

BUSINESS FOR SA: GUIDANCE NOTE

18 August 2020

1. Introduction

- 1.1 On 18 August 2020, South Africa moved to Alert Level (**AL**) 2 of the national state of disaster under [amended regulations](#) promulgated in terms of the Disaster Management Act 57 of 2002 (**the AL2 Regulations**).
- 1.2 AL2 sees a further reopening of the economy, minimal restrictions on movement of persons and a focus on compliance with health protocols. The shift from AL3 to AL2 comes in the wake of evidence of decreased rates of COVID-19 infections and increased recovery rates. These factors, President Cyril Ramaphosa noted in his [address](#) on 15 August 2020, have significantly reduced pressure on South Africa's health facilities.
- 1.3 Because the amended regulations pertaining to AL3 already provided for significant economic reopening, the regulation of AL2 is much the same as AL3, with a few notable exceptions. This note details those amendments.

2. Excluded business operations

- 2.1 Under AL2 all businesses may operate, with the exception of night clubs and international passenger air or sea travel for leisure purposes.¹ This includes fitness centres, all accommodation establishments and tour operators, subject to limitations on the numbers of people who may be present in the relevant premises.²
- 2.2 International sporting events remain prohibited and no spectators are permitted at any sporting event, but non-professional sporting events are now permitted. The dispensing and transportation of alcohol is now permitted without restrictions, and the sale of liquor is permitted for off-site consumption between 09.00 and 17.00 on Mondays to Thursdays, excluding public holidays, and for on-site consumption at any time that the premises is permitted to be open. The provisions regulating the operation of the economic sector remain in place as they were under AL3, and all persons who are able to work from home must continue to do so.³
- 2.3 Workplace plans must remain in place and compliance officers must continue to oversee the implementation of these plans and to monitor strict adherence to hygiene and health protocols for those employees who are permitted under those plans to work from their places of business.

¹ Regulation 62 read with Table 3.

² Regulation 55(2)(n).

³ Table 3.

3. Movement of persons and gatherings

- 3.1 Inter-provincial travel is now permitted for all purposes, but international travel remains limited to exceptions at the discretion of the Minister of Home Affairs and primarily for the purposes of repatriation.⁴
- 3.2 The AL2 Regulations retain the daily curfew between 22h00 and 04h00.⁵ Any employees required to work during those hours should be provided with a Form 2 permit, which is the standard form work permit under the Regulations to be issued by the head of the institution or his / her delegee. Movement is also permitted within the hours of curfew to attend to a medical or security emergency. However, failure to adhere to the curfew is no longer an offence under the AL2 Regulations.
- 3.3 The restrictions on carrying capacity for long-distance public transport under the amended AL3 Regulations remain in place and carrying beyond that capacity remains an offence under the AL2 Regulations.
- 3.4 All public gatherings are permitted subject to a limitation of a maximum of 50 persons in attendance, and private gatherings are permitted subject to a limitation of 10 persons.⁶ If a gathering takes place in contravention of these restrictions, an enforcement officer must first order the gathering to disperse and may arrest or detain the persons gathering only if such order is disregarded.⁷

4. Evictions

- 4.1 For the duration of the state of disaster, no-one may be evicted from his or her land or home or have their residence demolished without a court order, and that court order may be stayed until after the national state of disaster unless the court thinks it would *not* be just and equitable to do so. In other words, the presumption under the state of disaster is that an eviction will not be just and equitable, but a court may determine it to be otherwise if, for example, the prejudice in delaying the execution of the order outweighs the prejudice that will be caused by evicting the person. In coming to its decision regarding the equity of an eviction, a court may require a report from the executive about emergency accommodation for the person to be evicted.
- 4.2 The AL2 Regulations also provide that certain conduct in the context of landlord-tenant relationships arising from rental housing agreements is now presumed to be unfair. This includes termination of services where the landlord fails to attempt to reach an agreement on alternative payment agreements, penalties for late payment of rental where the default results from the national state of disaster and "[a]ny other conduct prejudicing the ongoing occupancy of a place of residence, prejudicing the health of any person or prejudicing the ability of any person to comply with the applicable restrictions on movement that is unreasonable or oppressive having regard to the prevailing circumstances." It remains to be seen how the Rental Housing Tribunal will enforce these provisions, and what will be considered to be unreasonable or oppressive in this context.

⁴ Regulation 59.

⁵ Regulation 50.

⁶ Regulation 44.

⁷ Regulation 55(3)(b).

5. **Conclusion**

With the economy substantially reopened, it is incumbent on businesses to cooperate fully with health and safety protocols to protect their employees and to help to curb a resurgence of COVID-19 infections. All persons who have been successfully working from home since the national state of disaster was implemented five months ago should continue to do so, and personal contact should continue to be avoided unless absolutely necessary.