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GENERAL NOTICE

NOTICE 460 OF 2001

DEPARTMENT OF SAFETY AND SECURITY

PUBLICATION OF SECURITY INDUSTRY REGULATION BILL, 2001

The Minister for Safety and Security intends introducing the Security Industry Regulation Bill, 2001 in the National Assembly during February 2001.

The draft Bill is hereby published in terms of Rule 241 of the National Assembly. All interested persons and institutions are invited to submit written representations on the draft legislation by not later than 16 March 2001 to the following parliamentary official:

The Portfolio Committee Secretary (Mr L Pakati)
Portfolio Committee on Safety and Security
P.O. Box 15
CAPE TOWN
8000

All written representations must be forwarded to the Portfolio Committee on Safety and Security for consideration. Kindly note that public hearings will be held and that any details in this regard will be published as soon as the Portfolio Committee has been able to finalise the necessary arrangements.

SECURITY INDUSTRY REGULATION BILL, 2001

To provide for the regulation of the security industry; for that purpose to establish a regulatory authority; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the adequate protection of fundamental rights to life and security of the person as well as the right not to be deprived of property, is fundamental to the well-being and to the social and economic development of every person;

AND WHEREAS security service providers and the security industry in general play an important role in protecting and safeguarding the aforesaid rights;

AND WHEREAS every citizen has the right to freely choose an occupation, including the occupation of security service provider;

AND WHEREAS it is necessary to achieve and maintain a trustworthy and legitimate security industry which acts in terms of the principles contained in the Constitution and other applicable law, and is capable of ensuring that there is greater safety and security in the country;

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

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CHAPTER 1

DEFINITIONS AND INTERPRETATION 45

Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise—

- "Authority" means the Security Industry Regulatory Authority established by section 2(1);
- "business trust" means a trust created for the purpose of making a profit through the combination of capital contributed by the beneficiaries of the trust and through the administration or management of the capital by trustees or a person acting on behalf of the trustees, for the benefit of the beneficiaries; 5
- "chairperson" means the chairperson of the Council;
- "close corporation" means a close corporation within the meaning of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- "code of conduct" means the code of conduct contemplated in section 27; 10
- "committee" means a committee appointed in terms of section 13;
- "company" means a company within the meaning of the Companies Act, 1973 (Act No. 61 of 1973);
- "Council" means the Council established by section 6;
- "councillor" means a member of the Council as contemplated in section 6; 15
- "director" means the director of the Authority appointed in terms of section 14(1);
- "employ", with regard to a security officer, includes the employment, controlling or making available of the security officer or his or her services or assistance, as contemplated in the definition of "security officer";
- "inspector" means a person appointed as an inspector in terms of section 30; 20
- "locksmith" means a person who, for the benefit of another person—
- (a) opens, closes or engages locks, including locking mechanisms operated by means of an electrical, electronic, magnetic or other process, by means other than keys, objects or procedures normally used;
 - (b) repairs, replaces, rebuilds or adjusts locks or such other locking mechanisms or their components; 25
 - (c) manufactures parts designed for use in locks or such other locking mechanisms; or
 - (d) cuts or reproduces keys or objects used to open, close or engage locks or such other locking mechanisms, 30
- but not a person who manufactures such locks, other locking mechanisms, keys or objects, only by repetitive methods;
- "Minister" means the Minister for Safety and Security;
- "National Commissioner" means the National Commissioner contemplated in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995); 35
- "organ of State" means an organ of State as defined in section 239 of the Constitution, but does not include the Security Services referred to in section 199 of the Constitution, the Department of Correctional Services and the Directorate of Special Operations;
- "person" includes— 40
- (a) a business trust; and
 - (b) a foundation;
- "polygraphist" means a person who, in order to ascertain, confirm or examine, in a scientific manner, the truthfulness or otherwise of statements made by another person, uses skills and techniques in conjunction with any equipment or instrument designed or adapted for that purpose; 45
- "premises" means any site, place or location regardless of whether it is or forms part of any temporary or permanent structure, building, vessel, vehicle or aircraft;
- "prescribe" means prescribe by regulation;
- "private investigator" means a person who, in a private capacity and for the benefit of another person— 50
- (a) investigates the identity, actions, whereabouts, movements, affiliations, associations, habits, personal character, reputation, trustworthiness, loyalty, occupation, previous employment, integrity, creditworthiness, transactions, financial position, life-history or background of another person, without the consent of such a person; 55
 - (b) searches for someone who has or is alleged to have committed any crime, delict, breach of contract or other wrongful act, or for any evidence of such wrongdoing;
 - (c) searches for missing persons, property or other assets, or investigates the cause or responsibility for accidents, injuries or damage; or 60
 - (d) conducts surveillance or counter-surveillance of a person and furnishes information with regards thereto;

"property" means any movable, immovable or intellectual property, or any right to such property;

"register" with regard to a security service provider, means entering the name of a security service provider in the register contemplated in section 23;

"regulation" means a regulation made in terms of section 34;

"security business" means, subject to subsection (2), any person who renders a security service to another for remuneration, reward, fee or benefit, except a person acting only as a security officer;

"security equipment" means—

(a) an alarm system;

(b) a safe, vault or secured container;

(c) a satellite-tracking device, closed circuit television or other electronic monitoring device or surveillance equipment; or

(d) a device used for intrusion detection, access control, bomb detection, fire detection, metal detection, x-ray inspection or for securing telephone communications,

designed, manufactured or used for the protection or safeguarding of persons, property or any other right recognised by law;

"security industry" means the industry conducted by security service providers;

"security officer" means any natural person—

(a) (i) who is employed by another person, including an organ of State, 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 any remuneration, reward, fee or benefit, as regards one or more security services; or

(b) who renders a security service under the control of another security service provider and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for such service; or

(c) who, or whose services are directly or indirectly made available by another security service provider to any other person, and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for rendering one or more security services;

"security service" means one or more of the following services or activities:

(a) protecting or safeguarding a person or property in any manner;

(b) giving advice on the protection or safeguarding of a person or property, on any other type of security service as defined in this section, or on the use of security equipment;

(c) providing a reactive or response service in connection with the safeguarding of a person or property in any manner;

(d) providing a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or similar purposes;

(e) manufacturing, importing, distributing or advertising of monitoring devices contemplated in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992);

(f) performing the functions of a private investigator;

(g) performing the functions of a polygraphist;

(h) providing security training or instruction to a security service provider or prospective security service provider;

(i) installing, servicing or repairing security equipment;

(j) monitoring signals or transmissions from electronic security equipment;

(k) performing the functions of a locksmith;

(l) 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 (k) and (m), to another person;

(m) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (k);

(n) creating the impression, in any manner, that one or more of the services referred to in paragraphs (a) to (m) are rendered;

"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;

"security training" means any training, instruction or qualification required in terms of any law before a person may be registered as a security service provider or allowed to render a particular security service; 5

"serve", in relation to any document or notice required in terms of this Act to be served on any person, means to send such a document or notice by post to the current business, employment or residential address as reflected in the records of the Authority, or to deliver, or to offer to deliver, a copy of the document or notice personally to such person, or at such person's employment or residential address to any person who is apparently over the age of 16 years and who resides or is employed at such address; 10

"Service" means the South African Police Service, established by section 5 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 15

"this Act" includes the regulations and the code of conduct for security service providers.

(2) The Minister may, after consultation with the Authority and as long as it does not prejudice the achievement of the objects of this Act, by notice in the *Gazette*, exempt any service, activity or practice or any equipment or any person or entity from any or all the provisions of this Act. 20

CHAPTER 2

SECURITY INDUSTRY REGULATORY AUTHORITY

Establishment of Security Industry Regulatory Authority

2. (1) A juristic person to be known as the Security Industry Regulatory Authority, is hereby established. 25

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

Objects of Authority

3. The primary objects of the Authority are to regulate the 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 security industry itself, and for that purpose, subject to this Act, to— 30

- (a) promote a legitimate security industry which acts in terms of the principles contained in the Constitution and other applicable law;
- (b) ensure that all security service providers act in the public and national interest in the rendering of security services; 35
- (c) promote a security industry which is characterised by professionalism, transparency, accountability, equity and accessibility;
- (d) promote stability of the security industry;
- (e) promote and encourage trustworthiness of security service providers; 40
- (f) determine and enforce minimum standards of occupational conduct in respect of security service providers;
- (g) encourage and promote efficiency in and responsibility with regard to the rendering of security services;
- (h) promote, maintain and protect the status and interests of the occupation of security service provider; 45
- (i) ensure that the process of registration of security service providers is transparent, fair, objective and concluded timeously;
- (j) promote high standards in the training of security service providers and prospective security service providers; 50
- (k) encourage ownership and control of security businesses by persons historically disadvantaged through unfair discrimination;
- (l) encourage equal opportunity employment practices in the security industry;
- (m) promote the protection and enforcement of the rights of security officers and other employees in the security industry; 55

- (n) 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;
- (o) protect the interests of the users of security services;
- (p) promote the development of security services which are responsive to the needs of users of such services and of the community; 5
- (q) promote the empowerment and advancement of persons who were historically disadvantaged through unfair discrimination in the security industry.

Functions of Authority

4. The Authority must take steps to achieve its objects with the means at its disposal 10 and may, subject to this Act, for the purpose of achieving its objects—

- (a) exercise such powers and perform such duties as may be given or assigned to the Authority in terms of this Act or any other law;
- (b) enquire into and report to the Minister on any matter concerning the objects of the Authority; 15
- (c) advise the Minister 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 application thereof, and on any other matter relating to security services which has been referred by the Minister to the Authority for the advice and recommendations of the Authority; 20
- (d) conduct an ongoing study and investigation of the rendering of security services and practices of security service providers in order to identify shortcomings in this Act or any policy or rule made in terms thereof, and to deal with any evasion, abuse or violation of the procedures or principles contained in this Act or any policy or rule made in terms thereof; 25
- (e) institute legal proceedings and defend or oppose any legal proceedings against the Authority;
- (f) 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; 30
- (g) suspend or withdraw the registration status of a security service provider in terms of this Act;
- (h) take such steps as may be necessary to develop and maintain standards and regulate practices in connection with the occupation of security service provider, and persons pursuing or intending to pursue such occupation; 35
- (i) gather information relevant to the occupation of security service provider in connection with persons who are security service providers or who are applying for registration as such;
- (j) take steps to protect and assist security officers and other employees against or in regard to acts, practices and consequences of exploitation or abuse; 40
- (k) take such steps as may be expedient or necessary in connection with the training of security service providers and prospective security service providers to ensure a high quality of training and in particular with regard to—
 - (i) the accreditation and withdrawal of the accreditation of persons and institutions providing security training; 45
 - (ii) the monitoring and auditing of the quality of training functions performed by accredited persons;
 - (iii) the participation in the activities of other bodies or persons entitled by law to set standards in respect of training of security service providers or bodies entitled to formulate, implement or monitor skills development plans for the security industry; 50
 - (iv) the appointment of persons to monitor and assess achievements or outcomes in respect of standards applicable to training;
 - (v) the determination and accreditation of qualifications required by security service providers to perform particular types of security services; and 55
 - (vi) the taking of reasonable steps to verify the authenticity of training certificates presented by persons for the purposes of this Act;
- (l) cause its work to be performed by persons employed or appointed by it in terms of this Act; 60

- (m) develop and maintain a computerised database with information required for the proper performance of its functions;
- (n) establish and manage branch offices;
- (o) provide or disseminate information promoting and encouraging compliance with this Act and the code of conduct by security service providers; 5
- (p) 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;
- (q) establish a guarantee fund for the security industry which is managed in the prescribed manner; 10
- (r) in the prescribed manner establish a complaints office to receive, process, refer or deal with complaints regarding the quality of service rendered by security service providers;
- (s) furnish information required by any department or any organ of State for the purposes of its official functions; 15
- (t) receive, expend and generally administer funds;
- (u) open accounts with any banking or other financial institution;
- (v) invest money with financial institutions registered in terms of any law;
- (w) 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; 20
- (x) acquire or hire movable or immovable property, or hypothecate, let, sell or otherwise dispose of movable or immovable property of the Authority;
- (y) accept donations with the approval of the Minister;
- (z) raise finance from other sources in the course of normal business; 25
- (aa) manage and safeguard its assets;
- (bb) determine minimum internal control systems for security businesses, including but not limited to, accounting and reporting procedures and any other procedures or systems;
- (cc) become a member of an association or organisation which seeks to promote any matter in which the Authority has an interest; 30
- (dd) establish relations with or enter into co-operation agreements with bodies or offices regulating the security industry in other countries, or bodies representing such regulators;
- (ee) consult with any person or engage the services of consultants regarding any matter necessary for the performance of its functions on such terms and conditions as the Authority may determine; 35
- (ff) conduct, or cause to be conducted, hearings, investigations and inquiries with regard to any matter falling within the scope of its functions;
- (gg) enter into contracts including insurance agreements; 40
- (hh) 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;
- (ii) cooperate with any person or body in the performance of an act which the Authority by law is permitted to perform; and 45
- (jj) generally perform any act that contributes to the attainment of its objects.

Governance of Authority

5. (1) The Authority is governed and controlled by the Council contemplated in section 6, in accordance with this Act.

(2) The Authority acts through the Council and all acts of the Council are regarded as acts of the Authority. 50

(3) The Authority must be impartial in the performance of its functions and must ensure that in the taking of decisions or other steps, it complies with all legal requirements for just administrative action.

(4) The Authority must otherwise perform its functions in terms of this 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*. 55

(5) 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*.

Establishment and constitution of Council and appointment of councillors

6. The Council for the Authority is hereby established and consists of the following councillors:

- (a) (i) a chairperson;
- (ii) a vice-chairperson; and 5
- (iii) three additional councillors;
- appointed by the Minister, which, in the case of the chairperson, must be done in consultation with Cabinet; and
- (b) the director, who will serve on the Council by virtue of his or her office, but without any voting rights. 10

Disqualifications for appointment as councillor

7. (1) A person may not be appointed as a councillor if such person—
- (a) is not a citizen of or does not have permanent resident status in the Republic;
 - (b) (i) has a direct or indirect financial or personal interest in the security industry which may prejudice his or her independence; or 15
 - (ii) represents or is a member of a body representing the interests of employers or employees in the security industry or security officers or any security business;
 - (c) is not a fit and proper person to hold office as a councillor;
 - (d) is an unrehabilitated insolvent; or 20
 - (e) has not obtained such a security clearance by the National Intelligence Agency as may have been determined by the Minister.

(2) A person must submit to the Minister a written statement indicating his or her commitment to the objects of this Act and his or her fitness to be appointed as a councillor, before his or her appointment as a councillor. 25

Term of office, vacation of office and payment of remuneration and allowances

8. (1) A councillor is, subject to this section, appointed for a period not exceeding one year as the Minister may determine in a letter of appointment.

(2) A councillor is eligible for reappointment upon the expiry of his or her term of office if he or she continues to meet the requirements for such appointment in terms of this Act. 30

(3) A councillor vacates office when—

- (a) he or she becomes subject to any disqualification referred to in section 7(1);
- (b) he or she has been absent from two consecutive meetings of the Council without leave of the Council; 35
- (c) he or she is removed from office in terms of subsection (4); or
- (d) his or her written resignation is accepted.

(4) A member of the Council may at any time be suspended or removed from office by the Minister if there is a sound reason therefor.

(5) If a councillor ceases to hold office the Minister must, with due regard to section 7, within a reasonable time appoint a person to fill the vacancy for the unexpired portion of the former councillor's term of office. 40

(6) A councillor, or a member of a committee appointed by the Council, 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 may determine with the concurrence of the Minister. 45

(7) The remuneration and allowances referred to in subsection (6) may differ according to different offices held by councillors or other persons or the different functions performed by them.

Functions of Council

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9. The Council—

- (a) must take steps to achieve the objects of the Authority contemplated in section 3 and to ensure performance of the duties of the Authority;
- (b) must oversee and exercise general control over the performance of the functions of the Authority and of the activities of the persons appointed by it to perform the work of the Authority; and 55

- (c) may by notice in the *Gazette* make rules, subject to the provisions of this Act, regarding—
- (i) the good management of the affairs of the Council and the effective execution of its functions; and
 - (ii) any matter necessary or expedient for the proper performance of the functions of the Authority. 5

Accountability of Council

10. (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; and 10
- (b) as soon as may be reasonably practicable 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— 15
 - (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).

(2) For the purposes of this section, the annual report contemplated in subsection (1)(b)(i), must contain a fair account of the regulatory activities of the Authority, information on any other matter required by the Minister in writing, and information on any matter which it is necessary or expedient to bring to the attention of the Minister. 20

Ministerial supervision of Authority

11. If the Council or the Authority cannot or does not maintain an acceptable standard in the fulfilment of one or more of its functions in terms of this Act, the Minister may intervene by taking any appropriate step to ensure proper fulfilment of that function, including— 25

- (a) issuing a directive to the Council or the Authority, describing the extent of the failure and stating the steps required to remedy the situation; or 30
- (b) assuming responsibility for the relevant function or duty to the extent necessary to—
 - (i) maintain an acceptable standard; or
 - (ii) 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. 35

Meetings and conflict of interests

12. (1) (a) The first meeting of the Council must be held on such date and at such time and place as the Minister may determine.

(b) All meetings of the Council thereafter must be held on such dates and at such times and places as the chairperson may determine in consultation with the Council. 40

(2) (a) The chairperson may at any time convene a special meeting of the Council and must convene such a meeting at the written request of the Minister.

(b) If at least three councillors request a special meeting in writing, the chairperson must convene such a meeting within seven days after receiving the request. 45

(c) If the chairperson fails to convene a special meeting within seven days after receiving the request, the members concerned may convene a special meeting.

(3) The quorum for any meeting of the Council is a majority of the councillors in office at the time.

(4) (a) Subject to subsection (3), a decision of the Council is taken by resolution agreed to by the majority of councillors at any meeting of the Council. 50

(b) In the event of an equality of votes regarding any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(5) The procedure at a meeting of the Council must be determined by the chairperson in consultation with the Council, and any decision in this regard must be taken after due consideration of transparency and fairness: Provided that the law generally applicable to 55

meeting procedures in South Africa must apply in the absence of a determination or agreement on the procedure to be followed.

(6) The chairperson may, in consultation with the Council, allow a deputy director contemplated in section 14(1) and any other person to attend any meeting of the Council on such conditions as the chairperson may determine.

(7) A decision taken by the Council or an act performed in terms of that decision is not invalid merely by reason of—

- (a) any irregularity in the appointment of a councillor; or
- (b) a vacancy on the Council; or
- (c) the fact that any person was not entitled to sit as councillor at the time the decision was taken; or
- (d) the fact that a councillor is guilty of an act or omission justifying his or her removal from office,

if such decision was taken by a majority of councillors present at the time and entitled so to sit, and those councillors at the time constituted a quorum in terms of subsection (3).

(8) (a) A councillor may not attend, vote at, participate in or influence any meeting or decision of the Council, if the councillor has a direct or indirect interest which may reasonably be seen to preclude the councillor from performing the relevant function in a fair, unbiased and proper manner.

(b) The provisions of paragraph (a) apply, with the necessary changes, to the director and deputy directors contemplated in section 14(1).

(9) When the chairperson is absent or is unable to perform functions as chairperson or whenever the office of the chairperson is vacant, the vice-chairperson must act as chairperson during such absence or incapacity or until a chairperson is appointed.

(10) If both the chairperson and the vice-chairperson are absent or unable to perform the functions of the chairperson or whenever both the office of the chairperson and the office of the vice-chairperson are vacant, the Council must appoint any other member to act as chairperson during such absence or incapacity or until a chairperson or a vice-chairperson is appointed.

Committees to assist Council

13. (1) The Council may appoint one or more committees consisting of one or more councillors, or one or more councillors and one or more other persons, or 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 establish committees representing different sectors, disciplines or interests in the security industry to advise it regarding the regulation of the security industry.

(3) The Council may designate a person as the chairperson of any committee if such committee consists of more than one member.

(4) A committee must perform its functions subject to the provisions of this Act and any directives of the Council.

(5) The Council is not legally bound to accept any recommendation made by a committee.

Staff of Authority

14. (1) The Council must appoint a suitably qualified and experienced person as the chief executive officer of the Authority, to be known as the director of the Authority, as well as three deputy directors on such conditions and terms as may be determined by the Council.

(2) The director and deputy directors of the Authority must, subject to the Council's direction and control—

- (a) establish administrative structures and divisions necessary for the performance of the functions of the Authority, which must include an office of the director, a finance and administration division, a law enforcement division and a training and communication division;
- (b) manage the day to day operations of the Authority and the execution of its financial and administrative, law enforcement, training, communication and other functions;
- (c) ensure that the functions of the Authority are performed in terms of this Act.

- (d) manage, control and oversee the staff of the Authority as well as the performance of their functions;
 - (e) report to the Council on the performance and functioning of the Authority;
 - (f) prepare the business plan of the Authority; and
 - (g) perform any other function assigned to them by the Council. 5
- (3) The director and deputy directors of the Authority may in writing, with the approval of the Council, delegate any of their powers, and assign any of their duties, to a staff member of the Authority.
- (4) (a) The director of the Authority may 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. 10
- (b) The director must in the appointment of staff provide for the advancement of persons historically disadvantaged by unfair discrimination, with the aim that its staff, when viewed collectively, must represent a broad cross-section of the population of the Republic and must generally apply equal employment opportunity practices. 15
- (c) Staff members of the Authority may not have any financial interest in the security industry and must successfully undergo such security clearance check conducted by the National Intelligence Agency, as may be determined by the Council if this is relevant in respect of their work. 20
- (5) Staff appointed in terms of this section may either be appointed as employees or in terms of a contract for a fixed period.
- (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. 25
- (7) The persons who, immediately before the commencement of this Act, were appointed by the Security Officers Interim Board established in terms of section 2(1) of the Security Officers Act, 1987 (Act No. 92 of 1987), and were acting in terms of section 3(d) of that Act, must, subject to subsection (4)(c), be deemed to be staff members of the Authority who have been appointed in terms of subsection (4)(a). 30

Delegation of powers and assignment of duties by Council

15. (1) Subject to subsection (5), the Council may assign any of its functions or duties and delegate any of its powers, except the power to make rules, to its chairperson, a committee of councillors, the director or a deputy director appointed in terms of this Act.
- (2) The Council is neither divested of any power nor relieved of any duty it may have delegated or assigned. 35
- (3) Any delegation or assignment—
- (a) may be made subject to any conditions determined by the Council;
 - (b) may be given together with the power to subdelegate or further assign, subject to such conditions as may be determined; 40
 - (c) must be communicated to the delegatee or assignee in a written notice which contains sufficient particulars of the matters being delegated or assigned and of the conditions attached thereto.
- (4) The Council may at any time amend or revoke a delegation or assignment in terms of subsection (1), or withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter and decide the matter itself, unless the decision by the delegatee has conferred a right on a third party. 45
- (5) The Minister may in a notice addressed to the Council prohibit, limit, or impose conditions regarding the—
- (a) delegation of any power of the Council; or 50
 - (b) assignment of any duty of the Council.

Funds of Authority

16. (1) The funds of the Authority consist of—
- (a) any amount received by or which has accrued to the Authority in terms of this Act; 55
 - (b) any donation or contribution which the Authority may receive;
 - (c) any finance raised from an external source by the Authority;
 - (d) all moneys accruing to the Authority in respect of investments, deposits and cash balances to the credit of the Authority at a bank or financial institution;

- (e) any money received by or which has accrued to the Authority in terms of the disposal, letting or hiring out or making available of the property or facility of the Authority;
- (f) any money appropriated by Parliament; and
- (g) money from any other legitimate source, received by or which has accrued to the Authority. 5

(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.

Bookkeeping and financial statements

17. (1) The Authority must keep such accounting records as are necessary to reflect the transactions and financial state of affairs of the Authority. 10

(2) The Authority must, in respect of each financial year of the Authority, make out financial statements and cause such statements to be audited by a registered accountant and auditor contemplated in section 18(2).

(3) The financial statements referred to in subsection (2) must— 15

- (a) be prepared in accordance with generally accepted accounting practice as determined by the South African Institute of Chartered Accountants;
- (b) by means of figures and a descriptive report, explain all matters and information material to the financial affairs of the Authority; and
- (c) include— 20
 - (i) a balance sheet dealing with the assets and liabilities of the Authority;
 - (ii) an income statement or any similar financial statement dealing with the income and expenditure of the Authority; and
 - (iii) a statement of cash flows. 25

Auditing

18. (1) The accounting records and annual financial statements of the Authority must be audited annually by persons appointed by the Council.

(2) No person may be appointed in terms of subsection (1), unless he or she is registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as an accountant and auditor engaged in public practice. 30

Financial year

19. The financial year of the Authority is a year ending on 31 March.

CHAPTER 3

REGISTRATION AS SECURITY SERVICE PROVIDER

Obligation to register and exemptions

20. (1) (a) No person, except a Security Service contemplated in section 199 of the Constitution (Act No. 108 of 1996), the Department of Correctional Services and the Directorate of Special Operations, may in any manner render a security service for remuneration, reward, a fee or benefit, unless such a person is registered as a security service provider in terms of this Act. 40

(b) A Security Service contemplated in section 199 of the Constitution, the Department of Correctional Services and the Directorate of Special Operations, may use persons employed by them and who are not registered as security service providers, to render a security service for which remuneration, reward, a fee or benefit accrues to the State. 45

(2) A security business may only be registered as a security service provider—

- (a) if all the persons performing executive, controlling or managing functions in respect of such security business are registered as security service providers; and
- (b) in the case of a security business which is a company, close corporation, 50 partnership, business trust or foundation, if every director of the company, every member of the close corporation, every partner of the partnership, every

trustee of the business trust, and every administrator of the foundation, as the case may be, is registered as a security service provider.

(3) (a) Any category or class of security service providers which was not obliged to be registered as security officers in terms of the Security Officers Act, 1987 (Act No. 92 of 1987), immediately before the commencement of this Act, need not be registered as contemplated in this section until such date as the Minister may determine by notice in the *Gazette*. 5

(b) 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. 10

(4) Any contract, whether concluded before or after the commencement of this Act, which is inconsistent with a provision contained in subsections (1), (2) or (3), is invalid to the extent to which it is so inconsistent.

(5) The invalidity of a contract as contemplated in subsection (4), does not affect the applicability of any provision of this Act. 15

(6) The Minister may, after consultation with the Authority, by notice in the *Gazette* exempt any 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.

Application for registration and renewal of registration 20

21. (1) An application for registration as a security service provider must be made to the Authority in the prescribed manner and must be accompanied by—

- (a) a clear and complete set of fingerprints taken in the prescribed manner—
 - (i) of the applicant, if the applicant is a natural person;
 - (ii) if the applicant is a security business, of every natural person performing executive, controlling or managing functions in respect of such security business;
 - (iii) of each director, if the applicant is a company;
 - (iv) of each member, if the applicant is a close corporation;
 - (v) of each partner, if the applicant is a partnership;
 - (vi) of each trustee, if the applicant is a business trust; and
 - (vii) of each administrator or person in control, if the applicant is a foundation;
- (b) the application fee as determined by the Authority; and
- (c) any other document or certificate required in terms of this Act or by the Authority to be submitted with an application for registration. 30 35

(2) Any person applying in terms of subsection (1) for registration as a security service provider, must furnish such additional particulars in connection with the application as the Authority may determine.

(3) If the Authority is of the opinion that the provisions of this Act have been complied with in respect of an application referred to in subsection (1), it may grant such application and register the applicant as a security service provider. 40

(4) The Authority may prescribe 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. 45

Requirements for registration

22. (1) Any natural person applying for registration in terms of section 21(1), may be registered as a security service provider if the applicant is a fit and proper person to render a security service, and—

- (a) is a citizen of or has permanent resident status in South Africa; 50
- (b) is at least 18 years of age;
- (c) has complied with the relevant training requirements prescribed for registration as a security service provider;
- (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; 55
- (e) was not found guilty of improper conduct in terms of this Act within a period of five years immediately before the submission of the application to the Authority;

- (f) submits a prescribed clearance certificate together with such other information as the Authority may reasonably require, if the applicant is a former member of any official military, security, police or intelligence force or service in South Africa or elsewhere;
- (g) is mentally sound; 5
- (h) is not currently employed in the Public Service in circumstances where such registration may conflict with a legislative provision applicable to the applicant;
- (i) has paid the relevant application fee; and
- (j) is not a person referred to in subsection (5). 10
- (2) A security business applying for registration as a security service provider in terms of section 21(1), may be so registered only if—
 - (a) every natural person referred to in section 20(2) complies with the requirements of subsection (1) and is not an unrehabilitated insolvent; and
 - (b) such security business meets the prescribed requirements in respect of the infrastructure and capacity necessary to render a security service. 15
- (3) The Authority may cause any inspection to be held which it deems necessary to establish whether an applicant meets the requirements contemplated in subsection (2)(b), against payment by the applicant of an amount determined by the Authority for this purpose. 20
- (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 Schedule 1 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. 25
- (5) Despite any provision to the contrary, a person in the permanent employ of the Service, the Directorate of Special Operations, the National Intelligence 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. 30
- (6) Despite the provisions of subsections (1) and (2), the Authority may on good cause shown and on grounds which are not in conflict with the purpose of this Act and the objects of the Authority, register any applicant as a security service provider. 35

Register of security service providers

23. The Authority must keep a register in which it must enter the name and prescribed particulars of every security service provider registered in terms of this Act.

Registration and identification certificates

24. The Authority must, in the form prescribed and on such conditions as it may determine, issue a certificate of registration to any person and a certificate of identification to any natural person, registered as a security service provider. 40

Suspension, withdrawal and lapsing of registration

- 25. (1) The Authority may suspend the registration of a security service provider—
 - (a) pending the conclusion of an investigation or enquiry by the Authority into alleged improper conduct by that security service provider in terms of this Act; or
 - (b) pending the conclusion of a criminal investigation by the State into an offence referred to in the Schedule in respect of that security service provider, or a determination by the prosecuting authority or the finalisation of criminal proceedings in regard to such an offence. 45
- (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 55

suspension the security service provider is still bound by all the obligations of a registered security service provider provided for in this Act.

(4) The Authority may, subject to section 5(3), withdraw the registration of a security service provider by written notice served on the security service provider if—

- (a) the security service provider has furnished to the Authority information in or in connection with the application for registration which is false; 5
- (b) there was some material irregularity in the registration of the security service provider concerned;
- (c) the registration was granted in error or on the basis of incorrect information furnished by any person, including any department or organ of State, to the Authority; 10
- (d) at any time after registration, the security service provider—
 - (i) is found guilty of an offence specified in the Schedule;
 - (ii) is found guilty of improper conduct in terms of this Act;
 - (iii) is no longer a fit and proper person to render a security service; or 15
 - (iv) does not comply with one or more of the requirements for registration referred to in section 22(1)(a), (b), (g), (h) and (j), or in section 22(2);
- (e) in the case of a security business, the registration of a person referred to in section 20(2) is withdrawn in terms of paragraphs (a), (b), (c) or (d);
- (f) in the case of a security business, any of the persons referred to in section 20(2) is for any other reason not registered as a security service provider; or 20
- (g) in the case of a security business, it has been placed under provisional liquidation.

(5) The registration of a security service provider lapses if it is not renewed as contemplated in section 21(4). 25

(6) Whenever the registration of a security service provider is suspended or withdrawn in terms of this Act, or if it lapses, the security service provider must forthwith return to the Authority the certificate of identification or the certificate of registration, as the case may be, issued in terms of section 24.

(7) The Authority may on application by a security service provider suspend or withdraw the registration of that security service provider in such circumstances and on such conditions as may be prescribed. 30

Application for court order in respect of security service provider

26. (1) The Authority may by way of application on notice of motion apply to a court for an order— 35

- (a) interdicting any security service provider from rendering a security service for such a period as the court may determine, if the security service provider is contravening a provision of this Act or if the activities or intended activities of the security service provider might seriously harm the national or the public interest or the interests of any category of persons; or 40
- (b) compelling a security service provider to comply with a provision of this Act.

(2) The court having jurisdiction in respect of an application in terms of subsection (1), is any division of the High Court of South Africa within whose area of jurisdiction the security service provider concerned is resident or employed or carries on business.

CHAPTER 4 45

PROPER CONDUCT AND APPEAL

Code of conduct

27. (1) The Minister must, after consultation with the Council, prescribe a code of conduct for security service providers which contains sufficient procedures and rules of evidence for its enforcement. 50

(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. 55

(3) The code of conduct must contain rules—

- (a) that security service providers must obey in order to promote, achieve and maintain—
 - (i) a trustworthy and professional security industry which acts in terms of the law applicable to the members of the industry;
 - (ii) compliance by security service providers with a set of minimum standards of conduct which is necessary to realise the objects of the Authority; and 5
 - (iii) compliance by security service providers with their obligations towards the State, the Authority, consumers of security services, the public and the security industry in general; and 10
- (b) to ensure compliance with standards aimed at preventing exploitation or abuse of employees in the security industry, including employees used to protect or safeguard merely the employer's own property or other interests, or persons or property on the premises of or under the control of the employer.
- (4) The code of conduct must be drawn up with due regard to— 15
 - (a) the objects of the Authority; and
 - (b) the different categories or classes of security service providers, different types of security services and any other factor meriting differentiation not amounting to unfair discrimination.
- (5) The code of conduct may provide for different penalties in respect of different categories or classes of security service providers or other persons who employ a security officer. 20
- (6) (a) The code of conduct drawn up in terms of subsection (1) must first be published by the Minister in the *Gazette* with a notice indicating that the Minister intends to issue such a code and inviting interested persons to submit to the Minister within a stated period, but not less than four weeks from the date of publication of the notice, any objections to or representations concerning the proposed code of conduct: Provided that, if the Minister after the expiry of that period decides on any alterations of the proposed code as a result of any objections or representations, it is not necessary to publish such alterations for further comment. 25 30
- (b) The provisions of paragraph (a) apply with regard to any amendment of the code of conduct.
- (7) (a) A code of conduct comes into operation on a date determined by the Minister in the *Gazette*.
- (b) The Minister may for the purposes of paragraph (a) determine different dates in respect of different categories or classes of security service providers. 35

Improper conduct proceedings against security service providers

- 28. (1) Improper conduct proceedings may, in the prescribed manner, be instituted by the Authority against a security service provider or other person who employs a security officer, on account of an allegation of improper conduct, whether such improper conduct was allegedly committed within or outside the borders of the Republic. 40
- (2) The person presiding at improper conduct proceedings may, on good grounds, conduct or proceed with such proceedings in the absence of the security service provider concerned.

Appeal against decisions 45

- 29. (1) Any person aggrieved by—
 - (a) the refusal by the Authority to grant his or her application for registration as a security service provider;
 - (b) the suspension or withdrawal of his or her registration as a security service provider by the Authority; or 50
 - (c) a finding against him or her of improper conduct in terms of this Act, or the punishment imposed in consequence of the finding,
- may within a period of 60 days after service of the notification of the relevant decision contemplated in paragraph (a), (b) or (c), appeal to an appeal committee.
- (2) An appeal committee contemplated in subsection (1) is appointed by the Minister and consists of— 55
 - (a) a person with not less than five years' experience as an attorney, advocate or magistrate, who is the chairperson; and
 - (b) two other persons considered appropriate by the Minister.

(3) Every person serving as a member of an appeal committee must be independent from the Authority and may have no personal interest in the security industry or in the affairs of an appellant.

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

(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.

(6) The appeal committee hearing an appeal in terms of this section may confirm, set aside or vary the decision or substitute for such decision any other decision which in the opinion of the appeal committee ought to have been taken and direct the Authority to do everything necessary to give effect to the decision of the appeal committee.

(7) A member of the appeal committee may be paid such remuneration and allowance as the Minister may, from time to time, determine with the concurrence of the Minister of Finance.

CHAPTER 5

MONITORING AND INVESTIGATION

Appointment of inspectors

30. (1) (a) The Council must appoint inspectors as staff members of the Authority in terms of this Act.

(b) The provisions of section 14 apply, with the necessary changes, to the appointment of such inspectors.

(2) Any person appointed in terms of this section must perform functions in terms of this Act, subject to the direction and control of the director.

(3) The director must furnish every inspector with a certificate in the prescribed form to the effect that he or she has been so appointed and is deemed by virtue of section 32(3) of this Act to be a peace officer.

(4) An inspector must at the request of any interested person produce the certificate when performing a function in terms of this Act.

(5) The Council, or the director if he or she has been authorised generally or specifically by the Council, may 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.

(6) A person appointed in terms of subsection (5), for the purpose of an inspection, has the same powers and duties as an inspector contemplated in subsection (1) and the provisions of subsections (3) and (4) and section 14 apply, with necessary changes, to such a person.

(7) When performing any function in terms of this Act, an inspector may be accompanied by and utilise the services of an assistant, an interpreter or any member of the Service.

Inspection of security service providers

31. (1) The director may at any time instruct an inspector to carry out an inspection of the affairs or any part of the affairs of a security service provider, of any other person who employs a security officer, or of a person whom the director has reason to believe is a security service provider or employs a security officer.

(2) An inspector who carries out an inspection in terms of this section must, on completion of the inspection, compile a report of the inspection, provide a copy thereof to the relevant security service provider or other person contemplated in subsection (1) and submit the original to the director.

Powers of inspectors relating to security service providers

32. (1) In order to carry out an inspection of the affairs of a security service provider or another person contemplated in section 31, an inspector may at any reasonable time—

(a) without prior notice, enter any premises—

- (i) occupied by or used in connection with the rendering of a security service by a security service provider or a person employing a security officer;
- (ii) which the director has reason to believe are occupied by or used in connection with the rendering of a security service by a security service provider or a person employing a security officer; 5
- (iii) where or from where a security service is rendered or the director has reason to believe that such a service is rendered;
- (b) use any applicable equipment which has not been prohibited by the Council during such inspection and conduct such inspection, examination and investigation as may be necessary for the purpose of monitoring or enforcing compliance with this Act; 10
- (c) use any computer system or equipment on the premises which is or appears to be utilised for the control or administration of the rendering of a security service, or require reasonable assistance from any person on the premises to use that computer system to— 15
 - (i) access any data contained in or available to that computer system relating to matters contemplated in paragraph (d);
 - (ii) reproduce any record from that data; and
 - (iii) seize any output from that computer for examination and copying; 20
- (d) require from any person on the premises who is in control of the premises or appears to be performing managerial, supervisory, administrative or clerical functions relating to the rendering of a security service, at such a reasonable time and place as may be determined by the inspector— 25
 - (i) to disclose information, either orally or in writing, on any matter relating to the compliance with the provisions of this Act by the security service provider concerned; 25
 - (ii) to produce to the inspector all or any records or documentation relating to the activities of the security service provider and pertaining to such a period as may be determined by the inspector, including but not limited to— 30
 - (aa) a list with the names and identity numbers of all security officers and other employees of the security service provider concerned, as well as a list with the names and identity numbers of all persons who are officials of the security service provider but who are not its employees; 35
 - (bb) the wage register, payroll, pay-slips or other similar documentation in respect of such security officers, officials and employees;
 - (cc) time-sheets and attendance registers reflecting the hours of work of such security officers, officials and employees; 40
 - (dd) posting sheets indicating the places where such security officers have been or are utilised in connection with a security service, the nature of such service, whether the security officers are in possession of any firearm or other weapon or have been provided with any firearm or other weapon by anyone and any legal authorisation regarding such a firearm; 45
 - (ee) documentation indicating the level of security training of such security officers and officials;
 - (ff) personnel files of such security officers, officials and employees;
 - (gg) contracts entered into between the security service provider and such security officers, officials and employees; 50
 - (hh) documentation pertaining to deductions and payment of amounts by the security service provider to the Authority; and
 - (ii) documentation pertaining to any contract between the security service provider and a client; 55
- (e) search the premises for any records or documentary information contemplated in paragraph (d);
- (f) open any room, strongroom, safe, cabinet or other container which the inspector suspects contains any record or document relating to the affairs of the security service provider, or cause it to be opened; 60
- (g) inspect or examine any record or document contemplated in paragraph (d), or other article or object on or in the premises used or which appears to be used in connection with the rendering of a security service by the security service

provider concerned and request information about any such document, article or object from any person contemplated in paragraph (c);

- (h) make copies or extracts from any record or document contemplated in paragraph (d) or, against the issue of a receipt by the inspector, seize a record, document or object if the inspector has reason to believe that it can serve as evidence at any improper conduct proceedings or any other inquiry in terms of this Act. 5

(2) Any person from whose possession any item contemplated in subsection (1) has been removed, or who otherwise to the satisfaction of the director or an inspector proves a right of ownership or possession in respect thereof, may during normal office hours be permitted by the director or inspector to investigate or examine the item in question, or extracts from any such record or document, under circumstances necessary to protect the integrity of the item in question. 10

(3) An inspector in respect of any provision of this or any other law applicable to security service providers is deemed to have been appointed as a peace officer by the Minister of Justice in terms of section 334 of the Criminal Procedure Act, 1977 (Act No 51 of 1977), for the national territory of the Republic, and for the purpose of exercising the powers contemplated in sections 40, 41, 44, 45, 46, 47, 48, 49 and 50 of the Criminal Procedure Act, 1977. 15

(4) A member of the Service or an inspector may demand the production of the registration and identification certificates contemplated in section 24, by any person purporting to be a security service provider. 20

(5) Any member of the Service has all the powers conferred on an inspector in terms of this Act.

Powers of inspectors relating to other persons

25

33. (1) In order to carry out an inspection of the affairs of a security service provider or another person contemplated in section 31, an inspector may—

- (a) question any person if the inspector has reason to believe that such person may be able to provide information relating to the affairs of the security service provider, and make and keep a record of such questioning or cause such a record to be made or kept; 30
- (b) on the authority of a warrant issued in terms of subsection (2), at any time, without prior notice—
- (i) enter any premises and require the production of any record or document relating to the affairs of the security service provider; 35
 - (ii) enter and search any premises for any record or document relating to the affairs of the security service provider;
 - (iii) open any strongroom, safe or other container which the inspector suspects to contain any document relating to the affairs of the security service provider; 40
 - (iv) examine, make extracts from and copy any record or document relating to the affairs of the security service provider or, against the issue of a receipt, seize such record or document for such purpose;
 - (v) against the issue of a receipt, seize any record or document relating to the affairs of the security service provider, which may afford evidence of improper conduct in terms of this Act; 45
 - (vi) use any computer system or equipment on the premises which the inspector suspects to contain information on the affairs of the security service provider, or require reasonable assistance from any person on the premises to use that computer system to— 50
 - (aa) access any data contained in or available to that computer system;
 - (bb) reproduce any record from that data; and
 - (cc) seize any output from that computer for examination and copying;
- Provided that an inspector may proceed without a warrant if the person in control or apparent control of any premises consents to the actions contemplated in this paragraph. 55

(2) (a) A warrant contemplated in subsection (1)(b), may on application by an inspector be issued by a judge, magistrate or justice of the peace who has jurisdiction in the area where the premises in question are located.

(b) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a record or document, whether in electronic form or not, relating to the affairs of the security service provider or other person contemplated in section 31 being inspected, is kept at or on the premises concerned.

(c) The provisions of section 32(2) apply, with the necessary changes, in respect of a record or document seized in terms of this section. 5

(3) An inspector may, without a warrant, enter upon and search any premises after having identified himself or herself and exercise any of the powers contemplated in subsection (1), if the inspector on reasonable grounds believes that—

- (a) the required warrant would be issued in terms of this section if the inspector were to apply for it; and 10
- (b) the delay which would ensue from first obtaining the warrant would defeat the object or purpose of the exercise of the powers and performance of the duties contemplated in subsection (1).

CHAPTER 6

15

GENERAL PROVISIONS

Regulations

34. (1) The Minister may make regulations relating to—

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) the registration by the Authority of security service providers; 20
- (c) the periodic applications for 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;
- (e) ensuring the quality of training as contemplated in section 4(k), in respect of security service providers and prospective security service providers; 25
- (f) the uniform, insignia and registration and identification certificates of security service providers;
- (g) the types of uniforms, distinctive badges or buttons which may not be supplied to 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; 30
- (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; 35
- (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; 40
- (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 security industry; 45
- (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; 50
- (l) the types of information which security service providers must furnish to the Authority;
- (m) the issuing, possession and use of firearms and other weapons by security service providers; 55
- (n) the safekeeping 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; 5
 - (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; 10
 - (s) the manufacture, importation, selling, distribution and possession of security equipment;
 - (t) 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. 15
- (2) Different regulations may be made in terms of subsection (1) with reference to different categories or classes of security service providers.
- (3) Regulations made in terms of subsection (1) 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 12 months. 20

Provision of information to Authority

35. (1) A member of the Service must, at the request of the Authority, furnish the Authority with information regarding any previous conviction of a person applying in terms of section 21 for registration as a security service provider.
- (2) A person in the employ of the State must, subject to any applicable law, at the request of the Authority furnish the Authority with such information as may be needed by the Authority in order to perform its functions in terms of this Act. 25

Preservation of confidentiality

36. No person may disclose to any other person any information obtained by him or her in the performance of any function in terms of this Act and which relates to the personal, financial or business affairs of any person or which may be prejudicial to the performance of the functions of the Authority, except— 30
- (a) to the extent to which it may be necessary for the proper administration or application of the provisions of this Act;
 - (b) to the extent that this Act or any other applicable law authorises or compels such disclosure; 35
 - (c) with the consent of the Minister; or
 - (d) to the extent that it is necessary for the purposes of pending legal proceedings relating to a matter dealt with in this Act.

Offences and penalties 40

37. (1) Any person who—
- (a) falsely represents himself or herself to be an inspector;
 - (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; 45
 - (c) refuses or fails to comply with any request of an inspector or member of the Service in terms of section 32 or section 33;
 - (d) without lawful excuse refuses or fails to answer a question put to him or her by an inspector or a member of the Service;
 - (e) makes any statement to an inspector or a member of the Service which is materially false or produces any document to an inspector or member of the Service which is false in any material respect, 50
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.
- (2) Any person who— 55
- (a) contravenes or fails to comply with section 20(1) or section 25(3);
 - (b) contravenes or fails to comply with section 25(6) or 36;

- (c) in any application, inquiry, improper conduct proceedings, appeal or other proceedings in terms of this Act wilfully furnishes information or makes a statement which is false in any material respect;
 - (d) fails to keep a prescribed record or document or fails to keep a prescribed record or document at premises as required in terms of this Act; 5
 - (e) advertises security services to be rendered by a person who is not registered in terms of this Act or whose registration is suspended in terms of this Act;
 - (f) holds himself or herself out as a registered security service provider whilst he or she is not registered or such registration is suspended;
 - (g) knowingly or without the exercise of reasonable care contracts for the rendering of security services contrary to a provision of this Act; 10
 - (h) in any manner threatens, or commits an act which is calculated to obstruct or unduly influence, a councillor or a staff member of the Authority in the performance of his or her functions in terms of this Act;
 - (i) commits an act which is calculated to hinder, impede or obstruct any investigation in terms of this Act; or 15
 - (j) knowingly publishes false or misleading information regarding the Authority or a person performing functions in terms of this Act,
- is guilty of an offence and—
- (i) on a first conviction of a contravention referred to in paragraph (a), is liable to a fine or to imprisonment for a period not exceeding three years, or to both a fine and such imprisonment; 20
 - (ii) on a second or subsequent conviction of a contravention referred to in paragraph (a), is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; 25
 - (iii) on a conviction of a contravention referred to in paragraph (b), (c), (d), (e), (f), (g), (h), (i) or (j), is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.
- (3) Any person who contravenes or fails to comply with any other provision of this Act, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding six months, or to both a fine and such imprisonment. 30

Extraterritorial application of Act and jurisdiction

38. (1) Any act constituting an offence in terms of this Act and which is committed outside the Republic by any security service provider registered or obliged to be registered in terms of this Act, is deemed to have been committed in the Republic. 35
- (2) Any offence in terms of this Act is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed—
- (a) at the place where it was actually committed;
 - (b) at the place where the accused is resident; and
 - (c) at the place where the accused conducts his or her business. 40

Limitation of liability

39. The Minister, someone acting under the authority of the Minister, the Authority, a councillor contemplated in section 6, or any person in the employ of the Authority or performing functions in terms of this Act, is not personally liable in respect of the *bona fide* exercise of a power or performance of a duty in terms of a provision of this Act, if such exercise or performance was not grossly negligent. 45

Delegation of powers by Minister

40. (1) The Minister may upon such conditions as he or she may deem fit, delegate any of the powers conferred upon him or her by this Act, except the power mentioned in sections 1(2), 6, 8, 20, 27, 29 or 34 to the National Commissioner or a member of the Service designated by the National Commissioner. 50
- (2) No delegation of any power prevents the exercise of such power by the Minister.

Act binds State

41. This Act binds the State.

Amendment and repeal of laws

42. The Security Officers Act, 1987 (Act No. 92 of 1987), is hereby repealed.

Transitional provisions

43. (1) In this section—

(a) “repealed legislation” means the Security Officers Act, 1987 (Act No. 92 of 1987); 5

(b) “Board” means the Security Officers’ Interim Board established by section 2 of the repealed legislation.

- (2) With effect from the date of commencement of this Act—

(a) all assets, rights, obligations, duties and liabilities of the Board vest in the Authority and are deemed to have been acquired or incurred by the Authority, as the case may be, in terms of the provisions of this Act; 10

(b) anything done or any decision or steps taken by the Board in terms of a provision of the repealed legislation is deemed to have been done or taken by the Authority, as the case may be, in terms of the corresponding provisions of this Act; 15

(c) any regulation or a code of conduct made or drawn up in terms of the repealed legislation and in force immediately before the commencement of this Act, remains in force to the extent that it is compatible with this Act, until amended, abolished or replaced in terms of this Act; 20

(d) any reference in any law or document to the Board must be construed as a reference to the Authority;

(e) all proceedings which were pending before a court between the Board and any person, or appeals pending before the Minister in terms of the repealed legislation, must continue as between the Authority and such person and must be disposed of as if this Act had not been enacted, unless the interests of justice require otherwise. 25

(3) As soon as possible after the commencement of this Act the Authority must, on application by any person and against payment of such amount as may be determined by the Authority, effect all such changes or endorsements on any document that was issued by the Board or which reflects a transaction to which the Board was a party immediately prior to such commencement as are necessary to give effect to this section. 30

(4) Any criminal proceedings, improper conduct proceedings or appeals against decisions of the Board instituted in terms of the repealed legislation and which had not been finalised at the commencement of this Act, must be dealt with and finalised as if such legislation had not been repealed. 35

(5) The Registrar of Deeds concerned must make entries or endorsements in or on any relevant register, title deed or other document in the Registrar’s office or submitted to the Registrar, which may be necessary in order to give effect to the provisions of subsection (2)(a) and no office fee or other charge is payable in respect of any such entry or endorsement. 40

Short title and commencement

44. This Act is called the Security Industry Regulation Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

Table of Offences

High treason.
Sedition.
Sabotage.
Terrorism.
Public violence.
Arson.
Malicious damage to property.
Intimidation.
Rape.
Murder.
Robbery.
Culpable homicide involving the use of a firearm or any form of intentional violence.
Kidnapping.
Assault with the intention to cause serious bodily harm.
Indecent assault.
Child stealing.
Fraud.
Forgery or uttering of a forged document knowing it to have been forged.
Breaking or entering any premises, whether in terms of common or statutory law, with the intention to commit an offence.
Theft, whether in terms of common law or statutory law.
Receiving stolen property knowing it to have been stolen.
Extortion.
Defeating the ends of justice.
Perjury, whether in terms of common law or statutory law.
Corruption in terms of statutory law.
An offence involving the illicit dealing in dependence-producing substances.
Any offence in terms of statutory law involving an element of dishonesty.
Any offence in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998).
Any offence in terms of the Explosives Act, 1956 (Act No. 26 of 1956).
Any offence in terms of the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998).
Any offence in terms of legislation pertaining to the control over the possession and use of firearms and ammunition.
Any offence in terms of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992).
Any offence in terms of the Intelligence Services Act, 1994 (Act No. 38 of 1994).
Any offence in terms of the Protection of Information Act, 1982 (Act No. 84 of 1982).
Crimen injuria.
Any offence in terms of statutory law involving cruelty to an animal.
Any offence in terms of any law relating to illicit dealing in or possession of precious metals or precious stones.
Any offence in terms of statutory law punishable by a period of imprisonment exceeding two years without the option of a fine.
Any conspiracy, incitement or attempt to commit any of the above offences.

MEMORANDUM ON THE OBJECTS OF THE SECURITY INDUSTRY REGULATION BILL, 2001

1. INTRODUCTION

- 1.1 The protection of every person's rights to life and security of the person as well as the right not to be deprived of property is fundamental to the well-being and to the social and economic development of every person. It is within this context that the strategic role of the security industry to protect these rights is realised.
- 1.2 The Bill gives effect to the Security Officers Amendment Act, 1997 (Act No. 104 of 1997), which places a duty on the Minister for Safety and Security to draft a new Bill on the regulation of the security industry. Therefore, although a functional legal framework for regulation exists, the general consensus is that the framework is in need of change. These changes are addressed in the various Chapters of the Bill.

2. SUBSTANCE AND ANALYSIS OF BILL

Chapter 1

Chapter 1 contains the definitions and provisions relating to interpretation.

The definitions should be read within the context of the Bill as a whole. However, compared to the current position, it is clear that the Bill seeks to enlarge the scope of regulation significantly in order to cover a wide enough scope in the security industry. It aims, for example, to cover:

- persons (employers, employees, managers, directors) in the security industry;
- business entities (companies, close corporations, partnerships, sole proprietorships, business trusts);
- activities and practices (the rendering of certain types of security services and the manner in which it is done, for example protecting or safeguarding a person or property, giving advice on the protection or safeguarding of a person or property, or on the use of security equipment, providing a reactive or response service in connection with the safeguarding of a person or property, manufacturing, importing, distributing or advertising of monitoring devices, providing security training or instruction to a security service provider, installing, servicing or repairing security equipment, etc.);
- occupations (private investigator, polygraphist and locksmith);
- sectors (contract security or in-house security, guarding sector);
- relationships (employer/employee); and
- objects or equipment used in providing a security service.

A person rendering a security service will henceforth be referred to as a "security service provider". A "security service" is comprehensively defined in the definitions clause.

Provision is also made for the Minister for Safety and Security to include, for the purposes of the Act, a service or activity other than a service or activity covered by the definition of "security service" as a security service. The Minister has similar authority with respect to the inclusion of security equipment. At the same time the Minister may also exclude any service, activity or practice so that it will not be regarded as a security service or the rendering thereof, as well as any equipment so that it will not be regarded as security equipment or any person or entity so that he, she or it will not be regarded as a security service provider for the purposes of this Act.

Chapter 2

The need for regulation of the security industry is universally accepted by the majority of stakeholders not only within the industry, but also in the public sector. The question then arises as to the appropriate or suitable vehicle for such regulation.

The Bill makes provision for the establishment of a Security Industry Regulatory Authority, replacing the existing Security Officers' Interim Board. Thus, the envisaged Regulatory Authority will henceforth become the vehicle for such regulation.

The objects of the Authority are set out in clause 3 of the Bill, whilst the functions of the Authority are dealt with in clause 4 of the Bill. Regulation is not merely limited to

the protection of the public against unscrupulous operators in the industry, but is extended to the protection of State interests, consumers and the occupation of security service provider. The primary objects of the Authority are to provide for the regulation of the security industry and to exercise control over the occupation of security service provider in the national interest, the public interest and the interest of the security industry itself.

It is proposed that a council of persons which is independent of the private security industry govern the Authority. The Minister may issue guidelines and policy directions regarding the performance of the functions of the Authority. The Council will consist of persons appointed by the Minister.

The Council is obliged to appoint a suitably qualified and experienced person as the chief executive officer of the Authority to be known as the director of the Authority, as well as three deputy directors.

The Council is accountable to the Minister for the performance of its functions. Provision is made for ministerial supervision of the Authority under certain circumstances.

Provision is made to ensure that the Authority is able to achieve its objects. These provisions relate to aspects such as the staff of the Authority, the delegation of powers, the funds of the Authority, bookkeeping and financial statements, as well as auditing.

Chapter 3

The registration of persons who fulfil the registration criteria is the cornerstone of effective regulation. One of the main functions of the Authority is to receive and consider applications for registration and renewal of registration as security service provider and to grant registration where such applications comply with the requirements of the Act.

Persons in the permanent employ of the South African Police Service, the Directorate of Special Operations, the National Intelligence Agency, the South African Secret Service, the South African National Defence Force or the Department of Correctional Services are specifically prohibited from registration as a security service provider while so employed.

Further provisions in this Chapter relate to the suspension, withdrawal and lapsing of registration.

Chapter 4

Chapter 4 contains empowering provisions relating to an enforceable code of conduct for security service providers. The code of conduct must contain rules aimed at promoting responsible conduct, trustworthiness, quality service and adherence to other relevant and applicable laws.

Provision is also made for improper conduct proceedings to be instituted by the Authority against a security service provider on account of an allegation of improper conduct.

Any person aggrieved by a decision of the Authority may appeal to an appeal committee. The appeal committee will be independent of the Authority and will be appointed by the Minister. A member of the appeal committee who is not in the full-time service of the State may be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

Chapter 5

Provisions governing the inspection of a security service provider, of any other person who or which employs a security officer, or of a person whom the director has reason to believe is a security service provider or employs a security officer, forms an important part of the regulatory task of the Regulatory Authority.

This Chapter deals with the appointment of inspectors as well as persons to assist inspectors.

It enables the director to instruct an inspector to carry out an inspection of the affairs, or any part of the affairs:

- of a security service provider;
- of any other person who employs a security officer; or

- of a person who the director has reason to believe is a security service provider or employs a security officer.

Specific provision is made for the powers of inspectors regarding such inspections.

Provision is also made for the powers of inspectors relating to other persons, but only on authority of a warrant, or if such a person has given consent.

Chapter 6

This Chapter contains general provisions regarding aspects such as the making of regulations, the provision of information to the Authority, offences and penalties, delegation of powers by the Minister and transitional measures.

Of particular importance regarding the making of regulations is the empowering provision with respect to the institution and conduct of improper conduct proceedings or any other enquiry in terms of the Act as well as related matters.

Schedule

The Bill contains a Schedule, which lists offences. These offences are relevant for the purpose of considering whether a person may be registered as a security service provider and whether the registration may be suspended or withdrawn.

3. DEPARTMENTS CONSULTED

The Departments represented in and comprising the relevant Inter-Departmental Committee and the representatives of the Departments participating in the functioning of the Departmental Drafting Team were consulted in the drafting of the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the state since it is intended to introduce a levy to be paid by the members of the security industry. A money bill to this effect is to be introduced shortly.

5. PARLIAMENTARY PROCEDURE

In the opinion of the Department of the South African Police Service and the State Law Advisers the Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.