

## **UNPACKING THE RESTRICTIONS TO CURB THE SPREAD OF THE CORONA VIRUS**

On Wednesday the 18<sup>th</sup> of March, the Minister of COGTA published a notice in the Government Gazette setting out the measures that are now in place to curb the escalation of the COVID-19 or the Corona Virus. Agbiz is actively involved in the critical discussions taking place between Business, Labour, Government and Civil Society organisations to manage and mitigate the effects of the pandemic. This article is based on the best information currently available, however additional measures may be implemented on very short notice. Rest assured that Agbiz will communicate with members directly as soon as new measures are put in place or their interpretation clarified.

### **A National State of Disaster v a State of Emergency**

Following the notice in the Government Gazette on Sunday, the COVID 19 virus has been declared a national disaster under the Disaster Management Act. The implication of this declaration is that the National Defence Force and all Government Departments must mobilize to help limit, contain and combat the spread of the virus within its available resources. It places an obligation on all spheres of Government to make personnel available to render services. In addition, it permits the Minister of COGTA to impose certain restrictions on activities. The current restrictions and measures will be unpacked in this article but they may be changed at short notice.

Please note that South Africa has not yet been placed in a State of Emergency akin to what is taking place in several European countries. A State of Emergency differs from the current situation in that it permits the state to place immediate and severe restrictions on fundamental rights. In other words, if required, a declaration of a State of Emergency under section 37 of the Constitution will allow the state to temporarily restrict all human rights other than the rights to life, equality, human dignity, freedom and security of the person, prohibition on slavery, children's rights and rights of detained persons. These measures could typically include a ban on non-essential travel, a curfew etc. South Africa is not there yet. For the time being, only the restrictions set out in the notice apply.

### **Restrictions imposed include the following:**

#### **Public gatherings**

As per the Regulations, Gatherings are prohibited. A 'Gathering' is defined as *"an assembly, concourse or procession of more than 100 persons, wholly or partially in open air or in a building."* In addition, no more than 50 people may gather where alcohol is sold. This means that all sporting events, concerts, rallies etc. that exceed 100 people is now unlawful. Special provisions were also added to the effect that any person who contravenes commits a criminal offence and may be arrested, convicted and imprisoned or subjected to a fine or both a fine and imprisonment.

#### **Impact on businesses**

From the discussions taking place, there seems to be a recognition that essential economic services must continue to take place. It is worth noting that there are ambiguities in the definition of "gatherings" and as such it is not 100% clear whether a workplace will be regarded as a gathering. That being said, there is recognition that essential work undertaken at packhouses, food processors etc. could still continue. Agbiz will try to obtain clarity and revert as soon as possible.

It is worth noting that a number of additional proposals are still under discussion but are not contained in the notice, namely proposals to:

- Allow for shortened shifts;
- Allow special leave for time taken off (opposed to using annual or sick leave);

- Claiming from the UIF fund where work cannot continue.

These proposals are still under discussion. It has however been recommended that non-essential travel be cancelled, that meetings take place via telecons and that employees be permitted to work from home wherever possible

### **Notification of infections & quarantine**

Any person that has been confirmed to have the virus, came into contact with a person who may have or is suspected to have been infected may refuse a medical examination. Refusal to a medical examination by such a person will result in them being quarantined for a period of 48 hours. Even those that have been diagnosed to have been carriers of the virus on reasonable grounds believed to have contracted the virus or been in contact with a person infected with the virus may be quarantined or placed in isolation for a period of 48 hours. Should such a person refuse to be quarantined a warrant by a magistrate will be issued against them and no compensation will be awarded for any loss or damage arising out of any action by an enforcement officer.

Compliance with these measures are vital during this period to avoid any claims that may arise after the fact for any damages or losses occurred during enforcement of such a warrant.

### **Isolation sites**

The Minister of Public Works and Infrastructure will identify sites that can be used for isolations purposes as well as quarantine facilities within their areas. Schools and partial care facilities are closed from the 18<sup>th</sup> of March 2020 up until the 15<sup>th</sup> of April 2020, the period of which may be extended by the cabinet member responsible therein should the national disaster persist.

### **Closure of schools**

All schools are closed as of the 18<sup>th</sup> of March until the 15<sup>th</sup> of April but may be extended if need be.

### **Public service centres**

All visits by members of the public to Correctional Centres, Remand Detention Facilities, holding cells, Military Detention facilities and the Department of Social Development facilities (these include Child and Youth Care Centres, shelters, one stop centres, and treatment centres are thus suspended effective immediately for a period of 30 days. The period may be extended but may not be beyond the duration of the national state of disaster.

### **Entertainment**

All taverns, restaurants and clubs must make sure not to accommodate more than 50 people at a time, provided that there is adequate space available and that hygienic conditions are adhered to limit exposure of the virus. The approval of special events or liquor licenses is suspended as well. The selling of liquor is thus limited between 18:00 and 09:00 the next morning on weekdays and Saturdays and from 13:00 on Sundays as well as on public holidays.

**Panic buying and procurement** as far as the public sector is concerned, emergency procurement procedures apply but private sector institutions need not worry about supply of goods during this period of the national disaster, hence panic buying is not really necessary for members of the public.

The Minister of Trade and Industry is authorized to issue directions that will protect consumers from excessive, unfair and unreasonable pricing of goods and services during this period. The Minister is required to maintain security and make available the supply of goods and services, and this can be

done by allowing institutions access to emergency procurement processes, so as to prevent panic and bulk buying of goods and services in this said period. This means that commercial activities are not banned or affected negatively by the measures imposed herein.

### **Transport**

The Minister of Transport is authorized to take all the necessary steps during this period as well, which he has done thus far by issuing travel bans from South Africa to other parts of the world such as the United Kingdom, United States of America, Italy, Switzerland, Iran and China. With regards to local bans, so far only 35 of the South African land ports have been closed. Border posts between Botswana, Lesotho, Mozambique, and Namibia have been limited with some being closed and two or one remaining operational. However, the border between South Africa and Zimbabwe it still operational and there is only one form of entry. It should be borne in mind that entry ports that have been closed are only in an effort to limit movement of people and not that of goods, this is with regards to the Department of Trade and Industry being able to be operational during this period.

### **Penalties for non-compliance**

There are penalties for not adhering to the regulations contained in this notice and these include for purposes of a gathering, accommodation of more than 50 people at premises where liquor is sold or consumed and any other person that hinders an enforcement officer from performing his or her duties in terms of the Regulations. Non-compliance is a criminal offence and as such is liable to a fine or subject to imprisonment for a period not exceeding 6 months or to both a fine and imprisonment. Members of the public are warned that should they be found to be making misrepresentations that they are in fact infected with the virus or publishing any statements through social media or any form of medium with the intention to deceive others about the status of any infected person or measures taken by Government as this is also an offence. The most stringent penalty in the regulations is reserved for any person who intentionally exposes another person to the virus as he/she may be prosecuted for the offence of assault, attempted murder or murder itself depending on the circumstances. This means that self-isolation is the best remedy in this regard for anyone suspected to be infected or known to be infected with the virus.

The regulations mentioned above came into operation on the 18<sup>th</sup> of March 2020, which means it was effective immediately and they will endure for the duration of the national disaster or such a time that the Department deems it safe for members of the public to continue with their blissful lives.

**By Emily Nathi and Theo Boshoff**