



PSiRA
Private Security Industry Regulatory Authority

Introduction of the Private Security Industry Regulation Bill, 2012

30 October 2012



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**INTRODUCTION BY THE HONOURABLE
MINISTER OF POLICE
NATHI MTHETHWA**

OVERVIEW BY DIRECTOR OF PSIRA

- Introduction of the Bill by the Minister of Police
- Purpose of Amendments
- Discussion of Sections
- Constitutional Implications
- Consultations
- Implementation Plan
- Cost Estimate



PURPOSE OF THE BILL

- To align old definitions with current legislation
- To provide additional powers to the Minister
- To provide for finance and accountability of the Authority
- To promote crime prevention partnerships with the State

PURPOSE OF THE BILL

- To regulate foreign ownership and control of security business
- To regulate security services rendered outside the republic by South African security providers
- To empower the Minister to make regulations for the transportation of cash and other valuables

CHALLENGES INFORMING THE NEED FOR THE BILL

- The lack of adequate resources, which compromise effective regulation of the industry
- The increased threat to national security posed by the participation of foreign nationals in the industry
- The lack of proper accountability for fire-arms in the possession of members of the industry
- The security services rendered outside the Republic of South Africa
- The criminality within the private security industry

MAJOR POLICY CHANGES

Policy Change 1: Ownership of Security Businesses

- The Act will only permit that only 51 percent of ownership and control of security businesses exercised by South African citizens
- The Minister is empowered to prescribe a different percentage of ownership and control in respect of different categories of security businesses taking into account the security interests of the Republic
- Businesses already registered at the commencement of the Bill must comply with the 51 percent requirement within five (5) years of such commencement

MAJOR POLICY CHANGES

Policy Change 2: Registration by South African Citizens only

- The Act will only permit South African citizens to be registered as security service providers
- The Minister is empowered to exempt any person in respect of certain categories of security services from exclusion on good cause shown and on grounds which are not in contravention with the purpose of the Act

MAJOR POLICY CHANGES

Policy Change 3: Consequences of Being Found Guilty of an Offence

- The Act will disqualifies any person found guilty of an offence specified in the Schedule from registering as security service provider despite the number of years before the submission for registration to the Authority

OTHER POLICY CHANGES

Policy Change 4:

- The Promotion of crime prevention partnerships between the private security industry and organs of the State

Policy Change 5:

- The introduction of the funding model from self-funding to a hybrid funding model comprising of self-funding and state-funding (monies appropriated by Parliament)

Policy Change 6:

- The Authority's to suspend a security provider who/which fails to pay a levy in terms of the Levies Act and to comply with the provisions of the Act
- The lapsing of registration of a security provider if levies are unpaid for a period of three (3) months from the date of suspension

OTHER POLICY CHANGES

Policy Change 7:

- Keeping an updated database of details of every firearm issued to a security provider by the Central Firearms Register of Service

Policy Change 8:

- The requirement for the provision of information to the Director of the Authority relating to a person who, within the Republic, recruits, trains, hires out, sends or deploys any other person to provide a security service outside the Republic

Policy Change 9:

- The prohibition against engaging in any activity or rendering any assistance that is in contravention with the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of armed Conflict Act, 2006 or the Regulation of Foreign Military Assistance Act, 1998

Section 1: Amends section 1

- ‘Levies Act’ means the Private Security Levies Act, 2002 (Act No. 23 of 2002)
 - To be in line with the Private Security Levies Act, 2002, which was promulgated after the Private Security Industry Regulatory Act, 2001
- ‘Locksmith’ expanded definition
 - Aims at addressing the new technological advancement in the locksmith industry

Section 1: Section 1 continues

- ‘Minister’ means the Minister responsible for police
 - This addresses the designation of the Minister responsible for police, the Minister of Police
- ‘National Treasury’ means National Treasury established by section 5 of the PFMA
 - To ensure that the Authority is in line with proposed Funding Model
- ‘Organ of state’ means an organ of state as defined in the Constitution but not the Security Services
 - To facilitate the proposed promotion crime prevention partnerships between the private security industry and organs of state responsible for crime prevention

Section 1: Section 1 continues

- ‘Public Finance Management Act’ means the Public Finance Management Act 1999 (Act No. 1 of 1999)
 - This is in line with the proposed funding model
- ‘Security Officer’
 - An expanded version of the definition is proposed to include any person who is otherwise engaged over and above the one who is employed
- ‘Security Service’
 - To include manufacturing, importing or advertising of monitoring devices contemplated in section 1 of the Regulation of of Interception of Communications and Provisions of Communication-related Information Act (Act No.70 of 2002)

Section 1: Section 1 continues

- Erratum: SECTION 1(i) should be removed from the Bill
 - ‘by the deletion of paragraph (g) of the definition of “security service”’
 - THIS PARAGRAPH IS NOT DELETED

Section 1: Section 1 continues

- ‘Security service’ also means “(h) installing, servicing, repairing, distributing or transporting security equipment”
 - This provision aims at extending the scope of security service to those providers who **distribute and/or transport** security equipment
- ‘Security Service’ also means “(IA) protecting or safeguarding cash or other valuables when being transported from one point to another.”
 - This provision covers those who protect or safeguard cash and other valuables when being transported
 - **Note:** creating an impression that this service under IA is being rendered presupposed that a security service is being rendered

Section 2: Amends section 3

- The primary objects of the Authority include to – “(bA) promote crime prevention partnerships between the private security industry and organs of the state responsible for crime prevention”
 - These organs of the state are defined in section 239 of the South African Constitution but does not include the Security Services referred to in section 199 of the Constitution
 - What is an “**organ of state**” in terms of section 239?
 - What is “**crime prevention**” in terms of the White Paper on Safety and Security, 1998

Section 2: Section 3 continues

– Section 239 defines an “organ of state” as

‘a) any department of state or administration in the national, provincial or local sphere of government; or

b) any other functionary or institution

i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

ii) exercising a power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

Section 2: Section 3 continues

- Crime Prevention is defined in the White Paper on Safety and security as

“All activities which reduce, deter or prevent the occurrence of specific crimes firstly, by altering the environment in which they occur, secondly by changing the conditions which are thought to cause them, and thirdly by providing a strong deterrence in the form of an effective Justice System”

- Proposed section 3 of the Bill:

–The Authority will promote crime prevention partnerships between the private security industry and all “organs of state” engaged in activities which deduce, deter or prevent the occurrence of specific crimes

Section 2: Section 3 continues

- Section 3 of the Bill, i.e. the promotion of crime prevention partnerships, will complement the National Crime Prevention Strategy, 1996 (NCPS)
 - The NCPS was prepared by an Interdepartmental Strategy Team comprising of the Departments of Correctional Services, Defence, Intelligence, Justice, Safety and Security, and Welfare
 - The NCPS is based on 4 pillars, namely:
 - 1. Criminal Justice Process
 - 2. Reducing Crime through Environmental Design
 - 3. Public Values and Education
 - 4. Transnational Crime

National Crime Prevention Strategy – Policy Shift From Crime Control to Crime Prevention

CRIME CONTROL

Deploys most resources towards responding after crimes have already been committed



CRIME PREVENTION

Aimed at preventing crime at all levels
(Private Security + Organs of state)



Section 2: Section 3 continues

- By insertion of the word “and “ after paragraph (p)
- Proposed Amendment:
 - The use of the word “and” is in keeping with the proper rules of punctuation. It also signifies the inclusion of the last sentence or paragraph.

Section 3: Substitutes section 10

- Proposed substitution is aimed at ensuring effective accountability of the Council to the Minister as follows:
- Proposed substitution:
 - “10(1)The Council is accountable to the Minister for the performance of its functions and must supply the Minister with such information and particulars as the Minister may in writing require in connection with the functions of the Authority or any other matter relating to the Authority.”

Section 3: Substitutes section 10

Proposed substitution:

- “10(2) The council must submit a report to the Minister –
 - (a) on any matter required by the Minister under subsection (1) and or any matter which it is necessary or expedient to bring to the attention of the Minister and
 - (b) at least once a quarter in connection with the activities of the Authority”

Purpose of Amendment

- The amendment introduces quarterly performance reporting to the Minister which was not covered in the previous section 10.

Section 4: Amends Section 12

- “(6) The chairperson may, after consultation with the Council, require the director contemplated in section 14(1), and allow any person to, attend any meetings of the Council on such conditions as the chairperson may determine.”

Purpose of the Amendment

- The main purpose of this amendment was to delete reference to the word “Deputy Directors”.
- The statutory title of only two Deputy Directors suggested that executive management of the Authority was limited to only three Exco members.
- This was to allow flexibility in the appointment of various levels of management of the Authority.

Section 5: Amends section 14

Proposed Amendment (part 1):

- The council is obliged to appoint a suitably qualified and experienced person as the director of the Authority on conditions and terms as may be determined by the Council.

Purpose of the Amendment

- This amendment aims at doing away with deputy directors and to extend the Executive Management of the Authority to more than just 3 staff members (i.e. the Director and 2 Deputy Directors)
- This amendment broadens the scope of the appointment of staff to express the managerial, administrative and operational relationship with the changing dynamics to the mandate of the Authority

Section 6: Substitutes for section 16

Purpose of the Amendment

- From self-funding to a hybrid-funding model
- To Introduce State funding of the Authority
- To make provision of the records of the Authority to be audited by the Auditor General of South Africa

Benefits of the Amendment

- It reduces the risk of sabotage of the regulatory mandate by the Private Security Industry in the form of withholding of fees or levies
- It will prevent a “Regulatory capture” in the sense that the Authority may focus more on revenue to address going concerns than the regulatory mandate in the public interest. Regulatory Capture is when a State Regulatory Agency advances commercial interest.....

Section 6: Continues

Accounting Requirements:

- The Council must, subject to the PFMA and section 16A –
 - Account for money received or paid on account of the Authority
 - Cause the necessary accounting and other related records to be kept

Note: the accounting and other related records must be audited by the Auditor-General

Section 7: Insertion of Section 16A

Purpose of the Amendment

- Proposes additional Council's obligations as follows:-
- The Council must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year to include:
 - Audited financial statements in terms of the PFMA;
 - The Auditor-General's report prepared in terms of the PFMA; and
 - A report on the activities of the Authority undertaken during the year to which the audit relates.

Section 7: Continues

- **Proposes the tabling by the Minister to Parliament of**
 - A copy of the annual report;
 - Financial statements; and
 - Audit report on those statements

Note: this must be done within one month after receipt in parliament is in session
- **Publication of Annual Report**
 - The director is obliged to publish the annual report, financial statement and audit report on those statements upon tabling in Parliament

Section 7: Continues

- **Consequences of proposed section 16A**
 - Sections 18 & 19 are rendered obsolete thus are repealed
- **Benefits of the Amendment**
 - It formalizes and legitimates reporting in terms of PFMA
 - Brings the Authority reporting requirements in line with other public entities