
INDEPENDENT REGULATORY BOARD FOR AUDITORS

RESPONSE TO ACCOUNTANTS AND AUDITORS WANTING THEIR SERVICES TO BE DESIGNATED AS ESSENTIAL

Johannesburg / 1 April 2020

Dear Registered Auditors

Following the various announcements by President Ramaphosa with regards to the COVID-19 pandemic and consequential regulations regarding essential services which can be provided during the Lockdown Period, the IRBA has received numerous requests from audit and accounting firms to request that audit and accounting be recognised as essential services.

We engaged with the Companies and Intellectual Properties Commission (CIPC) and studied the relevant regulations and pronouncements to enable us to provide our view on the matter and advise auditors and accountants accordingly.

1. What do the “Lockdown Regulations” state about essential services, what are the essential services and who qualifies?

THE DISASTER MANAGEMENT ACT 2002: AMENDMENT OF REGULATIONS:

The Disaster Management Act 2002: Amendment of Regulations issued in terms of Section 27(2) by the Department of Cooperative Governance and Traditional Affairs (COGTA) on 25 March 2020 (commonly referred to as the “Final Lockdown Regulations”) state the following regarding the provision of essential services:

“In **Regulation 11A** of the above-mentioned regulations issued by COGTA “**Essential Services**” means the services as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995), and designated in terms of section 71(8) of the Labour Relations Act, 1995 (and which designation remains valid as at the date of publication of this regulation), and as listed in paragraph B of Annexure B, as may be amended from time to time”.

The last part of the definition refers to paragraph B of Annexure B of the same regulation, which contains the following:

Extract from Paragraph B of Annexure B regarding services that are listed as essential in terms of Regulation 11A:

ANNEXURE B
CATEGORISATION OF ESSENTIAL GOODS AND SERVICES DURING LOCKDOWN
Regulation 11A

B. SERVICES

Categories of essential services shall be confined to the following services:

1. Medical, Health (including Mental Health), Laboratory and Medical services;
2. Disaster Management, Fire Prevention, Fire Fighting and Emergency services;
3. Financial services necessary to maintain the functioning of the banking and payments environment, including the JSE and similar exchanges, as well as Insurance services;
4. Production and sale of the goods listed in category A, above;
5. Grocery stores, including spaza shops;
6. Electricity, water, gas and fuel production, supply and maintenance;
7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance by the DPSA, including Social Grant Payments;
8. Birth and death certificates, and replacement identification documents;
9. Essential municipal services;
10. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;
11. Funeral services, including mortuaries;
12. Wildlife Management, Anti-poaching, Animal Care and Veterinary services;
13. Newspaper, broadcasting and telecommunication infrastructure and services;
14. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;
15. Cleaning, sanitation, sewerage, waste and refuse removal services;

16. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;
17. Essential SARS services defined by the Commissioner of SARS;
18. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;
19. Postal services and courier services related to transport of medical products;
20. Private security services;
21. Air-traffic Navigation, Civil Aviation Authority, Cargo Shipping and dockyard services;
22. Gold, gold refinery, coal and essential mining;
23. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown;
24. Production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment;
25. Transport services for persons rendering essential services and goods, and transportation of patients;
26. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament;
27. Commissioners of the South African Human Rights Commission, Gender Commission, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Public Protector and Deputy Public Protector; and
28. Transport and logistics in respect of essential goods as set out in A above to neighboring countries.

From the list above accounting or auditing services are not specifically listed as an essential service; therefore, strictly speaking the primary service offered by accounting/auditing firms cannot be classified as essential services.

However, essential service number 3 on the list refers to *“financial services necessary to maintain the functioning of the banking and payments environment, including the JSE and similar exchanges, as well as insurance services.”*

There may be a case for accounting/auditing firms who provide critical outsourced services to the JSE, other exchanges, banks and insurance companies to be classified as essential services under the financial services umbrella, for example those accounting/auditing firms who provide accounting (recording of transactions) and consulting services - such as outsourced key management personnel, to be regarded as essential services. The thinking is that the service offered by the accounting/auditing firm forms a critical required sub-process of a larger essential service process - for example, an insurance company requires key management oversight and approval as a control within their claims payment process before an insurance claim can be processed and for those transactions to be recorded (accounting) for the process to be completed. If the accounting/auditing firm is providing either the accounting or key management/consulting activity, then that service could be considered an essential service.

Furthermore, there may be an expanded case for accounting/auditing firms who can prove that the accounting and consulting services they provide are critically required to support any of the 28 essential services listed above, although nowhere in the regulation does it allow for this.

LABOUR RELATIONS ACT NO. 66 of 1995 REFERENCES:

The first part of the definition of essential services in the Lockdown Regulations refers to sections in the Labour Relations Act No. 66 of 1995.

Section 213 of the Labour Relations contains the following definition:

“essential service” means –

- a) *a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;*
- b) *the Parliamentary service;*

c) *the South African Police Services;*

Section 70 of the Labour Relations Act establishes the Essential Services Committee. In terms of Section 70(2) the *functions of the Essential Services Committee are:*

- a) *to conduct investigations as to whether or not the whole or a part of any service is an essential service, and then to decide whether or not to designate the whole or a part of that service as an essential service;*
- b) *to determine disputes as to whether or not the whole or a part of any service is an essential service; and*
- c) *to determine whether or not the whole or a part of any service is a maintenance service.*

Section 70(3) states that *at the request of a bargaining council, the Essential Services Committee must investigate in terms of subsection (2)(a).*

Section 71 deals with designating a service as an essential service and sets out the process that the Essential Services Committee must follow when designating a service as essential.

Section 71(8) states If the Essential Services Committee designates the whole or a part of a service as an essential service, the committee must publish a notice to that effect in the Government Gazette.

In the notices published by the Essential Services Committee, Government Gazette Notice 1216 published by the Essential Services Committee on 12 September 1997 is relevant.

Please refer to **Annexure A** for the services designated as essential services by the Essential Services Committee.

The only part of Government Gazette Notice 1216 that maybe remotely relevant to accountants or auditors is under paragraph 9(c) where it designates the finance division as an essential service but in relation to civilian personnel in the Department of Defence to support the South African National Defence Force. So again auditors/accountants who provide outsourced finance services to this entity may qualify.

Other than that, none of the services mentioned in Notice 1216 appear relevant to accounting, auditing or financial services.

It therefore appears that if accounting or auditing as a general service requires to be listed as an essential service, then there has to be an application in writing to the Essential Services Committee for this to happen or via a bargaining council as per Section 70(3) of the Labour Relations Act.

With reference to the Lockdown Regulations, **Regulation 11B**, sub-regulation 1(b) of the Final Lockdown Regulations, states:

“All businesses and other entities shall cease operations during the lockdown, save for any business or entity or entity involved in the manufacturing, supply, or provision of an essential good or service. Any place not involved in the provision of an essential good or service must remain closed to all persons for the duration of the lockdown – sub-regulation 1(e) of regulation 11B.

Sub-regulation (2) of regulation 11B states that:

“The head of an institution must determine essential services to be performed by his or her institution and must determine the essential staff who will perform those services.”

Sub-regulation (3) of regulation 11B also states that:

*“Persons performing essential services as determined in sub-regulation (2), must be duly designated in writing by the head of an institution, on a **form** that corresponds substantially with Form 1 in Annexure C”.*

Therefore, if a business does not fall under the categories mentioned by the regulation for the provision of essential goods and services then they will have to comply with the Lockdown Regulations and cease their services.

Not doing so is deemed an offence and on conviction, liable to a fine or imprisonment or both, in accordance with regulation 11G of the Lockdown Regulations.

2. Can a profession be registered as an essential service?

If a service is not listed in the Lockdown Regulations or in Section 213 of the Labour Relations Act then there is a specific process that needs to be followed in terms of Section 70 and 71 of the Labour relations Act No.66 of 1995 before a service can be considered as an essential service by the Essential Services Committee.

That process will take more than 14 days to complete, which already would be well into the lockdown period.

Both the Labour Relations Act and Lockdown Regulations refer to a service and not to a profession. The use of the word “service” in the Labour Relations Act is deliberate as only the service and not the sector, profession or industry under which the service falls, can be declared essential¹.

For example, while Police services are essential, services offered by their support staff are not essential. Therefore, in the same light, professions cannot be declared essential but only a specific service performed by the profession can be declared as such, provided it meets the requirements i.e. the interruption of the service would endanger the life, health or safety of the public.

It also appears that it is not possible for the Department of Trade and Industry (DTI) via the CIPC to register a profession as they operate on a registered company basis, that is, must be an existing CIPC registrant, when issuing a certificate to businesses that perform essential services. Please see below.

DTI and CIPC's role:

Regarding sub-regulation (3) above the DTI has indicated, in a media statement on its website dated 26 March 2020, that it can provide a form/certificate, to be issued by companies who provide essential services, for their workers to carry when travelling to and from work as required by the “Lockdown Regulations”.

¹ See the case of SAPS v POPCRU [2011] 9 BLLR 831 (CC), wherein the Court held that in designating services as essential, the Essential Services Committee must ensure that it is indeed a service or part thereof that can be declared essential and not employees, a business or industry.

DTI states:

“We have thus introduced a portal at the website run by the Companies and Intellectual Property Commission (CIPC) to log company details only where companies comply with the regulations issued by the Minister for Cooperative Governance and Traditional Affairs on 25 March 2020 in Government Notice 398 of Government Gazette No. 43148 (“Lockdown Regulations”).

Another media release dated 25 March 2020 was issued regarding businesses registering as essential service. Please refer to **Annexure B**.

The following contact details have been provided by the DTI where enterprises may contact them to clarify their status as an essential service provider – lockdownexemptions@thedtic.gov.za.

Please also refer to **Annexure C** which contains the guidelines issued by the DTI for completion of the permit to perform essential services.

Conclusion

Accounting and auditing services are not listed as essential services in terms of the Lockdown Regulations or the Labour Relations Act.

The only permissible avenue that appears available to accounting or auditing firms would be on a case by case basis where an accounting or auditing firm can prove that the consulting service that they offer is critical for the proper functioning of the approved listed essential service, for example accounting (recording of transactions) for a bank, insurance company, stock exchange or any of the other 28 listed essential services.

It also does not appear possible for a profession to be registered as an essential service. The IRBA could not find a case for external auditing or related assurance services qualifying as an essential service relevant to the 28 services listed in the Lockdown Regulations.

Potentially only non-audit services offered by accounting or auditing firms could apply, and such services would also be outside of the IRBA’s jurisdiction, making a case for the IRBA to register a profession as an essential service very difficult.

If the main concern and driving force behind the request by auditors to be categorised as an essential service is loss of income and financial distress, we would encourage auditing and accounting firms to participate in the government's financial distress assistance programmes which exist to aid those smaller accounting and auditing firms which experience financial difficulties during this period.

We also recognise that the primary objective of the Lockdown Period is to contain the spread of the virus, and that it can only be achieved by limiting movement. We therefore encourage audit and accounting firms to continue to provide their services remotely, where this is possible, and to make the necessary arrangements with their clients during the Lockdown Period.

Bernard Peter Agulhas

Chief Executive Officer

About the IRBA

The objective of the IRBA is to endeavour to protect the financial interests of the South African public and international investors in South Africa through the effective and appropriate regulation of audits conducted by registered auditors, in accordance with internationally recognised standards and processes.

ANNEXURE A

Government Gazette Notice No.1216: Department of Labour – Notice Published by the Essential Services Committee

**G O V E R N M E N T N O T I C E
G O E W E R M E N T S K E N N I S G E W I N G**

**DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID**

No. 1216

12 September 1997

NOTICE PUBLISHED BY THE ESSENTIAL SERVICES COMMITTEE

Under section 71 (8) of the Labour Relations Act, 1995 (Act No. 66 of 1995), the essential services committee hereby gives notice that—

1. it has designated the following services as essential services:
 - (a) Municipal traffic services and policing;
 - (b) municipal health;
 - (c) municipal security;
 - (d) the supply and distribution of water;
 - (e) the security services of the Department of Water Affairs and Forestry;
 - (f) the generation, transmission and distribution of power;
 - (g) fire fighting;
 - (h) the payment of social pensions one month *after* they fall due;
 - (i) the services required for the functioning of courts;
 - (j) correctional services; and
 - (k) blood transfusion services provided by the South African Blood Transfusion Service.
2. it has designated the following parts of sanitation services as essential services:
 - (a) The maintenance and operation of water-borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system;
 - (b) the maintenance and operation of sewage purification works;
 - (c) the collection of refuse of an organic nature;

- (d) the collection of infectious refuse from medical and veterinary hospitals or practices;
 - (e) the collection and disposal of refuse at a disposal site; and
 - (f) the collection of refuse left uncollected for 14 (fourteen) days *or longer*, including domestic refuse and refuse on public roads and open spaces.
3. it has designated as essential services until 31 March 1998 the following services provided by the public sector:
- (a) Emergency health services and the provision of emergency health facilities to the community or part thereof.
 - (b) nursing; and
 - (c) medical and paramedical services.
4. it has designated as essential services until 31 March 1998 the following services in support of the services referred to in paragraph 3:
- (a) Catering;
 - (b) medical records;
 - (c) security;
 - (d) porter and reception;
 - (e) pharmaceutical and dispensary;
 - (f) medicine quality control laboratory;
 - (g) forensics;
 - (h) laundry;
 - (i) clinical engineering;
 - (j) hospital engineering;
 - (k) waste removal;
 - (l) mortuary; and
 - (m) pest control.
5. it has designated as essential services the following services provided by the private sector which are funded by the public sector:
- (a) Emergency health services and the provision of emergency health facilities to the community or part thereof;
 - (b) nursing; and
 - (c) medical and paramedical services.
6. it has designated as essential services the following services in support of the services referred to in paragraph 5:
- (a) Boiler; and
 - (b) water purification.
7. it has designated as essential services the following services provided by nursing homes which are registered as welfare organisations in terms of the National Welfare Act, 1978 (Act No. 100 of 1978), to patients in need of moderate (level 2) and maximum (level 3) care:
- (a) Emergency health services and the provision of emergency health facilities;
 - (b) nursing; and
 - (c) medical and paramedical services.
8. it has designated as essential services the following services in support of the services referred to in paragraph 7:
- (a) Physiotherapy;
 - (b) dispensary;
 - (c) catering;
 - (d) laundry;

- (e) boiler;
- (f) transport; and
- (g) security.

9. it has designated as essential ~~services~~ the following services provided by the following civil personnel in the Department of ~~Defence~~ to support the South African National Defence Force:

- (a) The Secretariat for ~~Defence~~;
- (b) the Intelligence Division;
- (c) the Finance Division;
- (d) the parachute seamstresses of the South African Army;
- (e) the parachute packing operators of the South African Army;
- (f) the military intelligence functionaries of the South African Army;
- (g) the storemen in the ~~South~~ African Navy;
- (h) the provisioning officers and clerks in the South African Navy:
 - (i) the technical personnel ~~in~~ the South African Navy;
 - (j) the tugboat personnel in ~~the~~ South African Navy;
 - (k) the surveyors in the South African Navy;
 - (l) the South African ~~Medical~~ Service;
- (m) those sewing in military posts in the South African National Defence Force;
- (n) the cryptographers in the South African National Defence Force: and
- (o) the maintenance services in the South African National Defence Force.

D. PILLAY
Chairperson

ANNEXURE B



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Private Bag X84, PRETORIA, 0001 • **the dti** Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 0000
the dti Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500

MEDIA RELEASE

DATE: 25 MARCH 2020

Minister Patel Announces Essential Service Application Portal

The Minister of Trade and Industry, Mr Ebrahim Patel has announced that all businesses that will be allowed to provide essential services are required to seek approval from the Department of Trade, Industry and Competition (**the dtic**) in order for them to trade during the period of the lockdown in terms of the regulations published today by the Minister of Cooperative Governance and Traditional Affairs, Ms Nkosazana Dlamini-Zuma in Regulation Gazette No. 11062

Such businesses are required to apply to the Companies and Intellectual Property Commission (CIPC) Bizportal website at www.bizportal.gov.za and obtain a certificate from the Commission that allows them to continue trading. The Bizportal website will contain a menu icon listed as “Essential Service Businesses” through which an application can be made to the CIPC.

The application will be a simple declaration requiring minimal registration details, type of business/trade involved in, what trading name if any is used and whether it meets the requirements contained in the essential services list, the contact details of the person applying as well as the number of employees that will be working during the lockdown period.

The CIPC registry will then pre-populate the remaining company information and email a certificate stating that the business is allowed to remain trading.

The certificate can then be used as evidence to authorities requiring same that indeed the business has been given government permission to trade and that its employees are able to have unrestricted movement ONLY in the course of that trade.

It should be stressed and noted that if you make a false application to the CIPC, and are indeed not an essential service as per the government regulations, such will be taken as a fraudulent application and will render yourself as applicant liable to criminal prosecution and sanction.

This service will be available tomorrow morning 26 March 2020 at the start of business trading hours.

Enquiries:

Sidwell Medupe-Departmental Spokesperson

Tel: (012) 394 1650

Mobile: 079 492 1774

E-mail: MSMedupe@thedti.gov.za

Issued by: The Department of Trade and Industry

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ANNEXURE C

GUIDELINE FOR THE COMPLETION OF THE PERMIT TO PERFORM ESSENTIAL SERVICES IN TERMS OF THE DISASTER MANAGEMENT ACT, 2002: AMENDMENT OF REGULATIONS ISSUED IN TERMS OF SECTION 27(2) PER GOVERNMENT GAZETTE NO. 43148

1. INTRODUCTION

- 1.1 These guidelines are issued in order to assist enterprises to comply with the above Regulations.
 - 1.2 All enterprises operating within the borders of the Republic of South Africa are expected to be closed during the lockdown period.
 - 1.3 Only enterprises which produce, provide, distribute, trade or provide critical maintenance services to one or more of the listed goods and services in Annexure B of the Regulations may operate within the borders of the Republic of South Africa during the lockdown period.
 - 1.4 In addition, these enterprise **MUST** ensure that the absolute minimum number of staff necessary to safely operate these enterprises are at work during the lockdown period.
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2. MANDATORY IDENTIFICATION REQUIRED BY STAFF WORKING DURING THE LOCKDOWN PERIOD

- 2.1 All staff **MUST** at all times carry an original **PERMIT TO PERFORM ESSENTIAL SERVICE REGULATION 11B (3)**.
- 2.2 All staff **MUST** at all times carry a photo identification issued by the Department of Home Affairs.

3. NON-COMPULSORY CERTIFICATION OF ENTERPRISES THROUGH THE BIZPORTAL

- 3.1 Enterprises may register on www.bizportal.gov.za

4. CONTACT DETAILS IN THE EVENT OF ENTERPRISES WISHING TO CLARIFY THEIR STATUS AS AN ESSENTIAL GOOD OR SERVICE

- 4.1 Enterprises may contact the Department of Trade, Industry and Competition (DTIC) on lockdownexemptions@thedtic.gov.za
 - 4.2 Enterprises may call the Department of Trade, Industry and Competition (DTIC) on +27 80 000 6543 or +27 12 394 5560.
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ANNEXURE C FORM 1
PERMIT TO PERFORM ESSENTIAL SERVICE REGULATION 11B (3)

Please note that the person to whom the permit is issued must at all times carry a form of identification to be presented 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 the lockdown.

Surname				
Full names				
Identify number				
Contact details	Cell nr.	Tel nr (w)	Tel no(H)	Email-address
Physical address of institution				

Hereby certify that:

Surname	
Full names	
Identity number	

Signed at-----on this the----- day of -----2020

Official stamp of the institution

 Signature of Head of institution