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## GENERAL NOTICE ALGEMENE KENNISGEWING

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### NOTICE 3445 OF 2002

The Minister for Safety and Security intends to prescribe a Code of Conduct for Security Service Providers and Improper Conduct Enquiries Regulations.

The draft Code and Regulations are hereby published, in terms of section 28(6)(a) of the Private Security Industry Regulations Act, 2001 (Act No. 56 of 2001) for general information and comment from interested parties.

Any comment must be submitted to the office of the Head: Legal Services: Legislation. The comment must reach the said office on or before 17 January 2003 at the following address:

For Attention: Dr T Geldenhuys  
The Head: Legal Services: Legislation  
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### CODE OF CONDUCT FOR SECURITY SERVICE PROVIDERS, 2003

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**PREAMBLE**

**WHEREAS** the primary objects of the Private Security Industry Regulatory Authority are to regulate the private security industry and to exercise effective control over the practice of the occupation of security service provider in the public and national interest and the interest of the private security industry itself;

**AND WHEREAS** section 28 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) places a duty on the Minister for Safety and Security to prescribe a code of conduct that must meet the requirements of section 28 and must be legally binding on all security service providers as well as on certain other persons —

*Therefore the Minister for Safety and Security has prescribed the rules contained in this Schedule that embody the minimum standards of conduct to which every person to which it applies has to adhere whilst practising the occupation of security service provider, or carrying on business in the rendering of a security service, or in such other circumstances as determined in this Schedule.*

**CHAPTER 1****PURPOSE, APPLICATION AND INTERPRETATION OF THE CODE OF CONDUCT****1. Purpose of the Code of Conduct**

The purpose of the Code of Conduct is to provide binding rules to which all security service providers, as well as other persons to whom the Code of Conduct applies, will be subject in order to —

- (a) promote, achieve and maintain a trustworthy and professional private security industry which acts in terms of the law applicable to the members of the industry;
- (b) promote, achieve and maintain compliance by security service providers with a set of minimum standards of conduct which is necessary to realise the objects of the Authority;
- (c) promote, achieve and maintain compliance by security service providers with their obligations towards the State, the Authority, consumers of

security services, the public, and the private security industry in general;

- (d) ensure the payment of the applicable minimum wages and compliance with standards aimed at preventing exploitation or abuse of employees in the private 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; and
- (e) provide for matters incidental to the above.

## **2. Application of the Code of Conduct**

The Code of Conduct applies, subject to its provisions, to –

- (a) all security service providers, whether registered with the Authority or not, in practising the occupation of security service provider, or in carrying on business in the rendering of a security service, or in performing any function which is subject to the Act;
- (b) 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, to the extent provided for in the Act and the Code of Conduct;
- (c) every category or class of persons as contemplated in the Act, taking into account the nature of the relevant provisions of the Code of Conduct as well as the juristic nature of such persons; and
- (d) the relevant conduct of a security service provider at any place, irrespective of whether the conduct was committed within or outside the Republic.

## **3. Interpretation of the Code of Conduct**

The Code of Conduct must be interpreted to give effect to the objects of the Authority as contemplated in section 3 of the Act and to the purpose of the Code of Conduct.

## **4. Definitions**

In this Code of Conduct any expression to which a meaning has been assigned in the Act will bear the meaning so assigned and, unless the context indicates

otherwise —

“ammunition” means ammunition as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000);

“Authority” includes the Council, a councillor, a committee of the Council and a staff member of the Authority;

“act” includes an omission;

“Bill of Rights” means the Bill of Rights contained in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“client” includes a person with whom a security service provider has concluded a contract, with the exception of an employment contract, providing for the rendering of a security service to such person, and includes a person —

- (a) who approaches a security service provider or who is being approached by a security service provider in connection with the rendering of a security service to such person;
- (b) with whom a security service provider negotiates or communicates for the rendering of a security service to such person;
- (c) to whom a security service provider makes an offer to render a security service;
- (d) to whom a security service provider renders or rendered a security service; or
- (e) who remunerates a security service provider for rendering a security service to any person;

“Code of Conduct” means the Code of Conduct for Security Service Providers contained in this Schedule;

“director” includes a person appointed as an acting director by the Council or to whom the powers of the director have been delegated;

“document” means any recorded information, regardless of the form or medium thereof;

“enquiry” means an enquiry in terms of the Improper Conduct Enquiries

Regulations, 2003;

“equipment” means any equipment used for the purpose of or in connection with the rendering of a security service, including a working animal used in the rendering of a security service, but does not include a firearm, a weapon and ammunition;

“firearm” means a firearm as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000);

“improper conduct” means conduct as defined in regulation 25(1) and in regulation 27(1);

“Improper Conduct Enquiries Regulations” means the Improper Conduct Enquiries Regulations, 2003 contemplated in regulation 31;

“key” includes any object which is used to lock, unlock, close or engage a locking mechanism of any kind;

“Levies Act” means the Private Security Industry Levies Act, 2002 (Act No. 23 of 2002);

“non-security service provider” means a person who is not a security service provider but who uses his or her own employees as contemplated in regulation 22(1);

“presiding officer” means a person contemplated in regulation 2(1) of the Improper Conduct Enquiries Regulations;

“repealed code of conduct” means the code of conduct for security officers drawn up and made binding in terms of the Security Officers Act, 1987 (Act No. 92 of 1987) and which is repealed in terms of regulation 34;

“respondent” means a person, as defined in the Improper Conduct Enquiries Regulations, in respect of whom an enquiry into improper conduct has been instituted;

“Security Services” means the South African Police Service, the South African National Defence Force, the Directorate of Special Operations, the National Intelligence Agency, the South African Secret Service, the Department of Correctional Services and any other official law enforcement agency or service established by law, irrespective of whether such an agency or service resorts at national, provincial or local government level;

“security training establishment” means a person, establishment or institution providing security training and which has been accredited for this purpose in

terms of law;

“the Act” means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), and includes any regulations made in terms of the Act as well as any provision having the force of law on account of the Act; and

“weapon” means any weapon other than a firearm.

## CHAPTER 2

### GENERAL DUTIES OF SECURITY SERVICE PROVIDERS AND MINIMUM STANDARDS OF CONDUCT

#### 5. General duty to act in terms of applicable law

- (1) A security service provider must faithfully comply with the provisions of the Act as well as all other legal provisions and obligations, whether they are based on or form part of common law or statutory law, which are applicable to the occupation of security service provider, or the carrying on of business in the rendering of a security service, or the performance of any function which is subject to the Act, or which are otherwise relevant to the security service that a security service provider renders.
- (2) The general duty contained in sub-regulation (1) does not derogate from any specific duty imposed by the Code of Conduct and no specific duty in the Code of Conduct derogates from the generality of sub-regulation (1).

#### 6. General duties towards the Authority

- (1) A security service provider must, within his or her ability, render all reasonable assistance to and co-operate with the Authority to enable the Authority to perform any function which it may lawfully perform.
- (2) A security service provider may not perform any act which is calculated or likely to prevent the Authority from performing a function which it may lawfully perform, or which is calculated or likely to cause or encourage disobedience or resistance to the Authority or to any function which the Authority may lawfully perform.
- (3) A security service provider must without undue delay furnish the Authority with all information or documentation lawfully required by the Authority from such a security service provider.

- (4) A security service provider must take all reasonable steps to ensure that any information provided to the Authority by such security service provider is true and accurate.
- (5) A security service provider may not perform any act which is calculated to bring the Authority into contempt or disrepute.
- (6) A security service provider must discharge all his or her financial obligations of whatever nature to the Authority whenever an amount is due and payable, and, without derogating from the generality of the foregoing, may not tender or deliver a cheque to the Authority that is not good for payment in respect of any amount owed to the Authority by any person.
- (7) A security service provider may not use any person or body as a front or nominee, and no security service provider may allow himself or herself to be used as a front or nominee, in order to hinder, obstruct or weaken the Authority in the performance of any of the functions of the Authority, or which is calculated to mislead the Authority or cause harm to the interests of the Authority, the State or any person.
- (8) A security service provider must be honest in all his or her dealings with the Authority.

#### **7. General duties towards the Security Services and organs of State**

- (1) A security service provider must, within his or her ability, render all reasonable assistance and co-operation to the members and employees of the Security Services and of all organs of State to enable them to perform any function which they may lawfully perform.
- (2) A security service provider may not interfere with, resist, obstruct, hinder or delay a member or an employee of a Security Service or an organ of State in the performance of a function which such person may lawfully perform.
- (3) A security service provider must without undue delay furnish all information and documentation to a member or employee of a Security Service or an organ of State which such member or employee may legitimately request.
- (4) A security service provider may not unjustly cast reflection upon the probity, professional reputation, skill, knowledge, service or qualifications of any member of the Security Services.

- (5) A security service provider must be honest in all his or her dealings with a Security Service and with any organ of State.
- (6) A security service provider may not, whether directly or indirectly, request or use a member or former member of a Security Service or any person in the employ or former employ of a Security Service or an organ of State to obtain any information, document, object or assistance for the purposes of rendering a security service where such member or person, as the case may be, will contravene a law or the conditions of his or her service in providing such information, document, object or assistance.
- (7) A security service provider must, where the importance, nature or circumstances of a security service, or the nature or extent of the risks guarded against, or any other relevant fact, reasonably requires such a step, officially provide a responsible member of the Service with all relevant information regarding the rendering or proposed rendering of a security service, or the circumstances under which it is to be rendered, and maintain contact with such a member if this is reasonable and prudent in the circumstances or if so requested by such member.

#### **8. General duties towards the public and towards the private security industry**

- (1) A security service provider must at all times act in a manner which –
  - (a) does not threaten or harm the public or national interest;
  - (b) promotes the stability of the private security industry;
  - (c) promotes good discipline in the private security industry;
  - (d) maintains and promotes the status of the occupation of security service provider; and
  - (e) promotes efficiency in and responsibility with regard to the rendering of security services.
- (2) A security service provider may not infringe any right of a person as provided for in the Bill of Rights and, without derogating from the generality of the foregoing –
  - (a) may not in practising this occupation or carrying on business in the rendering of a security service unfairly discriminate against any person or deny any person equal service, employment or

employment benefits on the basis of race, colour, ethnic or social origin, gender, sex, age, religion, belief, culture or language;

- (b) may not break open or enter premises, or conduct a search, or seize property, or arrest, detain, restrain, delay, threaten, injure or interrogate any person or demand information or documentation from any person unless such conduct is reasonably necessary in the circumstances and is permitted in terms of law.
- (3) Every security service provider must endeavour to prevent crime, effectively protect persons and property and must refrain from conducting himself or herself in a manner which will or may in any manner whatsoever further or encourage the commission of an offence or which may wrongfully endanger the safety or security of any person or property.
- (4) A security service provider may only use force when the use of force as well as the nature and extent thereof is reasonably necessary in the circumstances and is permitted in terms of law.
- (5) A security service provider may not hold himself or herself or any other security service provider out to any person as having any authority, power, status, capacity, level of training, accreditation, registration, qualification or experience which he or she or the other security service provider does not have.
- (6) A security service provider may only possess or carry a firearm, ammunition, or a weapon or possess or use any equipment if such conduct is permitted by law.
- (7) A security service provider may not act in any manner that threatens public order or safety or which poses an unreasonable risk to the public order or safety.
- (8) A security service provider must, when performing functions in a public place, do so with due regard to the safety, security and legitimate interests of the members of the public that are present in such a place.
- (9) A security service provider may not through the medium of any other person or body, or by using such person or body as a front or nominee, do or attempt to do or achieve anything, which would not be permissible for him or her to do or to achieve, and no security service provider may allow himself or herself to be used as a front or nominee for such a purpose.

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- (10) A security service provider must in practising this occupation, or carrying on business in the rendering of a security service, or when he or she is undergoing security training or assessment of security training, knowledge or skill, always act in an honest and trustworthy manner.
- (11) A security service provider rendering a security service –
- (a) must treat members of the public with whom he or she comes into contact with the respect and courtesy that is reasonable in the circumstances;
  - (b) may not incite, encourage or help any person to use unlawful force or commit any unlawful act; and
  - (c) may not use language which may be reasonably construed as the advocacy of hatred or contempt that is based on race, ethnicity, sex, gender or religion.
- (12) A security service provider may not use or be under the influence of alcohol or a narcotic drug whilst rendering a security service.
- (13) A security service provider may not unjustly cast reflection upon the probity, professional reputation, skill, knowledge, quality of service, background or qualifications of any other security service provider, and, without derogating from the generality of the foregoing, may not intentionally or negligently disseminate false information concerning another security service provider or lay a false charge or make a false complaint against or concerning another security service provider.
- (14) A security service provider may not —
- (a) in any wrongful manner infringe the goodwill of any security business, and, without derogating from the generality of the foregoing, may not make false statements regarding a security business, instigate a boycott against a security business, or wrongfully exercise physical or psychological pressure on clients, employees or suppliers of a security business;
  - (b) commit any wrongful act or use any wrongful method, as established through the principles of the law of competition, in competing with another security service provider, and, without derogating from the generality of the foregoing, may not mislead the public, copy the distinguishing signs or performance of another

security service provider, exploit the reputation of another security service provider, unduly influence the public with regard to his or her own services, bribe an employee or agent of a client or potential client of another security service provider, obtain or use the trade secrets or confidential business information of another security service provider or compete with another security service provider in breach of a statutory or contractual obligation;

- (c) interfere with, hinder or obstruct another security service provider or its personnel in the rendering of a security service; or
- (d) interfere with or tamper with the equipment, firearms, ammunition, or weapons used by another security service provider in the rendering of a security service, or intercept or interfere with the communications of another security service provider.

**9. General duties towards clients, and issues related thereto**

- (1) A security service provider may not use any misrepresentation, duress, unreasonable pressure or undue influence, or unfairly or unreasonably exploit or misuse the circumstances of any client, or use any method or act prohibited in terms of legislation dealing with corruption, when communicating, negotiating or contracting with a client regarding the rendering of a security service to such client, or any condition or aspect concerning the rendering of a security service, or any aspect concerning the rendering of a counter performance by the client for the rendering of a security service.
- (2) A security service provider must, whenever a client reasonably needs information to make an informed decision or to exercise or protect a right or comply with a duty, furnish sufficient and correct information which is or should reasonably be within the knowledge of the security service provider to the client, including information concerning –
  - (a) the security service that he, she or any other security service provider that will be used to render a security service, is entitled, able and qualified to render;
  - (b) the correct and full remuneration, reward, fee or benefit payable by the client in respect of the relevant security service;
  - (c) the registration status, training level and relevant conditions of service of the personnel used or to be used in rendering a security

service;

- (d) the management, control and supervision of the rendering of a security service as well as reasonable contact particulars of personnel performing such functions;
- (e) the procedures, firearms, ammunition, weapons and equipment used or to be used by any person in the rendering of a security service;
- (f) any contractor or sub-contractor used or to be used in connection with the rendering of a security service as well as the control and supervision of such contractor or sub-contractor;
- (g) any matter on which the security service provider is by law obliged to furnish information; and
- (h) any matter on which a client lawfully and reasonably requests information.

(3) A security service provider may not —

- (a) make a contractual offer, conclude a contract or make himself or herself available for the rendering of a security service or the performance of any function, that requires a legal power, licence, permit, authorisation, accreditation, level of training, skill, knowledge, qualification, registration, personnel, firearm, ammunition, weapon, equipment, infrastructure, capacity or premises which he or she does not have or is not likely to have when he or she has to commence rendering such a service or perform such a function; or
- (b) render or purport to render a security service or perform any function that requires a legal power, licence, permit, authorisation, accreditation, level of training, skill, knowledge, qualification, registration, personnel, firearm, ammunition, weapon, equipment, infrastructure, capacity or premises which he or she does not have;
- (c) submit tender documentation for the rendering of a security service to any person or body that contains any materially false or misleading information;
- (d) make a contractual offer to or conclude a contract with a client

containing a provision that excludes or purports to exclude or limit the legal liability of the security service provider in respect of any malicious, intentional, reckless or grossly negligent conduct of the security service provider, its employees or any contractor or sub-contractor used by it, including the use or installation of faulty equipment, weapons, firearms or ammunition, or which places a duty or purports to place a duty on a client to indemnify the security service provider in respect of such conduct by any person for whose conduct the client is not responsible in law;

- (e) make a contractual offer to or conclude a contract with a client containing a provision that excludes or limits or purports to exclude or limit any duty on the security service provider in terms of the Act or the Code of Conduct or any right which a client has in terms of the Act or the Code of Conduct, or which constitutes or purports to constitute a waiver of such right by a client; or
  - (f) make a contractual offer to or conclude a contract with a client containing any term or condition that is prohibited in terms of any general legislation dealing with unfair or unconscionable contractual provisions.
- (4) A security service provider must ensure, at its own cost, that the full contractual agreement between the security service provider and his or her client regarding the rendering of a security service is reduced to writing and signed by or on behalf of the security service provider and that a true copy thereof is provided to the client without undue delay.
- (5) A security service provider —
- (a) must render the security service for which he or she has bound himself or herself contractually in accordance with the terms and conditions of the contract, the Act and the Code of Conduct;
  - (b) must perform any function or work with such a degree of skill and care as may be expected of a reasonable and qualified security service provider in the circumstances; and
  - (c) may not demand or receive more money or a greater contractual performance from a client for the rendering of a security service than that which is legally owed by the client.
- (6) A security service provider must provide a client with a written account

containing sufficient particulars to enable the client to estimate the correctness of the payment or performance required from the client for the rendering of a security service.

- (7) A security service provider must provide a client who has paid any amount for the rendering of a security service with a correct and full receipt in respect of such payment.
- (8) A security service provider must protect the rights and legally recognised interests of a client in a reasonable manner, in accordance with all applicable law and with due regard to the rights and legally recognised interests of all other parties concerned.
- (9) A security service provider may not in rendering a security service make any person available or use or permit the use of any firearm, ammunition, weapon or equipment if this may expose the client or any other person to any wrongful harm or unreasonable risk of wrongful harm of which the security service provider is aware or should reasonably be aware.
- (10) A security service provider may not —
  - (a) use or make any person available for the rendering of a security service, whether directly or indirectly, unless such a person —
    - (i) is registered as a security service provider in terms of the Act and may render the relevant security service in terms of the Act; and
    - (ii) has successfully completed the security training required in respect of the rendering of the relevant security service;
  - (b) use, contract or subcontract another security service provider than the one provided for in the contract with the client to render a security service or part of a security service to a client, unless —
    - (i) the client has given consent thereto; and
    - (ii) such security service provider is registered with the Authority and is entitled, able, equipped and has the infrastructure and capacity to render the security service in question.
- (11) A security service provider may not, where a conflict of interests of the

security service provider and the client arises or is reasonably foreseeable in the rendering of a security service, act or continue to act without prior full disclosure to and the consent of all interested parties.

- (12) A security service provider may not in any manner whatsoever disclose private information concerning a client, including information relevant to the security, safety or protection of a client or of his or her legally recognised interests that has come to his or her knowledge on account of the rendering or negotiating the rendering of a security service to such client, without having obtained prior consent for the disclosure, unless the security service provider is legally obliged to disclose the information or the disclosure is made in circumstances in which it is not reasonably possible to obtain the client's consent and the disclosure is made in the interests of the client.
- (13) A security service provider may not in any manner whatsoever, without the written consent of a client, use private information concerning a client that has come to his or her knowledge on account of the rendering or negotiating the rendering of a security service —
- (a) in order to obtain or retain an unfair financial benefit at the expense of the client; or
  - (b) to unfairly compete with the client.
- (14) A security service provider must take all reasonably necessary steps to protect and safeguard any private information concerning a client, including information relevant to the security, safety or protection of a client or of his or her legally recognised interests, that has come to his or her knowledge on account of the rendering or negotiating the rendering of a security service to such client.
- (15) A security service provider may not, without a legal ground justifying such conduct, use, alienate, hand over, be in possession of or retain any property of a client or be or remain on the premises or any part thereof of a client.

**CHAPTER 3****SPECIFIC DUTIES OF CERTAIN CATEGORIES AND CLASSES OF SECURITY SERVICE PROVIDERS****10. Application of this chapter**

The duties in this chapter do not derogate from any duty imposed in terms of any other provision of the Code of Conduct and no duty contained elsewhere in the Code of Conduct derogates from any specific duty contained in this chapter.

**11. Employers**

- (1) A security service provider employing any person must comply with every duty imposed by law towards or in respect of such employee, and, without derogating from the generality of the foregoing, may not abuse or exploit such employee and must ensure that the employee receives the wages and all other service benefits due to him or her as provided in terms of any applicable legal provision, agreement, contract or determination.
- (2) A security service provider must, before employing or using or making any person available for the rendering of a security service, take all reasonable steps to verify the registration status, level of training, qualifications and all other relevant facts concerning such a person.
- (3) A security service provider employing a security officer may not directly or indirectly order or allow him or her to render a security service which requires a legal power, status, licence, permit, authorisation, accreditation, registration, level of training, skill, knowledge or qualification that her or she does not have.
- (4) A security service provider employing a security officer may not directly or indirectly order or allow him or her to possess or use a firearm, ammunition, weapon or any equipment, unless such possession and use is lawful and he or she has been successfully trained as required by law in the possession and use thereof and is able to use it lawfully, safely and correctly in the relevant circumstances.
- (5) A security service provider employing a security officer must take reasonable steps to ensure that the security officer who is used or made available to render a security service to any person —

- (a) has been properly informed about the nature and scope of his or her functions and duties as well as his or her legal powers in this regard;
  - (b) is properly managed, controlled and supervised;
  - (c) has been lawfully provided with and is in lawful possession of all the equipment necessary to render the security service in question;
  - (d) has been lawfully provided with and is in lawful possession of any fire-arm, ammunition and any weapon necessary to render the security service in question; and
  - (e) is properly disciplined in the case of any misconduct.
- (6) A security service provider must, at its own cost, provide all assistance reasonably necessary and possible to security officers employed by him or her to ensure the receipt by them of all relevant information from the Authority regarding any matter relevant to regulation, including their financial obligations towards the Authority and the renewal of registration as security service provider as contemplated in the Act.
- (7) A security service provider must, at its own cost and as often as it is reasonable and necessary, provide training or cause such training to be provided, to all the security officers employed by it to enable them to have a sufficient understanding of the essence of the applicable legal provisions regarding the regulation of the private security industry and the principles contained in the Code of Conduct.

## **12. Employees (security officers)**

- (1) A security officer in the employ of a security service provider or a non-security service provider must comply with every duty imposed on him or her by law towards or in respect of his or her employer.
- (2) A security officer may not render a security service or perform functions, or agree to render a security service or perform functions, which require a legal power, status, licence, permit, authorisation, accreditation, registration, level of training, skill, knowledge or qualification that he or she does not have.
- (3) A security officer must take proper and reasonable care of any firearm, ammunition, weapon, equipment, uniform and any article or object

- provided to him or her by his or her employer, and of the property of his or her employer with which he or she comes into contact.
- (4) Without derogating from any other applicable provision of the Code of Conduct, a security officer must perform any function or work with such a degree of skill as might be expected of a reasonable and qualified security officer in the circumstances.
  - (5) A security officer may not make any material misrepresentation to his or her employer regarding his or her registration status as a security service provider, level of security training, qualifications, experience as an employee, any relevant fact concerning the rendering of a security service whilst in the employ of the employer, and any other matter on which it would be reasonably necessary for his or her employer to have information.
  - (6) A security officer may not provide any assistance or any confidential information concerning the business of his or her employer to another security service provider for the purposes of wrongful competition with his or her employer.
  - (7) Without derogating from any applicable provision of the Code of Conduct, a security officer employed by a non-security service provider —
    - (a) must render the security service which he or she is obliged to render in terms of his or her employment in accordance with the Act and the Code of Conduct;
    - (b) must perform any function or work with such a degree of skill as might be expected of a reasonable and qualified security officer in the circumstances;
    - (c) must protect the rights and legally recognised interests of the non-security service provider and of all other relevant persons in a reasonable manner, in accordance with all applicable law and with due regard to the legally recognised interests of all other persons concerned;
    - (d) may not in any manner whatsoever disclose private information concerning the safety and security of the non-security service employer or any other person that has come to his or her knowledge on account of rendering such security service, without having obtained prior consent for the disclosure, unless he or she

is legally obliged to disclose the information or the disclosure is made in circumstances in which it is not reasonably possible to obtain the consent and the disclosure is made in the interests of the relevant person.

### **13. Persons occupying certain offices or positions**

A security service provider who is a director, member, partner, trustee, administrator or a person in control of any security business, as the case may be, or any person performing executive or managing functions in respect of a security business, must at all times whilst he or she is occupying such office or having such position take all reasonably practicable steps within his or her powers or capacity to ensure that such security business and its staff comply with the provisions of the Act, the Levies Act and the Code of Conduct.

### **14. Managers, controllers and supervisors**

A security service provider who manages or controls or supervises the rendering of a security service or a security officer rendering such a service, or who is under a duty to perform any of these functions, must —

- (1) perform his or her functions in this capacity in a diligent, reasonable and competent manner;
- (2) employ methods, systems and procedures which are required in terms of law, as well as any other methods, systems and procedures which are necessary and appropriate in the circumstances, to promote and ensure the trustworthiness of and lawful, professional and disciplined conduct by security officers;
- (3) ensure that a security service of a sufficiently high quality is rendered;
- (4) perform the functions contemplated in regulation 11(5) or cause these functions to be performed;
- (5) verify whether and take all reasonable steps to ensure that a security officer used or made available is registered, trained, competent and equipped in accordance with the applicable provisions of the Act and the Code of Conduct, uses lawful and reasonable methods in rendering a security service and complies with the applicable provisions of the Act and the Code of Conduct;
- (6) keep all records and documentation required in terms of the Act as well

as a reasonable record containing sufficient information on his or her actions in managing, controlling or supervising every security service and every security officer in respect of which he or she has responsibility;

- (7) monitor and control the provision of firearms, ammunition and weapons to security officers, monitor their use by security officers and promote and ensure compliance with applicable laws and general standards of safety;
- (8) take reasonable steps to identify any shortcomings in the training, skills, methods or techniques of security officers managed, controlled or supervised so that this may be rectified without undue delay;
- (9) receive, consider and act in an appropriate manner upon complaints of security officers and clients; and
- (10) ensure that security officers are treated by their employer in terms of the applicable law and are not exposed to unnecessary risks or unreasonable conditions in connection with the performance of their functions and duties.

**15. Security service providers making security officers available to others**

- (1) A security service provider who makes a security officer or the services or the assistance of a security officer available to any other security service provider or any other person with a view to the rendering of a security service to a third party, is bound by all the provisions of the Code of Conduct that are applicable to security service providers generally as well as to employers specifically as contemplated in regulation 11 of the Code of Conduct, with the necessary changes.
- (2) Without derogating from the generality of sub-regulation (1), a security service provider contemplated in sub-regulation (1) must ensure that a security officer who, or whose services or assistance, is thus made available, receives the wages and all other service benefits due to the security officer as provided in terms of applicable law.
- (3) A security service provider who makes a security officer or the services or the assistance of a security officer available to any other security service provider as contemplated in sub-regulation (1), may only do so if such security service provider is registered with the Authority and is otherwise entitled to render the relevant security service.

**16. Private investigators**

A security service provider performing the functions of a private investigator —

- (1) may not perform any act which interferes with, hinders or obstructs a Security Service or an organ of State in performing any function that it may lawfully perform, or advise or agree with a client to perform such an act;
- (2) may not advise, assist or incite a client or any other person to commit an offence, a delict, breach of contract or any other type of illegal conduct;
- (3) may not undertake or assist in the entrapment of any person for the purposes of obtaining evidence of an offence, a delict or breach of contract unless such conduct is permitted in terms of law and any official permission that is required has been obtained;
- (4) may not conceal facts regarding the commission of an offence from a Security Service or any organ of State, or agree with a client to conceal such facts from a Security Service or any organ of State;
- (5) may not employ a corrupt, illegal or wrongful method or technique, or use unlawful threats, or intimidation or false pretences to gather information or to gain access to premises or to secure the assistance or co-operation of any person;
- (6) may not possess or use a monitoring device or any other equipment for the purposes of surveillance, counter-surveillance or any other aspect of an investigation where such possession or use is in conflict with any legal provision or any provision of the Code of Conduct or constitutes a wrongful act against any person;
- (7) may not possess or use a specialised device used for the opening, closing or engaging of locking mechanisms, or possess or use any specialised device used to reproduce or duplicate keys, or possess any key code or key, unless he or she is able to provide a justifiable reason to the Authority or the Service, as the case may be, for such possession or use;
- (8) may not possess, carry or use any document or object intended to be used to provide a false or incorrect indication of his or her identity, status, powers or functions;
- (9) may not falsify, distort, manufacture or interfere with any evidence of an

offence, delict, breach of contract or any other legally relevant fact;

- (10) may not request or obtain information, assistance or co-operation from any person in circumstances where such person contravenes or would contravene the law, the conditions of his or her service, a binding code of ethics, or act in breach of trust or infringe a person's right to privacy, in providing such information, assistance or co-operation;
- (11) may not promise, offer or give any consideration to a person in order to obtain information, assistance or co-operation from such person in circumstances where the person contravenes the law, the conditions of his or her service, a binding code of ethics or act in breach of trust in accepting such consideration;
- (12) may not co-operate with any person in circumstances or on conditions where such person contravenes the law, the conditions of his or her service or the provisions of a binding code of ethics in providing co-operation to a private investigator;
- (13) may only undertake an investigation on behalf of a client in terms of a proper mandate reduced to writing and signed by or on behalf of the client containing, *inter alia*, the name and address of the client, a description of the subject matter of the investigation, the date of the mandate and the remuneration, reward, fee or benefit in respect of the investigation, and details of any prepayment to be made by the client;
- (14) must keep the mandate contemplated in sub-regulation (13) for a period of at least three years in a secure place;
- (15) may not demand or receive any amount or performance from a client which is not in accordance with the amount contemplated in sub-regulation (13), or, in the case of a prepayment, which is in excess of half of the value of the estimated amount or performance payable by the client in respect of the mandated investigation,
- (16) may not demand, receive or retain any payment, performance or property from a client that is not due and payable or which serves as remuneration in respect of any act by the private investigator that is prohibited in terms of the Code of Conduct;
- (17) may not provide false or misleading information to a client regarding an investigation mandated by the client, including the cost of such investigation or any part thereof, the time spent on an investigation and

the methods used or to be used for the purposes of the investigation; and

- (18) must provide a client without undue delay with a written and signed report regarding any investigation mandated by the client, if so requested by the client and if there is no legal ground on which the client's request may be denied.

## **17. Locksmiths**

A security service provider performing the functions of a locksmith —

- (1) must perform all his or her functions in a trustworthy and competent manner;
- (2) must take all reasonable steps necessary to eliminate or minimise any risk of harm to a client as a result of any service rendered by him or her to a client;
- (3) may only open, close or engage a locking mechanism of any nature, or reproduce, duplicate, manufacture or provide a key, start any vehicle or cause a vehicle to be capable of movement by unlocking a locking mechanism, if the person requesting such action furnishes written proof of his or her identity with sufficient contact particulars as well as the authority to make the request, and, if relevant in the circumstances, the consent of any other person required by law in respect of the requested action, has been furnished;
- (4) must make reasonable enquiries, if reasonably necessary in the circumstances, to verify the proof and information contemplated in sub-regulation (3);
- (5) must keep a record of the information contemplated in sub-regulation (3) for a period of at least three years in a secure place;
- (6) may not perform any act, unless duly authorised thereto, that compromises or may probably compromise the security of a client or of any other person, including the security and efficacy of any locking mechanism, key, vehicle, door, gate or electronic security system;
- (7) may not duplicate, reproduce, manufacture or possess any key or key code, or modify a key blank, unless this is done for legitimate business purposes in the normal course of business;

- (8) must exercise effective and reasonable control over a specialised device, belonging to or utilised by him or her, used to open, close or engage locking mechanisms;
- (9) must exercise effective and reasonable control over a specialised device, belonging to or utilised by him or her, to reproduce or duplicate keys;
- (10) may not provide a key code, or a specialised device contemplated in sub-regulation (8) or (9), belonging to or utilised by him or her, to a person who is not registered as a security service provider and who is not otherwise entitled by law to possess and use such a key code or such a specialised device;
- (11) may not provide information or training or impart skills regarding the opening, closing or engaging of locking mechanisms of any nature to a person that is not registered as a security service provider, or enrolled to receive training at a security training establishment, or in terms of some other ground recognised by law; and
- (12) must acquire any key or key code, or any specialised device contemplated in sub-regulation (8) and (9), in a legitimate manner.

#### **18. Security consultants and advisers**

A security service provider giving advice on the protection or safeguarding of a person or property, any other type of security service, or on the use of security equipment —

- (1) must provide a client with sound, honest and objective advice which is in the best interests of the client;
- (2) must timeously disclose to a client any direct or indirect benefit of whatever nature that he or she or any business in which he or she has any direct or indirect interest will or will probably obtain if the client acts upon the advice provided by the security service provider;
- (3) must comply, with the necessary changes, with the duties contemplated in regulation 16(2), (4), (5), (6), (7), (8), (9), (10), (11), (12), (16) and (18);
- (4) may not advise a client to use any corrupt, wrongful or illegal method, system or practice;
- (5) may not advise a client to use or obtain the services of a security service

provider who is not registered with the Authority, trained up to the level required by law and otherwise entitled by law to render the security service in question;

- (6) may not advise a client to use or obtain the services of any person who is untrustworthy or incompetent; and
- (7) may not advise a client to obtain, use or provide any equipment, firearm, ammunition or weapon, or implement any system, which is faulty or has a defect that may render it an inherent source of danger to any person.

**19. Security service providers ensuring order and safety on premises used for sporting, recreational, entertainment or similar purposes**

A security service provider who has contracted to render a service aimed at ensuring order and safety on premises used for sporting, recreational, entertainment or similar purposes, whether on his or her own or in conjunction with any other person, and any security officer used to render such a service, must act in terms of all the duties imposed by the Act and any other applicable legal provisions.

**20. Security service providers providing security training**

A security service provider providing security training –

- (1) must provide security training which is of a high quality;
- (2) must employ training methods and materials which are the most suitable in the circumstances in order to promote and achieve the officially approved outcomes in respect of the security training;
- (3) may only provide security training in terms of his or her own qualifications and official accreditation or authorisation, including adherence to any conditions attached to such accreditation or authorisation;
- (4) must provide security training in accordance with any legal provisions applicable to such training;
- (5) must provide security training in accordance with any relevant and officially approved or accredited syllabus, programme, standards and training material;
- (6) must, when assessing or testing the knowledge, insight or skills of any

person undergoing security training, or the outcomes of such training, do so in an objective manner without showing prejudice or favour and may not employ any method that would distort the actual knowledge, insight and skills of a person undergoing the security training; and

- (7) must take reasonable steps to ensure that security training is only provided to a person entitled in terms of the Act to undergo such training.

**21. Security service providers installing, servicing or repairing security equipment and performing certain functions regarding monitoring devices**

- (1) A security service provider installing, servicing or repairing security equipment —
- (a) must perform all his or her functions in a reasonable, trustworthy and competent manner;
  - (b) may not install, service or repair any security equipment if the client's possession or use thereof, is or will be in contravention of any law, including the commission of an offence, a delict or breach of contract;
  - (c) must make reasonable enquiries, if reasonably necessary in the circumstances, to verify the legality of a person's possession or use of security equipment as contemplated in paragraph (b);
  - (d) may not install, service or repair any security equipment if he or she would contravene any legal provision in doing so;
  - (e) may only install security equipment if it has been acquired in a legitimate manner by him or her or by the client;
  - (f) may not install security equipment if he or she knows or should reasonably know that it is faulty, untrustworthy, defective or which poses a risk to the legitimate interests of the client or any other person;
  - (g) must, when he or she installs security equipment, provide a client with all information reasonably necessary in regard to the care of and the effective use of the security equipment, unless the client is already in possession of such information;
  - (h) must take all reasonable steps necessary in the circumstances to

eliminate or minimise any risk of harm to a client as a result of the service rendered by him or her;

- (i) may not perform any act, unless duly authorised thereto, that compromises or may probably compromise the security of a client or any other person entitled to security;
  - (j) may not provide information or training or impart skills regarding the operation, repair or servicing of security equipment to a person that is not registered as a security service provider or enrolled to receive training at a security training establishment or if such conduct is not otherwise permissible in terms of law; and
  - (k) may not make a misrepresentation regarding any security equipment provided by him or her to a client.
- (2) A security service provider manufacturing, importing, distributing, advertising or using a monitoring device contemplated in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992) —
- (a) may only manufacture, import, distribute, advertise or possess a monitoring device in compliance with all applicable legal provisions;
  - (b) must keep proper records as may be prescribed in terms of the Act;
  - (c) must submit information to the Authority on all transactions regarding monitoring devices as may be prescribed in terms of the Act;
  - (d) may not supply a monitoring device to any person if the identity of such person as well as the identity of the end user thereof, as the case may be, is not confirmed in writing to him or her before he or she supplies such a monitoring device;
  - (e) may not supply a monitoring device to any person if such person's possession or use thereof, or the possession or use thereof by the end user, as the case may be, is or will be in contravention of any law, including the commission of an offence, a delict or breach of contract;
  - (f) must make reasonable enquiries, if reasonably necessary in the circumstances, to verify the legality of a person's possession and

use of a monitoring device as contemplated in paragraph (e), as well as the accuracy of any relevant information provided by the client to him or her;

- (g) may only use a monitoring device in compliance with all applicable legal provisions; and
- (h) must comply, with the necessary changes, with the provisions of regulation 16(1), (2), (8), (10), (11) and (12), and regulation 18(4) and (5).

## CHAPTER 4

### DUTIES ON NON-SECURITY SERVICE PROVIDERS EMPLOYING SECURITY OFFICERS ("IN-HOUSE" SECURITY)

#### 22. Application of this chapter

- (1) Any person who is not a security service provider and who uses 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, is referred to in this chapter as a "non-security service provider" and is subject to the provisions of the Code of Conduct to the extent provided for.
- (2) The duties in the Code of Conduct do not derogate from a duty imposed on a non-security service provider in terms of the Act or any other law.

#### 23. General duties

- (1) A non-security service provider is, in addition to any other provision of the Code of Conduct which is on account of its wording applicable to him or her, subject to regulations 6, 7, 8 (with the exception of sub-regulations (12) and (14)), 13, 14 and 20, with the necessary changes.
- (2) The general duties contemplated in this regulation do not derogate from the specific duties contained in this chapter.

**24. Specific duties**

A non-security service provider —

- (1) may only use, permit or direct an employee to perform a function contemplated in regulation 22(1) if such employee is registered as a security service provider in terms of the Act, has successfully completed the security training relevant to the function and is otherwise entitled by law to perform the function in question;
- (2) must, before using, permitting or directing an employee to perform a function contemplated in regulation 22(1) take all reasonable steps to verify the registration status as security service provider, level of training, qualifications and all other relevant facts concerning such employee;
- (3) must appoint and use, subject to sub-regulation (1), a responsible person to manage, supervise and control all employees used, permitted or directed to render a security service as contemplated in regulation 22(1);
- (4) must appoint and use a responsible person ensuring that the duties of the non-security service provider towards the Authority are discharged in terms of law;
- (5) may not, subject to section 28(2) of the Act, make any employee or his or her services available for the purposes of rendering a security service to any other person, whether for reward or not;
- (6) must, in respect of all employees used, permitted or directed to render a security service as contemplated in regulation 22(1), comply with the relevant provisions of the Levies Act as well as all applicable laws and measures promulgated in terms of law regarding minimum wages and standards aimed at preventing exploitation or abuse of employees in the private security industry; and
- (7) must take all reasonable steps to ensure that the impression is not created that the non-security service provider is or acts as a security service provider.

**CHAPTER 5****PROVISIONS REGARDING IMPROPER CONDUCT, THE ENFORCEMENT OF  
THE CODE OF CONDUCT AND OTHER MATTERS RELATING THERETO, AND  
GENERAL PROVISIONS****25. Improper conduct by a security service provider**

- (1) A security service provider who –
  - (a) contravenes or fails to comply with a provision of the Act;
  - (b) contravenes or fails to comply with a provision of the Levies Act;
  - (c) contravenes or fails to comply with a provision of the Code of Conduct; or
  - (d) commits an offence contemplated in the Schedule to the Act —

is guilty of improper conduct and on conviction liable to any penalty contemplated in regulation 26 or in regulation 29, according to the case.
- (2) Any conspiracy, incitement or attempt to commit any act contemplated in sub-regulation (1)(a), (b) or (c) constitutes improper conduct.
- (3) Every contravention or failure to comply as contemplated in sub-regulation (1) and (2) constitutes a separate count of improper conduct in respect of which any penalty contemplated in regulation 26 or regulation 29, according to the case, may be imposed.

**26. Penalties in respect of improper conduct by a security service provider**

- (1) Subject to this regulation, a security service provider who has been found guilty of improper conduct in terms of the procedure contemplated in regulation 31 is subject to the following penalties —
  - (a) a warning or a reprimand;
  - (b) temporary suspension of registration as security service provider;
  - (c) withdrawal of registration as security service provider;
  - (d) a fine not exceeding R10 000, which fine is payable to the

**Authority;**

- (e) publication of the details of the conviction of improper conduct and any other penalty imposed; or
  - (f) compliance with any order that may be made in terms of the Act.
- (2) The penalty contemplated in sub-regulation (1)(d) may be combined with the penalty contemplated in sub-regulation (1)(b), (c), (e) and (f), and a penalty in sub-regulation (1)(e) and (f) may be combined with any other penalty contemplated in sub-regulation (1).
- (3) The penalty contemplated in sub-regulation (1)(b), (c), (d) and (f) may be suspended on any condition that is reasonably likely to promote compliance with the Code of Conduct by the security service provider.
- (4) In addition to any other relevant fact, the following must be considered and properly taken into account in imposing any penalty contemplated in this regulation —
- (a) the gravity and nature of the improper conduct;
  - (b) the known relevant circumstances of the security service provider and such other relevant circumstances as the security service provider may prove to exist;
  - (c) the national interest as well as the interests of the public and of the private security industry;
  - (d) the risk posed by the improper conduct to the rights or legitimate interests of any person;
  - (e) any previous conviction of the security service provider of improper conduct in terms of the Code of Conduct or the repealed code of conduct;
  - (f) the financial or other benefit or likely benefit obtained or that may be obtained by the security service provider through the commission of improper conduct; and
  - (g) any actual or potential harm caused by the security service provider through the improper conduct.

**27. Improper conduct by a non-security service provider**

- (1) A non-security service provider who —
  - (a) contravenes or fails to comply with a provision of the Act;
  - (b) contravenes or fails to comply with a provision of the Levies Act; or
  - (c) contravenes or fails to comply with a provision of the Code of Conduct —

is guilty of improper conduct and on conviction liable to any penalty contemplated in regulation 28 or regulation 29, according to the case.
- (2) Any conspiracy, incitement or attempt to commit any act contemplated in sub-regulation (1)(a), (b) or (c) constitutes improper conduct.
- (3) Every contravention or failure to comply as contemplated in sub-regulation (1) and (2) constitutes a separate count of improper conduct in respect of which any penalty contemplated in regulation 28 or regulation 29, according to the case, may be imposed.

**28. Penalties in respect of improper conduct by a non-security service provider**

- (1) Subject to this regulation, a non-security service provider who has been found guilty of improper conduct in terms of the procedure contemplated in regulation 31 is subject to the following penalties —
  - (a) a warning or a reprimand;
  - (b) a fine not exceeding R10 000, which fine is payable to the Authority;
  - (c) publication of the details of the conviction of improper conduct and any other penalty imposed; or
  - (d) compliance with any order that may be made in terms of the Act.
- (2) The penalty contemplated in sub-regulation (1)(b) may be combined with the penalty contemplated in sub-regulation (1)(c) and (d), and the penalty in sub-regulation (1)(d) may be combined with any other penalty contemplated in sub-regulation (1).

- (3) The penalty contemplated in sub-regulation (1)(b), (c) and (d) may be suspended on any condition that is reasonably likely to promote compliance with this Code of Conduct by the non-security service provider.
- (4) In addition to any other relevant fact, the following must be considered and properly taken into account in imposing any penalty contemplated in this regulation —
  - (a) the gravity and nature of the improper conduct;
  - (b) the known relevant circumstances of the non-security service provider, and such other relevant circumstances as the non-security service provider may prove to exist;
  - (c) the national interest as well as the interests of the public;
  - (d) the risk posed by the improper conduct to the rights or legitimate interests of any person;
  - (e) any previous conviction of the non-security service provider of improper conduct in terms of the Code of Conduct;
  - (f) the financial or other benefit or likely benefit obtained or that may be obtained by the non-security service provider through the commission of improper conduct; and
  - (g) any actual harm caused by the non-security service provider to any person, group or body.

## **29. Improper conduct also a criminal offence**

A person who contravenes or fails to comply with a provision of the Code of Conduct which is applicable to him or her, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 24 months, or to both a fine and such imprisonment.

## **30. Enforcement**

- (1) The Authority must, subject to the Act and any other applicable legal provisions, take all steps necessary to actively enforce the provisions of the Code of Conduct.

- (2) The Authority must provide all assistance with the means at its disposal to the Service and to the State's prosecuting authorities to investigate criminal complaints against security service providers and non-security service providers and to take any other appropriate legal steps, as the case may be.

### 31. Procedure

The procedures for the enforcement of the Code of Conduct through the institution of improper conduct enquiries and matters relating thereto are contained in the Improper Conduct Enquiries Regulations made by the Minister in terms of section 35(1)(h) of the Act.

### 32. Evidence and related matters

- (1) Subject to the Act, the Improper Conduct Enquiries Regulations, and the Code, the law relating to evidence and witnesses as applicable in connection with criminal proceedings in the Magistrate's Court will, with the necessary changes, apply in the case of an enquiry into an allegation of improper conduct.
- (2) A security service provider and a non-security service provider may be found guilty of improper conduct at an enquiry if the presiding officer is of the opinion that on all the evidence the Authority has proved the charge of improper conduct on a balance of probabilities.
- (3) If, at an enquiry, an element of the improper conduct in question consists of a finding or decision by a court of law or by any other tribunal or an official of the State, a certificate purporting to have been signed by the director recording such finding or decision and the source on which the information in the certificate is based, will be *prima facie* evidence of such a finding or decision.
- (4) The provisions of sub-regulation (3) do not exclude any other evidence that may be adduced by the Authority in terms of law to prove a charge of improper conduct or an element of improper conduct and do not derogate from the power of a presiding officer to make a finding regarding any element of improper conduct on any such evidence.
- (5)
  - (a) The provisions of the Computer Evidence Act, 1983 (Act No. 57 of 1983) are applicable, with the necessary changes, to an enquiry.
  - (b) For the purposes of the application of the Computer Evidence Act

in terms of paragraph (a), the Authority is deemed to be a "public institution" as contemplated in the said act.

- (6) If in an enquiry it is an element of the improper conduct that a person referred to in the charge sheet rendered a security service or was used or made available to render a security service and the Authority shows that the respondent is a security business and employed the person in question at the relevant time, it will be accepted that the said person rendered a security service or was used or made available to render a security service as alleged in the charge sheet, unless there is evidence to the contrary which raises a reasonable doubt.
- (7) If in any enquiry the Authority produces a document provided to it by the respondent, by an official of the respondent, or by a person apparently in the employ of the respondent, or by a person apparently assisting the respondent in its business or activities, or if the document was found by an inspector at premises apparently used by the respondent in connection with the rendering of a security service or the administration or management of the rendering of a security service or security officers, the document will be proof of the information contained therein to the extent that the Authority expressly relies on the truthfulness or accuracy of such information, unless there is evidence to the contrary.
- (8) If in any enquiry the Authority produces evidence of an oral statement made to an inspector by the respondent, or by an official of the respondent, or by a person apparently in the employ of the respondent, or by a person apparently assisting the respondent in its business or activities, the oral statement will be proof of the information contained in such oral statement to the extent that the Authority expressly relies on the truthfulness or accuracy of such information, unless there is evidence to the contrary.
- (9) Evidence submitted at an enquiry which has been obtained in a wrongful manner, is admissible at an enquiry unless the admission thereof would render the enquiry materially unfair or would be seriously prejudicial to the public interest.
- (10) No provision or penalty contained in the Code of Conduct, with the exception of criminal proceedings in terms of regulation 29, may be construed as indemnifying any person against a prosecution, conviction or imposition of a penalty in respect of any offence in a court of law.
- (11) No criminal proceedings or any other legal proceedings of whatever

nature, whether such proceedings are anticipated, pending or concluded, with the exception of criminal proceedings contemplated in regulation 29, will indemnify a security service provider or a non-security service provider against an investigation, enquiry, conviction of improper conduct or the imposition of a penalty in respect of improper conduct in terms of the procedure contemplated in the Act and in regulation 31.

**33. Repeal of code of conduct**

The code of conduct for security officers drawn up and made binding in terms of the Security Officers Act, 1987 (Act No. 92 of 1987) is, subject to the transitional provisions in the Improper Conduct Enquiries Regulations, hereby repealed.

**34. Authoritative text**

The provisions of the English text of these regulations will prevail in the case of a difference between the English text and any other text.

**35. Short title and commencement**

These regulations are called the Code of Conduct for Security Service Providers, 2003 and come into operation on 1 March 2003.

## **IMPROPER CONDUCT ENQUIRIES REGULATIONS, 2003**

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## 1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act will bear the meaning so assigned and, unless the context otherwise indicates –

“Act” means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) and the regulations made in terms of the Act;

“Authority” includes a committee appointed by the Council for the purpose of performing any function of the Authority contemplated in these regulations;

“charge”, in the relation to a security service provider, means an allegation of improper conduct made with a view to the institution of an enquiry;

“Code of Conduct” means the Code of Conduct for Security Service Providers prescribed in terms of section 28 of the Act;

“complainant” means any person who submits a charge to the Authority;

“day” does not include a Saturday, Sunday or public holiday;

“director”, except for the purposes of regulation 15(5) and regulation 23, includes an official of the Authority appointed by the Council to be responsible for the law enforcement division of the Authority contemplated in section 14(2)(a) of the Act, and any other official of the Authority designated by the Council to perform any functions of the director as contemplated in these regulations;

“document” includes any recorded information, regardless of the form or medium;

“enquiry”, in relation to a security service provider, means an enquiry as the result

of a charge, and includes the proceedings in terms of regulations 16 and 17;

“improper conduct” means improper conduct as defined in the Code of Conduct;

“non-security service provider” means a person who is not a security service provider and who uses 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;

“party”, in relation to an enquiry, means the prosecutor or the respondent;

“presiding officer” means a person referred to in regulation 2(1);

“prosecutor” means a person referred to in regulation 2(4);

“repealed regulations” means the regulations repealed in terms of regulation 26;

“respondent” means a security service provider in connection with whom an enquiry is held, including a director of a company, a member of a close corporation, a partner in a partnership, a trustee in a business trust, the administrator or person in control of a foundation, and a person who performs executive or management functions in respect of any security business, as the case may be, in regard to which an enquiry is held and who has been cited in terms of regulation 3 as representative of such company, close corporation, partnership, business trust, foundation or other security business, and any other person who has been substituted for any such representative in terms of regulation 5;

“security business” includes a non-security service provider as contemplated in these regulations;

“security service provider” includes a non-security service provider as contemplated in these regulations; and

“these regulations” means the regulations contained in this Schedule.

## **2. Appointment, designation and functions of presiding officers and of prosecutors**

- (1) The Council may from time to time appoint, on such terms and conditions as it may determine, persons who are not in the employ of the Authority and who in its opinion are suitably qualified, experienced and independent to preside over enquiries into charges of improper conduct against security service providers, and to perform any other function provided for

in these regulations.

- (2) The director may designate a presiding officer appointed in terms of sub-regulation (1) to enquire into a charge or any category of charges.
- (3) The functions and powers of a presiding officer are as provided for in the Act and in these regulations.
- (4) The director may from time to time appoint, on such terms and conditions as he or she may determine, suitably qualified and experienced persons as prosecutors to perform the functions of a prosecutor in regard to a specific charge or any category of charges.
- (5) A prosecutor performs his or her functions subject to these regulations and under the authority and control of the director.
- (6) A document purported to be signed by the director on behalf of the Authority and which states that a person mentioned therein has been appointed or designated as a presiding officer or as a prosecutor, as the case may be, constitutes *prima facie* proof of such an appointment and designation in any proceedings where the document is submitted.

### **3. Submission of charge, citation of respondent and notification to respondent**

- (1) A person who intends to submit a charge with reference to a security service provider to the Authority, must deliver the charge to the director by means of an affidavit essentially in the form contemplated in sub-regulation (2).
- (2) An affidavit referred to in sub-regulation (1) must contain the following particulars insofar as they are within the knowledge of the complainant -
  - (a) the full name, employment or business address and residential address of the complainant and of the respondent and, where the complaint is directed against a company, close corporation, partnership, business trust, foundation, other security business, the name, employment or business address and residential address of a director of the company, a member of the close corporation, a partner of the partnership, a trustee of a business trust, an administrator or person in control of a foundation, or a person performing executive or managing functions in respect of such a security business, who is cited as representative of the

respondent as contemplated in the definition of "respondent" in regulation 1; and

- (b) such particulars of the alleged improper conduct of which the respondent is said to be guilty, including particulars as to the date and place of the alleged improper conduct, as may be reasonably necessary to inform the respondent of the nature of the charge.
- (3) The director must take the steps that he or she deems necessary in the circumstances to establish whether there is *prima facie* evidence to support a charge that has been submitted to him or her in terms of sub-regulation (2).
- (4) If the director is satisfied that the requirements contemplated in sub-regulations (2) and (3) have been met, the director must direct the prosecutor designated to deal with the charge in writing to —
- (a) cause a copy of the charge as contained in a charge sheet, as well as all the other notices and documentation contemplated in this sub-regulation, to be served on the respondent;
  - (b) notify the respondent in writing that the Authority intends to institute an enquiry as a result of the charge as contained in the charge sheet;
  - (c) request the respondent in writing to give written notice to the director within the period mentioned in the request of whether the respondent intends to plead guilty or not guilty to the charge;
  - (d) notify the respondent in writing that if the respondent intends to plead not guilty to the charge, the respondent may make substantiated submissions to the director within the said period indicating the basis of the defense in such a manner and with such detail that it will enable the director to make a decision on whether the enquiry should be instituted, or instituted in respect of certain charges only, or which may shorten the proceedings at an enquiry;
  - (e) notify the respondent in writing that if the respondent intends to plead guilty to the charge, the respondent must submit an affidavit to that effect within the said period to the director and may so submit substantiated representations in connection with the imposition of a penalty which may be imposed:  
Provided that the affidavit submitted on behalf of a respondent

which is a security business must be accompanied by a certified resolution or other adequate proof that the person acting on behalf of the respondent is authorised to plead guilty and submit representations in connection with the imposition of a penalty;

- (f) inform the respondent in writing of the respondent's rights as contemplated in sub-regulation (5);
  - (g) request the respondent in writing to give written notice to the director within the period mentioned in the request of whether the respondent intends to be present at the enquiry or not, and whether the respondent will make use of a representative or an assistant; and
  - (h) notify the respondent in writing of the possible penalties provided for in the Code of Conduct if the respondent is found guilty of improper conduct.
- (5) A respondent has, subject to these regulations, the following rights in regard to an enquiry —
- (a) to be present at the enquiry or any part thereof;
  - (b) not to be present at the enquiry or any part thereof;
  - (c) to be assisted or represented by any other person appointed by him or her in regard to any part of the enquiry;
  - (d) to call a witness and to give or submit evidence;
  - (e) to be heard;
  - (f) to cross-examine any person called as a witness in support of the charge;
  - (g) to dispute any evidence submitted in support of the charge;
  - (h) to inspect any document or object produced as evidence; and
  - (i) to exercise any other right provided for in these regulations.
- (6) A person who attends an enquiry or part thereof on behalf of a respondent

whilst the respondent is absent, must submit proof to the satisfaction of the presiding officer that he or she has been duly authorised to represent the respondent.

#### **4. Conviction on plea of guilty without enquiry**

- (1) Where an affidavit referred to in regulation 3(4)(e) is submitted to the director, the director may —
  - (a) if it appears from the affidavit that the respondent is guilty of the charge, find the respondent guilty of the charge in question; or
  - (b) if there is a sound reason therefor —
    - (i) require supplementary relevant information from the respondent or any other person in order to again consider the matter in terms of paragraph (a);
    - (ii) take the steps contemplated in regulation 7(1).
- (2) The director may, after convicting a respondent contemplated in sub-regulation (1) of improper conduct, and with due regard to any representations submitted by the respondent (if any) as well as the considerations contemplated in the Code of Conduct, impose a penalty on the respondent in accordance with the provisions of the Code of Conduct.
- (3) The director may make any appropriate order provided for in these regulations in regard to the respondent.

#### **5. Substitution of representative of respondent**

- (1) If a representative as referred to in regulation 3(2)(a) at any time ceases to be a director of the company, a member of the close corporation, a partner of the partnership, a trustee of the business trust, an administrator or person in control of a foundation, or a person performing executive or management functions in regard to the security business, or is not able due to circumstances beyond his or her control to further act as a representative in the aforesaid capacity, or if there is another sound reason to replace the representative, the Authority may on application by the representative or any other interested person substitute any other person that may in terms of the definition of "respondent" in sub-regulation (1) act as representative as such representative, whereupon the proceedings will continue as if no substitution has taken place:

Provided that if no such other person is available, the Authority must refuse the application whereupon the representative must continue to act as such representative or, if this is not possible, the proceedings may continue in the absence of the respondent.

- (2) The citing of a person to represent any security business in terms of regulation 3(2)(a), or the substitution of any such person in terms of sub-regulation (1), will not relieve any such person from personal liability as a security service provider in respect of improper conduct contemplated in the Act.

#### **6. Necessary particulars or necessary further particulars of charge**

- (1) A respondent may at any reasonable time before the commencement of an enquiry, but not less than 5 days before the commencement, request the prosecutor in writing to furnish relevant particulars or further particulars of any aspect of that charge as contained in the charge sheet served on the respondent, that are reasonably necessary to enable the respondent to prepare for the enquiry
- (2) The particulars must be served on the respondent as soon as is reasonably possible and will form part of the record of the proceedings.
- (3) The presiding officer before whom an enquiry into a charge is pending may, at any time before evidence in respect of that charge has been led, direct that necessary particulars or further particulars duly requested in terms of sub-regulation (1) be delivered to the respondent if these particulars, which the respondent is entitled to, have not been delivered and may, if necessary, adjourn the proceedings in order that such particulars may be delivered.

#### **7. Summons to respondent to attend enquiry**

- (1) The director must cause a respondent, who has given notice to the director that the respondent intends to plead not guilty to the charge in question, or from whom the director has received no reply to the relevant documentation contemplated in regulation 3(4) within the relevant period, where the director is satisfied that the documentation has been properly served, to be summoned under the signature of the director to appear at an enquiry, at a date, time and place referred to in the summons, and to produce any document so referred to which is relevant to the enquiry and which is, or presumably is, in possession of the respondent.

- (2) A summons referred to in sub-regulation (1) is in the form that the director determines from time to time.

## **8. Witnesses and related matters**

- (1) The director may summon any person under the signature of the director to appear at an enquiry, at a date, time and place referred to in the summons, to give evidence and to produce any document so referred to which is relevant to the enquiry and which is, or presumably is, in the possession of the person in question.
- (2) A summons referred to in sub-regulation (1) is in the form that the director determines from time to time.
- (3) A respondent who wishes a person to be summoned to present evidence at an enquiry must draft, sign and serve a summons, substantially in the form that the director determines from time to time, on such person.
- (4)
  - (a) The presiding officer may direct any person who in the opinion of the presiding officer may be able to give evidence relevant to the enquiry, to attend the enquiry, to give evidence at the enquiry and to produce any document relevant to the enquiry, which is or presumably is, in the possession of such person, at the enquiry.
  - (b) A directive contemplated in paragraph (a) must, in the case of a person who is not already present at the enquiry, be in writing and in the form determined for this purpose by the presiding officer.
- (5) A directive of the presiding officer as referred to in sub-regulation (4) has for all the purposes of these regulations the same effect and status as a summons contemplated in sub-regulation (1).
- (6) The presiding officer may at the adjournment of an enquiry direct the respondent and any other person attending the enquiry as a witness and who has to be present when the enquiry resumes, to be present at the enquiry at a date, time and place directed by the presiding officer, and such directive has for all the purposes of these regulations the effect of a summons contemplated in sub-regulation (1).
- (7) Subject to the provisions of these regulations and the Code of Conduct, evidence by witnesses at an enquiry must be given orally under oath or affirmation, administered by the presiding officer.

## 9. Absence of respondent

- (1) The presiding officer may, at the request of the prosecutor, determine that an enquiry or any part thereof may commence, be conducted or be continued in the absence of a respondent if the respondent was properly summoned to appear at the enquiry, or directed to appear at the enquiry as contemplated in regulation 8(6), and —
  - (a) it is reasonable to assume from the information submitted to the presiding officer, or from the known circumstances, that the respondent is exercising, or is probably exercising, his or her right as contemplated in regulation 3(5)(b) not to be present at the enquiry; or
  - (b) it is reasonable and fair in the circumstances and on the basis of information submitted to the presiding officer, to commence, conduct or continue with the enquiry in the absence of the respondent.
- (2) The presiding officer may at any time if the interests of justice so require, direct that an enquiry which has commenced, has been conducted or has continued in the absence of the respondent, be adjourned in order to give the respondent a reasonable opportunity to be present at the enquiry.

## 10. Tendering of plea and related procedures

- (1) At the commencement of an enquiry the prosecutor must put the charge to the respondent and request the respondent to plead to the charge.
- (2)
  - (a) If the respondent pleads guilty and the presiding officer is satisfied that the respondent is, in accordance with the plea, guilty of the charge, the presiding officer must so find the respondent guilty.
  - (b) No plea of guilty referred to in paragraph (a) may be accepted by the presiding officer from a representative of a security business unless the representative submits to the presiding officer a certified resolution or other adequate proof of the authorisation of the representative to plead guilty.
  - (c) A respondent may at any stage of the proceedings alter a plea of not guilty to a plea of guilty, whereupon paragraph (a) will apply.
- (3) Where the respondent tenders any plea other than a plea of guilty, or if

the respondent refuses or fails to tender a plea, or if the proceedings commence in the absence of a respondent as contemplated in regulation 9 and the respondent has not indicated that he or she offers a plea of guilty, the presiding officer must record that the respondent has pleaded not guilty and the enquiry will proceed in accordance with these regulations.

- (4) (a) Where a respondent tenders a plea of not guilty, or where the presiding officer records a plea of not guilty as contemplated in sub-regulation (3), the presiding officer may ask a respondent who is present whether the respondent wishes to make a statement indicating the basis of the defence.
- (b) Where the respondent does not make a statement under paragraph (a) or does so and it is not clear from the statement to what extent the respondent denies or admits the issues raised by the plea, the presiding officer may question the respondent in order to establish which allegations in the charge are in dispute.
- (c) The presiding officer may in his or her discretion put any question to the respondent in order to clarify any matter raised under paragraph (a) or paragraph (b) and any admission by the respondent in terms of this sub-regulation will serve as *prima facie* proof on any matter covered by such admission.

#### **11. Application of procedural law and the law of evidence**

- (1) An enquiry is conducted, subject to the Act, these regulations and the Code of Conduct, in accordance with the law, with the necessary changes, which applies to a criminal trial in a Magistrate's Court.
- (2) A respondent may, after the prosecutor has closed his or her case, apply to the presiding officer to be acquitted of the charge, and the presiding officer must acquit the respondent if the presiding officer is of the opinion that the prosecutor has not tendered evidence on which a reasonable person might find the respondent guilty.

#### **12. Record of proceedings**

The Authority must cause a complete record of the proceedings of an enquiry to be kept by such mechanical or other means deemed fit by it.

**13. Service and return of service**

- (1) Any document whatsoever served in terms of these regulations, with the exception of a summons contemplated in regulation 8(3), must be served by a staff member of the Authority or by a person designated in writing by the director for this purpose.
- (2) An affidavit whereby a return of the service of any document in terms of these regulations is affirmed, will, for the purpose of these regulations, be *prima facie* proof of the serving of the document in accordance with the contents of the return.

**14. Adjournment of enquiry and costs of adjournment**

- (1) The presiding officer may at any time after the commencement of the proceedings of an enquiry, on request of a party, or where a sound reason exists on his or her own initiative, direct that the enquiry be adjourned to a date, time and place mentioned in the directive.
- (2) The presiding officer may on good cause shown by a party order the other party to pay the former party's wasted costs, as contemplated in regulation 16, as a result of the adjournment of the proceedings at any time and may, after considering any representations that the parties may submit, make an order as to the amount and manner of payment of such costs.
- (3) The presiding officer may direct that any application for costs to be awarded in terms of this regulation, is to be dealt with in conjunction with an application contemplated in regulation 16(1).

**15. Imposition of penalties, payment and collection of fines and other amounts**

- (1) After the conviction of a respondent of improper conduct in terms of any provision of these regulations, no penalty contemplated in the Code of Conduct may be imposed on the respondent, subject to regulation 9, before the respondent has been granted a fair opportunity to submit oral or written representation in connection therewith.
- (2) Where a fine has been imposed on a respondent in terms of sub-regulation (1) and has been confirmed in terms of regulation 18, the fine is due and payable to the Authority on demand, irrespective of the fact that the respondent has lodged an appeal as contemplated in section 30(1)(c) of the Act against the conviction or the fine in question:

Provided that a respondent who has lodged an appeal is entitled to furnish an acceptable bank guarantee in respect of the payment of the fine pending a decision on the appeal.

- (3) Where an appeal by a respondent contemplated in sub-regulation (2) who has paid a fine to the Authority imposed in terms of sub-regulation (1) is successful or partially successful, the Authority must repay the fine or part thereof, as the case may be, on demand by the respondent with interest for the relevant period calculated in accordance with the rate determined in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).
- (4) The provisions of sub-regulations (2) and (3) apply, with the necessary changes, to any cost order made by the presiding officer in favour of the Authority.
- (5) In any legal proceedings instituted by the Authority to recover any fine or other amount due to the Authority in terms of these regulations, a certificate that purports to have been signed by the director, whose appointment and authority need not be proved, will on mere submission to the court constitute sufficient proof against the debtor mentioned in the certificate for the purposes of provisional sentence or summary judgment, or constitute *prima facie* proof against the debtor mentioned in the certificate for any other purposes, as the case may be, of the existence and amount of the debt, that it is liquidated and that it has not been paid to the Authority.

#### **16. Cost orders in regard to enquiries**

- (1) The presiding officer may —
  - (a) order a respondent who has been found guilty of improper conduct to pay the Authority's costs as contemplated in this regulation; or
  - (b) order the Authority to pay to a respondent who has been found not guilty on all charges of improper conduct at an enquiry, the costs of respondent as contemplated in this regulation.
- (2) A party seeking a cost order contemplated in this regulation to be made in its favour must apply to the presiding officer as soon as possible after the findings of the presiding officer have been made known and present the necessary evidence, information and submissions to enable the presiding officer to make an appropriate order.

- (3) Costs contemplated in this regulation must be calculated on the appropriate reasonable tariffs and scales approved from time to time by the Authority for this purpose.
- (4) The Authority may be awarded costs only in respect of —
  - (a) the professional services of the presiding officer;
  - (b) the professional services of the prosecutor when the prosecutor is not in the fulltime employment of the Authority;
  - (c) the cost of travel and accommodation in respect of the presiding officer, the prosecutor and any person who attended an enquiry at the request of the Authority and whose attendance at the enquiry was necessary; and
  - (d) the costs of renting premises and facilities for the purposes of the enquiry.
- (5) A respondent may be awarded costs only in respect of —
  - (a) professional legal representation at an enquiry; and
  - (b) the cost of the respondent and necessary witnesses of the respondent in regard to travel and accommodation incurred in connection with attending the enquiry.
- (6) The proceedings referred to in this regulation must be conducted in terms of such procedures as the presiding officer may deem to be appropriate and fair in the circumstances and the presiding officer may only award costs to a party if that party has shown its entitlement thereto on a balance of probabilities.
- (7) An application for costs to be paid by a respondent to the Authority may be considered and decided upon in the absence of the respondent in the circumstances contemplated in regulation 9, with the necessary changes.
- (8) After considering any evidence, information and submissions that the parties may present, the presiding officer may refuse to make an order or may make an order as to the amount and manner of payment of costs awarded to a party.

**17. Suspended penalties**

- (1) If a respondent has been found guilty at an enquiry and the presiding officer finds that the respondent did not comply with a condition for the suspension of a previous penalty as contemplated in the Code of Conduct or in the repealed regulations, the presiding officer may, subject to regulation 15(1) —
  - (a) put the suspended penalty or any part of the suspended penalty into operation; or
  - (b) further suspend the suspended penalty or any part of the suspended penalty on appropriate conditions.
- (2) (a) If the director has reason to believe that a security service provider has at any time within the period of suspension of a penalty imposed in terms of the Code of Conduct or the repealed regulations, failed to comply with a condition for the suspension of the penalty, the director may direct a prosecutor to —
  - (i) cause a document with sufficient particulars of the alleged non-compliance with a condition for suspension of the penalty to be served on the security service provider;
  - (ii) notify the security service provider that the Authority intends to apply for the suspended penalty to be put into effect; and
  - (iii) request the security service provider to give written notice to the director within the period mentioned in the notice whether the security service provider intends to oppose the Authority's application or not and to submit in the form of an affidavit any evidence and representations that the security service provider wishes to submit.
- (b) The Authority may, through written notice served on the security service provider concerned, put into effect a suspended penalty of a security service provider who has indicated to the director in terms of paragraph (a) that the security service provider does not oppose the application of the Authority.
- (c) Where a security service provider has given notice to the director that the security service provider intends to oppose the application for putting into operation a suspended penalty, or from whom the

director has received no reply within the relevant period, the director may —

- (i) refer the matter to a presiding officer to consider and rule on the Authority's application; and
  - (ii) cause the security service provider to be summoned under the signature of the director for the purposes of considering and deciding on the Authority's application.
- (d) Subject to these regulations, the proceedings referred to in paragraph (c) must be conducted in terms of such procedures as the presiding officer may deem to be appropriate and fair in the circumstances.
- (e) A request for putting into operation of a suspended penalty contemplated in paragraph (c) may be considered in the absence of a respondent in the circumstances contemplated in regulation 9, with the necessary changes.
- (f) If the presiding officer after considering all the evidence finds that a security service provider, on a balance of probabilities, did not comply with a condition for the suspension of a penalty, the presiding officer must exercise the powers referred to in sub-regulation (1).

**18. Confirmation and review of enquiry proceedings and of the outcomes thereof**

- (1) After the conclusion of an enquiry the record of the proceedings, and any other relevant documentation required by the director, must be submitted to the director, whereupon the director —
- (a) may, where the respondent has been found guilty, confirm the conviction or set it aside;
  - (b) may, where the conviction is so confirmed, confirm the penalty imposed, or replace it with any lesser penalty contemplated in the Code of Conduct;
  - (c) may, where the conviction is so confirmed, replace the penalty imposed with a more onerous penalty contemplated in the Code of Conduct, after the rules of natural justice have been followed;

- (d) may, where the respondent has been found not guilty, set the proceedings aside if there was a material irregularity and direct that an enquiry be re-instituted in terms of these regulations in respect of the same charge;
  - (e) confirm or set aside any order relating to costs or any other order made by the presiding officer; and
  - (f) give any other order which is fair and just in the circumstances.
- (2) The respondent must be informed through a written notice signed by the director and served on him or her of the decision of the director in terms of sub-regulation (1).
- (3) The provisions of this regulation apply, with the necessary changes, to the proceedings contemplated in regulation 17(2)(f).

#### **19. Deviation from regulations**

A presiding officer may in any enquiry when in his or her opinion it is reasonable and just so to do, direct, with reference to any matter in connection with procedure or evidence, with the concurrence of every party who is present, that a provision of these regulations may be deviated from to the extent indicated by the presiding officer.

#### **20. Absence of provision in regulations**

A presiding officer may in any case where with reference to a matter of procedure or evidence no express provision is contained in these regulations or in the Code of Conduct, direct that the matter be regulated, with the necessary changes, in accordance with a provision of the law relating to procedure and evidence applying to criminal proceedings in a Magistrate's Court, or with reference to a principle of administrative justice or fair administrative procedure.

#### **21. Penal provisions**

- (1) No person may —
- (a) wilfully hinder or impede the presiding officer or any other person, at any stage of the proceedings in connection with an enquiry, in the exercise of his or her powers or the carrying out of his or her functions or duties in terms of a provision of these regulations;

- (b) threaten or insult the presiding officer or prosecutor in connection with an enquiry;
  - (c) wilfully furnish information or submit evidence at an enquiry which is false in any material respect;
  - (d) wilfully refuse or fail to act in terms of any lawful instruction or directive of the presiding officer in connection with an enquiry;
  - (e) subject to regulation 3(5)(b), after a summons has been served on him or her in terms of a provision of these regulations, without good cause refuse or fail to comply with the provisions of the summons;
  - (f) after he or she has in terms of these regulations been summoned to give evidence at an enquiry refuse to be sworn in as a witness or to make an affirmation, or to produce a document or, after he or she has been put under oath or affirmation, refuse to answer a lawful question put to him or her; or
  - (g) fail to pay a fine imposed in respect of improper conduct or make any other payment as directed by the presiding officer in terms of these regulations, when the fine or other amount is due and payable by such person.
- (2) Any person who contravenes a provision of sub-regulation (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 24 months, or to both the fine and the imprisonment.

## **22. Witness fees**

- (1) Subject to sub-regulation (2), the director may out of the funds of the Authority pay to any person who attended an enquiry as a witness such fees and allowances as may from time to time be determined by the Council.
- (2) The director may not pay any person any such fee or allowance, unless the presiding officer has certified that the person concerned has conducted himself or herself properly and satisfactory as a witness or that, where the person was not called upon to actually give evidence, he or she at all relevant times held himself or herself available for that purpose or, where his or her inability to give evidence was due to circumstances beyond his or her control, that such circumstances so prevented him or her.

- (3) Different fees or allowances in respect of different classes of witnesses or different circumstances or classes of enquiries may be determined under sub-regulation (1).

### **23. Delegation**

- (1) The director may, with the approval of the Council and upon such conditions as the Council may determine, in a written notice which contains sufficient particulars of the matters being delegated and of any conditions attached thereto, delegate any of the powers conferred upon the director by these regulations to any employee of the Authority or to any person with whom the Authority has entered into a contract for the rendering of a service to the Authority.
- (2) The director may at any time amend or revoke a delegation in terms of sub-regulation (1), or withdraw any decision made by the delegatee with regard to a delegated matter and decide the matter himself or herself, unless the decision by the delegatee has conferred a right on a third party.

### **24. Transitional provisions**

- (1) Any charge with reference to a security service provider already submitted to the Authority or the director at the date of the commencement of these regulations, must be dealt with in terms of these regulations.
- (2) Any enquiry pending at the date of the commencement of these regulations must continue in terms of these regulations unless the presiding officer for a sound reason directs that the enquiry, or any part thereof, must continue in terms of the Improper Conduct Enquiries Regulations, 2001.

### **25. Attendance of persons at enquiry proceedings**

Unless the presiding officer for a sound reason determines otherwise, only a person who performs a function at an enquiry in terms of the Act or these regulations or who is in the employ of the Authority, is allowed to be present at such enquiry.

### **26. Repeal of regulations**

The Improper Conduct Enquiries Regulations, 2001 are hereby repealed.

**27. Authoritative text**

The provisions of the English text of these regulations will prevail in the case of a difference between the English text and any other text.

**28. Short title and date of commencement**

These regulations are called Improper Conduct Enquiries Regulations, 2003 and come into operation on 1 March 2003.