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## India: Lockdown 2.0: MHA Notification Dated April 15, 2020 – Some Ambiguities and Discrepancies Persist While New Ones Crop Up.

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The Ministry of Home Affairs ("**MHA**") issued an order on April 15, 2020 containing the revised consolidated guidelines on the measures to be taken by the Central and State Governments for containment of COVID 19 ("**Revised Guidelines**").

The order / Revised Guidelines specify the economic activities which will be permitted after April 20, 2020 (except in containment zones).

As per the press release issued by the Government, the relaxations are aimed at:

*"ensuring that agricultural and related activities remain fully functional, the rural economy functions with maximum efficiency, employment opportunities are created for daily wage earners and other members of the labour force, select industrial activities are allowed to resume their operations, with adequate safeguards and mandatory standard operating protocols (SOPs)..."*

While the objectives of the Revised Guidelines are rational, the following ambiguities and discrepancies need to be addressed at the earliest:

The meaning of the term 'essential goods' continues to remain ambiguous. While there is a broad consensus that groceries, pharmaceutical products and hygiene items are 'essential', the interpretation with respect to other has varied from State to State and even in different districts within the same State. It is imperative that the Central Government issues a specific list of essential items to bring clarity and uniformity.

The original lockdown guidelines issued in March allowed IT & ITES establishments supporting essential services to operate without any restriction as to the number or

percentage of staff who could continue to work though with a caveat that they should work from home as far as possible. The Revised Guidelines permit IT & ITES establishments to work with up to 50% strength without making any distinction between the IT & ITES establishments which support essential services and which do not. The Revised Guidelines may therefore prove to be more restrictive for IT & ITES establishments which support essential services rather than allowing them any relaxation.

E-commerce companies are allowed to operate as per Paragraph 14(v) of the Revised Guidelines\*. The March 2020 guidelines allowed e-commerce companies to deliver only essential goods. Therefore, it is reasonable to conclude that they can now deal in all kinds of goods as the Revised Guidelines do not contain any restriction as to the nature of goods. However, it may have been more prudent to allow e-commerce companies to continue to deliver only essential goods. This is further reinforced by the recent incident of a pizza delivery boy in Delhi being infected with COVID 19 leading to 72 families and 17 other delivery boys being quarantined. Nevertheless, it is a plausible argument that we cannot live in a complete shutdown forever and it is necessary to allow normal economic activity to resume. On this issue, it may be pertinent to refer to the following statement made by the Hon'ble Prime Minister on April 14, 2020:

*"If we see the nationwide lockdown purely from an economic perspective, then it will surely appear to be a costly decision. But the cost is of no comparison when compared to the importance of human life."\**

Construction of medical / health infrastructure as well as certain other construction activities as listed in paragraph 16 of the Revised Guidelines would be permitted from April 20, 2020 onwards. However, the Revised Guidelines do not specifically allow transportation of construction materials. It needs to be clarified that the reference to goods / cargo in paragraph 12 of the Revised Guidelines includes construction materials. In the alternative, the Revised Guidelines may be amended to incorporate transportation of construction materials as a permitted activity.

As per paragraph 16(iii) of the Guidelines, construction projects within the limits of municipal corporations and municipalities may be continued where workers are available on site and no workers are required to be brought from outside. In the present circumstances, where most of the migrant labourers have left construction sites, there was no rationale for the haste in allowing non-essential construction projects to continue. The relaxation may in fact prompt certain construction contractors to unauthorisedly bring labourers to the site from nearby States in violation of the lockdown orders.

The Revised Guidelines provide that all facilities in the supply chain of essential goods shall be allowed to operate without any restriction on their timing of opening and closure. However, it is not clear whether the timing restrictions stipulated in the concerned Shops and Establishments Act would apply. It may be a plausible interpretation that the Shops and Establishments Act restrictions would not apply in the current unprecedented times. Nevertheless, it is possible for the labour authorities to contend that while there are no specific restrictions under the Revised

Guidelines, they do not dilute the provisions of the Shops and Establishments Act. Accordingly, a specific clarification on this aspect may be required.

### **Parting Thoughts**

India can neither afford a massive outbreak of COVID-19 nor the cost of a prolonged lockdown. Therefore, a gradual and systematic lifting of the lockdown is the only way forward. In the wake of the aforesaid, the relaxation of the lockdown vide the Revised Guidelines is a welcome step. The earlier lockdown guidelines were amended on several occasions and the Government seems to be amenable to suggestions and to learn from experience. It is hoped that the above mentioned ambiguities and discrepancies will also be resolved sooner rather than later.

*\*This Article was first published on April 18, 2020. Subsequent to the same, the Ministry of Home Affairs, Government of India has amended the Revised Guidelines vide notifications dated April 19, 2020 whereby e-commerce companies are allowed to operate only for essential goods as under the original guidelines issued in March 2020.*

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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