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Guidance note on the Joint Directive and the Call Centre Directions

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The Minister of Health and the Minister of Trade, Industry and Competition issued the Call Centre Directions applicable to call centres providing essential services during the Lockdown Period. The Call Centre Directions prescribe the precautionary protective measures to be taken by call centres in light of the COVID-19 pandemic. The extent to which the Call Centre Directions are applicable to financial institutions has caused some confusion within the financial sector as they provide different protective measures to those set out in the Joint Directive issued by the FSCA and the Prudential Authority. The FSCA and the Prudential Authority have thus issued a Guidance Note to clarify the confusion that has arisen.

1. **Background**

On 9 April 2020, the Minister of Health and the Minister of Trade, Industry and Competition (the "**Ministers**") issued Directions regarding call centres providing Essential Services[1] ("**Call Centre Directions**") with regard to measures to prevent the spread of the COVID-19 virus in call centres[2]. The Call Centre Directions classified certain services that are rendered via call centres as Essential Services[3], including financial services.

Separately, the Financial Sector Conduct Authority (the "**FSCA**") and the South African Reserve Bank's Prudential Authority (collectively referred to as the "**Authorities**") issued a joint directive[4] (the "**Joint Directive**") which dealt with appropriate precautionary measures to be put in place by financial institutions[5] performing essential financial services. Essential financial services include services necessary to maintain the functioning of the financial system such as the banking environment, payments environment, financial markets, insurance environment, savings and investments environment, pension fund administration and medical schemes administration.[6] The Joint Directive also covers financial services provided by call centres during the period for which South Africa is subject to a national lockdown (the "**Lockdown Period**").[7]

Both the Call Centre Directions and the Joint Directive are covered in prior notes published by Werksmans. They are both binding[8] and in force for the duration of the Lockdown Period.

Financial institutions that render essential financial services through call centres ("**Relevant Financial Institutions**") have been uncertain as to whether or not they are required to comply with both the Call Centre Directions and the Joint Directive. Relevant Financial Institutions have, further, encountered difficulty in determining the manner in which to comply with both the Call Centre Directions and the Joint Directive as each imposes different requirements. For example, the Call Centre Directions require that health and safety officers must take and record the temperatures of each employee at the start of each shift and every four hours during a given shift. If an employee has a temperature which exceeds 37.5 degrees, s/he must immediately be isolated to a different room and a second temperature check should be done. If the second record also exceeds 37.5 degrees, the employee must be provided with a surgical mask and sent home for quarantine. The Joint Directive, on the other hand, provides that the necessary protocols for temperature screening of all persons entering and leaving the business premises must be conducted but does not set out the process to be followed. Additionally, the Joint Directive simply provides that all reasonable steps must be taken to ensure that all employees with mild or severe COVID-19 symptoms are identified, tested and required to stay home.

The Authorities have now issued a guidance note[9] (the "**Guidance Note**") intended to clarify how Relevant Financial Institutions are to remain compliant during the Lockdown Period.

2. **The Guidance Note**

Whilst the Guidance Note clarifies some issues it also raises further questions.

The Guidance Note provides that Relevant Financial Institutions are required to comply with both the Call Centre Directions as well as the Joint Directive. This suggests that a Relevant Financial Institution must comply with both the Call Centre Directions and the Joint Directive in all of their premises and not only in premises where the Relevant Financial Institution's call centres are housed.

The Guidance Note, however, also states that "financial institutions that operate within the ambit of both the Call Centre Directions and the Joint Directive, as a result of shared facilities … are required to comply with the more onerous requirements between the Call Centre Directions and the Joint Directive." This wording suggests that a Relevant Financial Institution would only need to apply the more onerous of the requirements set out in the Call Centre Directions and the Joint Directive on premises and in offices occupied by a Relevant Financial Institution in which both the call centre and other operations of the Relevant Financial Institution's business share facilities.

In our view, the Guidance Note should be interpreted to mean that Relevant Financial Institutions are, in principle, subject to both the Call Centre Directions and the Joint Directive. A Relevant Financial Institution, however, is only expected to apply the more onerous of the requirements set out in the Call Centre Directions and the Joint Directive in respect of its call centre operations and not all of its operations.

Where Relevant Financial Institutions have already taken steps to implement the requirements in the Call Centre Directions, these steps may remain in place in order to mitigate any additional financial or operational strain on these financial institutions.

3. **Commencement and duration**

The Guidance Note is effective as of 19 April 2020 and will remain effective for the duration of the Lockdown Period and any extension thereof.

4. **Breach of The Guidance Note**

The Guidance Note is binding[10] and a contravention of its terms would amount to a contravention of the Call Centre Directions and the Joint Directive (as the case may be).

Any individual or financial institution who is in breach of its provisions shall be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment[11].

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[1] Regulation 459 as published in Government Gazette no 43224 in terms of the Regulations made under section 27(2) of the Disaster Management Act 57 of 2002 (published by Government Notice No. 459 of 9 April 2020) (the "**Regulations**").

[2] The details of the Call Centre Directions are set out in the Update sent by Natalie Scott and Kyra South.

[3] Item 3.3 of the Call Centre Directions.

[4] Directive published in terms of Regulation 11B(4A)(e)(i) of the Regulations, as discussed in the Financial Services Sector Update 5 sent on 17 April 2020.

[5] As defined in section 1 of Act 9 of 2017.

[6] Item B.3.1 of Annexure B to the Regulations.

[7] On 15 March 2020 the President declaring the outbreak of COVID-19 in South Africa as a National State of Disaster. On 23 March 2020 he announced that the country (including all businesses other than essential services) would be placed in a period of shutdown as from 27 March to 16 April 2020 and in a further announcement on 9 April 2020 the President extended the lockdown until the end of April 2020 ("**Lockdown Period**").

[8] Regulations 10(1)(a), 11B(4A)(b) and 11B(4A)(e)(i) of the Regulations provides that the Ministers and the Authorities may issue directions to address, prevent and combat the spread of COVID-19.

[9] Guidance Note in terms of Regulation 11B(4A)(e)(ii) of the Regulations.

[10] Regulation 11B(4A)*(e)*(ii) of the Regulations provides that the Authorities may issue guidance and other directives in relation to the performance of essential financial services in terms of these Regulations.

[11] Regulation 11G of the Regulations.

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