

7 April 2020

EXPLANATORY NOTE

TRANSPORTATION OF CARGO (COVID-19)

(Amendment of Regulation 11B(1)(a)(iii) to the Disaster Management Act, 2002)

Purpose

This Explanatory Note relates to the Customs Practice Note on the Transportation of Cargo (COVID 19) published on the SARS webpage on 06 April 2020 and provides further information in respect thereof.

Background

The amendment to regulation 11B(1)(a)(iii) of the Regulations to the Disaster Management Act, 2002 on 02 April 2020 was made for purposes of relieving congestion at ports of entry. It allows for the evacuation of cargo from congested ports and port facilities and their subsequent movement across metropolitan and district areas – an action previously prohibited prior to the amendment.

Detailed explanations

1. The “intended destination” of the cargo

The following provisions in the amended regulations published on 02 April 2020 are relevant in providing context:

11B(1)(a) For the period of lockdown -

(i) Every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, pension or seeking emergency, life-saving or chronic medical attention.

(ii) ...

(iii) movements between provinces and between metropolitan and district areas is prohibited except –

(aa) ...

(bb) transportation of cargo from ports of entry to their intended destination, on condition that necessary precautions have been taken to sanitise and disinfect such cargo;

11B(1)(b) All businesses and other entities shall cease operations during lockdown, save for any business or entity involved in the manufacturing, supply or provision of an essential good or service.

In reading the regulations, it is important to provide for the movement of cargo, whilst also complying with the overarching objective of the lockdown. It is therefore vital to ensure that in moving goods from the port of entry to

their intended destination, paragraphs 11B(1)(a)(i) and 11(1)(b) prohibiting the movement of people and operations of business, unless as it relates to essential goods and services, are complied with.

Normal trade practices

Under normal trade practice, imported cargo is consigned to a seaport, airport or train station in South Africa based on a transport contract concluded by the shipper with the relevant carrier and evidenced by a bill of lading, air waybill, rail consignment note, etc.

All cargo imported and landed in the Republic may be removed in bond to any place in the Republic appointed as a place of entry.

This bonded movement is subject to Customs control, which means that the cargo may only be removed on the basis of a suitable customs clearance (Removal in Bond), and release, or by an approved container operator based on a manifest (reflecting the details of the underlying transport document). The physical movement also takes place between facilities designated or licensed for that purpose (e.g. terminals and depots).

For example, a Full Container Load (FCL) of cargo, discharged and landed in Durban and consigned by the shipper to an importer situated in Johannesburg, is removed by an approved container operator from the Durban Container Terminal (DCT) and delivered to City Deep, as either the port of destination as per manifest or the end destination of the Removal in Bond (RIB) transaction. On presentation of a valid customs clearance and release, the approved container operator will instruct the City Deep terminal operator to release the container to the importer.

In the case of a LCL or FCL (Groupage) container containing consignments for multiple consignees situated in Johannesburg, the approved container operator will deliver the container to a licensed customs container depot serving City Deep. The contents of the container will then be unpacked and delivered to the various consignees on presentation of the required customs clearance and release.

Practices during the lockdown period

As outlined in the above-mentioned regulations, non-essential cargo cannot be delivered to the importer or consignee. It is therefore our interpretation that the carrier or depot operator should secure such cargo in their facilities as the intended destination for the purpose of complying with the regulations. This is in line with 11B(1)(b) that non-essential businesses “...shall cease operations during lockdown...”. It is also not for SARS to dictate the mode of transport; however, we are of the opinion that it should be in line with the broader provisions and requirements of the regulations.

You are also referred to the powers assigned to the Minister of Transport in this regard through the amended regulation dated 2 April 2020 – Regulation 3(d) sub regulation (6)(c) which provides: “The Cabinet member responsible for transport may issue directions with regard to sea cargo operations and air freight operations.”

2. The impact of the lockdown in terms of essential services and essential goods

The point of departure in this regard is again 11B(1)(b) which states that *“All businesses and other entities shall cease operations during lockdown, save for any business or entity involved in the manufacturing, supply or provision of an essential good or service.”*

Whilst goods may be moved from ports of entry where landed to other places of entry in the Republic, they may not be delivered to consignees who are not rendering an essential service or dealing in essential goods, as set out in Annexure B to the regulations.

3. What happens to non-essential goods?

Until such time as the lockdown periods ends, or any further amendment to the Regulations are made that allows for the delivery of non-essential goods to consignees, such goods must be stored in temporary storage facilities (e.g. container depots, sea or air transit sheds, air de-grouping depots, railway stations, etc.).

As a result, the entities exercising release controls on behalf of SARS (e.g. container operators/carriers, container depots, sea or air transit sheds, air de-grouping depots, railway stations, etc.) may not allow the delivery of non-essential cargo to any consignee. Deliveries in this regard will be in contravention of regulations and this may attract penalties as outlined in 11G of the regulations.

4. What happens if such temporary storage facilities also become congested?

SARS will approve the premises of certain trade intermediaries for the temporary storage of such goods that it deems secure and appropriate for such purpose – see paragraph 5 of the referenced Customs Practice Note.

Trade intermediaries are role-players in the supply chain such as container operators and carriers who currently have a responsibility to SARS regarding the lawful movement and release of cargo. In this regard, actions by SARS relating to the approval of the premises of trade intermediaries for the temporary storage of goods will be informed by its responsibility to safeguard cargo and to act in accordance with the regulations.

Trade intermediaries, as defined in the paragraph above, who wish to have their facilities approved for the temporary storage of cargo may submit an application to SARS via e-mail to osc@sars.gov.za on a company letterhead. Any such application must be able to show that there is a pressing need for the approval to be granted based on the volumes experienced at existing storage facilities (e.g. terminals, transit sheds and licensed depots). Approval will be subject to such conditions that SARS may impose generally, or in a specific case, including requirements relating to the distance of the facility from the office concerned in order to ensure proper operational oversight, the status of the cargo (e.g. customs cleared), as well as measures to safeguard the cargo and prevent the unlawful release thereof.