

South Africa

Legislative & Directives

On 15 March 2020 a national state of disaster was declared in South Africa in terms of the Disaster Management Act 57 of 2002 ("the Act"). In terms of the Act, various regulations were promulgated and declarations and directives issued in response to the national state of disaster, aimed at reducing and ultimately eliminating the spread of COVID-19 in the country.

General Impacts

Pursuant to the Declaration of a National State of Disaster, on the evening of 23 March 2020 President Cyril Ramaphosa announced the enforcement of a nation-wide lockdown for 21 days with effect from midnight of Thursday, 26 March 2020, until midnight of Thursday 16 April 2020.

In terms of the lock down, every person is confined to their place of residence, unless they need to perform an essential service, obtain essential goods or services, collect a social grant, pension or seek emergency, life-saving, or chronic medical attention.

Essential services include all functions that are necessary to maintain the functioning of a financial system, such as the banking environments and financial markets. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners (to a limited extent) required for those services are also considered an essential service.

On the issue of transportation, all the country's borders are closed during the lockdown period, except for designated ports of entry in order to transport fuel, cargo and goods during the lockdown period.

All commuter transport services including passenger rail services, bus and taxi services, e-hailing services, and all commuter maritime and air passenger transport are prohibited. However, bus and taxi services, e-hailing services and private motor vehicles that are being used to render essential services, obtain essential goods or services, seek medical attention, funeral services and for collecting payment of grants and pensions are permitted, but subject to capacity restrictions.



Courts

- The Courts in South Africa remain open during the National Lockdown to enable access to courts in relation to any urgent matter, bail applications, maintenance and domestic violence related matters and cases involving children issues.
- The courts are also limiting the number of people permitted to enter the courts in order to enforce social distancing. Importantly, anyone who has had contact with or exposed to people who have tested positive for COVID-19, or been in contact with or exposed to people from high risk countries are prohibited from entering a court during the state of national disaster. Civil cases that are not identified as urgent and essential services are not allowed to be placed on the court roll during the lockdown period.
- However, Heads of courts do retain the discretion to authorise the hearing of matters through teleconference or videoconference or any other electronic mode. Legal Practitioners are urged to consult the Directives of each Court / division of each Court for full details as to how the individual Courts / divisions of Courts are operating. Service of process and execution of writs by sheriffs are limited to cases which are urgent and essential, such as the service of process relating to claims which are prescribing, and the service of urgent court process relating to court hearings scheduled during the period of lockdown.
- On 1 April 2020 the Department of Justice and Constitutional Development issued a statement advising that essential justice services will be available at Courts only between 10h00 and 13h00 daily during the lockdown period. The statement further advised that persons who have matters on the court rolls that are not urgent must stay home and not attend Court during the lockdown period, and that the courts will advise of the new dates to which their matters are postponed.
- Legal practitioners who are engaged in litigation during the lockdown must obtain a permit authorising them to do so from the Legal Practice Council, and such permit can only be issued if the practitioner is appearing in a matter that is classified as urgent.
- On 2 April 2020 the Judge President of the Gauteng Division of the High Court issued a directive clarifying the fact that the lockdown period does not constitute dies non, i.e. the lock down period does not constitute a period where no legal process can be served. It is important to note that this Directive is only applicable to the Gauteng divisions of the High Court.

Arbitration Centres

On 16 March 2020 the Arbitration Foundation of Southern Africa ("AFSA") published a declaration offering their advanced facilities to host long distance meetings and hearings by way of video conferencing. AFSA also advised the Judge President that it will extend this offer to use their facilities to litigation matters where the need for long distance participation may arise.

During the lockdown all AFSA staff will be working remotely and will be available to assist parties in ongoing matters.

Force majeure

In South Africa, force majeure is a creature of contract and must be expressly referred to and defined in an agreement. A typical force majeure clause will prescribe a list of events beyond the parties' control that can render performance impossible. However, if an agreement does not contain a force majeure clause, or if such clause does not make provision for specific circumstances that will prevent performance by a party, then the parties will have to rely on the common law principle of supervening impossibility of performance.

To uphold a defence based on supervening impossibility, the South African common law position is that the impossibility: (1) must be absolute or objective as opposed to relative or subjective; (2) the parties must not have had reasonable foresight of the event causing impossibility at the time the agreement was concluded; (3) must relate to contractual obligations and not to objectives of, or reasons for entering into, the contract.

In determining impossibility our courts will look into the nature of the contract, the relation of the parties, circumstances of the case, and the nature of the impossibility invoked by the defendant to see whether the contract will be discharged. Importantly, the fact that the force majeure has made it uneconomical for a party to carry out its obligations does not mean that performance has become impossible.

Courts

Non-essential persons have been restricted from attending court proceedings to reduce overcrowding in courts. The judges/magistrates have been urged to give bail to reduce congestion in remand prisons.

Force majeure

The Law of Contract Act, Cap 345 of the laws of Tanzania provides under Section 56 (2) that once a contract becomes impossible to perform, at neither of the parties' cause, then the contract is rendered void.

This provision basically covers for force majeure. In our experience, force majeure must be expressly raised and communicated to the other party in writing. This will depend on the procedure expressly stipulated to the relevant party on how to declare force majeure. Failure to raise it at the earliest opportunity available (especially if the Government is a party) may lead to refusal of the force majeure claim – especially if the force majeure no longer exists and may lead to penalties being applied to the contractor.

General impacts

In Tanzania on 2 April, 2020 the Ministry of Home Affairs Immigration Services Department through a press release to the general public granted a free extension (1-3 months) to foreign residents and visitors.

The extension applies to those who because of Covid-19 could not travel and their passes, permits or certificates have expired or are about to expire.

For more information and further insight into the impact of Coronavirus, please visit our [Coronavirus Information Hub](#) or contact us directly if you have any questions or if you would like our assistance