

COVID-19 - Manufacturing of Essential Goods in India

On March 24, 2020 the Government of India announced a nation-wide lockdown to prevent the spread of Covid-19. This was followed by an order of the Ministry of Home Affairs (“**Ministry**”) to take effective measures to prevent the spread of Covid-19 while ensuring supply of essential goods and services, valid for a period of 21 days. The Order did not contain any clarity on transport of workers or how essential goods and services would be supplied. Addressing this loophole, the Ministry issued certain ‘Guidelines’, providing details on scope of the lockdown.

Two addendums to the Guidelines have since been issued by the Ministry, to provide more clarity to the public on applicability of Order and what categories are exempted.

The Guidelines note that ‘***Industrial Establishments will remain closed***’, with the following exceptions:

- a. Manufacturing units of essential goods, including drugs, pharmaceutical, medical devices, their raw material & intermediates;
- b. Production units, which require continuous process, after obtaining permission from the State Government;
- c. Coal and mineral production, transportation, supply of explosives and activities incidental to mining operation;
- d. Manufacturing units of packaging material for food items, drugs, pharmaceutical and medical devices;
- e. Manufacturing and packaging units of fertilizers, pesticides and seeds.

The five categories of industrial establishments mentioned above are exempted from the lockdown requirements.

The first exemption pertains to manufacture of ‘*essential goods*’. But what does ‘*essential goods*’ comprise of? The answer is not straight-forward, unless the goods squarely fit in one of the categories provided under the Schedule to the Essential Commodities Act, 1955 (“**Act**”).

The Schedule to the Act identifies the following goods as “*essential commodities*”:

- a. Drugs, as defined in the Drugs and Cosmetics Act, 1940;
- b. Fertilizer, whether inorganic, organic or mixed;
- c. Foodstuffs, including edible oilseeds and oils;
- d. Hank yarn made wholly from cotton;
- e. Petroleum and petroleum products;
- f. Raw jute HI jute textiles;
- g. (i) seeds of food-crops and seeds of fruits and vegetables;
(ii) seeds of cattle fodder; and
(iii) jute seeds.
- h. Masks (2ply & 3ply surgical masks, N95 masks) & hand sanitizers (*inserted vide the Essential Commodities Order, 2020*).

Thus, if you are in the industry of manufacturing essential commodities mentioned above, your facility may be exempted from the lockdown orders. However, there are several factories and plants in India manufacturing raw materials, products and equipment, intermediaries which need to be delivered to other factories for manufacturing essential goods. Are they also exempted? The Ministry, through several addendums and State, through their own notifications have tried to address the situation as much as possible. The Guidelines include an exemption for manufacturing of '*raw material & intermediates*' as well. However, not everything is black and white, when it comes to supplying equipment/services for the production of essential goods, a grey area still exists!

In addition to the above, the Ministry also published Standard Operating Procedures for maintaining supply of essential goods. The Standard Operating Procedures were published for smooth functioning of small local retail shops, large organized retail stores and e-commerce and constituents of the supply chain regarding restaurants (supplying home delivery of cooked food items), facilities for storage, transporters of essential goods, manufacturing units of essential goods.

If you are not clear on whether your facility falls within the exemptions, the Guidelines provide that the District Magistrate will deploy appropriate authorities in the local jurisdictions, responsible for implementing the measures specified in the Guidelines and grant passes for enabling essential movements. The Guidelines further clarify that all enforcing authorities should note that the strict measures imposed during the lockdown fundamentally relate to the **movement of people and not to that of essential goods**. Thus, the relevant authorities may be approached for seeking clarity on the status of your industry/factory/plant. It may also be prudent to approach the local police station for hassle-free functioning of the exempted facility.

While seeking a clarification, be sure to keep certain details handy:

- (i) Details pertaining to the production/manufacture of essential commodities, or their raw material and intermediates;
- (ii) Details of the location of the factory and its employees; and
- (iii) In case the facility manufactures raw materials or intermediates, details of the companies that it is supplying to and evidence that such companies produce essential commodities;

In addition to this, facilities manufacturing essential commodities should also peruse the notifications issued at the state level to identify the relevant authorities to approach in case of any hassle or query.

Additionally, the Ministry of Micro, Small and Medium Enterprises of the Government of India has requested suppliers of medical supplies and auxiliary supplies to register as a supplier in the Government E-Market Place. The request as well as the list of items required for supply are at the following link: <http://jan-sampark.nic.in/campaigns/2020/26-Mar/MSME/index.html>.

But this is not enough, while the Government has also contemplated scenarios to exempt the manufacture and supply of essential goods, their raw materials and intermediates, how does one dispatch it? The Guidelines and

Addendum also address these issues pertaining to transport. **All transport services—air, rail, roadways have been suspended** with few exceptions:

- Emergency Services;
- Operations of Railways, Airports and Seaports for cargo movement, relief and evacuation and their related operational organizations;
- Inter-state movement of goods/cargo for inland and exports (*Factories and plants exporting essential goods and commodities can continue to do so*)
- Cross land border movement of essential goods including petroleum products and LPG, food products, medical supplies;
- Intra and inter-state movement of harvesting and sowing related machines like combined harvester and other agriculture/horticulture implements

These measures introduced by the Indian Government for continued manufacture and supply of essential goods and services and operation of factories, while keeping in mind the health of factory workers and business, is laudable. The Government has also introduced several other measures focusing on employees and introduced various reforms, which we will discuss in a separate piece.

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Disclaimer:

1. *The present alert has been issued in the form of a summary and interpretation of the Ministry's Guidelines with respect to essential commodities. Please note that the same does not constitute legal advice.*
2. *This is based on information generally available in public domain as on March 30, 2020. Each State may have different exceptions and procedure to implement lockdown.*
3. *The practical steps may differ in each State depending on the facts and circumstances*

For any further information or legal advice, please feel free to contact us.