

30 April 2020

Dear Members,

1. We refer to the above as well as the regulations published by Government, circulated last night, which we expect to be published formally today, 30 April 2020, in the Government Gazette.
2. In this letter, we intend to give a brief description of the most important aspects of these new regulations, as well as our interpretation of their effect.
3. At the outset, certain of the previous regulations are repealed. These regulations are:
 - 3.1. Regulations R318 published on 18 March 2020, which set out the initial state of disaster regulations;
 - 3.2. Regulations R398 published on 25 March 2020, which set out the lockdown regulations, as well as the various amendments thereof;
 - 3.3. Regulations R465 published on 16 April 2020, which extended the lockdown until 23h59 on Thursday 30 April 2020.
4. The repeal of these regulations does not bring an end to any of the prosecutions brought thereunder – such prosecutions will still proceed. Furthermore, it is clear that lockdown is in place until 23h59 on Thursday 30 April 2020, whereafter the level 4 regulations as set out below, will apply.
5. Furthermore, all directions issued by Government in terms of these regulations remain in place until amended or repealed by the Minister concerned. The various ministers are given the powers to issue directions and to amend such directions pertaining to their ministry. As an example, the Minister of Justice may issue directions to address, prevent, and combat the spread of COVID-19 in prisons, courts, and the like, and may also prescribe Alternative Dispute Resolution-methods to resolve disputes relating to the present pandemic.

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6. The following general measures are put in place to combat the spread of COVID-19:
 - 6.1. Any person in a public place (which is not defined, but is defined in the case law as a place to which the public has access¹) is required to wear a cloth mask or similar item which covers the nose and mouth. No person will be allowed to enter any public place, building, premises or public transport if they are not wearing such a face covering. Furthermore, employers are to provide employees who will come into contact with members of the public as part of their duties, with the appropriate cloth mask.
 - 6.2. Every business premises (curiously, the regulations states that a business premises shall do the following, which is of course impossible. It is presumed that it ought to refer to the person in control of a business premises) shall determine the maximum number of people that can be accommodated in that premises, by allowing 1,5m² per person. Therefore, if a premises measures 150m², it may accommodate 100 people, which shall include both customers and employees. The previous uncertainty as to whether the allowed number of people includes or excludes employees has therefore now been removed. Furthermore, these businesses must provide adequate queueing space, so that 1,5m per person is allowed, whether the persons are queueing inside or outside the premises. Furthermore, hand sanitizer must be provided at the entrance to all employees and customers. An employee must also be designated in writing to act as compliance officer to ensure adherence to the foregoing.
 - 6.3. Employers must adopt measure to promote physical distancing, which includes working from home as far as possible, reducing the need to physical meetings, with special provisions having to be made for employees who are more at risk, i.e. those with known medical conditions and employees above 60 years of age.
 - 6.4. There are measures dealing with testing, isolation, contact tracing, deployment of the armed forces, provisions of shelters, procurement and the provision of resources, which will not be discussed at all in this letter, as it is not relevant for the present purposes.
7. Interestingly, where civil litigation is to be instituted against the State or any organ of state, the parties may refer such dispute to mediation, in which event certain specific provisions will apply.

¹ Bozzoli & Another v Station Commander, John Vorster Square, Johannesburg 1972 3 SA 934 (W)

8. Again, a number of offences are created, such as spreading of fake news or false claims, and not adhering to certain of the regulations. The penalty for such contravention shall be a fine or six months' imprisonment or both.
9. It is important to note that the published regulations only refer to level 4. We therefore do not yet know what will be allowed or disallowed should lower levels be allowed. Further regulations will have to be published to cater for these levels.
10. With regards to the movement of persons, the regulations decree that persons are restricted to their places of residence, except as otherwise allowed under the regulations. People may only leave their residences to:
 - 10.1. Perform an essential or permitted service as allowed;
 - 10.2. Go to work, if they are in possession of a valid permit to do so. In this regard, the format of the permit stays the same, with the result that new permits will not be required;
 - 10.3. Buy permitted goods or obtain permitted services;
 - 10.4. Move children as allowed;
 - 10.5. Walk, run or cycle within a 5km radius from their residence, and only between 6h00 and 9h00, and not in any organised groups.
11. A curfew is put in place. No one may be outside their residence from 20h00 until 5h00, except to perform essential or permitted services (in which event the usual permit is required), or in the event of a security or medical emergency.
12. Movement between provinces is still largely prohibited, although certain exceptions are allowed, such as attendance at funerals, or to perform essential services. Importantly, any person who was not at his/her place of residence or workplace when the lockdown started, will be allowed to return on a once-off basis.
13. All businesses which are entitled to re-open under level 4, must do the following:
 - 13.1. Designate a COVID-19 compliance officer who has specific duties;
 - 13.2. Develop a plan for the phased return of employees, in the specified format; and
 - 13.3. Develop measures to ensure that the workplace adhere to the requirements of social distancing and health protocols.

14. The regulations pertaining to movement of children between parents, attendance at funerals, remain virtually the same.
15. Importantly, the prohibition against evictions is extended, but only insofar as it relates to homes or land. Therefore, there is no longer any prohibition against commercial evictions. Orders for eviction for land or residences may still be granted, but execution is to be stayed until the last day of level 4.
16. The national borders remain closed, except for permitted import and export, repatriation of citizens and emergency medical treatment. The Minister of Transport is required to issue new directions on public transport and return to work of employees.
17. Gatherings are still prohibited, unless such gathering is for a funeral, work, or buying or obtaining permitted goods or services. As such, church services, parties, and the like are still prohibited.
18. Most places open to the public remain closed. These include churches, sporting and recreational venues, public parks, public swimming pools, beaches, and game reserves.
19. The sale and transportation of liquor remains prohibited. Furthermore, the sale of tobacco and vaping products also remain prohibited.
20. Certain retail trading will be allowed. Once again, employees will require permits issued by the head of the organisation. Also, again, a store selling permitted items will not be allowed to sell non-permitted items. As an example, the sale of stationery and educational books is permitted, but the sale of fiction books will not be permitted. The permitted retail trading includes the following:
 - 20.1. Food, including non-alcoholic beverages and pet food;
 - 20.2. Hot food, but for delivery only, and only between 9h00 and 19h00;
 - 20.3. Toiletries and cleaning products;
 - 20.4. Products for the care of babies and toddlers;
 - 20.5. Medical supplies
 - 20.6. Fuel and lighting, including gas and wood;
 - 20.7. Airtime and electricity;
 - 20.8. Hardware, components and supplies;

- 20.9. Components for vehicles undergoing emergency repairs;
 - 20.10. Winter clothing, footwear, bedding and heaters;
 - 20.11. Children's clothing;
 - 20.12. Stationery and educational books;
 - 20.13. Personal computer equipment, mobile phones and home office equipment;
 - 20.14. E-commerce may be expanded by the appropriate directions being issued.
21. Various other industries may also start returning to work. These include:
- 21.1. Construction and civil engineering related to public works;
 - 21.2. Critical repairs and maintenance;
 - 21.3. Postal and courier services for all permitted level 4 services;
 - 21.4. Domestic employees may only return to work if they live on the premises, or if they provide care to sick, elderly or disabled persons or children;
 - 21.5. The Deeds Offices and Masters' Offices.
22. Various services are also again classified as essential services. The list remains very much the same as previously, and includes private security, payroll and payment services, and the like.
23. It is therefore clear that, inasmuch as some relief is provided from the lockdown regulations, this relief is not as extensive as what had been hoped for, or even assumed under the previous documents provided by Government.
24. As and when more detail on the other levels are provided by government, we will provide the necessary updates.
25. This memo was prepared by Ben Groot of GVS Law. For any questions hereon, he can be contacted on 083 287 0909 or ben@gvs.law

Kind regards



NEIL GOPAL
Chief Executive Officer