



26 October 2012

SUMMARY OF THE PSIRA AMENDMENT BILL SUBMISSIONS

1. Introduction

The aim of this report is to provide the Portfolio Committee on Police with a brief summary of the Public Submissions that were made on the PSIRA Amendment Bill.

2. SUBMISSIONS

2.1 SSG Operational Risk Services (PTY) Limited

They made comments on the following issues raised by the Bill:

- There is an attitude of distrust between PSIRA and the private security industry.
- The Authority is dysfunctional and does not effectively communicate with industry. The industry was not consulted in the drafting of the Bill.
- The industry must be accessible to promote employment and redress post discrimination, particularly at entry level. While regulation is important, the Act must not constitute a bar to entry.
- The use of regulations should be discouraged and minimised.

Positive aspects of the Bill:

- **Partnerships:** The Bill provides that the Authority promotes crime prevention partnerships with the organs of State. This is supported. In addition, the Minister should be given the power to proclaim such partnerships; and selected categories of security officers should be given expanded powers of arrest, search and seizure.

Examination of selected parts of the Bill:



- The drafters of the legislation should provide the Portfolio Committee with the rationale/reason behind each of the amendments.
- “security officer” expanded definition may result in incorporation of informal car guarding industry within the ambit of the Bill
- Definition of “security service” needs to be revisited in terms of incorporation of the transporters of security equipment.
- Proposed amended of Section 3 (Clause 2) should be applauded but needs to be provide more specific contents on what type of crime prevention partnerships the can be entered into.
- Clause 9: Limitation on foreign ownership of security industry is unjustifiable. The “threat to increased national security posed by the participation of foreign nationals” is misleading the Portfolio Committee because there is no evidence of such threat.
 - In addition, the 51% local ownership requirement must be revisited as it (1) will have impact on a range of international companies some of whom only a small aspect of their business is related to security, and may result in disinvestment; (2) This problem is compounded by listings on the Johannesburg Stock Exchange in which shares are freely traded and there is no control over who can buy these shares.
 - The proposed sub-section 2(A) is extremely dangerous because it gives the Minister the power to decide different percentages of ownership and control for different categories of security businesses, without any form of Parliamentary or public scrutiny. Lack of guidelines and factors that need to be taken into account when making this decision.
- Clause 11: The proposed Section 23 is in conflict with Section 22 of the Constitution read together with Section 36 because it gives the Minister unfettered power to prescribe requirements for infrastructure and capacity of a security business to render a security service.

2.2 Locksmiths Association of South Africa

They made comments on the following issues raised by the Bill:



- The proposed Bill's definition of a locksmith is not correct. It creates loopholes that will be exploited by unscrupulous operators, who do not want to register, to the detriment of law abiding locksmiths. Exclusion of key cutters is also a problem. Electronic locking mechanisms need to be contained in the definition.
- The PSIRA proposal that a learner must first do the course, get relevant unit standards, be registered with Authority and then get employed is not practical.

Proposed definition to be considered for the Bill is:

- Locksmith means a person who, for the benefit of another person engages in any activity or business which is related to the opening, closing or engaging of locking mechanisms of any nature, by means of lock picking or other tools or specialized devices, or who duplicates or copies keys from a sample, or who originates keys, access cards, discs tags or other objects which are used to unlock, close release or engage locking mechanisms, by means of tools including electronic devices, key cutting machines, hand files or other equipment or any other specialized device designed for the purpose of originating, electronically enabling or copying keys, access cards, discs, tags, but does not include the manufacture of keys in bulk by or for lock manufacturers.

2.3 African Policing Civilian Oversight Forum

They made comments on the following issues raised by the Bill:

- **The oversight Deficit:** There is a blurring of private and public policing practices as well as a blurring of the policing of private and public spaces. The regulatory systems currently in place largely reflect a business regulation model rather than a model of public service governance. Strong oversight over the private security industry is necessary.
- **Oversight and current limitations:** PSIRA code of conduct binds private security employers and employees. When there are infringements to the Code, the weakness in PSIRA is that it cannot criminally prosecute cases private security companies but will rely on other authorities to take this up, such as the police. In addition, the lack of



capacity of inspectors and investigators; poor collection of evidence; gaps in the PSIRA database; and complaints-driven investigations reduces oversight impact.

Recommendations:

- A positive duty must be placed on the private security industry, via PSIRA, to submit itself to scrutiny and reporting in relation to its record of action in relation to safeguarding the human rights of South African citizens.
- The private security industry becomes legally obliged to submit all cases of death as a result of security guard action, rape or torture to an independent, external facility. It is recommended that this facility be one of the current institutions that already carry an oversight mandate, such as the Chapter 9 institutions, the IPID or the National Secretariat for Police
- Investigations, whether undertaken by SAPS or internally, should be subject to audit and or further investigation by an external oversight agency such as the Independent Police Investigation Directorate.
- Reporting and analysis mechanisms that allow the Civilian Secretariat of Police to assess and report, and make relevant policy recommendations, on any systemic issues within the industry, or parts of the industry, which give rise to abuse and hamper effective accountability.
- The private security industry be required to provide detailed public reports on its investigations and other oversight activities.

2.4 Salus Protection Services

They made comments on the following issues raised by the Bill:

- Regulation of security services rendered outside the Republic. Function confusion between PSIRA and the SAPS when deploying private security officers on ships in international waters to protect these vessels against attacks by pirates.

2.5 South African Intruder Detection Services Association



They made comments on the following issues raised by the Bill:

Clause 1: Proposed Amendments of Section 1 of the Act (Definitions):

- According to the proposed Bill Clause 1(g) all employees employed by the organ of state and the organ of state itself rendering security service have to be registered with the Authority as a service provider.
- The manufacturing of security equipment should be included in Clause 1(j). All exemptions for manufacturers from registration should be withdrawn.

Clause 2: Proposed Amendments of Section 3 of the Act:

- Following the definition of a service provider above and in the Act, the organ of state entering into such partnership with a private security service provider needs to be registered with the Authority. A private security service provider, in terms of the Act, may not enter into a partnership with any person, if such person is not registered as a security service provider.
- The Act does not clearly define the object of these partnerships;
- Organs of state are funded by all tax payers, whilst private security service providers are remunerated by individuals (“the consumer”) to whom the service provider delivers a service;
- The infrastructure of the security service provider, such as manpower, vehicles and communication is therefore funded and utilized for the exclusive use of the paying consumer.
- How and on what basis will the private security service provider be remunerated for the use of their resources and participation in these partnerships?
- Will the organ of state remunerate the private security service provider for resources used in these partnerships, and if so at what rate?
- The Act is not clear if these partnerships will be compulsory or on a voluntary basis.
- It is also not clear if these partnerships refer to partnerships between the Authority and the organs of state?

Clause 5: Proposed Amendment of Section 14 of the Act



- The proposed amendment of section 14(3) should be rewritten to ensure that the director of the Authority delegates his/her power or duties to a suitable and experienced person.

Clause 12: Proposed Amendment of Section 26 of the Act

- The amendment of Section 26(5)(b) is not clear on what will happen if the non-payment of the Levies is due to a declared dispute regarding due payments. Submit that this clause is contrary to the Constitution and the Promotion of Administrative Justice Act.

2.6 Control Risk SA (Proprietary) Limited

They made comments on the following issues raised by the Bill:

Clause 9 of the Bill amends Section 20 of the Act

- The enactment of Clause 9 of the Bill would require Control Risk UK to divest fifty-one per cent of its shareholding in Control Risk SA. This Clause will interfere with property rights of Control Risk SA, who will now be subjected to compulsory equity divestiture of fifty-one per cent of its business. This constitutes a deprivation of property as contemplated by Section 25 of the Constitution. The Bill does not provide for compensation to be paid to those persons whose property is expropriated.
- While clause 9(a) of the Bill provides that fifty-one per cent of a business must be owned and controlled by South African citizens in order to register as a security services provider, section 23(2)(a) of the PSIRA, read with the amended section 23(1)(a), in effect requires that one hundred per cent of a security business must be controlled by citizens in order to register. This is due to the requirement under clause 11 of the Bill that all directors and executives must be South African citizens.
- The discretion afforded to the Minister under clause 9(b) is vague.

The SA-UK BIT



- Control Risk UK would be entitled to bring claims under the SA-UK BIT based on Article 2.2 which requires host state to afford investors fair and equitable treatment. Article 3.1 which requires host states to afford investors treatment that is no less favourable than that afforded to its own nationals. Article 5.1 and 5.2 which prohibit unlawful expropriation.

Clause 11 of the Bill amends Section 23 of the Act

- Control Risk SA employs foreign national in strategic positions owing to their extensive qualifications and experience. This in line with Section 9 of the Constitution. Clause 11 differentiates on the ground of citizenship.
- There is no transitional provision in Clause 11 of the Bill which allows a period within which natural persons and security businesses may appoint South African citizens as directors, managers and executives.

2.7 Security Industry Alliance

They made comments on the following issues raised by the Bill:

Positive Aspects:

- The Bill amends the funding of PSIRA which will elevate the Authority to a level of an organ of state. The current funding model through levies is unsustainable for security providers and ordinary workers.
- The increased accountability of the Council of PSIRA as well as strengthening of other governance functions and structures is welcomed.
- Bill recognises the nature of the private industry which is complex and interconnected. Bill will allow specific regulation for different sub-sectors which is welcomed.
- Stronger measures for the prohibition of foreign military assistance and the regulation of the deployment of South Africans into security functions in foreign territories is welcomed.
- Greater oversight and control over the proliferation of firearms in the sector is welcomed as long as it does not over burden the service providers.



Negative Aspects:

- The limitation of foreign ownership within the private security industry breaches South Africa's obligations under a number of international trade agreements and treaties and is inconsistent with the Constitution of the Republic. Will have implications for a range of international companies especially in the electronic and IT industry; will not foster investment; will result in loss of skills, capability and result in technical support gaps.
- Some of the amendments are vague and likely to have unintended consequences.
- There was no engagement with the industry during the drafting of the Bill.

Specific concerns:

- Clause 1(b) definition of "locksmith": 1(b)(e) which expands ambit to deal with locking systems will result in unintended consequence for the IT industry that will need to fall under regulation.
- Clause 1(j)(h) definition of "security service": extension to distributors and transporters overextends regulation, and this clause should be removed.
- Clause 1(k) definition of "security service": Tries to deal with cash-in-transit but inclusion of 'other valuable' overextends mandate of regulation. Define which valuables more clearly to limit transport under legislation of the South African Reserve Bank.
- Clause 9, 11,13: Foreign ownership: amendments are irrational and therefore in breach of rule of law; constitute an arbitrary deprivation of property in violation of Section 25(1) of the Constitution; and amount to constructive expropriation and give rise to an uncompensated expropriation of property in violation of Section 25(2)(b) of the Constitution. It is recommended that these provisions are removed.
- Clause 11 (Section 23(1)(a)): there is no rational basis for precluding a person that is a permanent resident from participating in employment opportunities in the sector.



- Clause 12 ((Section 26(1) and (5)): may result in possible arbitrary suspensions related to payment of levies. Recommend that suspension should be subject to fair processes as envisaged under the Promotion of Administrative Justice Act.

2.8 American Chamber of Commerce

They made comments on the following issues raised by the Bill:

Positive Aspects:

- The Bill amends the funding of PSIRA which will elevate the Authority to a level of an organ of state. This will bring access to government funding and fiscal oversight.
- Recognises diverse nature of the industry.
- Enforcement of the regulations will be through joint accountability for compliance by providers as well as customers.
- Proposed limitations on mercenary activities are applauded.

Negative Aspects:

- The period of five years that companies should comply with regarding a fifty-one percent local ownership. All sectors included in this ambit including manufacturers of electronic equipment.
- The vagueness of the legislation lends itself to interpretation. Provides for exemptions with no detail on who would qualify and how to obtain them. There is no clarity regarding existing investments.
- It is not clear who will benefit if ownership is sold pursuant to the Act.
- What will happen if support for foreign sourced electronics is cut off by the new Act?
- For companies that deal with IT as well, the Bill is not clear regarding whether the ownership requirements deals with company as a whole or only those aspects dealing directly with security.

Possible International violations of the proposed amendments:



- The proposed Bill might contravene the provisions of World Trade Organisation's (WTO) General Agreement of Trade in Service (GATS) commitments, where South Africa has undertaken full market access (Article XVI) and national treatment commitments (Article XVII) with respect to investigation and security services.
- Negative signals to foreign investors.
- May result in oligopolies as the number of companies decreases.

2.9 ADT Security Limited:

They made comments on the following issues raised by the Bill:

Definition of "security service" Section 1 (h) (or Clause 1(j)): too broad

Clause 9: Section 20 of the Act

- The insertion of paragraph 20(2)(c) is contrary to the commitment that South African government has to maintain an open environment for investment. The justification for this paragraph which is "the perceived threat to national security" because of foreign ownership is not credible.
- The concern regarding Section 20(2A) is the absence of the percentage to be determined by the Minister. The drafters of the Bill should give clarity on the envisaged percentage to be determined.
- The provision of Section 20(6)(a) is too restrictive in terms of the 5 year period within which private security companies must comply. The shareholders will be required to sell their shares to ensure compliance, and this constitutes a forced sale. Given that the sale will be made at a time when market would be aware that foreign shareholders are forced to divest their shareholding, it is unlikely that shareholders will receive a fair market value for those shares.

Clause 11: Section 23 of the Act

- Regarding Section 23(7), the discretion of the Minister to exempt any person in respect of a certain category of a security service from the exclusion in subsection 23(1)(a) or 6 does not support fair treatment of industry participants.



Violation of Trade Treaties and Agreements:

- The proposed Bill will violate the provisions of GATS's Article XVII (1), Article XVII (3).
- The proposed Bill also will violate the provisions of the European Union and South Africa Trade, Development and Co-operation Agreement (TDCA).
- Violation of the Bilateral Trade Agreement between the United Kingdom and South Africa.

Regulations

Clause 13: Section 35

- The discretion given to the Minister in Section 35(IA) and 35(sA) should be qualified. It is therefore recommended that the guidelines governing the Minister's discretion in this regard be developed with the input of all stakeholders involved.

Clause 15: Section 36

- The addition of Section 36(3) may be impractical given the administrative challenges faced by the Central Firearm Register and the lack of a credible firearm register. It is therefore recommended that Section 36 (3) be strengthened to define the process to enable PSIRA to exercise its regulatory authority.

Clause 15: Section 36A (presume error in submission which refers to Section 38A(1)(a))

- A concern with this proposed provision contained in Section 36A(1)(a) that there is no indication of the information required and the prescribed time limits. It is therefore recommended that clarity be provided to all stakeholders in this respect. The additional administrative burden to industry is also a concern.

2.10 Gun Free South Africa

They made comments on the following issues raised by the Bill:



Clause 3

- The Gun Free South Africa (GFSA) welcomes the requirement that PSIRA must provide quarterly reports to the Minister. It is recommended that the amendment and Regulations specify the information to be included in the report. Information should include: number of security first registered; number of guards registered (per category and function); details for training of guards; number of firearms (lost and stolen); all instances in which firearm discharged by guards (including circumstances and consequences); detailed information on crime investigations involving the private security industry.

Clause 6

- The GFSA welcomes the amendment which provides PSIRA with Voted funds. It is recommended that the Act and the Regulations spell out in detail the exact responsibilities of PSIRA in overseeing the private security industry.
- It is also recommended that a body that will oversee PSIRA be established.

Clause 7

- The contents of the Annual Report must be spelled out and the additional information in line with GFSA recommendations on quarterly reports must be included in the annual report.

Clause 11

- The GFSA welcomes the amendment Clause 11(b) but further recommends that the Firearms Control Act, 2000 be specifically listed in the Schedule.

Clause 14

- The amendment is welcomed but further recommendation was made by GFSA that in addition to keeping details of every firearm being made available within 30 days of request, PSIRA must be responsible for reporting this information in both quarterly and annual reports.

Clause 18



- This amendment must be expanded to include the Firearms Control Act, 2000.

Suggested Additional Amendments to be added to the Bill:

- It is suggested that the client-level responsibility be included in the PSIRA Act.
- The PSIRA Act and Regulations must be aligned with the Firearms Control Act and related Regulations.
- Align and standardise training practices and qualifications.
- Increase monitoring of policing functions undertaken by private security companies.

2.11 Safer South Africa Foundation (SSAF)

Safer South Africa Foundation's submission is similar to GFSA's submission with the exception of the following:

Section 3 of the Act (clause 2) – crime prevention partnerships

- The SSAF welcomes the amendment of Section 3 and recommended that attention be given to the amendment to ensure that it is not open to a number of interpretations and potential misunderstanding.

Suggested Amendment to be added to the Bill

- Accreditation of private security sector organisations whose operatives provide policing type functions in public places.