

BUSINESS FOR SOUTH AFRICA: GUIDANCE NOTE

1 May 2020

1. INTRODUCTION

- 1.1 As of 1 May 2020, South Africa entered a new phase of its response to COVID-19 in terms of further [regulations](#) promulgated under the Disaster Management Act, 2002 (the **Regulations**). The Regulations repeal and replace the previous lockdown regulations of 18 March 2020, as amended.
- 1.2 The promulgation of the Regulations followed President Ramaphosa's announcement on 23 April 2020 that the COVID-19 response would be regulated in accordance with five "Alert Levels", with the most severe restrictions applicable during Alert Level 5, and the least during Alert Level 1. While the progression from Level 5 to Level 1 will not necessarily be linear and different levels may apply to different areas of the country at any given time, the nationwide movement to Level 4 on 1 May provides some respite for certain businesses.
- 1.3 This Guidance Note focuses on the permissions and restrictions applicable to Alert Level 4 which are likely to be of particular relevance to Business for South Africa (**B4SA**) members.

2. ALERT LEVEL 4

- 2.1 The general position under Alert Level 4 remains that "[e]very person is confined to his or her place of residence" subject to exceptions listed in a table of permitted industries and activities (**Table 1**).¹ Table 1 is prefaced by an explicit requirement that "[a]ll persons who are able to work from home should do so."² In the same spirit, the movement of persons is still strictly regulated and constrained to performing or obtaining permitted services or purchasing essential goods, as well as the travel required for these purposes.³
- 2.2 Nevertheless, the Regulations provide for several substantive changes to ease the effect of the restrictions on individuals and businesses.
- 2.3 The primary change is the removal of the previous requirement that entities permitted to operate from their ordinary places of business must be providing essential services. Instead, Table 1 lists entities which "may commence operations" and whose employees, therefore, "will be permitted to perform work outside the home, and to travel to and from work" subject to the requisite health interventions and hygiene controls.⁴ Many of the listed sectors are the same as, or extensions of, listed "essential service" providers under the repealed lockdown regulations. Significant additions include the sale of hot cooked food (but only for home delivery),⁵ winter clothing and other seasonal necessities,⁶ stationery and educational books⁷ and personal ICT equipment.⁸ The manufacturing sector is permitted to scale

¹ Regulation 16(1).

² See Table 1 of Chapter 3.

³ Further exceptions are also applicable to movement of children between parental households and limited forms of exercise.

⁴ Regulation 28.

⁵ Table 1, part E, item 2.

⁶ Table 1, part E, items 14 and 15.

⁷ Table 1, part E, item 17.

⁸ Table 1, part E, item 18.

up to full employment for several key products, while all remaining manufacturing may be opened up to a maximum of 30 per cent of usual employment capacity.⁹

- 2.4 The category of permitted financial services now includes a general reference to “[o]ther professional services” permitted to operate to support other Alert Level 4 services.¹⁰ This means that professional services will be permitted to attend to on-site support for all of the listed sectors. However, this strictly applies only in so far as those services cannot be provided from home.
- 2.5 Employers are still required to provide permits to staff leaving their places of residence for lawful work purposes, which permits should be carried together with the employee’s identification document for the duration of Alert Level 4. ¹¹ Although a nightly curfew has been imposed (from 20:00 until 05:00) under Level 4, employees working shifts within the curfew periods are permitted to travel for work subject to being issued with the standard permit. ¹²
- 2.6 The regulations set out specific provisions pertaining to the supply of energy and petroleum products (regulation 29) and mining operations (regulation 30).

3. **MANDATORY HEALTH INTERVENTIONS**

- 3.1 The second major addition to the new Regulations is clarification as to what employers are required to do if they intend to (and are permitted to) reopen. Regulation 16 provides that all businesses and entities, in both the public and private sector, must develop a plan for phased reopening which meets the standards of health protocols and required physical distancing measures.¹³ The nature of the plan depends on the size of the business.¹⁴ Small businesses probably do not require written plans. Medium and large businesses must take specific account of the factors listed under items 1-6 of Annexure E to the Regulations. Each business must designate a COVID-19 compliance officer to oversee implementation of the workplace plan and adherence to the applicable health protocols.¹⁵
- 3.2 Further details of protocols and measures are set out in regulation 5. These include mandatory physical distancing measures, such as enabling remote working, restricting face-to-face meetings, ensuring that there is adequate space between employees, and taking special measures for employees over the age of 60 and other employees with known or disclosed health conditions which place them at a higher risk if they are infected with COVID-19.
- 3.3 All businesses must provide hand sanitiser which must be accessible to staff and customers. It appears from the Regulations that everyone will be required to wear a mask, or another item which covers their nose and mouth, on public transport, when they enter premises, and whenever they are in a public place.¹⁶ Where an employee has contact with the general public as part of their duties at work, it is the employer’s obligation to ensure that they are provided with a suitable mask.

⁹ Table 1, part C, item 9.

¹⁰ Table 1, part H, item 9. The term “professional services” is not defined.

¹¹ Regulation 28(4). The standard template for such a permit appears in annexure A, form 2.

¹² Regulation 16(3).

¹³ Regulation 16(6)(b)-(d).

¹⁴ See Annexure E to the Regulations.

¹⁵ Regulations 5(4)(e), 16(6)(a) and 28(2)(b).

¹⁶ Regulation 5(1) and (2).

4. IMPORTS AND EXPORTS

- 4.1 South Africa's borders remain closed except to transport fuel, cargo and goods permitted under Alert Level 4.¹⁷ Essential goods authorised for import are listed in Annexure B to the Regulations, and permitted goods for export are listed in Annexure C. In addition, all materials and components required for manufacturing activities under Table 1 may be imported.¹⁸ Although the position is unclear, it is arguable that other goods may be imported but the onward transportation of those goods beyond ports of entry will be subject to ministerial directions aimed at addressing constrained storage capacity at ports of entry.¹⁹
- 4.2 While the Regulations provide that the transport of goods within South Africa is permitted,²⁰ it is unclear whether or not this is limited to essential goods and all other goods that may be imported, exported, sold or produced under Level 4.
- 4.3 Goods permitted to be exported include all agricultural, agro-processing, forestry and fishing products, as well as all manufacturing and mining products permitted under Table 1. The transport of liquor for export purposes is also permitted.²¹

5. CONCLUSION

- 5.1 The Regulations provide a more detailed framework for businesses to know whether and the extent to which they are permitted to operate in the event that they decide to return to work. Health protocols and hygiene restrictions are, for the first time, subject to a degree of standardisation across sectors. This is a helpful starting point that should be fleshed out in directions to be issued in the coming days and weeks. In particular, B4SA expects directions to be promulgated dealing with permitted cargo and public transport, as well as the incremental expansion of E-commerce.
- 5.2 The ministerial directions issued under the repealed lockdown regulations remain in effect until they are varied, amended or withdrawn.²² It is therefore recommended that members continue to take account of B4SA's [consolidated guidance note of 17 April 2020](#) together with the complete set of ministerial directions available on the [government website](#). B4SA will supplement this Note to reflect any further directions or amendments relevant to B4SA members as and when necessary.

¹⁷ Regulation 21.

¹⁸ Regulation 22(1)(b).

¹⁹ Regulation 22(1)(c) read with regulation 22(1)(g).

²⁰ Regulation 22(1)(f).

²¹ Regulation 26(3).

²² Regulation 2(3).