Can I legally get married during the lockdown period?

To answer this question, we must first take a look at the legal requirements of a valid marriage. The requirements of a valid marriage are set out in Section 29 of the Marriage Act 25 of 1961.

> ***29 Time and place for and presence of parties and witnesses at solemnization of marriage and validation of certain marriages***
>
> *(2) A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection shall not be construed as prohibiting a marriage officer from solemnizing a marriage in any place other than a place mentioned therein if the marriage must be solemnized in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties.*
>
> *(4) No person shall under the provisions of this Act be capable of contracting a valid marriage through any other person acting as his representative.*
>
> ***29A Registration of marriages***
>
> *(1) The marriage officer solemnizing any marriage, the parties thereto and two competent witnesses shall sign the marriage register concerned immediately after such marriage has been solemnized.*

When reading and interpreting the above section of the Marriage Act, it is clear that an authorized marriage officer, the parties getting married, as well as two witnesses will have to be physically present in order to conclude a valid marriage.

Furthermore, the marriage register will have to be signed immediately after solemnizing the marriage, once again confirming that the physical presence of the marriage officer, the parties getting married and the two witnesses are required.

Once the marriage register is signed, it is the obligation of the marriage officer to

attend the offices of the Department of Home Affairs to ensure that the marriage is registered and that the details are recorded in the National Population Register.

Usually the marriage officers have three working days to register the marriage at the Department of Home Affairs. In light of the fact that Home Affairs are currently not registering marriages during the lockdown period, we foresee that they will make exceptions to the "three-day rule" in order to accommodate those couples who got married a few days before the lockdown.

The physical presence of the parties, the witnesses and the marriage officer will hardly be possible during the lockdown period and therefore a valid marriage can unfortunately not be concluded during the lockdown period in a lawful manner.

Should the parties manage to arrange with a marriage officer and the necessary witnesses to be present at the solemnization, and should they manage to all sign the register, a valid marriage will be concluded. We can however not confirm whether the Department of Home Affairs will condone the late registration of the marriage and advise clients not to take such a risk.

Furthermore, should it come to light that the marriage was concluded in the presence of the witnesses and the marriage officer during the lockdown period, all parties concerned risk facing criminal charges for non-compliance with the lockdown regulations. Even after the lockdown period when the marriage officer attempts to register the marriage at the Department of Home Affairs, the officials might report the marriage proceedings and criminal charges may be instituted.

What are the consequences of an invalid marriage?

A marriage that is not concluded in accordance with the relevant legislation will be annulled. The marriage will be void ab initio (as if it never existed).

The annulled marriage will have no effect on the status of the parties. The status of the parties will thus be *single*/ *widowed*/*divorced* instead of *married*.

When a marriage is void there will be no matrimonial property system applicable to parties' relationship. There will not be a reciprocal duty to support between the parties and the children born out of this marriage relationship will be born out of wedlock.