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WHAT IS AN "ESSENTIAL ENTERPRISE" CARRIAGE SERVICES, FORWARDING AND SHIPPING DURING THE LIMITATIONS OF CORONA

Apart from a port and railway line separating the Carmel and the Sea the British Mandate over Palestine left a "legal legacy" for the new State of Israel, being the "emergency regulations" and the "health ordinance".

Dr. Yael Berda, assistant Professor of Sociology and Anthropology at the Hebrew University in an article entitled "managing dangerous populations" describes that between the First and Second World Wars the British Regulations" as a central means used by the Colonial Authorities for "population management".

As the British Attorney General opposed the declaration of a "state of emergency", the Governors of the British Colonies used a set of "emergency regulations" following from the "Defence of the Realm Act, 1914", thereby limiting movement and activity in the British Colonies and thereby controlling local the local populations by means of the Attorney General's use of the abovementioned mechanism.

In India, between the two World Wars, British Emergency Laws distinguished between those who were "loyal" and "co-operative" and those suspected of being hostile to and the enemies of the State. Accordingly, in Palestine, at the time of the outbreak of "Arab" riots, the British (who controlled Palestine at the time) promulgated Emergency Regulations and from 1936 imposed a military regime which continued until 1939.

In 1945, with the outbreak of the opposition by the Jewish inhabitants against the British Authorities, the British promulgated "Emergency Regulations", replacing the previous Regulations.

In 1940 the British promulgated the Public Health ordinance which in Clause 20(1) provided that if in any part of Palestine there should be an outbreak of epidemic disease either local or infectious, such as cholera, smallpox, typhus or any other disease which the authorities have formally declared as being "a dangerous infectious disease", the Minister or director appointed by him are authorized to promulgate Regulations allowing for measures to be taken to prevent the spreading of the disease, including, expulsion, isolation, arrest, the use of protective equipment, the right to enter at any time, any private or public building to examine if affected persons are situated there and further measures relating to the above.

On the establishment of the State of Israel and under the authority given to the interim council of the state, the regulation of the State and laws, Ordinance of 1948 determined, inter alia, that the laws applicable to the Land of Israel on 14 May 1948 will remain in force to the extent that they are not in conflict with the Ordinance itself or other laws proclaimed by the Interim Council of the State.

In Clause 39 of the "Basic Law": The Government, authority is granted to the Government in an "emergency situation" to issue emergency regulations to defend the State, for public safety and the provision of essential services.

Accordingly, the British "colonial legacy" of promulgating emergency regulations including the Health Ordinance, an Emergency situation which has never been revoked, and for the maintaining of supplies and essential services continues to exist. Additionally, the government Law enables

the government to promulgate orders and prohibitions relating to emergency events and the administration thereof.

Accordingly, as from March 2020, the scope of the preventive measures applicable to residents of the State of Israel are increasing. The "lock-down" and isolation is to prevent the Corona virus from being transmitted from person to person and to facilitate the Health authorities having to contend with persons affected below a capacity at which the authorities can function.

Against the above background, it is necessary to consider what is a vital industry or activity which have to continue even in the event of a total or near total lockdown. The central law relating to the foregoing is "The Emergency Employment law- 1967" which defines that following two expressions.

The one is a "vital enterprise", being an enterprise acting or capable of acting for the Defence needs of the State or which is capable of acting for this purpose including for the supply of vital services and confirmed as such by the relevant Government Minister in consultation with the Minister of Defence.

The other is "an enterprise providing essential services" such as the supply of water, food or electricity, hygiene services, health services communications, and those additional services deemed to be essential by the Minister to ensure supplies or caring for the population or any other service which the Minister considers may result in economic distress in the absence of the provision of such services.

The "Minister" relevant to the foregoing was initially, the Minister for Industry, Commerce and Labour. In 2016 the foregoing powers were transferred to the minister of Social Welfare and Public Services.

It should be noted that in order for a "work place" to be considered as providing essential services it is not sufficient that they are considered necessary by law, the Ministry of Labour also has to certify that they are "essential" enterprises.

Originally the law was intended to apply to "security" situation and in the case of armed hostilities, however on 15 March 2020, the law was amended so that an "emergency situation" would include an epidemic and illness related to the Corona virus.

On 22 March 2020 (in accordance with the Government's authority under clause 39 of the "Basic Law," the Government", emergency regulations were promulgated (Corona virus- Limitation of Activity) which limit leaving home except for work purposes or receiving medical services, obtaining food or medicines and which regulations also limited the operation of business premises and arising therefrom, limitations which in view of the spread of the virus now appear to be appropriate.

Also, on 22 March 2020, Regulations pertaining to workplaces were issued being Emergency Regulations ("the Limitation of the Number of Employees at Work Places for the prevention of the transmission of the corona virus").

These Regulations provide that at any place of work the number of employees should not exceed 10 persons or 30% of the work force, whichever is higher.

The continuation to the above regulations enumerates the exceptions to the above Regulations, including

employees of the Ministry of Health, the prison service, the Ministry of Defence, the defence and related industries.

In addition, by the authority conferred by the Regulations, there is a list of occupations and branches which are not subject to the above limitations and which are required in order to limit, insofar as possible, the number of employees required to ensure the provision of essential services. These include, the financial sector, the provision of electricity, natural gas, water, agriculture, education by remote services, seminaries, the provision of services and facilities to youth at risk, and others.

Under the "exempted" enterprises for example activities such as the production of cement, including the mining of raw materials therefor, or the manufacture of pharmaceuticals including their transportation and storage, and also toilet products, cleaning materials, cosmetics, baby napkins, agricultural product producers, egg grading and sorting, are all exempted from the limitations of the size of the work force, as prescribed by the Regulations.

The following areas of activity are also exempted: transport services, storage and customs facilities, forwarding of goods services and their transport by land, sea or air and their storage, cold storage facilities, freight forwarding and customs clearing agents and international forwarders, ports and shipping: the operation of ports, the discharge and loading and storage of cargo, marine traffic, marine workshops, the administration of ports and their storage areas, ship owners and ship agents.

Transport: public transport, air transport, the development and operation of transport facilities, control centres, vehicle rentals and garages.

Accordingly, on the face of matters, it appears that those engaged in, forwarding, customs clearance, air and sea transport, have same status as those of an "essential enterprise, notwithstanding the lack of an "authorization" from the Minister, and only by virtue of their involvement in the above activities and the provisions of the Regulation limiting employment as from 22 March.

Also, it emerges that prima facie, those involved in the enterprises enumerated above can continue their work activities, even if the limitations will be increased unless the exemptions enumerated above will be specifically limited.

It will therefore be necessary to follow the "exempt" activities appearing in the Schedule to the Regulations in order to examine if the "block exemptions" contained therein have been limited or otherwise. In the absence of any limitations the "block exemptions" constitute a permit to engage in the stated activities notwithstanding the lack of an "authorization" issued by the Minister.

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Contents of the article are only for general information and do not constitute a legal opinion.

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