

There have once again been many confusing and contradictory statements over the last 72 hours relative to the amendments to the shutdown regulations especially as to how they affect the movement of non-essential cargo. These areas still require clarifications this morning as we are seeing ports, shipping lines and authorities still contracting each other in the practical application of the regulations and their interpretation on what can and cannot be done with non-essential cargo. Please be assured that SCT is working hard within a number of forums to try and ensure clarity to processes and ensure compliance with the law and we will update you asap. Perhaps the clearest and most definitive explanation to the laws as well as the grey areas requiring interpretation and clarity has come from our freight forwarders association SAAFF in the attached circular distributed Saturday. We extract below from this article their concluding remarks:

Extract from above SAAFF circular

THE MEANING OF THE REGULATION

The lockdown regulations and the various directives issued pursuant thereto, have all been prepared in haste, for obvious reasons. Because of this, our view is that a robust interpretation is called for. Given the context in which this regulation arose, it seems safe to conclude that the regulation means exactly what it says it does.

It will have been observed that in this regulation too, there is no reference to essential cargo – only to cargo. This means that all cargo – irrespective of whether it consists of essential or non-essential goods – can be transported out of the port area, once customs cleared, to its intended destination.

Some caveats are in order.

There is some speculation as to what the phrase “intended destination” might signify. We understand “intended destination” to mean no more than a destination to which a member wishes to deliver the cargo, provided that the destination is one which is permissible within the context of the lockdown regulations. By way of example, the lockdown provides for all businesses and other entities to cease operations during the lockdown, unless involved in the manufacturing, supply, or provision of an essential good or service. The regulations also state that 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. Plainly, most business premises will (or should) be closed during the lockdown. It would accordingly not be possible, in so far as those businesses are concerned, for cargo to be delivered to their premises. What we need to be very clear on is that the regulation does not provide justification for a business

which is closed to re-open its premises for the purposes of receiving the cargo. It will accordingly be necessary – in most cases – for cargo to be stored for the customer until the lockdown is over.

Further, the regulation cannot be extrapolated to mean that, once delivered to destination, the goods can then be handled and/or on-carried. This regulation aside, logistics, transport and delivery are still only permitted in relation to the rendering of essential services – as envisaged by category B24 of Annexure B to the lockdown regulations. The most important of these is of course the production and sale of essential goods.

What is still not clear is how the cargo is to be sanitised and disinfected, as required by the regulation. Quite apart from the actual need for cargo to be so sanitised and disinfected (which we are not qualified to express an opinion on) the regulations do not say how this is to be achieved, or who is responsible for doing so. We have also been unable to establish whether there are any government-sanctioned protocols in this regard. There is some indication in the directives made by the Minister of Transport (although it is by no means clear) that it is the licensed port and air service operators who will be responsible for doing so. Until there is clarity on this aspect, we expect that the usual precautions will continue to be taken (such as disinfecting/wiping the handles on the container doors).

CONCLUDING REMARKS

What is just as important as a correct understanding of the regulation, is how the SAPS and other parties will respond to it. The initial reports which we have received in this regard suggest that the SAPS are on-board and that they will not seek to prevent the movement of non-essential cargo from the ports. Members are encouraged to co-operate with the SAPS and to report any difficulties to the SAAFF board.

There are reports that at least one carrier intends to adopt the stance that only containers containing essential goods may be released. It is to be hoped that it will be dissuaded from this interpretation which is clearly at odds with the plain meaning of the regulation.

Members should also be alive to (and resist) attempts by their customers to subvert the regulations, thereby exposing members to possible criminal charges and the withdrawal of their operating certificates. Members are reminded of their obligations in terms of the SAAFF code of ethical conduct. Finally, although this circular has been drafted with legal input, it has of necessity been put together under severe time constraints, in the interests of providing direction and guidance to members; it does not constitute legal advice as such.

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