

REPUBLIC OF SOUTH AFRICA

PRIVATE SECURITY INDUSTRY REGULATION AMENDMENT BILL

(As presented by the Portfolio Committee on Police)
(The English text is the official text of the Bill)

(MINISTER OF POLICE)

[B27B—2012]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactment.

BILL

To amend the Private Security Industry Regulation Act, 2001, so as to amend certain definitions; to provide for additional powers of the Minister; to provide for the appointment of the director and deputy directors for the Authority; to provide for cooperation with the Civilian Secretariat for Police; to provide for the finances and accountability of the Authority; to provide for limitation on foreign ownership; to provide for the establishment and functions of the Exemption Advisory Committee; to regulate security services rendered outside the Republic; to empower the Minister to make regulations for the transportation of cash and other valuables; to provide for offences and penalties; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

Amendment of section 1 of Act 56 of 2001

1. Section 1 of the Private Security Industry Regulation Act, 2001, (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “**business trust**” of the following definition:

" **Civilian Secretariat** means the national Civilian Secretariat for the Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2011(Act No. 2 of 2011);";

(b) by the substitution for the definition of “**company**” of the following definition:

" **'company'** means a company within the meaning of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);";

(c) by the insertion after the definition of "**inspector**" of the following definition:

" **'Levies Act'** means the Private Security Industry Levies Act, 2002 (Act No. 23 of 2002);";

(d) by the substitution for the definitions of "**locksmith**" and "**Minister**" of the following definitions:

" **'locksmith'** means a person, including an apprentice employed by a locksmith, who, for the benefit of another person, engages in any activity or business which is related to **[the]**—

(a) designing and managing master key systems;

(b) installing, maintaining, repairing and changing the combinations of safes, vaults and safety deposit boxes;

(c) maintaining key code records;

(d) cutting keys and duplicating existing keys; or

(e) opening, closing or engaging of locking mechanisms of any nature, by means of a specialised device in any manner;

'Minister' means the **[Minister for Safety and Security]** member of the Cabinet responsible for policing;";

(e) by the deletion of the definition of "**National Commissioner**";

(f) by the insertion, after the definition of "**National Commissioner**" of the following definition:

" **'National Treasury'** means the National Treasury established by section 5 of the Public Finance Management Act;

(g) by the substitution for the definition of "**organ of state**" of the following definition:

" '**organ of state**' means an organ of **[State]** state as defined in section 239 of the Constitution of the Republic of South Africa [(Act No. 108 of 1996)], 1996, but does not include the Security Services referred to in section 199 of the Constitution;";

(h) by the insertion after the definition of "**property**" of the following definition:

" **'Public Finance Management Act'** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);";

(i) by the substitution for the definition of "**security business**" of the following definition:

" '**security business**' means, subject to **[subsection (2)]** section 20(5) any person who renders a security service to another for remuneration,

reward, fee or benefit, except a person acting only as a security officer;"

(j) by the substitution for paragraph (a) of the definition of "**security officer**" of the following paragraph:

"(a) (i) who is employed by another person, including an organ of **[State]** state, subject to section 20(1)(a) and (b) of the Act, and who receives or is entitled to receive from such other person any remuneration, reward, fee or benefit, for rendering one or more security services; or

(ii) who assists in carrying on or conducting the affairs of another security service provider, and who receives or is entitled to receive from such other security service provider, or any other person, any remuneration, reward, fee or benefit, as regards one or more security services;"

(k) by the substitution for paragraph (e) of the definition of "**security service**" of the following paragraph:

"(e) manufacturing, **[importing, distributing]** assembling, possessing, selling, purchasing, or advertising of **[monitoring devices]** listed equipment contemplated in section 1 of the **[Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992)]** Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), authorised by the Minister of Justice and Constitutional Development under section 45(2) and section 46(1)(a)(ii) of that Act;"

(l) by the substitution for paragraphs (k) and (l) of the definition of "**security service**" of the following paragraphs:

"(k) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in paragraphs (a) to (j), **[and] (l) and (IA)**, to another person;

(l) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (j) and (IA)";

(m) by the insertion of the following paragraph in the definition of "**security service**":

"(IA) protecting or safeguarding of cash or goods with a high value, including precious metals or jewellery when transported on a public road, except when transported by a person at his or her own account, or by the South African National Defence Force or in the case of transport by escort of the Service;"

(n) by the substitution for paragraph (m) of the definition for "**security service**" of the following definition:

"(m) creating the impression, in any manner, that one or more of the services in paragraphs (a) to **[(l)] (IA)** are rendered";

(o) by the substitution for the definition of "**security service provider**" of the following definition:

" '**security service provider**' means a person who renders a security service to another for **[a]** remuneration, reward, fee or benefit and includes such a person who is not registered as required in terms of this Act;" and

(p) by the deletion of subsection (2).

Substitution of section 2 of Act 56 of 2001

2. The following section is hereby substituted for section 2 of the principal Act:

"Establishment of Private Security Industry Regulatory Authority

2. **[(1)]** A juristic person to be known as the Private Security Industry Regulatory Authority, is hereby established.

[(2) The head office of the Authority is situated in Pretoria.]"

Amendment of section 3 of Act 56 of 2001

3. Section 3 of the principal Act is hereby amended—
(a) by the substitution for the words preceding paragraph (a) of the following words:

“The primary objects of the Authority are to regulate the private security industry and to exercise effective control over the practice of the occupation of security service provider in the public and national interest and **[the interest of the private security industry itself, and]** for that purpose, subject to this Act, to—”; and

(b) by the substitution for paragraphs (a) to (q) of the following paragraphs:

- “(a) ensure a legitimate private security industry which—
- (i) acts in terms of the principles contained in the Constitution and other applicable law;
 - (ii) is characterised by ethical conduct, accessibility, accountability, transparency, equity, professionalism and stability; and
 - (iii) protects and serves the interests of members of the public who use or are affected by the security services;
- (b) determine and enforce minimum standards of occupational conduct in respect of security service providers;
- (c) ensure that the process of registration of security service providers is transparent, fair, objective and concluded timeously;
- (d) promote high and uniform standards in the training of security service providers and prospective security service providers;
- (e) promote the protection and enforcement of the rights of security officers and other employees in the private security industry;
- (f) ensure that compliance with existing legislation by security service providers is being promoted and controlled through a process of active monitoring and investigation of the affairs of security service providers;
- and
- (g) promote awareness amongst the public and the private security industry on the functions and role of the Authority and the industry.”.

4. Section 4 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (b) and (c) of the following paragraphs:

"(b) enquire into and report to the Minister, through the Council, on any matter concerning the objects of the Authority;

(c) advise the Minister, through the Council, on any matter deemed by the Authority to be necessary or expedient to be considered by the Minister in connection with the provisions of this Act, or the Levies Act, or the application thereof, and on any matter relating to security services which has been referred by the Minister to the Authority for the advice and recommendations of the Authority";

(b) by the substitution for paragraphs (e) to (ii) of the following paragraphs:

"(e) receive and consider applications for registration and renewal of registration as security service provider and grant or renew registration to applicants who comply with the requirements for such registration or renewal of registration in terms of this Act;

(f) establish and manage offices for the Authority in every province;

(g) provide or disseminate information promoting and encouraging compliance with this Act, the Levies Act and the code of conduct, by security service providers;

(h) provide information to the users, prospective users or representatives of users of security services regarding the compliance of security service providers with the provisions of this Act and the Levies Act;

- (i) in the prescribed manner establish a complaints office to receive, process, refer or deal with complaints regarding unlawful or unethical conduct by security service providers;
- (j) determine, charge and collect fees as provided for in this Act or in respect of any service rendered by the Authority or any object made available by the Authority;
- (k) determine minimum internal control systems for security businesses, including but not limited to, accounting and reporting procedures and any other procedures or systems;
- (l) conduct, or cause to be conducted, hearings, investigations and inquiries with regard to any matter falling within the scope of its functions; and
- (m) enter into agreements with or obtain the assistance of any department or organ of state to conduct or assist it in conducting any investigation or performing any other function in terms of this Act or the Levies Act."

Amendment of section 5 of Act 56 of 2001

5. Section 5 of the principal Act is hereby amended—

- (a) by the insertion of the following subsection after subsection (2):

"(2A) The Public Finance Management Act applies to the Council and the Authority."

- (b) by the substitution for subsection (4) of the following subsection:

"(4) The Authority must otherwise perform its functions in terms of this Act **[and]**, the Levies Act and the Public Finance Management Act **[and in accordance with such guidelines and policy directions as may be issued by the Minister from time to time by notice in the *Gazette*].**";

(c) by the substitution for subsection (5) of the following subsection:

"(5) (a) The Authority must perform its functions in accordance with such guidelines and policy directions as may be issued by the Minister from time to time by notice in the *Gazette*.

(b) A guideline or policy direction issued by the Minister in terms of this section, may be amended, withdrawn or substituted by the Minister, by notice in the *Gazette*."; and

(d) by the addition of the following subsection:

"(6) Whenever members of the Council are unable to agree on a material financial, governance or operational issue which cannot be resolved by the Council, the Minister must mediate between the parties."

Amendment of section 6 of Act 56 of 2001

6. Section 6 of the principal Act is hereby amended—

(a) by the insertion of "(1)" after the section number; and

(b) by the insertion of the following subsections:

"(2) Subject to section 7, a member of the Council for the Authority must be a fit and proper person with due regard to his or

her experience, conscientiousness and integrity to be entrusted with the responsibilities of the office concerned.

(3) The members of the Council must, when viewed collectively be persons who are suited to serve on the Council by virtue of their qualifications, experience and expertise in the fields of finance, law and governance.

(4) The Minister must report to Parliament on the appointment of councillors, as well as their qualifications, experience and expertise."

Amendment of section 7 of Act 56 of 2001

7. Section 7 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

"(a) is not a citizen of **[or does not have permanent resident status in]** the Republic;"

(b) by the deletion of paragraph (c);

(c) by the substitution for paragraphs (d) and (e) of the following paragraphs:

"(d) is an unrehabilitated insolvent; **[or]**

(e) has not obtained such a security clearance by the **[National Intelligence] State Security** Agency as may have been determined by the Minister **[.]; or;**" ; and

(d) by the addition of the following paragraph after paragraph (e):

"(f) has been convicted of a criminal offence, or who is subject to a pending criminal prosecution."

Amendment of section 8 of Act 56 of 2001

8. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) A councillor is, subject to this section, appointed for a period not exceeding **[three] five** years, on such terms and conditions as the Minister may determine in a letter of appointment, provided that all members of the Council serve on a part-time basis.

(2) A councillor is eligible for reappointment upon the expiry of his or her term of office, for a period not exceeding two **[additional terms] years**, if he or she continues to meet the requirements for such appointment in terms of this Act.";

(b) by the deletion in subsection (3) of the word "or" at the end of paragraph (c) and by the insertion of the word "or" at the end of paragraph (d) and the addition of the following paragraph:

"(e) he or she is no longer a fit and proper person as required in section 6(2)."; and

(c) by the insertion after subsection (3) of the following subsection:

"(3A) When a councillor becomes subject to any disqualification referred to in section 7 or is absent from three consecutive meetings of the Council, the chairperson, vice-chairperson or acting chairperson contemplated in section 12(10), as the case may be, must inform the Minister in writing within a reasonable time, but

before the next meeting of Council, of such disqualification or absence.”;

(d) by the substitution for subsections (5) and (6) of the following subsections:

"(5) If a councillor ceases to hold office the Minister must, with due regard to **[section] sections 6(2) and 7**, within **[a reasonable time] six months** appoint a person to fill the vacancy **[for the unexpired portion of the former councillor’s term of office]**.

(6) A councillor, or a member of a committee appointed by the Council referred to in section 13(1), who is not an employee of the Authority or an officer or employee in the Public Service, may be paid from the funds of the Authority such remuneration and allowances as the **[Council] Minister** may determine with the concurrence of the Minister of Finance.”;

(e) by the deletion of subsection (7); and

(f) by the addition of the following subsection:

"(8) The Authority is responsible for all legitimate costs of Council including the remuneration for the Council secretary."

Amendment of section 9 of Act 56 of 2001

9. Section 9 of the principal Act is hereby amended—

(a) by the substitution for the heading of the section of the following heading:

"Functions of Council [and], chairperson and secretary";

(b) by the substitution for the words preceding subparagraph (i) in paragraph (c) of subsection (1) of the following:

"(c) **[may]** must, in consultation with the Minister, by notice in the Gazette make rules, subject to the provisions of this Act **[and]**, the Levies Act~~[,]~~ and the Public Finance Management Act regarding—;"

(c) by the insertion after subsection (1) of the following subsection:

"(1A) In formulating the rules referred to in subsection 1(c), cognisance must be taken of the principles relating to improvement of service delivery, quality of training and integrity as applicable to the public administration."

(d) by the deletion in subsection (2) of paragraph (a);

(e) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

"(d) must provide strategic direction to the **[director and]** Authority through the Council; and";

(f) by the deletion in subsection (2) of paragraph (e) and by the substitution in subsection (2) for paragraph ((f) of the following:

"(f) must **[establish and]** maintain **[liaison]** a working relationship with the Civilian Secretariat **[for Safety and Security to ensure transformation in the]** to cooperate on policing and policy matters related to the [Private Security Industry] private security industry."; and

(g) by the addition of the following subsection:

"(3) (a) The Council must, after obtaining the advice of the Department of Public Service and Administration and in

consultation with the Minister, appoint a suitably qualified person to act as Council secretary.

(b) The Council secretary must be accountable to the chairperson and the Council.

(c) The Council secretary must manage any administrative matters and the correspondence of the Council and any committee appointed in terms of section 13(1) or established in terms of section 13(2), including—

(i) acting as a link and liaising between the Council and the Authority;

(ii) facilitating communication between the—

(aa) Council and the Authority;

(bb) Council and the Minister; and

(cc) Council and Parliament;

(iii) developing rules for the Council and ensuring compliance with legislation by the Council;

(iv) assisting the Council in the development of its annual plan;

(v) providing administrative support to the Council in the preparation of all reports and other documentation of the Council;

- (vi) preparing the agenda and all documents for the Council meetings and dissemination thereof;
- (vii) taking minutes and keeping records of all decisions of the Council;
- (viii) facilitating and providing relevant advice required by the Council;
- (ix) facilitating the submission of reports and other documents of the Authority to Council; and
- (x) executing any other task assigned by the Council."

Amendment of section 10 of Act 56 of 2001

10. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

- "(1) The Council is accountable to the Minister for the performance of its functions and must[-
- (a)] 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[;.
 - (b) **as soon as may be reasonably practical after the end of each financial year, but in any event within three months of the end of the financial year, supply the Minister with a copy of-**

- (i) **the annual report on the activities of the Authority and the Council; and**
- (ii) **the audited financial statements contemplated in section 18(1), including any notes to the financial statements and the audit opinion of a duly appointed auditor contemplated in section 18(2); and**
- (c) **table a copy of the annual report contemplated in paragraph (b)(i) in Parliament and present such further reports to Parliament as Parliament may request.].**

(b) by the insertion of the following subsection, after subsection (1):

- "(1A) The Council must submit a report to the Minister—
- (a) on any matter required by the Minister under subsection (1) and on any matter 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, including—
 - (i) the number of security service providers registered, sold, transferred, liquidated, suspended, dormant, merged, de-accredited and prosecuted;
 - (ii) the number of security officers registered, including category and functions;
 - (iii) the details of training undertaken by registered security officers and training institutions;
 - (iv) the number of training institutions registered, sold, transferred, liquidated, suspended and dormant;

- (v) the number of firearms registered to, lost by, stolen from, transferred by security businesses or destroyed in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000);
- (vi) instances in which firearms were discharged by a security officer in the performance of his or her duties causing death or injury;
- (vii) information of criminal complaints and investigations relating to security service providers reported to the Service by the Authority;
- (viii) the number of meetings of the Council;
- (ix) a report in terms of the Public Finance Management Act;
and
- (x) a monthly report on—
 - (aa) the financial performance of the Authority; and
 - (bb) any deposits or withdrawals relating to any investment account of the Authority and the reasons therefor."; and

(c) by the deletion of subsection (2).

Amendment of section 11 of Act 56 of 2001

11. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:

"If the Council or the Authority cannot or does not maintain an acceptable standard in the fulfillment of one or more of its functions in terms of this Act **[or]**, the Levies Act and the Public Finance Management Act, the Minister may intervene by taking any appropriate step to ensure proper fulfillment of that function, including—“;

(b) by the substitution in paragraph (b) of subparagraph (ii) of the following subparagraph:

"(ii) to prevent the Council, the Authority or any person appointed by the Council or the Authority, from taking any action which is prejudicial to the objects of the Authority; **[and]**"; and

(c) by the insertion of the following paragraphs after paragraph (c):

"(d) taking such corrective measures as required by the circumstances in the period whilst there is no appointed Council; and

(e) the interim appointment of a person or persons meeting the requirements contemplated in section 6(2) to ensure the continuity of the affairs of the Authority: Provided that the interim appointment may not exceed six months."

Amendment of section 12 of Act 56 of 2001

12. Section 12 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) of the following paragraph after paragraph

(b):

"(c) The Council must meet at least once every quarter.";

- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) The chairperson may at any time convene a special meeting of the Council **[and must also convene such a meeting at the written request of the Minister]**."

- (c) by the insertion in subsection (2) of the following paragraph:

"(c) The chairperson must convene a special meeting if so directed by the Minister.";

- (d) by the substitution for subsection (3) of the following of the subsection:

"(3) The quorum for any meeting of the Council is **[a simple majority of the councillors in office at the time]** three councilors.

- (e) by the substitution in subsection (7) for paragraph (b) of the following paragraph:

"(b) a vacancy on the Council; or";

- (f) by the substitution in subsection (7) for paragraph (c) of the following paragraph:

"(c) the fact that any person was not entitled to sit as councilor at the time the decision was taken; **[or]**"; and

- (g) by the deletion in subsection (7) of paragraph (d)."

Amendment of section 13 of Act 56 of 2001

13. Section 13 of the principal Act is hereby amended by—

(a) the substitution of subsections (1) and (2) of the following subsections:

"(1) **[The]** Subject to section 8(6) the Council may appoint one or more ad hoc committees consisting of—

(a) one or more councillors **[, or]**;

(b) one or more councillors and one or more other persons**[,];** or

(c) one or more other persons.

to advise or assist the Authority in relation to any matter referred to it by the Council and to report on that matter to the Council.

(2) The Council **[may]** must establish committees representing different sectors, disciplines or interests in the private security industry to advise it regarding the regulation of the private security industry, provided that no remuneration or allowances as contemplated in section 8(6) may be paid to a member of a committee established in terms of this subsection.";

(b) the substitution for subsection (4) of the following subsection:

"(4) A committee must perform its functions subject to the provisions of this Act, the Levies Act, the Public Finance Management Act and any terms of reference prescribed by [directives of] the Council."; and

(c) the addition of the following subsection:

"(6) The Council must report to the Minister on the appointment of the committees and the costs pertaining to such appointment."

Amendment of section 14 of Act 56 of 2001

14. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Council must through a transparent process appoint, in consultation with the Minister a **[suitably qualified and experienced person as the]** director of the Authority, as well as three deputy directors **[on such conditions and terms as may be determined by the Council]** who are—

(a) citizens of the Republic; and

(b) fit and proper persons,

with due regard to their qualifications, experience, conscientiousness and integrity, to be entrusted with the responsibilities with regard to their respective offices."

(b) by the insertion after subsection (1) of the following subsections:

"(1A) Appointments made under subsection (1) must be on such terms and conditions as may be determined by the Council and taking into account the principles relating to improvement of service delivery, quality of training and integrity as applicable to the public administration.

(1B) The fixed establishment, the number and grading of posts of the Authority must be approved by the Council in consultation with the Department of Public Service and Administration and with the concurrence of the Minister.

(1C) The Minister must report the appointment of the director and deputy directors to Parliament.”;

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The director **[and deputy directors]** of the Authority must, subject to **[the Council’s direction and control]** subsection (1B)—”;

- (d) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) ensure that the functions of the Authority are performed in terms of this Act **[and]**, the Levies Act and the Public Finance Management Act”;

- (e) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

“(f) prepare the **[business]** strategic and annual performance plan of the Authority in accordance with the Public Finance Management Act; and”;

- (f) by the substitution for subsection (3) of the following subsection:

“(3) The director **[and deputy directors]** of the Authority may in writing, with the approval of the Council, delegate any of **[their]** his or her powers, and assign any of **[their]** his or her duties, to a staff member of the Authority.”;

- (g) by the insertion after subsection (3) of the following subsection:

“(3A) A standing delegation made under subsection (3) must be reviewed annually by the Council.”;

(h) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) The director of the Authority **[may]** must appoint, subject to this Act and to the general **[or special]** directions of the Council, the staff of the Authority that may be necessary to perform the work arising from or connected with the Authority's functions in terms of this Act **[and]**, the Levies Act and the Public Finance Management Act.";

(i) by the deletion in subsection (4) of paragraph (b);

(j) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

"(c) Staff members of the Authority—

(i) may not have any financial interest in the private security industry; and

(ii) must successfully undergo such security clearance check conducted by the **[National Intelligence]** State Security Agency, as may be determined by the Council if this is relevant in respect of their work.";

(k) by the deletion of subsection (5);

(l) by the substitution for subsection (6) of the following subsection:

"(6) The terms and conditions of service of the Authority's staff and their remuneration, allowances, subsidies and other service benefits must be determined by the Council **[from time to time]**, in consultation with the Minister."; and

(m) by the addition of the following subsection:

"(7) A vacancy in the offices of the director and deputy directors must be filled within six months."

Insertion of section 14A in Act 56 of 2001

15. The following section is hereby inserted after section 14 of the principal Act:

"Disqualifications for appointment as director and deputy directors

14A. A person may not be appointed as a director or deputy director if such person—

- (a) is not a citizen of the Republic;
- (b) (i) has a direct or indirect financial or personal interest in the private security industry; or
 - (ii) represents or is a member of a body representing the interests of employers or employees in the private security industry or security officers or any security business;
- (c) is an unrehabilitated insolvent;
- (d) has not obtained such a security clearance by the State Security Agency as may have been determined by the Minister ;
- (e) has been convicted of a criminal offence, or who is subject to a pending criminal prosecution; or
- (f) is not a fit and proper person."

Repeal of section 15 of Act 56 of 2001

16. Section 15 of the principal Act is hereby repealed.

Substitution of section 16 of Act 56 of 2001

17. Section 16 of the principal Act is hereby substituted for the following section:

"~~[Funds]~~ Finances of Authority

16. (1) **[The funds of the Authority consist of money from any legitimate source, received by or which has accrued to the Authority in terms of this Act or any other law]** The Authority is financed from—

(a) registration fees, levies or moneys from any legitimate source which have accrued to the Authority in terms of this Act, the Levies Act or any other law; and

(b) money that may be appropriated by Parliament, where necessary, appropriate and justifiable.

(2) **[The Authority must use its funds for defraying the expenditure incurred in the achievement of its objects and the performance of its functions in terms of this Act and the Levies Act]** The Council must, subject to the Public Finance Management Act and section 16A—

(a) account for money received or paid on account of the Authority; and

(b) cause the necessary accounting and other related records to be kept.

(3) The records referred to in subsection (2)(b) must be audited by the Auditor-General.

(4) The director must report to the Council in respect of the financial affairs, including any investment account of the Authority, on a monthly and quarterly basis and as and when required.

(5) The Council is the accounting authority for the Authority.”.

Insertion of section 16A in Act 56 of 2001

18. The following section is hereby inserted after section 16 of the principal Act:

"Annual report

16A. (1) The Council must prepare and submit to the Minister, through the accounting officer designated by the Minister, an annual report in terms of section 55(1)(d) of the Public Finance Management Act.

(2) The annual report referred to in subsection (1) must include the following documents:

(a) The audited financial statements prepared in terms of the Public Finance Management Act;

(b) the Auditor-General's report prepared in terms of the Public Finance Management Act; and

(c) a report on the activities of the Authority undertaken during the year to which the audit relates including matters—

(i) referred to in section 10(1A), 26(9) and 32(4); and

(ii) pertaining to the exemptions granted or refused and the reasons therefor; and

(iii) pertaining to any investment account of the Authority, including any deposits or withdrawals and reasons therefor.

(3) The director must publish, including in a medium accessible to the public, the annual report, financial statements and audit report on those statements once tabled in Parliament.”.

Repeal of sections 17, 18 and 19 of Act 56 of 2001

19. Sections 17, 18 and 19 of the principal Act are hereby repealed.

Amendment of section 20 of Act 56 of 2001

20. Section 20 of the principal Act is hereby amended—

(a) by the addition in subsection (1) of the following paragraph:

"(c) A security business may not use the services of a person who is not registered in terms of this Act to render a security service.”;

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) if all the persons performing executive or managing functions in respect of such security business are registered as security service providers, unless such person is exempted in terms of this Act; and”;

(c) by the addition of the following paragraph:

“(c) if at least 51 percent of the ownership and control is exercised by South African citizens.

(d) by the insertion after subsection (2) of the following subsections:

“(2A) Despite subsection (2)(c), the Minister may, taking into account the security interests of the Republic, prescribe by regulation a different percentage of ownership and control in respect of different categories of the security business contemplated in section 21A.

“(2B) The Minister must prescribe by regulation the verification of ownership and control of security businesses.”.

(e) by the substitution for subsection (5) of the following subsection:

“(5) The Minister may, after **[consultation with the Authority]** taking into consideration the recommendations of the Exemption Advisory Committee referred to in section 20A, by notice in the Gazette exempt any—

(a) security service provider or security service provider belonging to a category or class specified in the notice, either generally or subject to such conditions as may be specified in the notice, from the operation of any provision of this Act; or

(b) service, activity, practice, equipment, person or entity from any provision of this Act.

as long as it does not prejudice the achievement of the objects of this Act."

(d) by the addition of the following subsection:

"(6) The Minister must take a decision within 90 days of receipt of the application for exemption contemplated in this Act, and in the case of refusal provide the applicant with reasons within 30 days of the date of receipt of a request for reasons."

Insertion of section 20A in Act 56 of 2001

21. The following section is hereby inserted in the principal Act after section 20:

"Exemption Advisory Committee

20A. (1) The Exemption Advisory Committee is hereby established.

(2) The Committee consists of a representative of the—

(a) Authority;

(b) Civilian Secretariat;

(c) Department of Home Affairs;

(d) Service;

(e) Department of Trade and Industry; and

(f) State Security Agency,

appointed by the Minister.

(3) The representative of the Civilian Secretariat must be a legally qualified person and must chair the Committee.

(4) The Committee must make recommendations to the Minister in respect of exemptions referred to in section 20(5).

(5) The Minister may prescribe procedural matters and the factors to be considered in relation to the function of the Committee referred to in subsection (4).

(6) The regulations referred to in subsection (5) must be tabled in the National Assembly for scrutiny and adoption—

(a) within 6 months of promulgation of this Act; and

(b) thereafter at least 30 days before promulgation of the regulations,

while it is in session or after the commencement of the next ensuing session.”.

Amendment of section 21 of Act 56 of 2001

22. Section 21 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the application fee as determined by the **[Authority]** Council;
[and]”;

(b) by the insertion in subsection (1) after paragraph (b) of the following paragraphs:

“(bA) a certified copy of a valid identity document of a person referred to in paragraph (a);

- (bB) a design, sketch or photograph of the security service provider's insignia, emblem, title or symbol whether on a uniform, vehicle or otherwise; and
- (bC) a colour sketch or photograph of the security service provider's uniform."

Insertion of section 21A in Act 56 of 2001

23. The following section is hereby inserted in the principal Act after section 21:

"Categories of security businesses

- 21A.** (1) The Authority may register a security business meeting the requirements in sections 21 and 23 under any one or more of the following categories—
- (a) guarding;
- (b) close protection;
- (c) response security;
- (d) assets in transit;
- (e) event security;
- (f) manufacturers, importers and distributors of listed equipment defined in the Interception of Communications and Provision of Communication-related information Act, 2002 (Act No. 70 of 2002);
- (g) private investigators;

(h) security training;

(i) electronic security;

(j) locksmiths; or

(k) security advisers.

(2) The Minister may, by notice in the *Gazette*, determine additional categories of security businesses.

(3) The Authority must determine training standards in respect of the categories referred to in subsection (1).

(4) A notice referred to in subsection (2) must be tabled in Parliament for notification within –

(a) 14 days if Parliament is in session; or

(b) 14 days after the next ensuing session if Parliament is not in session."

Substitution of section 22 of Act 56 of 2001

24. Section 22 of the principal Act is hereby substituted for the following section:

"Renewal of registration

22. (1) The Minister **[may]** must prescribe, through regulations, procedures **[and principles]** in respect of **[periodic applications for]** the renewal of registration by registered security service providers and the conditions and requirements for the granting of such applications.

(2) (a) The registered security service provider must apply for the renewal of the relevant category of registration within the period determined by the Minister by notice in the *Gazette*.

(b) Different periods may be determined in terms of paragraph (a) in respect of different categories of security businesses for registration.

(c) If an application for the renewal of registration has been lodged within the period contemplated in subsection (2), the registration remains valid until the application is decided.

(3) An application for renewal of a registration contemplated in subsection (1) must, in addition to any requirement in terms of this Act, be accompanied by—

(a) a certified copy of the existing registration certificate; and

(b) such other information as may be prescribed.

(4) The registration of any security service provider, who fails to apply for the renewal of registration before the end of the period determined by the Minister in terms of subsection (2), lapses, subject to compliance with section 26(5).

(5) The Authority must process an application for renewal within six months of receipt thereof.”

Amendment of section 23 of Act 56 of 2001

25. Section 23 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) has complied with the relevant prescribed training requirements **[prescribed for registration as a security service provider]** in respect of any particular category referred to in section 21A;”;
- (b) by the substitution in subsection (1) for paragraph (d) of the following subsection:
- “(d) was not found guilty of an offence specified in the Schedule **[within a period of 10 years immediately before the submission of the application to the Authority];**”;
- (c) by the substitution in subsection (1) for paragraph (h) of the following subsection:
- “(h) is not currently employed in the **[Public Service]** public administration in circumstances where such registration may conflict with a legislative provision applicable to the applicant;”.
- (d) by the substitution in subsection (2) of the word “and” at the end of paragraph (a), the insertion of the word “and” at the end of paragraph (b) and the addition of the following paragraph:
- “(c) such security business furnishes information on the nature, scope and activities of the security business with reference to the categories referred to in section 21A(1).”;
- (e) by the substitution for subsections (4) and (5) of the following subsections:
- “(4) The Authority may refuse the registration of any person who[—

- (a) at the time of submission or consideration of the application, is under State investigation in respect of an offence specified in the Schedule or who is being criminally prosecuted in respect of such an offence[; or
- (b) **was convicted of an offence specified in the Schedule more than 10 years immediately before the submission of the application for registration to the Authority].**”; and

(5) Despite any provision to the contrary, a person in the permanent employ of the Service, **[the Directorate of Special Operations, the National Intelligence]** the State Security Agency, **[the South African Secret Service,]** the South African National Defence Force or the Department of Correctional Services may not be registered as a security service provider whilst so employed.”.

Amendment of section 26 of Act 56 of 2001

26. Section 26 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) and (2) of the following subsections:

"(1) **[If there is]** The Authority must suspend the registration of a security service provider if there is a *prima facie* case of=

- (a) improper conduct in terms of this Act[,] or
- (b) **[of]** the commission of an offence referred to in the Schedule[, **against a security service provider, the Authority may suspend the registration of the security service provider-**

- (a) pending the conclusion of an investigation or enquiry by the Authority into the alleged improper conduct; or
- (b) pending the conclusion of the criminal investigation by the State into the offence in respect of that security service provider, or a determination by the prosecuting authority or the finalisation of criminal proceedings in regard to the offence].

(b) by the insertion after subsection (1) of the following subsections:

"(1A) The Authority may suspend the registration of a security service provider if—

- (a) the security service provider fails to comply with the obligation to pay the levy in terms of section 4 of the Levies Act; or
- (b) the security service provider fails to comply with any other provision of this Act.

(1B) The registration of a security service provider may be suspended subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000).";

(c) by the substitution for subsections (2) and (3) of the following subsections:

"(2) The Authority may suspend the registration of a security business if any of the grounds contemplated in subsection (1) pertain to a **[natural]** person referred to in section 20(2).

(3) The effect of a suspension of registration is that the security service provider whose registration is suspended may not render any security service [, **unless the prior written permission of**

the Authority has been obtained], but during the period of such suspension the security service provider is still bound by all the obligations of a registered security service provider provided for in this Act and in the Levies Act.";

- (d) by the substitution in subsection (4) of the words preceding paragraph (a) of the following words:

"The Authority **[may]** must, subject to section 5(3) and the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), withdraw the registration of a security service provider by written notice served on the security service provider if—";

- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) the security service provider has furnished to the Authority information **[in or]** in connection with the application for registration which is false;"

- (f) by the substitution for subsection (5) of the following subsection:

"(5) **[The]** Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), the registration of a security service provider lapses if—

(a) it is not renewed as contemplated in section 22; or

(b) the amount payable for levies in terms of section 2 of the Levies Act is not paid to the Authority within three months of the date of suspension of the registration of the security service provider concerned, unless the Authority determines otherwise.";

- (g) by the insertion after subsection (5) of the following subsection:

"(5A) If the registration of a security service provider has lapsed in terms of subsection (5) the Authority must publish a notice in the Gazette, indicating—

(a) the name of the security service provider;

(b) the period after which the registration has lapsed;

(c) the reason for the lapsing of registration; and

(d) the effect of the lapsing of registration."; and

(h) by the addition of the following subsections:

"(9) The Authority, through the Council, must report any suspension or withdrawal of registration made in terms of subsection (7) and any upliftment of suspension of registration made in terms of subsection (8) to the Minister within 30 days of the suspension, withdrawal or upliftment.

(10) The Authority must include any report referred to in subsection (9) in its annual report.";

Amendment of section 28 of Act 56 of 2001

27. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The code of conduct is legally binding on all security service providers **[irrespective of whether they are registered with the Authority or not and,]** to the extent provided for in this Act, on every person using his or her own employees to protect

or safeguard merely his or her own property or other interests, or persons or property on his or her premises or under his or her control.”.

Amendment of section 30 of Act 56 of 2001

28. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"An appeal committee contemplated in subsection (1) is appointed by the Minister **[for every appeal]** and consists of—";

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph :

"(b) two other persons if **[it is]** considered appropriate by the Minister.”;

(c) by the insertion after subsection (2) of the following subsection:

"(2A) (a) An appeal committee is appointed to function on a part-time basis for a period not exceeding three years on such terms and conditions as determined by the Minister.

(b) A member of the appeal committee may resign by notice in writing to the Minister.”; and

(d) by the substitution for subsections (4) and (5) of the following subsections:

"(4) The procedure in connection with the lodging and prosecution of an appeal in terms of this section must be prescribed by the Minister through regulations.

(5) The amounts payable by an appellant to the Authority in respect of the reproduction of records and related matters in the lodging and prosecution of an appeal must be prescribed by the Minister through regulations."; and

(e) by the addition of the following subsection:

"(8) All costs related to the appeals procedure must be borne by the Authority."

Amendment of section 31 of Act 56 of 2001

29. Section 31 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) (a) The **[Council, or the]** director **[if he or she has been authorised generally or specifically by the Council,]** may, if it is considered necessary in the circumstances to acquire special expertise or to augment the capacity of the Authority temporarily, appoint any person **[,]** who is not in the full-time employment of the Authority **[, as an inspector for a particular inspection or]** to assist an inspector with a particular inspection.

(b) Any appointment made in terms of paragraph (a) must be reported on quarterly by the Council to the Minister and must be included in the annual report referred to in section 16A."

Amendment of section 32 of Act 56 of 2001

30. Section 32 of the principal Act is hereby amended by the addition of the following subsection:

"(4) The Authority must include information on any penalties imposed under subsection (3) in the annual report."

Amendment of section 34 of Act 56 of 2001

31. Section 34 of the principal Act is hereby amended—:

(a) by the substitution for the words preceding paragraph (i) in subsection (1) of the following:

"(a) without prior notice, subject to subsection (6), enter any premises—";

(b) by the substitution for subparagraph (iii) of paragraph (a) of subsection (1) of the following:

"(iii) where₁ or from where₁ a security service is rendered or the director has reason to believe that such a service is rendered;"

(c) by the substitution in subsection (3) for paragraph (b) of the following:

"(b) An inspector may use the powers in terms of this subsection only to serve the purposes of this Act **[and matters incidental thereto]**.";and

(d) by the addition of the following subsection:

"(6) An inspection of private dwellings may only be carried out when authorised by a warrant issued by a competent court."

Amendment of section 35 of Act 56 of 2001

32. Section 35 of the principal Act is hereby substituted for the following section:

"Regulations

35. (1) The Minister may make regulations relating to any matter which—

(a) **[any matter which]** in terms of this Act is required or permitted to be prescribed; and

(b) generally is necessary or expedient to prescribe for the attainment or better attainment of the objects of this Act or performance of the functions of the Authority.

(1A) The Minister must make regulations relating to—

(a) the requirements in respect of the infrastructure and capacity necessary for a security business to render a security service;

- (b) the registration by the Authority of security service providers, including the procedures in relation to the suspension, withdrawal and lapsing of registration;
- (c) the **[periodic applications for]** procedures in respect of renewal of registration and the conditions upon which such applications are to be granted;
- (d) the obligatory undergoing of security training by security service providers in respect of the different categories referred to in section 21A(1);
- (e) ensuring the quality of training as contemplated in section 4(k) or any other law, in respect of security service providers and prospective security service providers;
- (eA) guidelines in respect of insignia, emblem, title or symbol whether on a uniform, vehicle or otherwise;
- (f) the **[uniform, insignia and]** registration and identification certificates of security service providers;
- (g) the types of uniforms, insignia, emblem, title, symbol, distinctive badges or buttons which may not be supplied to, used or worn by a security service provider;
- (h) (i) the procedure for the institution and conduct of improper conduct proceedings or any other inquiry in terms of this Act;

- (ii) the appointment, powers and duties of presiding officers and other officials in respect of such proceedings or any other inquiry in terms of this Act;
- (iii) the attendance by a security service provider or any witness, of improper conduct proceedings or any other inquiry in terms of this Act;
- (iv) cost orders with regard to improper conduct proceedings;
- (v) the procedure for the payment and collection of fines imposed in respect of improper conduct;
- (vi) competent findings and other appropriate orders in respect of improper conduct;
- (vii) the confirmation, review or substitution of any finding, punishment or other order contemplated in subparagraph (vi), or the setting aside thereof, by the Authority;
- (i) the establishment, management and functioning of a guarantee fund for the private security industry;
- (j) the establishment and operation of a complaints office as contemplated in section 4(*r*);
- (k) the compulsory keeping of records and documents concerning the management, administration and other matters relating to the rendering of a security service and the format for keeping the records and documents, including the premises where the records and documents must be kept available;
- (l) the types of information which security service providers must furnish to the Authority;

- (IA) the types of information which security service providers must furnish to the Authority when rendering a security service outside the Republic;
- (m) the issuing, possession and use of firearms and other weapons by security service providers;
- (n) the safe-keeping and disposal of records, documents and other objects seized in terms of this Act;
- (o) the training, registration, use, treatment, transportation and general care of working animals by security service providers and other persons who employ security officers, in or in connection with rendering a security service, as well as the registration of training centres with regard thereto;
- (p) the information to be furnished by security businesses to consumers or prospective consumers of security services;
- (q) the advertising of the services of security service providers and of security equipment;
- (r) the use of certain types of equipment by security service providers in the rendering of a security service;
- (s) the manufacture, importation, selling, distribution and possession of security equipment;
- (sA) minimum standards applicable to security service providers responsible for the safe transportation of cash or goods with a high value, including precious metals or jewellery;
- (sB) minimum standards for the provision of security services at national key points as referred to in section 1 of the National Key Points Act, 1980 (Act No. 102 of 1980);

(t) the limited engaging by the Authority of the services of consultants, when it is necessary to make use of such services [;

(u) **generally, any matter which it is necessary or expedient to prescribe for the attainment or better attainment of the objects of this Act or the performance of the functions of the Authority].**

(2) Different regulations may be made in terms of subsection (1) or (1A) with reference to different categories or classes of security service providers.

(3) Regulations made in terms of subsection (1) or (1A) may, in respect of any contravention thereof or failure to comply therewith, prescribe as a penalty a fine or imprisonment for a period not exceeding **[24 months]** five years.

(4) The Minister must, after consultation with the Council, issue guidelines or policies in relation to the governance of the Authority within six months of the commencement of this Act and thereafter as and when required.

(5) Any regulation made under this section must be tabled in Parliament for consideration.”.

Amendment of section 36 of Act 56 of 2001

33. Section 36 of the principal Act is hereby amended—

(a) by the substitution for the heading of the section of the following:

"Provision of information [to Authority]"; and

(b) by the addition of the following subsections:

"(3) The Authority must inform the Registrar as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), at the time of any new registration, suspension, sale, transfer, liquidation, merger, lapsing or termination of the registration or ownership of a security service provider or any other material change or reason that would necessitate the licensing, relicensing or disposal of firearms in the possession of such security service provider.

(4) The Registrar mentioned in subsection (3) must, at the written request of the director, submit a list of all firearms registered to a particular security service provider, to the Authority within 30 days of the request being made.

(5) The Authority must report to Parliament in its annual report information provided by the Authority to the Registrar in terms of subsection (3)."

Insertion of section 36A in Act 56 of 2001

34. The following section is hereby inserted after section 36 of the principal Act:

"Security services rendered outside Republic

36A. (1) Any person who, within the Republic, recruits, trains, hires out, sends or deploys any other person to provide a security service outside the Republic must—

(a) provide to the director on a quarterly basis such information as may be prescribed regarding such recruitment, training, hiring out, sending or deployment or nature of the security service within the prescribed time limits; and

(b) comply with the provisions of this Act.

(2) A person referred to in subsection (1) may not engage in any activity, or render any assistance, that is prohibited in terms of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006) or the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998).

(3) Any person who—

(a) is employed by another person from outside the Republic, and

(b) is deployed from the Republic to perform armed guarding services outside the Republic,

must at least two weeks before the deployment inform the Authority of such deployment in the prescribed manner.

(4) The information referred to in subsection (3) must be submitted by the Authority to the State Security Agency within seven days of receipt of the notification.".

Amendment of section 38 of Act 56 of 2001

35. Section 38 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) interferes with, resists, obstructs, hinders or delays an inspector, any other person lawfully accompanying an inspector or a member of the Service in the performance of any function in terms of this Act or the Levies Act;"

(b) by the deletion in subsection (2) of the word "or" at the end of paragraph (a), the insertion of the word "or" at the end of paragraph (b) and the addition of the following paragraph:

"(d) any security service provider who—

(i) allows the use of any insignia, emblem, title or symbol whether on uniform or vehicle or otherwise, or

(ii) allows the use of any uniform, which corresponds or can be confused with any uniform, insignia, emblem, title or symbol used by the South African National Defence Force or the Service or a municipal police service,"

(c) by the substitution in subsection (3) for subparagraphs (i), (ii) and (iii) of the following subparagraphs:

- “(i) in the case of a natural person, on a first conviction of a contravention referred to in paragraph (a), (e), (f), (g) or (h) is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment, and in the case of a juristic person, to a fine;
- (ii) in the case of a natural person, on a second or subsequent conviction of a contravention referred to in paragraph (a), (e), (f), (g) or (h) is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment, and in the case of a juristic person, to a fine;
- (iii) in the case of a natural person, on a conviction of a contravention referred to in paragraph (b), (c), (d), [(e), (f), (g), (h),] or (i), is liable to a fine or to imprisonment for a period not exceeding 24 months, or to both a fine and such imprisonment, and in the case of a juristic person, to a fine.”; and
- (d) the insertion of the following subsection after subsection (3):

“(3A) Any person who fails to comply with the provisions of section 36A(1) or (3) is guilty of an offence and is liable—

(a) in the case of a natural person, on a first conviction, to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, and in the case of a juristic person, to a fine; or

(b) in the case of a natural person, on a second or subsequent conviction, to a fine or to imprisonment for a period not

exceeding 15 years, or to both a fine and such imprisonment, and in the case of a juristic person, to a fine."

Repeal of section 39 of Act 56 of 2001

36. Section 39 of the principal Act is hereby repealed.

Repeal of section 41 of Act 56 of 2001

37. Section 41 of the principal Act is hereby repealed.

Insertion of section 44A in Act 56 of 2001

38. The following section is hereby inserted after section 44 of the principal Act:

"Transitional provisions relating to Private Security Industry Regulation Amendment Act, 2013

44A. (1) In this section "Amendment Act" means the Private Security Industry Regulation Amendment Act, 2013.

(2) (a) Any category or class of security service providers which was not obliged to be registered as such in terms of this Act, immediately before the commencement of the Amendment Act, will not be

subject to the provisions of this Act or the Levies Act until such date as the Minister may determine by notice in the Gazette.

(b) From the date of commencement of the Amendment Act, all new applications for registration must be made in accordance with the requirements of the Amendment Act.

(c) A notice contemplated in paragraph (a) may specify different dates in respect of different categories or classes of security service providers and must be published at least 180 days before any such date specified therein.

(3) The Minister must, within a period of two years from the commencement of the Amendment Act, make regulations that must be made under this Act, as amended by the Amendment Act.

(4) The chairperson and councillors who have been appointed before the commencement of the Amendment Act shall remain in these positions until their services have been terminated in terms of the provisions of this Act: Provided that such chairperson and councillors must obtain a security clearance to the level required by the Minister if not yet acquired before the commencement of the Amendment Act.

(5) Should the Minister re-appoint any councillor who is serving at the time when the Amendment Act commences, the total period of the contract of such a councillor may, when the original appointment is taken into account, not exceed seven years and such councillor must contribute to the requirement of section 6(3).

(6) Subject to subsection (4), from the commencement of the Amendment Act all members of the Council may only serve on a part-time basis.

(7) The secretary for the Council must be appointed within six months of the commencement of the Amendment Act, and until the appointment of such secretary, the director must ensure that the necessary secretarial services are provided to the Council.

(8) As from the date of commencement of the Amendment Act, the post of the director and the deputy directors must be filled in accordance with section 14 and taking into account section 14A Act, but the current incumbents of the respective posts will continue to hold office until the respective posts are filled in terms of section 14.

(9) The Exemption Advisory Committee as contemplated in section 20A must be appointed by the Minister before the commencement of the Amendment Act.

(10) An appeal committee as contemplated in section 30(2A) must be appointed before the commencement of the Amendment Act.

(11) A regulation that prohibits the use of any uniform, insignia, emblem, title, symbol, distinctive badge or button used by security service providers which was not in contravention of the Act must provide for a reasonable period, which period may not be less than 18 months from the promulgation of such regulation, for the phasing out of the use of the particular uniform, insignia, emblem, title, symbol, distinctive badge or buttons.

(12) The fixed establishment of the Authority referred to in section 14(1B) must be determined within 24 months of the commencement of the Amendment Act and the Minister must report any delay in the process to Parliament.

(13) The Authority through the Council must submit quarterly progress reports to the Minister on its readiness and progress made in respect of the implementation of the Levies Act and the renewal of registration.

(14) The Minister must report, on a quarterly basis, to Parliament on the progress made in the implementation of the Amendment Act.

(15) The implementation of section 20(2)(c) with regard to a security business that is registered as a security service provider at the commencement of the Amendment Act must be done in accordance with legislation promoting and protecting investment in the Republic and the Republic's international trade obligations."

Amendment to the Schedule to Act 56 of 2001

39. The Schedule to the principal Act is hereby amended—

- (a) by the insertion after "Any offence in terms of the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)." of the following:

"Any offence in terms of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006)."; and

- (b) by the insertion after “Any offence in terms of legislation pertaining to the control over the possession and use of firearms and ammunition;” of the following:

"Any offence in terms of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2000 (Act No. 70 of 2002).

Any offence in terms of the Intelligence Services Act, 2002(Act No. 65 of 2002).

Any offence of trafficking in persons as defined in section 1 of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).

Any offence of torture as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 3 of 2013).

Any offence referred to in Part I or Part II of Schedule I to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).

Any offence in terms of the Explosives Act, 2003 (Act No. 15 of 2003)."

Amendment of Index to Act 56 of 2001

40. The Index to the principal Act is hereby amended—

- (a) by the insertion after item 14 of the following item:

"14A. Disqualifications for appointment as director and deputy directors";

- (b) by the deletion of item 15;

(c) by the substitution for item 16 of the following item.

"**16. [Funds] Finances of Authority**";

(d) by the insertion after item 16 of the following item:

"**16A. Annual report**";

(e) by the deletion of items 17, 18 and 19";

(f) by the insertion after item 20 of the following item:

"**20A. Exemption Advisory Committee**";

(g) by the insertion after item 21 of the following item:

"**21A. Categories of security businesses**";

(h) by the insertion after item 36 of the following item:

"**36A. Security services rendered outside Republic**";

(i) by the deletion of items 39 and 41; and

(j) by the insertion after item 44 of the following item:

"**44A. Transitional provisions relating to the Private Security Industry Regulation Amendment Act, 2013**".

Substitution for long title to Act 56 of 2001

41. The long title of the principal Act is hereby substituted for the following long title:

"To provide for the regulation of the private security industry; for that purpose to establish a regulatory authority; to provide for the appointment of the director and deputy directors for the Authority; to provide for cooperation with the Civilian Secretariat for Police; to provide for the finances and accountability of the Authority; to provide

for limitation on foreign ownership; to provide for the establishment and functions of the Exemption Advisory Committee; to regulate security services rendered outside the Republic; to empower the Minister to make regulations for the transportation of cash and other valuables; to provide for offences and penalties; and to provide for matters connected therewith.” .

Short title and commencement

42. This Act is called the Private Security Industry Regulation Amendment Act, 2013, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PRIVATE SECURITY INDUSTRY REGULATION AMENDMENT BILL, 2013

1. BACKGROUND

1.1 The Private Security Industry has grown tremendously over the past years since the establishment of the Private Security Industry Regulatory Authority (the Authority). Since the promulgation of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) (the Act), government and civil society have been concerned with the regulation of the industry, particularly with regard to effective regulation, given the challenges of growth and funding of the Authority, which is wholly derived from the contributions of the private security industry.

1.2 The challenges of the private security industry manifested themselves in many ways which included—

- The lack of adequate resources, which compromised effective regulation;
- the lack of proper accountability for fire-arms in the possession of members of the private security industry;

- security services rendered outside the Republic by South African security companies; and
- criminality within the private security industry.

1.3 As a result of the challenges, the tightening of the South African regulatory framework for the private security industry became necessary. The call for the review of the Act was also affirmed by government's strategic plan to build a developmental state in order to ensure that every citizen feels and is safe.

1.4 Drawing from the valuable lessons of the application and implementation of the current private security regulatory regime as informed by the Act and the policy formulated relating to the industry, the draft Private Security Regulation Amendment Bill (the Bill) was produced.

1.5 On 30 May 2012, the Cabinet approved the Bill for introduction in Parliament. In addition to consultations before the Bill was approved for introduction in Parliament by Cabinet, the Portfolio Committee on Police invited public comments on the Bill and initiated further interdepartmental consultations. Public hearings were held by the Portfolio Committee, which elicited valuable input into the Bill.

2. OBJECTS OF THE BILL

2.1 The Bill seeks to strengthen control over the regulation of the private security industry including security services rendered from South Africa to other countries.

2.2 The provisions of the Bill are summarised as follows:

2.2.1 Ad Clause 1

Clause 1 amends section 1 of the Act and seeks to align the definitions for “company”, “Levies Act”, “locksmith”, “minister”, “organ of state”, “security business”, “security officer”, and “security service” in the Act with new developments and also insert definitions for “National Treasury” and “Public Finance Management Act” to provide in respect of the changed status of the Authority as a public entity, as well as a definition for the “Civilian Secretariat” . The definition of “National Commissioner” is deleted. The clause also removes the power of the Minister to grant exemptions from the definitions section and transports this power to section 20 of the Act with an insertion of a new clause 20A in the Bill that relates to the establishment of an Exemption Advisory Committee.

2.2.2 Ad clause 2

Clause 2 substitutes section 2 of the principal Act, and delete the reference by deleting the reference pertaining to the head office of the Authority to be situated in Pretoria.

2.2.3 Ad Clause 3

Clause 3 proposes to substitute section 3 of the principal Act that provides for the objects of the Authority by deleting certain objects and re-arranging retained objects in clusters to provide for a logical sequence.

2.2.4 Ad clause 4

Clause 4 amends section 4 of the principal Act that deals with the functions of the Authority by deleting paragraphs (e) to (ii) and substituting it with new paragraphs (e) to (n).

2.2.5 Ad Clause 5

Clause 5 of the Bill amends section 5 of the principal Act by inserting a new section 5(2A) that provides for the Public Finance Management Act to apply to the Council and the proposed subsection (6) for the Minister of Police to mediate where Council is unable to agree on material financial, governance and operational issues.

2.2.6 Ad Clause 6

Clause 6 amends section 6 of the principal Act by providing that the Minister of Police must give consideration to appointing members to the Council who, are fit and proper persons with experience, conscientiousness and integrity to be entrusted with the responsibilities of the office concerned and collectively, must have certain qualifications, experience and skills in the fields of finance, law and governance.

2.2.7 Ad Clause 7

Clause 7 proposes amendments to section 7 of the principal Act, to delete the reference to permanent residence status, allowing only for citizens of the Republic to appoint as a councillor.

2.2.8 Ad Clause 8

Clause 8 amends section 8 of the principal Act by increasing the maximum period of the appointment of a member of Council from three to five years and for the

members to serve on a part-time basis. Reappointment for members of the Council may only be for a period not exceeding two years. This clause also for the Minister of Police to be informed whenever a member of Council becomes subject to a disqualifying factor or absence from three consecutive meetings. Vacancies on the Council must be filled within six months from the date upon which the vacancy occurred. It is further provided that the Council is responsible for all legitimate costs of Council, including the remuneration for a Council secretary.

2.2.9 Ad Clause 9

Clause 9 amends section 9 of the principal Act by providing that the Council must maintain a working and cooperative relationship with the Civilian Secretariat on policing and policy matters related to the private security industry. It furthermore provides for the appointment of a Council secretary and the functions of such secretary.

2.2.10 Ad Clause 10

Clause 10 amends section 10 of the principal Act by deleting paragraphs (a) to inserting subsection (1A) which deals with the accountability of the Private Security Industry Regulatory Authority Council (the Council). The clause seeks to provide for the accountability of the Council to the Minister of Police and quarterly reporting of information in connection with its functions and certain compulsory information.

2.2.11 Ad Clause 11

Clause 11 amends section 11 of the principal Act by empowering the Minister to take corrective measures when there is no appointed Council and for the Minister to make an interim appointment to ensure continuity of the affairs of the Authority.

2.2.12 Ad Clause 12

Clause 12 amends section 12 of the principal Act by providing that Council must meet at least once every quarter and that the chairperson must convene a special meeting when so directed by the Minister.

2.2.13 Ad Clause 13

Clause 13 substitutes subsections (1) and (2) of section 13, relating to the appointment of ad hoc committees by the Council and provides for the remuneration of such committees and a report to the Minister on the appointment of committees. The Council must establish committees representing different sectors in the private security industry.

2.2.14 Ad Clause 14

Clause 14 amends section 14 of the principal Act by providing that the Council must appoint the director and deputy directors of the Authority in consultation with the Minister. The clause also seeks to provide for the director to perform his or her functions in terms of the Public Finance Management Act and prepare strategic and annual performance plans in accordance with the Public Finance Management Act. The clause also seeks to delete references to “deputy directors” in section 14(2).

2.2.15 Ad Clause 15

Clause 15 proposes to insert a new section 14A in the Act, providing for disqualifications for appointment as director and deputy directors.

2.2.16 Ad Clause 16

Clause 16 proposes to delete section 15 of the principal Act.

2.2.17 Ad Clause 17

Clause 17 proposes the substitution of section 16, providing for the funding model for the Authority. The clause provides that Authority is financed from levies or monies that have accrued to it in terms of the principal Act and any monies that may be appropriated by Parliament where this is necessary, appropriate and justifiable. Council is the accounting authority and is subject to the Public Finance Management Act.

2.2.18 Ad Clause 18

Clause 18 seeks to insert section 16A into the principal Act. The insertion provides for the Council to submit an annual report to the Minister in terms of section 55(1)(d) of the Public Finance Management Act and for the Minister to table a copy of the annual report, financial statements and audited statements to Parliament. It also provides for the publication of the annual report, financial statements and audit report once tabled in Parliament in a medium accessible to the public.

2.2.19 Ad Clause 19

Clause 19 seeks to delete sections 17, 18 and 19 from the principal Act. The repealed sections deal with the auditing and financial year-end of the Authority which

are adequately covered by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

2.2.20 Ad Clause 20

Clause 20 amends section 20 of the principal Act by providing that a security business may not use the services of a person who is not registered in terms of the principal Act to render a security service. The clause also provides for the Minister to have regard to the recommendations of the Exemption Advisory Committee when making decisions on applications for exemptions. The clause further deals with the issue of foreign ownership in the private security industry.

2.2.21 Ad Clause 21

Clause 21 inserts a new section 20A in the Act and seeks to establish the Exemption Advisory Committee and provide for its composition, functions and procedures by the insertion of section 20A to the principal Act.

2.2.22 Ad Clause 22

Clause 22 amends section 21 of the principal Act which deals with application for registration as a security service provider. The clause seeks to provide for new requirements for documents required for registration as a security officer. Submission of a certified copy of a valid South African identity document is inserted as a new requirement.

2.2.23 Ad Clause 23

Clause 23 proposes the insertion of a new section 21A, providing for the respective categories under which the Authority may register a security business. It also provides that the Minister may, by notice in the Gazette determine additional categories of security businesses.

2.2.24 Ad Clause 24

Clause 24 substitutes section 22 of the principal Act, providing for the renewal of registration by security service providers.

2.2.25 Ad Clause 25

Clause 25 proposes to amend section 23 of the principal Act by deleting the discretion to register natural persons who have previous criminal convictions and by providing for the submission of information by security businesses of information pertaining to the relevant categories of security businesses.

2.2.26 Ad Clause 26

Clause 26 provides for the amendment of section 26 of the principal Act and proposes additional requirements for suspension of the registration of security businesses, to ensure compliance with the Administrative Justice Act, 2000 (Act No. 2 of 2002), reporting suspensions and withdrawals of registration to the Minister and inclusion of particulars relating to suspensions and withdrawals in the annual report of the authority. It furthermore requires the publication of a notice in the Gazette regarding the lapsing of the registration of security service providers, and also inclusion of details thereof in the annual report of the Authority.

2.2.27 Ad Clause 27

Clause 27 proposes the deletion in section 28 of the principal Act of the provisions which made the code of conduct applicable to non-registered security service providers.

2.2.28 Ad Clause 28

Clause 28 provides for the amendment of section 30 of the principal Act to ensure that an appeal committee can be established on a continuous, but part-time basis and be appointed for a period not exceeding three years on such terms and conditions as the Minister may determine. The Minister is empowered to provide in regulations for the procedure in connection with the lodging and prosecution of an appeal.

2.2.29 Ad Clause 29

Clause 29 provides for the amendment of section 31 of the principal Act, which relates to the appointment of a person to assist an inspector with a particular inspection.

2.2.30 Ad Clause 30

Clause 30 provides for the amendment of section 32 of the principal Act to require that the Authority must include information on any penalties imposed under section (3) in the Annual report.

2.2.31 Ad Clause 31

Clause 31 amends section 34 of the principal Act by requiring for inspections of private dwellings to be carried out with a warrant issued by a competent court.

2.2.32 Ad Clause 32

Clause 32 amends section 35 of the principal Act, which sets out the matters in respect of which the Minister may make regulations. It seeks to provide for additional powers of the Minister to make regulations in relation to the procedures for the suspension, withdrawal and lapsing of registration; information to be furnished to the Authority by security service providers operating outside the Republic; and minimum standards for security service providers responsible for transportation of cash and other valuable assets; guidelines in respect of insignia, emblem, title or symbol used by security service providers; guidelines in relation to the governance of the Authority. The maximum term of imprisonment that may be provided for contravention of the regulations has been increased from 24 months to five years.

2.2.33 Ad Clause 33

Clause 33 amends section 36 of the Act. The clause seeks to provide for the Authority to inform the Registrar of Firearms under the Firearms Control Act, 2000, of any change or reason that would necessitate the licensing, relicensing or disposal of firearms in the possession of security service providers. It furthermore provides for the submission of a list, upon request of the Authority to the Authority of all firearms registered to a particular security service provider, to a particular security service provider. It places an obligation on the Authority to report to Parliament in respect of information provided to the Authority by the Registrar of firearms.

2.2.34 Ad Clause 34

Clause 34 inserts section 36A in the Act. This new section provides for the regulation of security services rendered outside the Republic by the Authority. The clause also provides for any person who is employed by another person from outside the Republic and is deployed from the Republic to perform armed guard duties outside the Republic to inform the Authority of such deployment and for the Authority to inform the South African Police Service.

2.2.35 Ad Clause 35

Clause 35 amends section 38 of the Act, which deals with offences and penalties. The clause seeks to provide for additional offences and penalties in relation to convictions for offences as contemplated in the new section 36A as well as to increase sentences for certain offences. Penalties are provided for natural persons as well as for juristic persons.

2.2.36 Ad Clause 36

Clause 36 provides for the deletion of section 39 of the principal Act.

2.2.37 Ad Clause 37

Clause 37 provides for the deletion of section 41 of the principal Act.

2.2.38 Ad Clause 38

Clause 38 provides for the insertion of section 44A in the principal Act, dealing with transitional matters relating to the implementation of the Private Security Industry Regulation Amendment Act, 2013.

2.2.39 Ad Clause 39

Clause 39 proposes amends the table of offences listed in the Schedule to the principal Act.

2.2.40 Ad Clause 40

Clause 40 provides for the amendment of the Schedule to the principal Act.

2.2.41 Ad Clause 41

Clause 41 provides for the substitution of the long title of the principal Act.

2.2.42 Ad Clause 42

Clause 42 provides for the short title and commencement of the Private Security Industry Regulation Amendment Act, 2013.

3. DEPARTMENTS / BODIES / PERSONS CONSULTED

In addition to consultations before the Bill was introduced, the public consultation process of the Portfolio Committee on Police led to submissions to the Committee by—

- (a) SSG Operational Risk Services (PTY) Limited;
- (b) Locksmiths Association of South Africa;
- (c) African Policing Civilian Oversight Forum;
- (d) Salus Protection Services;
- (e) South African Intruder Detection Services Association;
- (f) Control Risk SA (Proprietary) Limited (on the SA-UK BIT);

- (g) Security Industry Alliance;
- (h) American Chamber of Commerce;
- (i) ADT Security Limited;
- (j) Gun Free South Africa;
- (k) Safer South Africa Foundation.

The Portfolio Committee on Police also held extensive public hearings on the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 The proposed amendments might require investment of revenue in respect of the Authority. The Bill provides that the Authority is financed from—

- (a) registration fees, levies or moneys from any legitimate source which have accrued to the Authority in terms of this Act, the Levies Act or any other law; and
- (b) money that may be appropriated by Parliament, where necessary, appropriate and justifiable.

4.2 Major cost-drivers will be in the following areas:

- (a) Funding of the Authority;
- (b) Capacity building;
- (c) Exemption Committee; and
- (d) Renewal of registration.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.