

ADVICE NOTE¹

SI 99 of 2020: UNPACKING LEVEL 2 LOCKDOWN RESTRICTIONS

In a bid to contain the effects of Covid – 19 and flatten the curve in Zimbabwe, a series of Statutory Instruments have been gazetted. On the 2nd of May 2020 the Zimbabwean government gazetted Statutory Instrument 99 of 2020 which introduced Level 2 Phased Relaxation of the National Lockdown, effective until the 17th of May 2020. SI 99 of 2020 amends the principal SI 83 of 2020, which had extended the lockdown in Zimbabwe until the 3rd of May 2020.

This advice note seeks to unpack the measures put in place and possible implementation strategies for everyone affected.

1. Types of Businesses that are allowed to be opened

Certain types of business that fall under what has been generally referred to as “industry and commerce” meaning any business, trade or occupation dealing, whether by wholesale or retail or other basis, in goods or services for the generation of income or the making of profits have been allowed to reopen under strict guidelines.

The businesses which fall under this definition can be identified by one or more of the following indicators:

- (a) the holding of a shop or other licence from a local authority enabling it to operate the business in question from a specified premises; or
- (b) being the lessee of premises governed by the Commercial Premises (Lease Control) Act [Chapter 14:04]; or
- (c) being a registered operator for the purposes of the Value Added Tax Act; or
- (d) being a registered as an employer for the purpose of paying employees’ tax under the Income Tax Act, or otherwise making a regular return of income for the purposes of that Act;
- (e) being a party to a collective bargaining agreement negotiated through an Employment Council governing the business in question;

¹ This advice note is not intended to constitute legal advice, but is intended for information purposes. It is a guide to unpack possible implementation mechanism in light of SI 99 of 2020 and should not be construed as the ultimate legal implications of the SI. Please contact ChimukaMafunga Commercial Attorneys for legal advice pertaining to your particular situation.

The SI is very specific to exclude businesses that are conducted in open public places that are typical of the informal sector.

So essentially any registered tax paying business with any premises used for or in connection with the carrying on of any industry, business, trade or occupation; and any ground, parking space, garage, outbuilding, workers quarters and other improvement in, on or let or used with such premises or part thereof can resume commercial operations in Level 2 of the lockdown. **(Please take note important exception in Point 2 below)**

If any question arises whether any business in the commercial and industrial sector is formal or not, the person purporting that the business or industry is formal shall have the burden of proving, to the satisfaction of an enforcement officer, that the business is formal. The enforcement officer has the discretion to disperse and return personnel home where any business or industry is not found to be a formal business or industry. He also has the right to access any land or premises during working hours of any business in order to carry out his/her duties.

2. Places open to the public and public gatherings

The number of individuals who are allowed to publicly gather for specified purposes has been increased from 2 (two) individuals to 50 (fifty) individuals. At any gathering, every person must exercise social distancing rules **AND** it is mandatory that every individual must be wearing a mask at all times.

It is important to note that public places, as defined in SI 83 of 2020 remain closed. These include;

- i. all open space organised gatherings,
- ii. restaurants,
- iii. game reserves,
- iv. backpackers,
- v. places of worship,
- vi. clubs,
- vii. sports clubs,
- viii. recreational facilities,
- ix. flea or vegetable markets (except as designated by the local authority for the sale of food and other basic commodities),
- x. liquor establishments,
- xi. cinemas,
- xii. theatres,

- xiii. Shopping malls (except food and retail stores for essential necessities).

This means that even if a business may qualify under the designated industry and commerce sector, if it is defined as a public place, it shall remain effectively closed.

3. Mandatory face masks

Anyone moving about outside their home must at all times wear a mask.

The SI goes on to explicitly state that the masks shall not necessarily be of the standard specified in the Public Health (Standards for Personal Protective Apparel, Materials and Equipment) Regulations, 2020, published in Statutory Instrument 92 of 2020.

The Mask can be improvised and or manufactured by anyone.

It would be prudent for Employers whose businesses are allowed to be open in terms of the SI to ensure that their employees have adequate face masks to enable their employees to be compliant.

4. Mandatory workplace safety requirements

Before resuming operations in industry and commerce, all personnel must be subjected to mandatory screening and testing for covid-19 at the direction of an enforcement officer whether by use of a rapid results diagnostic test or other test approved by the Minister of Health.

It is incumbent upon Employers to arrange with enforcement officers for the mandatory screening and testing and for this purpose the Employers must contact the Ministry of Health Call Centre or the Ministry of Information Call Centre.

An enforcement officer has the discretion to direct any Employer and its personnel to submit to screening and testing for covid-19 at any time the enforcement office deems necessary.

The SI is not clear follows in the event that an employee is tested or screened and is positive of Covid – 19 or exhibits symptoms of Covid – 19, it can only be assumed that since this mandatory testing is to be conducted at the direction of the enforcement officer, the enforcement officer should then direct the step that follows in terms of the Ministry of Health guidelines. The employer should subject him/herself to the direction of the enforcement officer.

Though not specifically mentioned in the SI, it is prudent that employers provide hand sanitizers which have an alcohol content of at least 70%.

The usual constant hand washing and area sanitisation habits should be implemented in the place of business.

5. Social Distancing in the place of business

An Employer must make sure at all times that personnel observe the social distancing rules at the workplace. Employers must take measures to promote social distancing in the workplace to ensure that the risk of spreading the virus is minimised.

The highest risk is when a member of staff is asymptomatic but carrying the virus. It is therefore prudent and of utmost importance for employers to facilitate social distancing policies in the workplace.

Every member of staff must also be provided with protective masks.

Employer must also make available for use by employees and other persons hand sanitising liquid.

6. Business opening hours

Except if good cause is shown to an enforcement officer, the designated businesses shall operate from 0800-15:00 hours daily.

This is to ensure that employees have ample time to get transport back home without crowding for public transport at the end of the day.

7. Movement of persons

Level 2 of the lockdown renders every person employed or operating any of the designated businesses that have been allowed to operate an essential service personnel and allowed free movement strictly for the purposes of reporting for duty and traveling back home.

As a result of the transportation restricted to only public transport in terms of the law, it would be prudent for employers to allow only the key staff members to report to work. Those who can work from home should be allowed to continue working from home.

Another strategy would be to rotate employees for the larger corporations to ensure that less people move and reduce the spread of Covid -19.

8. Transportation

Section 2 of the principal SI (SI 83 of 2020) that restricts transport services for the carriage of passengers to ZUPCO, omnibuses hired or operated by the Public Service Association, the Police Service, the Defence Forces and the Civil Protection Authorities, Local Authorities is still in full effect.

SI 99 of 2020 then instructs that all these designated transport services vehicles shall be disinfected against Covid-19 at least twice a day by or at the direction of an enforcement officer.

Every individual passenger must be temperature-tested and have his/her hands sanitised before being allowed to board a transport service vehicle and must observe strict social distancing rules while aboard said transport service vehicle.

Private vehicles remain permissible in terms of SI 83 of 2020.

9. Breach of the Regulations and Penalties

Any person who fails to comply with an order of an enforcement officer, or who hinders or obstructs an enforcement officer from having the access to the premises of a business during working hours, shall be guilty of an offence and liable to fine not exceeding level 12 (twelve) or to imprisonment for a period not exceeding 1 (one) year or both such fine and such imprisonment.

10. Practical Workplace measures

In a bid to flatten the curve, business owners should come up with deliberate plans for re-opening their places of business. This could require extra diligence beyond the minimum requirement of the law. We advise that;

- i. It is prudent for businesses to put in place reopening plans that must be circulated to employees before re-opening to ensure that the place of business is Covid – 19 ready for reopening,
- ii. Employers must take the pre-testing requirement with the due care and seriousness it deserves before opening their places of business,
- iii. Large businesses should put in place timetables for employee rotations and they must have phased return-to-work plans in place,
- iv. Sanitary and social distancing measures at the entrance and exit of workplaces must be put in place,
- v. Regular sanitisation of work areas must be implemented,
- vi. Regular sanitisation of restrooms, bathrooms and visitors' rooms must be put in place,

- vii. Arrangements for customers and members of the public visiting places of business must be put in place,
- viii. Employers must periodically screen members of staff to limit exposure to the virus and minimise its spreading within the workplace,
- ix. Employers must put in place deliberate and safe plans for the evacuation of symptomatic employees to minimise the spread of the virus.

11. Conclusion

It is important to note that SI 99 of 2020 is an amended of Statutory Instrument 83 of 2020 that still remains the principal SI on the National Lockdown and anything that has not been changed or altered in SI 99 of 2020 for the avoidance of doubt, remains in effect.

In that regard please be advised that the border closures, prohibition of medical supplies hoarding, false reporting remain in effect.

SI 99 of 2020 is deficient in implementation strategies and to enable the safe opening of businesses, employers and employees should work together and implement safe strategies for re-opening.