



STATEMENT ON LOCKDOWN REGULATIONS

27 MARCH 2020

1. INTRODUCTION

- 1.1 On 25 March 2020, Minister Nkosazana Dlamini-Zuma promulgated regulations for implementing a nationwide “lockdown” effective from midnight on 26 March ([the “Regulations”](#)). While the Regulations are broad and highly restrictive, they are not an invocation of a state of emergency, which would require a separate proclamation by the President. However, contravention of aspects of the Regulations is a criminal offence punishable by a fine or up to six months’ imprisonment.
- 1.2 The Regulations have since been amended to provide some clarity on the limits on business operations and add to the list of designated essential products and services. The amended regulations explicitly recognise the right of businesses to continue operating remotely where staff can do so from their normal places of residence (or where operations are provided from outside of South Africa, if applicable). The amendments have also deleted a regulation limiting the right to compensation for loss or damage arising out of any *bona fide* action or omission by an enforcement officer under the Regulations.
- 1.3 The effect of the Regulations, as amended, is a general closure of all businesses and a mandatory order that “[a]ll businesses and other entities shall cease operations”, other than those providing essential goods or services, subject to the right to continue operating remotely through electronic means. This should be read with the closure of retail shops and shopping malls (again, subject to the provision of essential goods and services), and the general restriction confining “every person to his or her place of residence”. While we all face challenging times, we must take as our starting point that businesses should do everything in their power to abide by these general rules to assist with flattening the curve of COVID-19.
- 1.4 The exceptions to the Regulations are limited to “institutions”, defined as “any public or private institution that is engaged in the supply or distribution of an essential good or service”.

2. ESSENTIAL GOODS AND SERVICES

- 2.1 Essential goods and services are listed in Annexure B to the Regulations.
- 2.2 Essential goods include—
 - 2.2.1 food products (excluding alcoholic beverages) and goods used in the production of such products;
 - 2.2.2 animal food and goods used in the production of animal food;
 - 2.2.3 specifically listed cleaning and hygiene products and goods required for their production;

- 2.2.4 products for the care of babies and toddlers and goods required for their production;
 - 2.2.5 medical supplies and goods required for their production;
 - 2.2.6 fuel, including coal and gas; and
 - 2.2.7 basic goods, including airtime and electricity. ¹
- 2.3 What precisely falls within “basic goods” is unclear, but its description as including airtime and electricity indicates it may include items such lightbulbs, plugs and batteries. It is unlikely that it can reasonably be interpreted as including a product falling outside of products required for communication and energy, or goods essential to human and animal life. We have requested the Minister to provide clarification in this regard and, to the extent necessary, to amend the Regulations as soon as possible.
- 2.4 Essential services include the production and sale of each of the essential goods listed above. ² This means that companies producing and stores selling food products, animal food, medical and hygiene supplies, airtime, electricity and other essential goods may remain open. However, retail stores are prohibited from selling any other goods with the exception of those listed. ³ Furthermore, production of non-essential goods would not qualify as an essential service. In other words, the operations of a company in the production and sale of essential goods is limited to only that which is truly essential, as set out in the Regulations.
- 2.5 Other essential services are specified in Part B of Annexure B. They include “[f]inancial services necessary to maintain the functioning of the banking and payments environment, including the JSE and similar exchanges, as well as insurance services and medical aid administrators”. Please refer to the Regulations for the full list of goods and services classified as essential and note that the amendments have added the following:
- 2.5.1 the National Institute for Communicable Diseases;
 - 2.5.2 vital demand management services for electricity;
 - 2.5.3 tow trucks and vehicle recovery services;
 - 2.5.4 call centres necessary to provide health, safety, social support, government and financial services;
 - 2.5.5 harvesting and storage activities essential to prevent the wastage of primary agricultural goods;
 - 2.5.6 implementation of payroll systems to the extent that such arrangement has not been made for the lockdown, to ensure timeous payments to workers; and
 - 2.5.7 critical maintenance services which cannot be deployed for more than 21 days and are essential to resume operations after the lockdown.

¹ Annexure B, item A.

² Annexure B, regulation B4.

³ Regulation 11B(1)(c).

2.6 There are goods and services which Ministers have previously, within the scope of their respective portfolios, announced would be exempt from the lockdown restrictions. The Regulations override those statements. We will update our members on any relevant directions issued, particularly by the Minister of Trade and Industry who is authorised under the amendments to direct determine crucial services in relation to international markets and financial services.⁴

2.7 We will continue to consult with government regarding goods and services not covered in these Regulations which are necessary for the on-going functioning of the state and for addressing and alleviating the impact of the COVID-19 disaster.

3. **THE ENFORCEMENT MECHANISMS**

3.1 The Regulations require the head of an "institution" engaged in the distribution of an essential good or service to determine the essential staff within his or her institution and designate the individuals concerned as such in writing.⁵

3.2 In essence, the CEO of a company (or a senior executive to whom that function has been delegated by the CEO) must determine the exact essential services (within the ambit of that concept) to be performed by that company, as well as the employees essential for the performance of those services. These essential employees must be designated in writing. The form required to be completed for this purpose is annexed to the Regulations as Form 1 in Annexure C. We have drafted a form based on Annexure C which complies with the regulatory requirements and adds the details of the service to be performed. The form is attached at the end this statement.

3.3 Essential employees should ensure that they carry a duly signed copy of this permit, as well as official identification, in case they are stopped by a law enforcement officer, which includes members of the South African Police Service and the National Defence Force. Essential employees may also be subject to screening for COVID-19 by enforcement officers.

3.4 The DTI has created a registration portal through the Companies and Intellectual Property Commission which may provide comfort to businesses providing essential services. Although registration may be advisable, the DTI has indicated that registration is not mandatory. Regardless of whether a business has registered, whether it is entitled to operate depends on whether it provides essential goods and services, as defined.

3.5 Contravention of the Regulations is an offence punishable by a fine or imprisonment for a period not exceeding six months, or both.⁶ However, the Regulations cannot allow detention without trial in the same way as state of emergency legislation might permit. Any individuals arrested for a suspected contravention are required to be presented to a magistrate within 48 hours.

⁴ Amended regulation 11B(4A)(b).

⁵ Regulation 11B(2) and (3).

⁶ Regulation 11G.

DRAFT TO BE INSERTED ONTO OFFICIAL COMPANY LETTERHEAD

CONFIRMATION OF EMPLOYMENT IN ESSENTIAL BUSINESS

[STAMP WITH OFFICIAL STAMP OF COMPANY, IF YOU HAVE THIS]

THE PERSON IN POSSESSION OF THIS LETTER SHALL HAVE HER/HIS IDENTITY DOCUMENT / PASSPORT / DRIVER'S LICENSE IN HER/HIS POSSESSION AND SHALL PRESENT IT TO ANY LAW ENFORCEMENT OFFICER UPON REQUEST.

[INSERT NAME OF EMPLOYER] CONDUCTS BUSINESS IN THE [INSERT NATURE OF INDUSTRY]. THE COMPANY IS AN ESSENTIAL BUSINESS AS DESIGNATED BY THE GOVERNMENT AND IS REQUIRED TO CONTINUE OPERATIONS DURING THE NATIONAL LOCKDOWN PERIOD IN TERMS OF THE REGULATIONS IN THAT THE BUSINESS OPERATES AS AN ESSENTIAL SERVICE CATEGORISED AS:

[INSERT TYPE OF ESSENTIAL SERVICE UNDER THE REGULATIONS TO THE NATIONAL DISASTER MANAGEMENT ACT]

THE EMPLOYEE, WHOSE DETAILS ARE SET OUT BELOW, IS EMPLOYED BY THE COMPANY, FULFILLS AN ESSENTIAL FUNCTION, AND IS REQUIRED TO TRAVEL TO AND FROM WORK DURING THE LOCK-DOWN PERIOD.

EMPLOYEE'S DETAILS:

NAME AND SURNAME: _____

ID NUMBER: _____

EMPLOYEE NUMBER: _____

WORK ADDRESS: _____

POSITION: _____

CONTACT DETAILS:

CELL NUMBER	TELEPHONE NUMBER (W)	TELEPHONE NUMBER (H)	EMAIL ADDRESS

COMPANY'S DETAILS:

NAME: _____

REGISTRATION NUMBER: _____

PHYSICAL ADDRESS _____

CONTACT PERSON: _____

CONTACT NUMBER: _____

THE COMPANY CONFIRMS THAT THE INFORMATION SET OUT ABOVE IS TRUE AND CORRECT.

FOR: [NAME OF COMPANY]

DATE

NAME:

POSITION: HEAD OF THE INSTITUTION