

COVID-19: Decoding “Essential Services” during the Lockdown Period

Introduction

On 24 March 2020, the Ministry of Home Affairs issued an order imposing a 21-day lockdown of the entire country as a preventive measure to stop the spread of COVID -19. The lockdown announced by the Government mandates that while all commercial operations shut down, the Government left out a silver lining for “Essential Services.”

This newsletter focuses on examining what qualifies as “Essential Services” and what industries and particular operations have been deemed to be “Essential” to operate during the 21-day lockdown.

Central Lockdown Order

On 24 March 2020, the Central Government, through the Ministry of Home Affairs, issued an order under the Disaster Management Act, 2005 to trigger a 21-day lockdown of the entire country (“**Central Lockdown Order**”). This order issued a comprehensive guideline outlining the services that shall remain operational during the 21-day lockdown period. As expected, the order created some exceptions for state bodies such as defence, police, basic utilities, and municipal operations, hospitals and all related medical establishments, including private establishments. Further, on 25 March 2020, the Central Government issued an addendum to the guidelines and added certain mining activities, pharmaceuticals and cargo operations. In addition to the orders issued by the Government, the Central and State Governments have published standard operating procedures to ensure the functioning of certain sectors that are essential. An industry-wise analysis is provided below for a deeper understanding.

Prior to the Central Lockdown Order, the Secretary of the Department of Consumer Affairs on 20 March 2020 issued a letter stating that on account of several State Governments issuing lockdown orders, it is likely to result in the disruption of the supply chain of goods, especially e-commerce which was critical in the present situation and thereby requested that the State Governments create an exception for e-commerce and logistics to ensure there is no disruption of services or panic amidst citizens. Further, several State Government had also issued lockdowns orders/ notices under the Epidemic Diseases Act, 1897 prior to the issuance of the Central Lockdown Order.

Impact of lockdown on key industries

Logistics, Supply Chain and Warehousing industries

The Central Lockdown Order had initially limited the operation of the logistics industry by restricting the transport to essential goods only, whereas cold storage and warehousing and

transport of essential goods had been exempted from lockdown. However, an order dated 29 March 2020 amended the Central Lockdown Order thereby allowing the transportation of all goods without distinction.

Healthcare and pharmaceutical industry

The Central Lockdown Order does not provide for any restrictions on the healthcare industry. Therefore, hospitals, private clinics, dispensaries, nursing homes, veterinary hospitals, laboratories, etc. may function regularly.

Furthermore, the pharmaceutical industry (raw material sourcing, manufacture, production and distribution), along with entities engaged in the manufacturing of medical equipment, shall also remain unaffected.

Petroleum, coal and power industry

As per the Central Lockdown Order, the retail and storage of petroleum (including LPG, CNG and PNG), mineral production, transportation and incidental activities of the coal industry have been exempted.

Furthermore, the generation, transmission, distribution and service of power has been exempted from the lockdown. Therefore, the power sector may not suffer significant repercussions of lockdown.

Hospitality industries

As per the Central Lockdown Order, hotels, homestays, lodges and motels may be able to operate in a limited manner by accommodating tourists, persons stranded due to the lockdown, medical and emergency staff and air and sea crews. Further, hotels that have been earmarked for quarantine facilities are also permitted to function.

Manufacturing

The manufacturing industry may have to absorb some impact as non-essential manufacturing has been prohibited during the lockdown period and manufacturing has been permitted for essential goods, drugs, pharmaceuticals, packaging materials, medical equipment, their raw materials and intermediates only.

Entities engaged in continuous production of goods would have to obtain prior permission from the respective State Government for them to continue to operate during the lockdown period.

IT/ ITES services

The order gives specific direction that information technology services that are required for essential services are exempt from lockdowns. It has been advised that wherever possible work from home is to be resorted to.

E-commerce

Operations under e-commerce have been confined to the delivery of essential goods that include food, pharmaceuticals and medical equipment.

Other industries

Several other industries such as private security, banking, insurance, capital market and debt market services, packaging industry and data and call centres (government activities only) may function during the period of lockdown.

Comment

It is important that companies that are permitted to function as per the Central Lockdown Order only operate during this lockdown period. It is advisable that for anything which is not specifically permitted under the Central Lockdown Order, the companies should seek prior permission from the Central Government/ respective State Governments prior to operating.

This is imperative as the Central Lockdown Order also provides for offences by companies by which any person who is, in charge of, and is responsible to, the company, for the conduct of the business of the company shall be deemed to be guilty along with the company for any contravention of the Central Lockdown Order and can be proceeded against. The onus would be on the person concerned to demonstrate that he has exercised due diligence, or the offence was committed without his knowledge. Imprisonment for non-compliance with the Central Lockdown Order may attract imprisonment extending to one year and/ or fine. In case of such non-compliance leading to loss of lives, the imprisonment period may extend to even two years.

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