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Covering COVID-19

Alert Level 3

1 June 2020

“

*The secret of change is to focus all
your energy not on fighting the old, but
on building the new*

— Socrates

”

The new norm of anticipating uncertainty in our business operations and personal lives is continuing. The lasting impact of the global COVID-19 pandemic remains unknown, with the only certainty seemingly being that there will be one.

Our Corporate and Commercial team provided key takeaways for business operations during alert level 4 in South Africa. Now, in this second part to our handbook series: Covering COVID-19, we provide similar guidance in relation to the declaration of alert level 3.

We hope to continue to create certainty for your business in uncertain times.

Our team will release an updated version with each alert level declared during the lockdown alert strategic phases.

Table of Contents

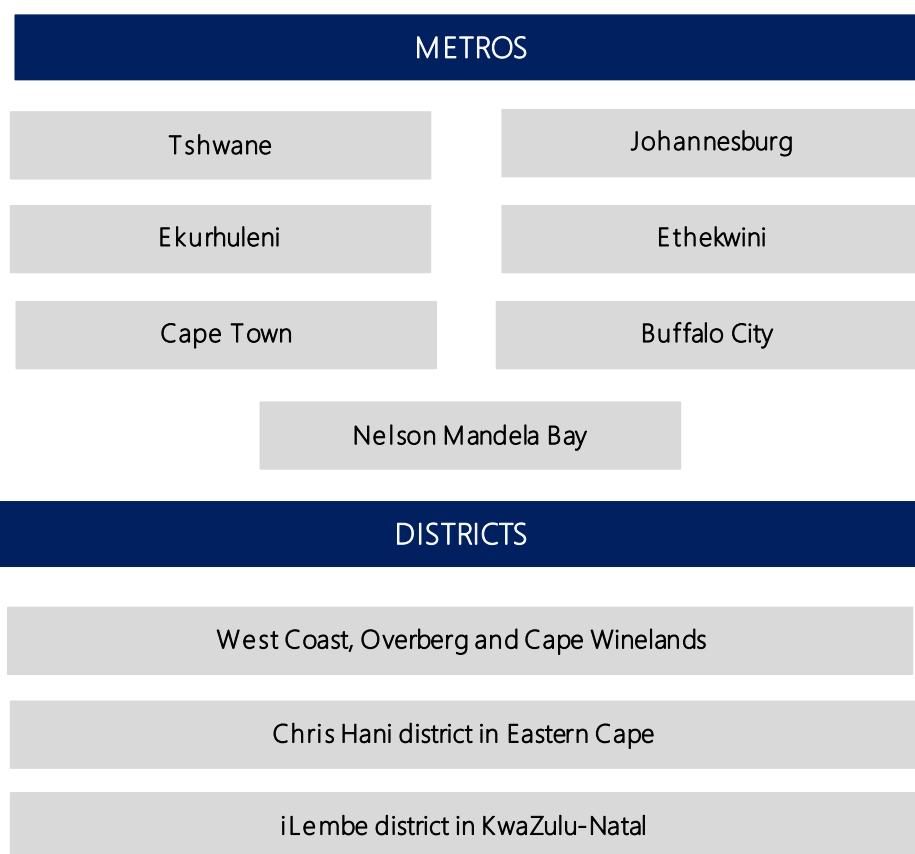
General Provisions.....	4
Duties of Employers and/or Businesses.....	8
Meet the team	13



General Provisions

General Risk Approach

- As mentioned in part 1 of our handbook series covering COVID-19, South Africa has moved to a risk adjusted approach in its fight against COVID- 19. This risk adjusted approach is based on a system of alert levels.
 - Currently, South Africa is under a declared national alert level 3. However, the following areas have been declared as "hotspots":



- A hotspot can be declared to have a different risk level and the movement of people in and out of a hotspot can be restricted. In addition, a plan will be developed by government in relation to the measures to contain the spread of COVID-19 in a hotspot.

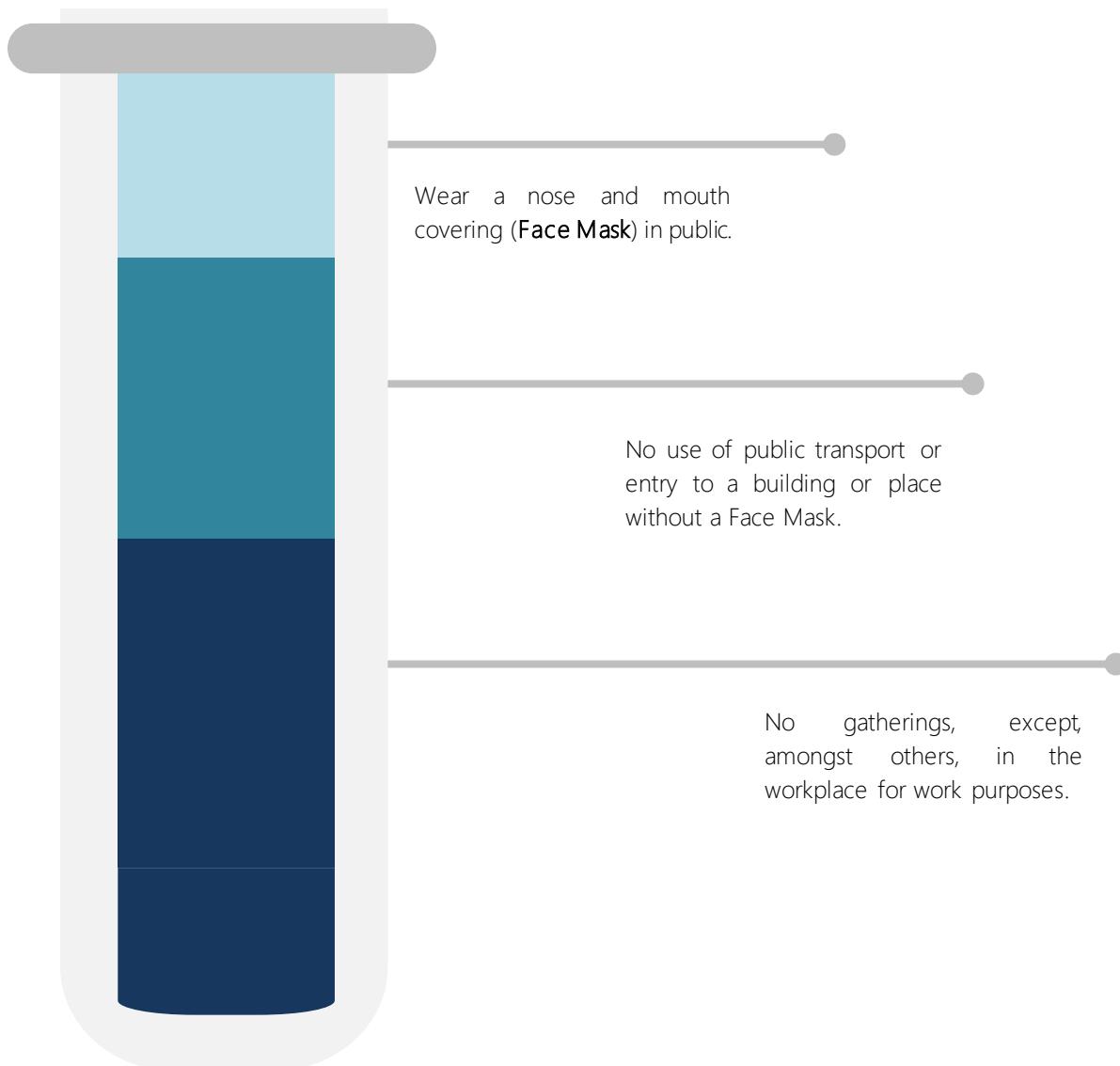
New Regulations

- The Minister of Cooperative Governance and Traditional Affairs (**Minister**) issued new regulations under the Disaster Management Act on 29 April 2020, and these were amended by the Minister on 28 May 2020 (**Level 3 Regulations**).
- The purpose of the Level 3 Regulations is to amend the previous regulations issued in response to the COVID-19 pandemic and to set out the regulations regarding alert level 3.
- Under the Level 3 Regulations, the restrictions on movement and the economy are further eased from the previous alert level. However, certain of the provisions contained in the previous regulations continue to apply.
- The Minister shall be responsible for the declaration of the alert level that will apply at national, provincial, metropolitan, district level or in a hotspot.
- All directives that were issued under the Old Regulations will remain in force until such time as these directives are amended or withdrawn by the relevant members of cabinet.
- The purpose of this guideline is to summarise certain provisions of the Level 3 Regulations, a copy of which can be obtained at https://www.gov.za/sites/default/files/gcis_document/202005/43364gon608s.pdf and which should be considered in full.



General measures

The following general measures to contain the spread of COVID-19, are still in place:





Restriction of movement of persons in relation to the workplace

The Level 3 Regulations restrict the movement of persons and the following is relevant in terms of the workplace:

- all persons who are able to **must** work from home. However, persons are permitted to perform any type of work outside of the home if health protocols and social distancing measures are complied with, the return to work is phased in and the work is not one of the specific exclusions;
- a person may leave their place of residence to, amongst others, go to work or perform any service permitted under the Level 3 Regulations;
- persons moving between provinces, metropolitan areas, districts and/or hotspots to carry out work responsibilities or a service permitted under the Level 3 Regulations, must have a permit issued by the employer that corresponds with Form 2 of Annexure A (**Permit**). A copy of the Permit is attached hereto as **Schedule 1**;
- various places that were previously closed to the public remain closed to the public;
- the borders of South Africa, remain closed, save for certain permitted exceptions; and
- directives must be issued regarding the re-opening of, amongst others, domestic air travel to allow for the return to work.

Duties of Employers and/or Businesses

The Level 3 Regulations provide for numerous duties and responsibilities on employers and businesses. Importantly, these include:

General obligations under alert level 4 that continue to apply under the Level 3 Regulations

- Employers must provide employees, that may come into direct contact with the public as part of their duties, with a Face Mask.
- In terms of every **business premises**:
 - it must be determined what the floor space area is in square metres;
 - it must be determined what number of customers and employees may be inside the business premises at any one time, with adequate space being available;
 - steps must be taken to ensure that queuing persons are able to maintain a distance of one and a half metres from each other (**Approved Social Distance**);
 - hand sanitisers for use by the public and employees must be provided at the entrance of premises;
 - there must be a written assignment of an employee or other suitable person as a compliance employee, which compliance employee must ensure compliance with the above and that all hygiene conditions and limitations set out in directives are adhered to; and
 - All employers must adopt measures to promote physical distancing including:
 - enabling employees to work from home;
 - the provision of adequate space within the workplace;
 - restricting face to face meetings; and
 - developing special measures for employees with known or disclosed health issues or comorbidities or high-risk conditions or who are above the age of 60.

Compliance officer (applicable also under alert level 4)

- All industries, businesses and entities, permitted to operate, must:
 - designate a compliance officer, who must oversee (a) compliance with the Workplace Plan (as defined below) and (b) adherence to standards of hygiene and health protocols relating to COVID-19 at the workplace.
 - prior to the reopening of a workplace for business, develop a plan corresponding to Annexure E of the relevant regulations (**Workplace Plan**), the Workplace Plan must be retained for inspection and must set out:
 - which employees are permitted to work;
 - the plan for the phased-in return of employees;
 - the health protocols in place; and
 - the details of the compliance officer;
 - phase in the return of their employees to the workplace to manage the said return, including from other provinces, metropolitans and district areas; and
 - develop measures to ensure that standards relating to health protocols, adequate space and social distancing are met.
- The Workplace Plan for small business can be basic and that for medium and large business more detailed and which must set out the details per Annexure E. We attach a copy of Annexure E to this guide as **Schedule 2**.



Obligations in relation to the commencement of business operations

- As mentioned above, in order to commence operations, a business must first have a Workplace Plan in place.
- Every person in control of a retail store or institution **must**:
 - take steps to ensure that customers maintain the Approved Social Distance and adhere to all directions in respect of health protocols and social distancing;
 - designate a compliance officer to ensure that safety controls are adhered to; and
 - display the name of the compliance officer prominently in the store or in a visible area.
- All businesses and other institutions are permitted to operate in terms of the Level 3 Regulations, save for certain operations that are expressly excluded. We attach a copy of the full list of the specific economic exclusions as **Schedule 3**.



CMS practical tip

Under the old regulations, only specially mentioned permitted and essential services were allowed to operate. In terms of an issued directive, permitted and essential service companies were required to obtain a certificate from the Companies and Intellectual Property Commission (CIPC).

As at the date on which this guide is issued, the website of CIPC was updated to reflect that “essential service certificates” are not required under alert level 3.

While it would be preferable for the relevant minister to issue a directive regarding this, it seems that the said certificates are not required.

Permits

- As mentioned above, persons that are **required to move** between provinces, metropolitan areas, districts and/or hotspots to carry out work responsibilities or a service permitted under the Level 3 Regulations must be issued with a Permit by the **employer**.
- The Level 3 Regulations therefore only require Permits to be issued to employees that are required to travel between areas for work. Furthermore, the Level 3 Regulations do not expressly require that the head of institution (as defined) must sign the Permit. However, the form that the Permit must comply with still refers to a signature by the head of an institution and thus it is recommended that this be complied with.

Appointment of persons

As set out above, businesses must appoint, designate and/or assign (as the case may be) a compliance employee and compliance officer.

Larger Businesses

- Businesses with more than 100 employees must, where possible, minimise the number of employees at the workplace through rotations, staggered working hours, remote working and other similar arrangements.
- Construction, manufacturing businesses and financial services firms with more than 500 employees must arrange the following:
 - transport for employees to site, or where this is not possible, consider alternative working time arrangements which will reduce overall congestion in public transport;
 - stagger the return to work to ensure workplace readiness and avoid traffic congestion; and
 - screen employees daily for COVID-19 symptoms and refer employees who display symptoms to medical examinations and testing where necessary and submit the collected data to Director-General: Health.



Other requirements

- Directives issued by the relevant cabinet member regarding health protocols and social distancing measures must be complied with.
- Measures must be implemented by employers for employees over 60 or those with co-morbidities to facilitate their return to work to limit such employee's exposure and where possible that these employees should work from home.
- Sector or industry specific bodies (if existing) must develop, in consultation with the Department of Health, sector specific health protocols in the event of high health risks.



Meet the team



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FORM 2
PERMIT TO PERFORM AN ESSENTIAL OR PERMITTED SERVICE
 Regulations 16(2)(b) and 28(4)

- Please note that the person to whom the permit is issued must at all times present a form of identification together with this permit. If no identification is presented, the person to whom the permit is issued will have to return to his or her place of residence during Alert Level 4.

I, being the head of institution, with the below mentioned details,

Surname				
Full names				
Identity number				
Contact details	Cell nr.	Tel Nr(W)	Tel Nr(H)	e-mail address
Physical Address of Institution				

Hereby certify that the below mentioned official/employee is performing services in my institution

Surname				
Full names				
Identity number				
Place of residence of employee				

Signed at _____, on this the _____ day of _____
 2020.

Signature of Head of Institution

*Official stamp of
 Institution*

ANNEXURE E
WORKPLACE PLANS
Regulation 16(6)(b)

A COVID-ready Workplace Plan must be developed prior to the reopening of an enterprise employing persons or serving the public.

For small businesses, the plan can be basic reflecting the size of the business, while for medium and larger businesses, a more detailed written plan should be developed given the larger numbers of persons at the workplace.

The Plan for medium and large businesses must include the following:

1. The date the business will open and the hours of opening;
2. The timetable setting out the phased return-to-work of employees, to enable appropriate measures to be taken to avoid and reduce the spread of the virus in the workplace;
3. The steps taken to get the workplace COVID-19 ready;
4. A list of staff who can work from home; staff who are 60 years or older; and staff with comorbidities who will be required to stay at home or work from home;
5. Arrangements for staff in the establishment:
 - (a) sanitary and social distancing measures and facilities at the entrance and exit to the workplace;
 - (b) screening facilities and systems;
 - (c) the attendance-record system and infrastructure;
 - (d) the work-area of employees;
 - (e) any designated area where the public is served;
 - (f) canteen and bathroom facilities;
 - (g) testing facilities (for establishments with more than 500 employees);
 - (h) staff rotational arrangements (for establishments where fewer than 100% of employees will be permitted to work).
6. Arrangements for customers or members of the public, including sanitation and social distancing measures.

SCHEDULE 3 - SPECIFIC EXCLUSIONS

SPECIFIC ECONOMIC EXCLUSIONS	
1	Consumption of food and beverages at or in a place of sale, including restaurants retail outlets, convenience stores or informal traders.
2	On-site consumption of liquor.
3	Short term home-sharing/letting/leasing/rental for leisure purposes.
4	Domestic passenger air travel for leisure purposes, until directions with health protocols and social distancing measures are issued by the relevant Cabinet member responsible for transport.
5	Passenger ships for leisure purposes.
6	Conferences and events, including sporting events, except as provided for in Chapter 4 of the Regulations.
7	Personal care services, including hairdressing, beauty treatments, make-up and nails salons and piercing and tattoo parlours, except those categories of services identified in directions by the relevant Cabinet member, in consultation with the Cabinet member responsible for health, as safe to resume, under specified conditions.
8	Exclusions relating to public transport services as set out in the directions issued by the Cabinet member responsible for transport.
9	Exclusions relating to education services as set out in the directions issued by the Cabinet members responsible for education.
10	Tourist attractions, casinos and entertainment activities, except those categories of activities which the relevant Cabinet members, in consultation with the Cabinet member responsible for health, identified in directions as safe to resume under specified conditions.



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