

BUSINESS FOR SA: GUIDANCE NOTE

30 May 2020

1. INTRODUCTION

- 1.1 On 28 May 2020, Minister Nkosazana Dlamini-Zuma (**the Minister**) promulgated [amendments](#) to the [regulations](#) in terms of the Disaster Management Act, 2002 (**the Regulations**), providing the legal framework for Alert Level (**AL**) 3, to which the whole of South Africa will move from 1 June 2020.
- 1.2 As amended, the Regulations are now structured in three broad parts: (i) general measures governing the national response to the state of disaster in overarching terms; (ii) a chapter setting out the law applicable under AL4; and (iii) a further chapter dealing with the situation under AL3. AL5 is not dealt with explicitly, but the list of essential services that was applicable during the initial lockdown period is still appended to the Regulations as Annexure D.
- 1.3 The Minister is empowered to determine which of ALs 1 – 5 apply at national, provincial, metropolitan or district level or in a “hotspot”.¹ As alluded to in the [President's speech](#), it is envisaged that areas with higher levels of infection and less capacity in their health facilities may revert to AL4 or AL5. Any shift to a different AL in any area is enforceable only after the Minister has published a notice to that effect in the *Government Gazette*. If that happens, different regulations will be applicable in different geographical areas. Business for SA (**B4SA**) encourages the business community to be aware of that possibility, and of the possibility that the Regulations will continue to be amended and supplemented from time to time as the situation unfolds.
- 1.4 This note serves to outline the new regulatory framework pertaining to AL3 and to highlight the likely areas of interest or concern for B4SA members.

2. ALERT LEVEL 3

- 2.1 Under AL3, the Regulations shift from a prohibitive basis to a permissive basis. The general position regarding economic activity is that all business enterprises may operate unless listed as a specific exclusion.² Specific exclusions include on-site consumption of food, beverages or liquor; domestic air travel for leisure purposes; personal care services; and businesses providing entertainment activities.³ Domestic workers are not included in the list of exclusions and are permitted to return to work.
- 2.2 Employers are still required to prepare workplace plans with similar details to those under AL4,⁴ and it is expected that new directions on health and safety will be published for application under AL3.⁵

¹ Regulation 3. The Minister has published a declaration that the whole of South Africa is moving to AL3. The areas declared as “hotspots” are Tshwane, Johannesburg, Ekurhuleni, Ethekewini, Nelson Mandela Bay, Buffalo City, Cape Town, West Coast, Overberg and Cape Winelands districts, Chris Hani district in the Eastern Cape and iLembe district in KwaZulu-Natal.

² Regulation 46(1).

³ Table 2.

⁴ See Regulation 47.

⁵ See Regulation 46(4).

- 2.3 All businesses with more than 100 employees must minimise the number of employees present at the workplace at a given time by implementing staggered shifts, rotations, remote working arrangements and similar measures unless it is impossible to do so. ⁶ Congestion in public transport is a particular concern, and businesses are encouraged to arrange their affairs so as to minimise such congestion.
- 2.4 Businesses with more than 500 employees are required to make arrangements, either as individual businesses or collectively as sectors, to facilitate safe working environments with staggered returns to the workplace, to provide private transport to employees if possible, and to provide daily screening for COVID-19 symptoms and testing of employees where necessary. All data collected through screening and testing must be sent to the Director-General of the Department of Health. ⁷
- 2.5 All employers are required to implement specific measures for the safe return to work for employees over 60 and with co-morbidities or, where possible, to facilitate their working from home. ⁸
- 2.6 Permits must be issued for employees moving between provinces, metropolitan and district areas and hotspots. ⁹ This means that, as it stands, employees who live in Pretoria and work in Johannesburg or vice versa are required to have permits.
- 2.7 Registration with the Companies and Intellectual Properties Commission is no longer applicable.

3. OFFENCES

- 3.1 Regulation 48 sets out the offences applicable under AL3. These include the convening of a gathering and hindering, interfering with or obstructing an enforcement officer in the exercise of his or her powers or duties.
- 3.2 Regulation 48 also criminalises the contravention of certain specific regulations, including the prohibition on evictions, ¹⁰ attending places listed as closed to the public, ¹¹ the sale or consumption of liquor outside the scope of the provisions of regulation 44, and the sale of tobacco products unless for export. ¹²
- 3.3 Offences are punishable by six months' imprisonment, a fine, or both imprisonment and a fine.

4. CONCLUSION

- 4.1 While we await the promulgation of amendments regulating AL2 and AL1, and potential amendments to the AL4 and AL5 frameworks, the Regulations for AL3 in so far as they pertain to the operation of businesses are relatively clear. Businesses assume greater responsibility for the health of their employees and it is essential that they are diligent in the implementation of these responsibilities.
- 4.2 The effect of different ALs applying to different areas across the country is likely to create a challenge to many businesses. B4SA will publish information relating to this as government's position becomes

⁶ Regulation 46(2).

⁷ The Director General's email address is DG@health.gov.za.

⁸ Regulation 46(5).

⁹ Regulation 33(4).

¹⁰ Regulation 36.

¹¹ Regulation 39

¹² Regulation 45.

clearer. Businesses are encouraged to seek legal advice before implementing any programmes of which they are uncertain.