

BUSINESS FOR SA GUIDANCE NOTE: ALERT LEVEL 3 REGULATIONS

29 June 2020

1. INTRODUCTION

- 1.1 Since adopting a risk-adjusted strategy to COVID-19, the South African government has gradually lifted restrictions on economic activity by promulgating new [regulations](#) in terms of the Disaster Management Act, 2002 (**the Regulations**), amending the Regulations on 28 May and 25 June 2020, and issuing several sector-specific directions to manage the safe reopening of the economy.
- 1.2 As amended, the Regulations are 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 Alert Level (**AL**) 4; 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 applies at national, provincial, metropolitan or district level or in a “hotspot”,¹ and the Regulations provide for different ALs to apply to different areas. Conceivably, therefore, areas with higher levels of infection and less capacity in their health facilities may revert to AL4 or AL5.² Thus far, however, there is no indication that this will occur. 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 continue 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 present 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.³ Specific exclusions include on-site consumption of liquor; domestic air travel for leisure purposes; short-term leasing of unlicensed private accommodation for leisure purposes; and gyms and fitness centres.⁴

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 Hanu district in the Eastern Cape and iLembe district in KwaZulu-Natal.

² See [the address](#) by President Cyril Ramaphosa on 24 May 2020.

³ Regulation 46(1).

⁴ Table 2.

- 2.2 The latest amendments to the Regulations permit the re-opening of, among other things, conference facilities for business purposes,⁵ restaurants,⁶ and personal care services,⁷ but these sectors are required to remain closed until directions setting out health protocols are issued. Businesses will be permitted to open only when they are able to comply with the requirements to be specified in the directions. Thus far, [directions](#) have been issued for the personal care industry, which reopened from 19 June 2020 subject to compliance with applicable health protocols.
- 2.3 Employers are still required to prepare workplace plans with similar details to those under AL4,⁸ and [consolidated directions](#) on health and safety have been published for application under AL3.⁹
- 2.4 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.¹⁰ Congestion in public transport is a particular concern, and businesses are encouraged to arrange their affairs so as to minimise such congestion.
- 2.5 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.¹¹
- 2.6 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.¹² Employers must issue permits to employees required to move between provinces for the purpose of carrying out work responsibilities.¹³ Restrictions on travel between districts and metropolitan areas, and between hotspots, have been lifted, and permits are no longer required for such travel within the same province.
- 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,¹⁴ attending places listed as closed to the public,¹⁵ the sale or consumption

⁵ Regulation 37(1)(d), read with regulation 39(2)(f).

⁶ Regulation 37(1)(l).

⁷ Regulation 37(1)(k).

⁸ See Regulation 47.

⁹ See Regulation 46(4).

¹⁰ Regulation 46(2).

¹¹ The Director General's email address is DG@health.gov.za.

¹² Regulation 46(5).

¹³ Regulation 33(4).

¹⁴ Regulation 36.

¹⁵ Regulation 39

of liquor outside the scope of the provisions of regulation 44, and the sale of tobacco products unless for export.¹⁶

3.3 Offences are punishable by six months' imprisonment, a fine, or both imprisonment and a fine.

4. CONCLUSION

4.1 Given the significant re-opening now provided for under AL3, it does not appear that economic activity will be greatly affected by shifts to AL2 and AL1. The Regulations for AL3 in so far as they pertain to the operation of businesses are relatively clear. Businesses are permitted to operate but they assume greater responsibility for the health of their employees. It is essential that they are diligent in the implementation of these responsibilities.

4.2 Despite now permitting almost all business activities, the Regulations still provide that "[a]ll persons who are able to work from home *must* do so."¹⁷ This requirement is more relevant than ever in the context of the current surge of COVID-19 cases in South Africa.

4.3 B4SA encourages businesses not to open offices unnecessarily and to avoid personal contact between employees to the extent that it is possible. Where working from home is not possible, businesses are required strictly to follow the [health protocols](#) in place for workplaces or for their particular sector.

¹⁶ Regulation 45.

¹⁷ Table 2, Alert Level 3. Emphasis added.