

The background of the entire page is a dark blue-grey color. Scattered across this background are several red, spherical particles with a textured, spiky surface, resembling coronaviruses. These particles vary in size and are positioned at different angles, creating a sense of depth and movement. In the top right corner, the text 'C/M/S/' is written in a white, serif font. Below this text is a thin white horizontal line, and underneath the line, the words 'Law . Tax' are written in a smaller, white, sans-serif font.

C/M/S/

Law . Tax

Covering COVID-19

Alert Level 3 (Amended Advanced)

13 July 2020

The background of the entire page is a dark blue-grey color, decorated with several red, spherical, spiky particles that resemble viruses or bacteria. These particles are scattered across the frame, with some appearing larger and more detailed than others. A large white rectangular box is centered on the page, containing text and quotation marks.

“

*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 and alert level 3 in South Africa. Now, in this supplementary part to our handbook series: Covering COVID-19, we provide similar guidance in relation to recent updates to alert level 3 (amended advanced).

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 Provisions4

Duties of Employers and/or Businesses7

Other requirements 13

Meet the team 14



General Provisions

We issued a handbook on alert level 3 (advanced) on 1 July 2020 and for purposes of this handbook on alert level 3 (amended advanced) we have included certain relevant changes as a result of the amended Level 3 Regulations (as defined below) that were issued on 12 July 2020. For ease, we indicate these changes in grey.

General Risk Approach

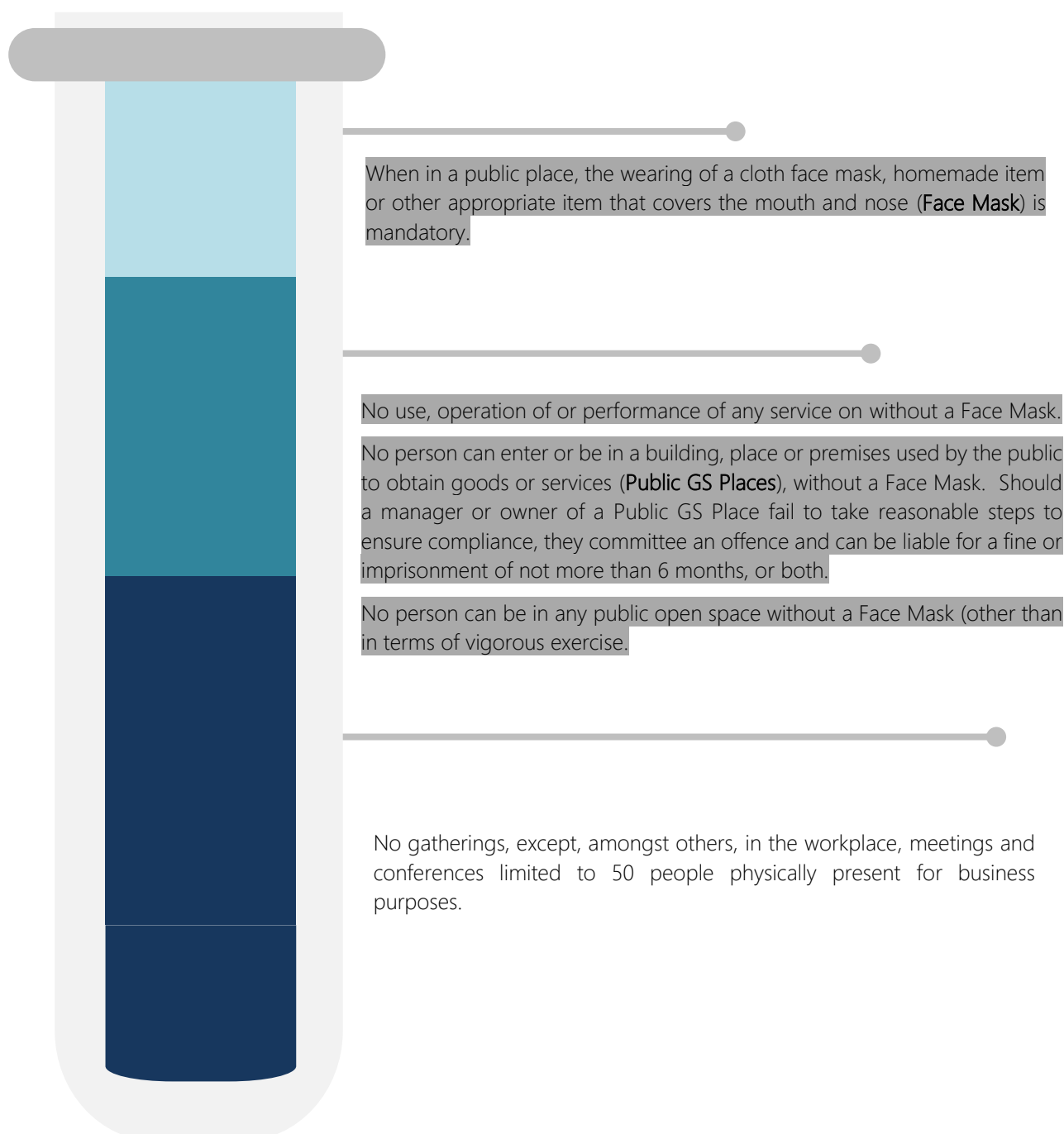
- o As mentioned in our previous handbooks covering COVID-19, South Africa has moved to a risk adjusted approach in its fight against COVID- 19. This risk adjusted approach is based on a system of alert levels.
- o Currently, South Africa is under a declared national alert level 3. In terms of the current Level 3 Regulations, the declaration of areas as "hotspots" has been deleted.

Regulations

- o The Minister of Cooperative Governance and Traditional Affairs (**Minister**) issued regulations under the Disaster Management Act on 29 April 2020, and these were amended by the Minister on various occasions with the latest amendment taking place on 12 July 2020 (**Level 3 Regulations**).
- o Under the Level 3 Regulations, the restrictions on movement and the economy are eased from the previous alert level. However, certain of the provisions contained in the previous regulations continue to apply.
- o The purpose of this handbook 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 https://www.gov.za/sites/default/files/gcis_document/202006/43476gon714.pdf. and which should be considered in full and <https://www.gov.za/documents/disaster-management-act-amendment-regulations-coronavirus-covid-19-lockdown-12-jul-2020>

General measures

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



The background of the document features a close-up, high-contrast photograph of green leaves, likely from a peace lily, with prominent veins and a slightly wavy, organic shape. The leaves are layered, creating a sense of depth and texture. The color is a vibrant, slightly dark green, with some lighter areas where the leaves are more exposed to light.

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 and travel for the leisure purposes allowed under the Level 3 Regulations;
- persons moving between provinces 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**;
- with effect from 13 July 2020, persons cannot leave their place of residence between 21:00 and 04:00, unless they have been issued with a Permit to perform a permitted service or attend to a security or medical emergency (**Curfew**). Non-compliance with the Curfew is an offence, which can attract a fine or imprisonment of not more than 6 months or both;
- various places that were previously closed to the public remain closed to the public with the exception of, amongst others, restaurants, theatres, cinemas, casinos, museums and personal care services which are now open to the public, subject to various conditions and directives from the relevant minister;
- 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

- o Employers must provide **every** employees with a Face Mask, when the employees are in the workplace and an employer may not allow any employee to perform any duties or enter into the employment premises without a Face Mask (collectively referred to as the **Employee Face Mask Requirement**).

CMS Note

Prior to their amendment on 12 July 2020, the Level 3 Regulations only required Face Masks to be provided to employees that come into contact with the public as part of their duties. This obligation has now been extended to all employees.

- o If an employer fails to take reasonable steps to ensure compliance with the Employee Face Mask Requirement, they commit an offence and can be liable for a fine or imprisonment of not more than 6 months, or both
- o 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

- o 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.
- o 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

- o As mentioned above, persons that are **required to move** between provinces to carry out work responsibilities or a service permitted under the Level 3 Regulations must be issued with a Permit by the **employer**.
- o The Level 3 Regulations, therefore, only require Permits to be issued to employees that are required to travel between provinces for work. Furthermore, the Level 3 Regulations do not expressly require that the head of an 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.

CMS Note

Prior to their amendment on 25 June 2020, the Level 3 Regulations provided that Permits were required to be issued to employees that were moving between provinces, metropolitan areas, districts and/or hotspots to carry out their work. Following the amendment, the Level 3 Regulations only refer to the Permit being needed for travel between provinces. However, the Level 3 Regulations refer to the Permit being required for non-compliance with the Curfew (regardless of movement between provinces).

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

- o 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.
- o 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



Deepa Vallabh
Co-Head of Corporate & Commercial; Head of Africa: M&A

M +27 82 571 0707
E deepa.vallabh@cms-rm.com



Yushanta Rungasammy
Co-Head of Corporate & Commercial

M +72 72 464 1722
E yushanta.rungasammy@cms-rm.com



Sihle Bulose
Senior Associate

M +27 82 776 2038
E sihle.bulose@cms-rm.com



Rembuluwani Nembudani
Senior Associate

M +27 79 631 6418
E rembuluwani.nembudani@cms-rm.com



Maud Hill
Senior Associate

M +27 76 181 4543
E maud.hill@cms-rm.com



Lebogang Molebale
Senior Associate

M +27 82 947 5708
E lebogang.molebale@cms-rm.com



Mawande Ntontela
Candidate Attorney

M +27 84 837 9504
E mawande.ntontela@cms-rm.com



Dumisani Lucas
Paralegal

M +27 78 344 2406
E dumisani.lucas@cms-rm.com

"FORM 2

*PERMIT TO PERFORM AN ESSENTIAL/PERMITTED SERVICE

Regulations *16(2)(b)/28(4)/33(1A)

- 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.

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

* Delete whichever is not applicable*.

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.	Sale, dispensing or transportation of liquor except as provided for in regulation 44.
2.	Sale of tobacco, tobacco products, e-cigarettes and related products to members of the public and to persons including retailers who sell directly to the members of the public, except as provided for in regulation 45.
3.	Hotels, lodges, bed and breakfasts, timeshare facilities and resorts and guest houses, for leisure purposes.
4.	Short term home-sharing/letting/leasing/rental.
5.	Domestic passenger air travel for leisure purposes.
6.	Passenger ships for leisure purposes.
7.	Sporting events, except as provided for in Chapter 4 of the Regulations.
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."



Law . Tax

Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.

cms-lawnow.com

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law