knowledge that it is not providing an essential service, such person may be committing a contravention of the Companies Act, 2008. Conversely, there is no legal basis for prosecutions arising from essential service

providers not registering with CIPC. Nonetheless, enforcement officers are relying on the certificates for monitoring purposes, and companies able to register with CIPC are encouraged to do so.

3. THE 16 APRIL AMENDMENT TO THE LOCKDOWN REGULATIONS

3.1 The 16 April amendment provides for substantive changes in three categories:

3.1.1 first, the movement of persons and goods in the period of the lockdown;

3.1.2 second, the sale of hardware products and vehicle components; and

3.1.3 third, the required continuation of sectors providing energy and petroleum products.

3.2 Restrictions on movements of persons and goods

3.2.1 The 16 April amendments serve to clarify the permitted exceptions to restrictions on movements of persons and goods. The latest directions issued by the Minister of Transport already shed some light on the position in respect of [public transport](#) and [sea ports](#) and rectified previous misalignment between transport directions and the Lockdown Regulations. Significantly, the 16 April amendment now explicitly includes the transportation of cargo currently at ports of entry for the purposes of decongesting ports.¹

3.2.2 The 16 April amendment also prohibits transportation of liquor with the exception of alcohol being used for industrial purposes or for production of certain listed hygiene products.²

3.3 Sale of hardware and vehicle components

3.3.1 "Hardware, components and supplies" are now permitted to the extent that they will be used by a qualified tradesperson for the purposes of emergency repairs at residential homes or for the purposes of providing essential services or related projects.³

3.3.2 The supply of vehicle components is also permitted, but solely for the purpose of emergency repairs to vehicles being used to provide essential services.⁴

3.3.3 This means that the production, manufacturing, supply, logistics, transport, delivery of, as well as critical maintenance and repair work required for, hardware and vehicle components for emergency repairs are also permitted.⁵ Those qualified to provide emergency repairs now also qualify as essential service providers, including plumbers, electricians, locksmiths, glaziers and roof repair workers.⁶

3.3.4 The sale of hardware products and vehicle components are also the first products to be subject to a register of goods which must be kept by all sellers of goods to record that the goods are being

¹ Regulation 11B(1)(bbB).

² Regulation 8(6).

³ Items 6 and 7, Part A, Annexure B to the Lockdown Regulations.

⁴ Item 8, Part A, Annexure B to the Lockdown Regulations.

⁵ Item 24, Part B, Annexure B to the Lockdown Regulations.

⁶ Item 34, Part B, Annexure B to the Lockdown Regulations.

sold and purchased only for use in essential goods or essential services.⁷ An editable version of the form required for this is provided at the end of this note.

3.4 Energy and petroleum products

3.4.1 The 16 April amendment provides that all collieries that supply Eskom and refineries for the production of fuel, including smelters, plants and furnaces, are required to operate at a full capacity. This is the first time that the Regulations have stipulated that certain services must continue to operate.

3.4.2 Other mining operations for gold, gold refineries and coal are permitted and must be conducted at a reduced capacity of up to 50% subject to rigorous screening, testing and quarantine requirements.⁸

3.5 In addition to these categories there are several important discrete changes, including:

3.5.1 the blanket prohibition on all evictions of people from their places of residence, including informal residences and farm dwellings, for the duration of the lockdown;⁹

3.5.2 call centres are now also permitted if they are necessary for debt restructuring to consumers of retailers and for access to short-term insurance policies as a result of reduced income or loss of income;¹⁰ and

3.5.3 all ICT services rendered to entities and institutions engaged in delivering essential services are permitted.¹¹

4. **CONCLUSION**

4.1 In addition to taking cognisance of the changes listed above, business enterprises should note that there are several amendments which have not been made. The definition of "basic goods" has not been clarified and there is no provision for the sale of non-essential items together with essential items.

4.2 There is no addition or further direction in the amended regulations regarding registration as an essential service provider, which BSA understands remains voluntary. BSA recommends that businesses continue to act cautiously and to provide forms for those necessary to provide essential services.

⁷ Regulation 11B(1)(g).

⁸ Regulation 11K.

⁹ Regulation 11C.

¹⁰ Item 30, Part B, Annexure B to the Lockdown Regulations.

¹¹ Item 26, Part B, Annexure B to the Lockdown Regulations.

FORM 4

DECLARATION BY BUYER OF HARDWARE PRODUCTS OR MOTOR-COMPONENTS

REGULATION 11B(1)(G)

Full names:						
Surname:						
Identity number						
Home address:						
Contact details:	Cell No		Tel No (h)		e-mail address	

DECLARE THAT THE UNDERMENTIONED GOODS ARE NECESSARY FOR THE RENDERING OF EMERGENCY REPAIR WORK:

SIGNED AT _____ -- THIS _____ DAY OF _____ 2020

SIGNATURE OF BUYER