

BUSINESS FOR SA: GUIDANCE NOTE

21 September 2020

1. Introduction

- 1.1 As of midnight on 20 September 2020, South Africa moved to Alert Level (**AL**) 1 of the national state of disaster under [amended regulations](#) promulgated in terms of the Disaster Management Act 57 of 2002 (**the AL1 Regulations**).
- 1.2 AL1 sees a further reopening of the economy, with minimal restrictions on movement of persons and focus on compliance with health protocols. In his [address](#) to the nation on 16 September 2020, President Ramaphosa noted that the shift from AL2 to AL1 is the result of further decreased rates of COVID-19 infections and increased recovery rates, but urged South Africans to ensure, through their conduct, that the country is not struck by a second wave of infections, as many other countries have experienced.
- 1.3 The Regulations pertaining to AL2 already provided for significant economic reopening and relaxation of previous restrictions. In this way, the AL1 Regulations continue the process initiated under AL2, with some notable exceptions. This note focuses on the significant changes between AL2 and AL1.

2. Movement of persons and gatherings

- 2.1 The AL1 Regulations impose a shorter daily curfew, from 00h01 until 04h00 daily, than was the case under AL2. Employees required to work during those hours must be provided with a Form 7 permit, which is the standard-form work permit to be issued by the head of an institution or her/his delegee. As under AL2, a failure to adhere to the curfew is not an offence under the AL1 Regulations.¹
- 2.2 All persons must wear face masks when in a public place, except when engaging in vigorous exercise. Entry into public places and the use of public transport is prohibited if a face mask is not worn. This prohibition also applies to attendance at a gathering, whether in a public place or not.²
- 2.3 The Regulations deal with different types of gatherings, as follows:
- 2.3.1 Gatherings at the workplace are allowed.³
- 2.3.2 Gatherings at conferences and meetings are limited to 250 persons or fewer (in the case of an indoor gathering) and to 500 persons or fewer (in the case of an outdoor gathering), provided that no more than 50 percent of the capacity of the venue concerned is used.⁴ Gatherings for recreational purposes (at cinemas, concerts, etc) are subject to the same restrictions.⁵

¹ Regulation 66.

² Regulation 67.

³ Regulation 69(6).

⁴ Regulation 69(7).

⁵ Regulation 69(8).

- 2.3.3 Gatherings at casinos are not subject to a restriction on the maximum number of persons, but only 50 percent of the capacity of the relevant venue may be used, and a distance of 1.5 meters between persons is to be maintained. ⁶
- 2.3.4 Gatherings at fitness centres, gyms and pools are similarly not subject to a restriction on the maximum number of persons but may only reach 50 percent of the venue's capacity. No minimum distance between persons is specified here. ⁷
- 2.3.5 Gatherings at sports grounds and fields, beaches, public parks, museums, galleries, libraries, archives and auctions are permitted, subject to strict adherence to health protocols and social distancing measures set out in the directions issued by the relevant Ministers. ⁸
- 2.3.6 Gatherings at restaurants, bars and hotels are permitted, subject to specific limitations with regards to each as set out in the Regulations. ⁹
- 2.3.7 Sporting activities, including professional and non-professional matches, by recognised sporting bodies are permitted, subject to a range of restrictions listed in the Regulations on who may and who may not be present. ¹⁰ Spectators may not attend matches, and no international sport events are permitted.
- 2.4 If any 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. ¹¹
- 2.5 The restrictions on carrying capacity for long-distance public transport imposed by the AL2 Regulations remain in place and carrying beyond that capacity remains an offence under the AL1 Regulations.¹²
3. **Excluded business operations**
- 3.1 Under AL1 all businesses may operate, with the exception of night clubs and those businesses determined by the relevant Minister to be closed. ¹³
- 3.2 International sporting events remain prohibited. Domestic professional and non-professional sporting events are now permitted subject to restrictions (discussed above).
- 3.3 The dispensing and transportation of alcohol remains permitted without restrictions, but the sale of liquor is now also permitted for off-site consumption between 09.00 and 17.00 on Fridays, and for on-site consumption at any time that the relevant premises are permitted to be open. ¹⁴
- 3.4 Employers must ensure that relevant health protocols and social distancing measures are adhered to. Workplace plans must remain in place and compliance officers must continue to oversee the

⁶ Regulation 69(9).

⁷ Regulation 69(11).

⁸ Regulation 69(10).

⁹ Regulation 69(12)(a) to (c).

¹⁰ Regulation 69(14).

¹¹ Regulation 69(14).

¹² Regulation 69(15), read with Regulation 76.

¹³ Regulation 72, read with table 4

¹⁴ Regulation 77.

implementation of these plans. While it is still advisable to do so, and subject to sector-specific health protocols, under AL1 it is no longer incumbent on employers:

- 3.4.1 to implement special measures for employees over 60 and those with co-morbidities to ensure a safe return to work;
- 3.4.2 to allow employees to work from home where it is possible for them to do so;
- 3.4.3 where the employer has more than 100 employees working together on the same floor space, to make provision for minimizing the number of employees together in the same space; and
- 3.4.4 where the employer has more than 500 employees, to provide or arrange transport for them, stagger the return to work to ensure workplace readiness and avoid traffic congestion, to screen employees daily, and submit this data.

4. **Evictions**

No changes have been made in the AL1 regulations with regards to evictions and conduct by landlords.

5. **Partial reopening of borders**

- 5.1 Those borders which were partially operational under AL2 are now fully operational, and those borders that were closed under AL2 remain closed.¹⁵
- 5.2 International travel to and from South Africa is permitted from 1 October 2020, subject to various restrictions:
 - 5.2.1 Travel from countries from outside the African continent with high infection rates will be prohibited, unless for business *and* with the approval of the Minister of Home Affairs. A list of these countries will be published and amended as necessary.¹⁶
 - 5.2.2 All travellers entering South Africa from the African continent, and from countries outside the African continent with low infection rates, are required to (i) provide a certificate, not older than 72 hours before the date of travel, of a negative COVID-19 test; or (ii) in the event of a failure to submit such a certificate, the traveller will be required to quarantine at her/his own cost.¹⁷
- 5.3 The Minister of Home Affairs will publish directions regarding the resumption of visa applications.¹⁸

6. **Conclusion**

With the economy now nearly fully reopened, and with several of the restrictions in place under AL2 now relaxed, it is nevertheless incumbent on businesses to cooperate fully with health and safety protocols to protect their employees as far as possible and to help to curb a resurgence of COVID-19 infections.

¹⁵ Regulation 75(1).

¹⁶ Regulation 75(4).

¹⁷ Regulation 75(3).

¹⁸ Regulation 75(9).