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Our ref: BEN GROOT/GEN1/0002

Date: 29 MAY 2020

VARIOUS CLIENTS OF GVS LAW

Dear Sir / Madam

Re: **REGULATIONS ON LEVEL 3 OF THE DISASTER REGULATIONS**

1. We refer to the above as well as the regulations published by Government today in the Government Gazette No 43364, pertaining to alert level 3, as it applies from 1 June 2020.
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. The regulations published under Alert Level 4 remain in place, and the new regulations merely add a new chapter to these regulations. This means that all definitions, offences, and the like remain.
4. The notice of publication specifically states that alert level 3 will apply nationally with effect from 1 June 2020. Certain hotspots are, however, identified, but no other restrictions have yet been put in place for these hotspots. The hotspots are:
 - 4.1. Tshwane metro
 - 4.2. Johannesburg metro
 - 4.3. Ekurhuleni metro
 - 4.4. Ethekwini metro
 - 4.5. Nelson Mandela Bay metro
 - 4.6. Buffalo City metro
 - 4.7. Cape Town metro
 - 4.8. West Coast district municipality
 - 4.9. Overberg district municipality
 - 4.10. Cape Winelands district municipality
 - 4.11. Chris Hani district in the Eastern Cape
 - 4.12. iLembe district in Kwazulu-Natal.

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5. The following general measures remain in place to combat the spread of COVID-19, as set out in regulation 5:
 - 5.1. 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 access) 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.
 - 5.2. Every business premises (curiously, the regulations still state 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. 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.
 - 5.3. 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.
 - 5.4. 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.
6. The regulations now also define a “hotspot” as being a “geographical area or cluster of geographical areas”, and provide that the Minister of Co-operative Government and Traditional Affairs may designate the alert level that will apply nationally, in a province, metro, district or hotspot. The national alert level applies in all provinces, metro’s and district, unless otherwise provided.
7. The regulations provide that the Minister of Health may identify a hotspot, after consulting with the Provincial MEC for Health, after taking into consideration various factors, being:
 - 7.1. The number of active cases per 100 000 population;
 - 7.2. The rate of increase of active cases;
 - 7.3. The availability of hospital beds and related resources; and
 - 7.4. Any other factor relevant for the containment of COVID-19.
8. Once a hotspot has been identified, the Minister of Co-operative Government and Traditional Affairs may designate the alert level that will apply to that hotspot, as well as any other restrictions that may apply. Therefore, one hotspot may be moved to alert level 5, whilst another may be moved to alert level 4. At this stage, all hotspots will move to alert level 3 on Monday 1 June 2020.

9. It is important to note that the published regulations only refer to alert level 3. 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 regard to the movement of persons, the regulations decree that persons may leave their residences to:
 - 10.1. Perform any permitted service as allowed;
 - 10.2. Go to work;
 - 10.3. Buy permitted goods or obtain permitted services;
 - 10.4. Move children as allowed;
 - 10.5. Exercise between 6h00 and 18h00, provided that it is not done in any organised groups, and that the applicable health protocols and social distancing measures are adhered to. The previous limitations pertaining to time and distance therefore does not apply under level 3. If an area moves to level 4, however, those limitations will again apply to that area;
 - 10.6. Attend a place of worship. For such attendance, movement across metro's and districts will be allowed, but not across provinces;
 - 10.7. Attend a school, once the schools have opened.
11. 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 to care for an immediate family member may now also move between provinces.
12. The regulations pertaining to movement of children between parents, attendance at funerals, remain virtually the same.
13. The prohibition against residential evictions is again extended. Therefore, there is still no 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 3.
14. The gathering of people at the following places is now permitted:
 - 14.1. Faith-based institutions, but limited to no more than 50 people. It may be less, depending on the size of the premises;
 - 14.2. Funerals, also limited to 50 people;
 - 14.3. Workplaces for work;
 - 14.4. Agricultural auctions; and
 - 14.5. Professional non-contact sport matches, provided that only the players, match officials, journalists, medical and television crews are there.
15. The last-mentioned regulation means that certain sport matches may now proceed, provided that it is for professionals only, and for non-contact sports. As an example, a professional tennis match may now proceed, but not a professional rugby match. Also, an amateur club tennis match remains prohibited.

16. With regard to places of worship, as stated above, these gatherings are now allowed, subject to a maximum of 50 people at any time. The minister has simultaneously also published guidelines pertaining to these gatherings. These guidelines include the following:
 - 16.1. Services should be convened through online platforms where possible.
 - 16.2. A religious service may not extend for more than 2 hours, and must at least have a 30-minute interval between services.
 - 16.3. The religious leader must ensure that all people entering the place are wearing cloth masks, develop a plan to ensure that the regulations are adhered to, as well as a protocol to ensure that no more than 50 persons enter the place of worship.
 - 16.4. Persons entering the premises must be screened for symptoms, namely fever, cough, sore throat or breathing problems. They must also be asked whether they are suffering from any of a number of ailments, such as body aches, nausea, fatigue or the like.
 - 16.5. Social distancing must be adhered to, i.e. 1.5m between persons.
 - 16.6. Singing is limited to solo performances or pre-recorded performances.
 - 16.7. If the religious activity (such as preaching) cannot be performed with a face mask, the distance between persons must be increased to 2.5m. Congregants are to wear their face masks for the duration of the service.
 - 16.8. Hand sanitizer must be available, and the place of worship must be cleaned before and after religious activities.
17. The national borders remain closed, except for permitted import and export, repatriation of citizens and emergency medical treatment. The return of people working or studying abroad is now allowed.
18. Many places that are normally open to the public remain closed. These include sporting and recreational venues, public parks, public swimming pools, beaches, and game reserves. Sports grounds and fields may only be open for training by professional athletes and professional non-contact sport matches as set out above.
19. The sale of tobacco and vaping products remain prohibited.
20. Liquor sales will now be allowed, subject to the following:
 - 20.1. Sale of liquor at on- and off-consumption premises and through e-commerce is allowed between Monday to Thursday from 9h00 – 17h00. This means that restaurants offering take-aways and deliveries may now sell alcohol together with those meals.
 - 20.2. Alcohol may not be consumed at the place of purchase.
 - 20.3. Liquor may be transported to licensed premises from today, 29 May 2020.
 - 20.4. Liquor may not be sold from Friday to Sunday.
21. All businesses may now operate, unless specifically prohibited. For those businesses that are operational, the directions pertaining to health and safety, social distancing and the like apply.

22. All businesses, industries and other entities which are entitled to re-open under level 3, must do the following:
 - 22.1. Designate a COVID-19 compliance officer who has specific duties;
 - 22.2. Develop a plan for the phased return of employees, in the specified format; and
 - 22.3. Develop measures to ensure that the workplace adhere to the requirements of social distancing and health protocols.
23. Persons who can work from home should still do so.
24. The list of trading that remains prohibited is as follows:
 - 24.1. Consumption of food or beverages at the place of purchase, i.e. restaurant, retail stores, and the like;
 - 24.2. On-site consumption of liquor, as stated above;
 - 24.3. Short-term letting or sharing of homes for leisure purposes (such as AirBnB);
 - 24.4. Domestic air travel and passenger ships for leisure purposes;
 - 24.5. Conferences and events;
 - 24.6. Personal care services, such as hair and beauty, nail salons, tattoo parlours, but the Minister of Health may issue further directions to allow for the opening of these businesses;
 - 24.7. Tourist attractions, casinos and entertainment activities, unless allowed by the relevant Minister, under directions to be issued.
25. It is therefore clear that much more relief is provided from the lockdown regulations, and that the focus has shifted from what is allowed, to what is prohibited. This, we believe, is a welcome change.
26. We trust that you find the above in order. Please do not hesitate to contact us, should you wish to discuss any aspect hereof.

Yours faithfully

Ben Groot

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