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GENERAL NOTICE

NOTICE 1871 OF 2003

INVITATION BY THE MINISTER FOR INTELLIGENCE SERVICES FOR COMMENTS ON PROPOSED REGULATIONS

The Minister for Intelligence Services hereby invites comments and input on the following proposed regulations issued in terms of section 37 of the Intelligence Services Act, Act 65 of 2002:

- a) Chapter V: Recruitment, selection, appointment and termination of service;
- b) Chapter VI: Cadet recruitment and training;
- c) Chapter XXIII: Veterans Association;
- d) Chapter XXIV: Restrictions of former members;
- e) Chapter XXVI: Security Screening.

Furthermore, the Minister for Intelligence Services hereby invites comments and input on the following proposed regulation issued in terms of section 6, read with section 2A of the National Strategic Intelligence Act, Act 39 of 1994: National Security Screening Regulations.

Definitions as set out in section 1 of the Intelligence Services Act, Act 65 of 2002, are included for ease of reference only.

Comments and input in this regard are invited, and should be submitted on or before 04 August 2003.
The person to contact is:

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DEFINITIONS

Definitions

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

“Academy” means the South African National Academy of Intelligence established by section 5;

“Advisory Committee” means the Ministerial Advisory Committee on Training established by section 9;

“Agency” means the National Intelligence Agency referred to in section 3;

“Chief Executive Officer” means the head of the Academy appointed in terms of section 6(1);

“counter-intelligence” means counter-intelligence as defined in section 1 the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);

“department” means a department as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“Director-General” means a person appointed as such in terms of section 3(3);

“former member” means any member of the Intelligence Services or the Academy whose services have terminated for any reason;

“Intelligence Services” means the Agency or the Service as the case may be;

“Intelligence Services Council” means the Intelligence Services Council on Conditions of Service established by section 22;

“Joint Standing Committee on Intelligence” means the committee established by section 2 of the Intelligence Services Control Act, 1994 (Act No. 40 of 1994);

“member” means a person appointed in terms of section 8, 9 or 19 or referred to in section 3;

“Minister” means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209(2) of the Constitution;

“misconduct” means an act contemplated in section 18(1);

“National Intelligence Structures” means the National Intelligence Structures as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);

“non-statutory service” means the former Umkhonto weSizwe (MK), the Azanian Peoples Liberation Army (APLA), the Pan Africanist Security Service of the Azanian Peoples Liberation Army and the Department of Intelligence and Security of the African National Congress;

“person” includes—

(a) a trust;

(b) a foundation; and

(c) any body of persons corporate or unincorporate;

“personnel list” means the personnel list submitted to the President within seven days after the commencement of the Intelligence Services Act, 1994 (Act No. 38 of 1994), by the head of each of the following organisational components which were integrated to comprise the Intelligence Services, with the names of the persons who—

(a) on the date of the commencement of the said Act, were members of the Bureau as defined in section 1 of the Bureau for State Security Act, 1978 (Act No. 104 of 1978);

(b) on the date of the commencement of the said Act, were members of the Department of Intelligence and Security of the African National Congress;

(c) on the date of the commencement of the said Act, were members of the Bophuthatswana Internal Intelligence Service by virtue of their appointment in terms of the Bophuthatswana Internal Intelligence Service Act, 1982 (Act No. 25 of 1982), or were appointed in terms of section 15 of the National Security Council Act, 1981 (Act No. 27 of 1981), of Bophuthatswana;

(d) on the date of the commencement of the said Act, were members of the Transkei Intelligence Service by virtue of their appointment in terms of the Intelligence Service and State Security Council Act, 1987 (Act No. 67 of 1987), of Transkei;

(e) on the date of the commencement of the said Act, were members of the Venda National Intelligence Service by virtue of their appointment in terms of the Intelligence Service Act, 1988 (Act No. 31 of 1988), of Venda;

(f) immediately before the commencement of the Constitution of the Republic of

South Africa, 1993 (Act No. 200 of 1993), were members of any intelligence service or intelligence structure of—

(i) any Government of a self-governing territory as defined in section 38(1) of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or

(ii) any political party or organisation;

“polygraphist” means a person who, in order to ascertain, confirm or examine in a scientific manner the truthfulness or otherwise of statements made by another person, uses skills and techniques in conjunction with any equipment and instrument designed or adapted for that purpose;

“premises” means any site, place or location regardless of whether it is or forms part of any temporary or permanent structure, building, vessel, vehicle or aircraft;

“prescribed” means prescribed by regulation;

“private investigator” means a person who for reward—

(a) investigates and furnishes information regarding the identity, actions, whereabouts, movements, affiliations, associations, habits, personal character, reputation, trustworthiness, loyalty, occupation, previous employment, integrity, creditworthiness, transactions, financial position, life history or background of another person with or without the consent or knowledge of such a person;

(b) searches for someone who has or is alleged to have committed any crime, delict, breach of contract or other wrongful act, or for any evidence of such wrongdoing;

(c) searches for missing persons, property or other assets, or investigates the costs relating to or responsibility for accidents, injuries or damage; or

(d) conducts surveillance or counter-surveillance;

“regulation” means a regulation made under this Act;

“security equipment” means security equipment as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

“security service” means a service that entails—

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

(b) giving advice on the protection or safeguarding of a person or property, or on the use of security equipment or the services of a private investigator;

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

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

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

(f) performing the functions of a private investigator;

(g) performing the functions of a polygraphist;

(h) installing, servicing or repairing security equipment;

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

(j) performing the functions of a locksmith;

(k) performing the functions of a cryptographer;

(l) providing training on the services referred to in paragraphs (a) to (k);

(m) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in paragraphs (a) to (l) to another person;

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

“Service” means the South African Secret Service referred to in section 3;

“staff forum” means a consultation forum for members on conditions of service and human resources;

“strike” means a strike as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

“this Act” includes the regulations.

CHAPTER V**RECRUITMENT, SELECTION, APPOINTMENT AND TERMINATION OF SERVICE****1. PURPOSE**

The purpose of this Chapter is to specify the -

- (a) requirements and procedures for recruitment, selection, appointment and termination of service in the Intelligence Services and the Academy; and
- (b) the conditions of service applicable to those persons recruited, selected, appointed and/or whose services are terminated in the Intelligence Services and the Academy, except those conditions relating to salaries, allowances and related benefits.

2. APPLICATION OF THE REGULATION

(1) The following are fundamental aspects -

- (a) accessibility - all positions within the Intelligence Services and the Academy must be filled on a basis of competition, and must therefore be advertised openly. Requests to waive advertising procedures and/or to appoint by invitation must be referred to the Director-General or CEO, as the case may be, for approval;
- (b) accountability - the Director-General or CEO, as the case may be, is accountable and the authority for recruitment and selection is vested with him or her;
- (c) equity - measures must be implemented to ensure that human resource practices are free from discrimination, invisible barriers and unjustness, which will impede equal employment opportunities;
- (d) fairness - actions and decisions must be objective, consistent and without prejudice;
- (e) transparency - recruitment and selection processes in the Intelligence Services and the Academy must be open, transparent and subject to internal scrutiny and audit;
- (f) professionalism - recruitment and selection processes must be conducted professionally, competently and depict the highest ethical standards.

(2) Recruitment for rare or scarce skills in the competitive market must require the use of both advertising and headhunting.

(3) Recruitment and selection within the Intelligence Services and the Academy must be guided and informed by a properly instituted human resource plan, derived from the Intelligence Services' or the Academy's, as the case may be, strategic planning processes.

(4) All matters relating to the filling of positions within the Intelligence Services or the Academy, as the case may be, as the case may be, must be coordinated and handled by the structure responsible for recruitment and selection within the respective Intelligence Services or the Academy, as the case may be.

3. REQUIREMENTS FOR APPOINTMENT

- (1) Any person may apply for appointment in the Intelligence Services or the Academy, as the case may be, if the person –
 - (a) is a South African citizen;
 - (b) is at least eighteen (18) years old;
 - (c) is mentally and physically fit to perform the functions required by the Intelligence Services or the Academy, as the case may be;
 - (d) meets the educational standards determined by the Intelligence Services or the Academy, as the case may be;
 - (e) meets the security requirements determined by the Intelligence Services or the Academy, as the case may be;
 - (f) is prepared to affirm and uphold the Declaration of Allegiance;
 - (g) is prepared to undergo training as may be required from time to time; and
 - (h) is prepared to be subjected to the Code of Conduct for Intelligence Workers, and all applicable regulations and directions of the Intelligence Services or the Academy, as the case may be.
- (2) An applicant may not be appointed in the Intelligence Services or the Academy, as the case may be, unless he or she has successfully undergone the required medical testing, psychological testing and any other related assessments and examinations as may at the time of application reasonably be required by the Intelligence Services or the Academy, as the case may be.
- (3) The Director-General or CEO, as the case may be, may, subject to Chapter XV, issue directives on the tests and assessments required for various occupational groups.
- (4) An applicant's profile must be aligned with the desired attributes of an Intelligence Officer contemplated in Chapter I.
- (5) The Minister may after consultation with the Director-General or CEO, as the case may be, issue guidelines on the recruitment and appointment of Deputy Director(s)-General, Assistant Director(s)-General, general managers, managers and equivalent post levels, and members to be posted to foreign offices.

4. APPLICATION FOR APPOINTMENT

- (1) When applying for a position in the Intelligence Services or the Academy, as the case may be, the applicant must -
 - (a) duly complete the application form;
 - (b) submit satisfactory proof of citizenship;

- (c) submit satisfactory proof of age;
 - (d) submit satisfactory proof of having attained the required educational and training standard;
 - (e) submit the information as requested to facilitate the security screening;
 - (f) submit satisfactory documentary proof of the applicant's matrimonial or partnership status, as well as parenthood of natural or adopted children; and
 - (g) any other documentation that may be required from time to time by the Intelligence Services or the Academy, as the case may be.
- (2) A member of the Intelligence Services or the Academy, as the case may be, may apply for an advertised post within the Intelligence Services or the Academy, as the case may be, for which he or she is eligible in terms of inherent requirements for the job: Provided that where a post is at a higher level the member must have completed at least a period of one (1) year in his or her current post.
- (3) A member who intends to apply for another post must notify his or her current supervisor prior to such an application.
- (4) Where members of the Intelligence Services or the Academy, as the case may be, are headhunted or talent spotted, the headhunting or talent spotting management must inform the management of the affected member: Provided the conditions stipulated in regulation 4(2) are observed.
- (5) Whenever an applicant is required to submit a document as proof of a fact and is unable to submit the original or a certified copy of the document, he or she may submit a sworn or confirmed affidavit in affirmation of the fact to be proved and state the reason for the unavailability of the original or certified copy: Provided that the Director-General or CEO, as the case may be, may take steps to verify the contents of such documentation.

5. FILLING OF POSTS

A process contemplated in Chapter II must precede the filling of newly created or existing vacant posts.

6. METHODS OF RECRUITMENT

(1) Advertising

- (a) Vacant posts may be advertised both internally within the Intelligence Services or the Academy, as the case may be, and externally, with a specific job level indicated. Preference must be given to members.
- (b) The Director-General or CEO, as the case may be, may waive advertising procedures, and by invitation appoint a person to fill a post according to the provisions contemplated in regulation 8(3).
- (c) The advertisement must specify the requirements and criteria set for the post.

- (d) The structure responsible for recruitment and selection within each of the Intelligence Services or the Academy, as the case may be, must be responsible for the compilation of the advertisement, in consultation with the relevant line management.
- (e) Care should be taken not to include any potentially discriminating criteria in the advertisement of posts.
- (f) The closing date for applications must allow sufficient time for potential applicants to receive relevant information on the post, and to submit their applications within the given period.
- (g) Applications must be forwarded and registered by the structure responsible for recruitment and selection within each of the Intelligence Services or the Academy, as the case may be. The relevant structure must acknowledge receipt of all applications.

(2) Headhunting

- (a) Headhunting as a method of recruitment may be used simultaneously with advertising according to regulation 6(1).
- (b) Headhunting measures may be used to identify and invite a number of applicants with specific relevant skills, which are not readily available in the open market.
- (c) The Intelligence Services or the Academy, as the case may be, may utilise the services of registered and security-cleared recruitment consultancies to reach a targeted pool of persons, and to enhance the headhunting capacity.

(3) Talent spotting

Talent spotting may be utilised to identify persons with specific talents and skills for recruitment.

7. SELECTION PROCESS

- (1) The selection process must consist of the following three (3) phases –
 - (a) pre-selection;
 - (b) *selection*; and
 - (c) post-selection.
- (2) The General Manager responsible for Human Resources must ensure the co-ordination of the three selection phases and submission of reports to the Appointment and Selection Board for processing.
- (3) The pre-selection phase consists of –
 - (a) shortlisting;
 - (i) this must take place as reasonably as is possible after the closing date for the submission of applications;

- (ii) the structure responsible for recruitment and selection must conduct a preliminary shortlisting of applicants;
 - (iii) the interview panel must meet to plan the selection criteria prior to the interviews.
- (b) reference and preliminary security checks on short-listed applicants prior to interviews.
- (4) The interview panel provides the requirements and criteria set for the post to all assessment units.
- (5) The interview panel must be constituted prior to the commencement of the selection process.
- (6) The interview panel must be representative in terms of gender and race, and consist of a member from –
 - (a) line management;
 - (b) human resources; and
 - (c) a member from a component outside the component the candidate is interviewed for.
- (7) *The selection phase consists of panel interviews and assessments as follows -*
 - (a) panel interviews;
 - (i) these interviews must take place within a reasonable period after the pre-selection phase has been concluded.
 - (ii) the overall purpose of the interview is to –
 - (aa) provide information about the nature of the Intelligence Services or the Academy, as the case may be, and the responsibilities attached to the post;
 - (bb) elicit information on the applicant's previous experience and qualifications insofar as they relate to the job requirements;
 - (cc) assess competence, particularly behavioural attributes and language ability; and
 - (dd) afford the line manager an opportunity to have personal interaction with the applicants.
 - (iii) the interviews and/or questions must be based on competencies determined by the Director-General or CEO, as the case may be.
 - (b) assessments;
 - (i) assessment tests must be conducted by trained assessors.

- (ii) the assessment process must be competency-based and may include the following tests -
 - (aa) conventional assessment centre exercises;
 - (bb) psychometric tests;
 - (cc) medical tests; and
 - (dd) job samples.
- (8) The post-selection phase consist of -
 - (a) security screening, that may commence at any time during the selection process.
 - (b) Selection and Appointment Board;
 - (i) A Selection and Appointment Board must be constituted within the respective Intelligence Services or the Academy, as the case may be: Provided that the Minister may determine that a Selection and Appointment Board may be established for a spending center within the Agency, comprising -
 - (aa) The Head responsible for the Human Resources function;
 - (bb) The senior manager responsible for coordination of human resources in the spending centre the candidate is interviewed for, where relevant;
 - (cc) The Head or a designated member responsible for Internal Security;
 - (dd) The manager of the post to be filled;
 - (ee) A member designated by the Board to be the chairperson; and
 - (ff) The Chairperson of the Staff Council.
 - (iii) the functions of the Board are to-
 - (aa) receive all selection assessments from the assessment panel;
 - (bb) consolidate recommendations or findings of the various assessment units that conducted the assessments;
 - (cc) to evaluate the recommendations and to select the successful candidate in accordance with requirements and criteria set for the post;
 - (dd) to inform the applicant with regard to the conditions of service applicable to the Intelligence Services or the Academy, as the case may be.
 - (iv) the Board must record and submit reasons for its decisions and or recommendations to the Minister, the Director-General or CEO, as the case may be.

8. APPOINTMENTS

- (1) The Minister, the Director-General or CEO, as the case may be, must make an appointment after satisfying himself or herself that the applicant meets all the requirements and criteria set for the post, and as recommended by the Selection and Appointment Board.
- (2) Where the Minister, the Director-General or CEO, as the case may be, does not accept the recommendation of the Board, he or she must record the reasons for such in writing.
- (3) The Minister, the Director-General or CEO, as the case may be, may, by invitation, appoint a person in exceptional circumstances outside the process contemplated in regulation 7. Exceptional circumstances refer to -
 - (a) redeployment to resolve personal circumstances, redundancy situations or a member returning from a foreign posting;
 - (b) appointment to a new or different position where such appointment forms part of a restructuring process: Provided that redeployment and/or appointment in a new position must be finalised after consultation with the member concerned;
 - (c) transfer to a vacant post with a view to meeting employment equity requirements;
 - (d) securing a particular person with scarce skills, not readily available in the Intelligence Services or the Academy, as the case may be;
 - (e) contract employment contemplated in regulation 12, to address a particular need; and
 - (f) where the Minister, the Director-General or CEO, as the case may be, is convinced that such appointment may be in the best interest of the Intelligence Services or the Academy, as the case may be.

9. SECONDMENT

- (1) The Minister, the Director-General or CEO, as the case may be, may, on such conditions as may be determined by him or her and with the consent of a member, second such a member to another Public Service Department, any entity or Intelligence Service or the Academy under the control of the Minister for a particular service and/or for a period of time.
- (2) The recipient Public Service Department or entity or Intelligence Service or the Academy under his or her control must bear the inclusive costs of secondment, unless the agreement states otherwise.

10. ACTING IN A HIGHER MANAGEMENT POST

- (1) The Minister, Director-General or CEO, as the case may be, may appoint a member to act in a higher management post.

- (2) A member in a post, one level lower than the vacant post or on an equivalent level to the vacant post or on a level higher than the vacant post, may be appointed by the Minister, the Director-General or CEO, as the case may be, to act in a management post for a period not exceeding twelve (12) months.
- (3) The Minister, Director-General or CEO, as the case may be, may appoint a member on a lower level to act in a management post: Provided that –
 - (a) a suitable member in a post contemplated in regulation 10(2) is not available, and
 - (b) such an appointment is for a period not exceeding three (3) months.
- (4) The Director-General or CEO, as the case may be, must compensate such a member for acting in a higher vacant management post (M-level posts) in the form of an allowance if the acting period exceeds 44 consecutive working days contemplated in Chapter VII.
- (5) A member may not act in more than one post at the same time.

11. EXTERNAL TRANSFERS

The Minister, the Director-General or CEO, as the case may be, must approve all external transfers, including transfers from one Intelligence Service to another or to the Academy and *vice versa*, as the case may be: Provided that transfers on account of public interest may only be approved by the Minister.

12. APPOINTMENT OF CONTRACT WORKERS

- (1) A contract must be concluded between the person and the Intelligence Services or the Academy, as the case may be, as the case may be.
- (2) The contract of employment must stipulate all the terms and conditions of employment.

13. RE-APPOINTMENT OF FORMER MEMBERS

The Minister, Director-General or CEO, as the case may be, may not re-appoint a former member as a member if –

- (a) he or she left the Intelligence Services or the Academy, as the case may be, sooner than the formal retirement age on condition that he or she would not accept or seek re-appointment;
- (b) he or she took a severance package on condition that he or she would not accept or seek re-appointment;
- (c) the original grounds for termination of service outweigh the need or request for re-appointment; or

- (d) the former member left the Intelligence Services or the Academy, as the case may be, due to ill health and is unable to provide recent and conclusive medical evidence of recovery.

14. PROBATION

- (1) All new appointments within the Intelligence Services or the Academy, as the case may be, including transfers from other Public Service Departments or Public entities, are subject to a twelve-month (12) probation period, except that the –
 - (a) Minister, Director-General or CEO, as the case may be, may exempt a person who is transferred to the Intelligence Services or the Academy, as the case may be, from any organ of state if the person concerned, immediately prior to the transfer, served in a permanent capacity in that organ of state; and
 - (b) the probation period of newly appointed learner-technicians must be equal to the minimum period needed to obtain the minimum educational qualifications or to complete the technical training required by the Intelligence Services or the Academy, as the case may be.
- (2) A Director-General or CEO, as the case may be, may extend a probation period for a maximum of six (6) months, if he or she has reason to believe that it will be in the interest of the concerned Intelligence Service or Academy, as the case may be, to do so, according to Chapters XVIII and IX.
- (3) A member's permanent appointment may be confirmed by the Director-General or CEO, as the case may be, if the general manager of a member on probation certifies that the member has, during the period of probation or extended period of probation, complied with the conditions and requirements of the concerned Intelligence Service or the Academy, as the case may be.
- (4) A general manager of a member on probation must ensure that –
 - (a) the member, at the commencement of the probationary period, knows the performance and other requirements for obtaining confirmation of appointment;
 - (b) the member, on a quarterly basis, receives written feedback on his or her performance and compliance with other requirements;
 - (c) if necessary, the member receives training, counselling or other assistance to meet the requirements for confirmation;
 - (d) the member receives written confirmation of appointment at the end of the probationary period, if he or she has been found suitable for the relevant post; and
 - (e) the member, subject to a procedure contemplated in Chapters XVIII to XX, when dismissal is considered as a result of misconduct, poor performance or medical unfitness, is afforded the opportunity to state his or her case during which process the member may be assisted by a representative: Provided that such a representative must be a member of the Intelligence Services or the Academy, as the case may be, and has the right to accept or refuse to do so.

15. TERMINATION OF SERVICE

- (1) The service of a member of the Intelligence Services or the Academy, as the case may be, may be terminated upon –
 - (a) the retirement of the member;
 - (b) the resignation or voluntary retrenchment of the member;
 - (c) death;
 - (d) the non-confirmation of a probationary appointment; or on account of
 - (e) misconduct;
 - (f) medical unfitness;
 - (g) poor performance;
 - (h) operational requirements;
 - (i) public interest;
 - (j) absence without the permission of the Director-General or CEO, as the case may be, for a period exceeding fourteen (14) consecutive days;
 - (k) absence as a result of other employment;
 - (l) security considerations;
 - (m) instigation of or participation in a strike;
 - (n) imprisonment without the option of a fine; or
 - (o) upon failure to meet probation requirements.
- (2) The retirement, resignation or voluntary retrenchment of Deputy Director(s)-General, Assistant Director(s)-General, general managers and managers or equivalent posts must be noted by the Minister.
- (3) Unless the Minister, the Director-General or CEO, as the case may be, determines otherwise, the resignation of a member in respect of whom any hearings, inquiries or proceedings instituted in terms of the Act and these Regulations are pending, may not take effect until the completion of the hearings, procedure or inquiry. If a member resigns, the Director-General or CEO, as the case may be, may deem the resignation as a discharge.
- (4) A member may resign voluntarily if he or she has given the Director-General or CEO, as the case may be, at least 30 calendar days written notice of the intention to resign: Provided that the –
 - (a) notice period may be reduced by the Minister, the Director-General or CEO, as the case may be, on the request of the member; or

- (b) the Minister, the Director-General or CEO, as the case may be, may accept the resignation of the member at any time prior to the expiry of the notice period without loss to any employment-related benefits that the member would have been entitled to up to the end of the notice period.

16. **PROCEDURE APPLICABLE TO MEMBERS ON PROBATION**

The procedure contemplated in Chapter XVIII applies to members on probation in the case of disciplinary procedure and Chapter XIX in the case of poor performance.

17. **EXIT INTERVIEWS**

- (1) The structure responsible for human resources must conduct exit interviews with all departing members: Provided that the Director-General or CEO, as the case may be, may nominate any other structure to participate during the interviews.
- (2) The information gathered during the exit interviews must be used to address problems relating to personnel turnover and, where relevant, for security purposes.
- (3) Where circumstances dictate, the panel conducting the exit interview may include representation from the structure responsible for internal security.

18. **MEMBER RECORDS**

The Intelligence Services or the Academy, as the case may be, must keep records of each member and each post on the approved establishment in accordance with the security and confidentiality requirements issued by the Minister as well as the provisions of the National Archives of South Africa Act, 1996 (Act 43 of 1996).

CHAPTER VI**CADET RECRUITMENT AND TRAINING****1. PURPOSE**

The purpose of this Chapter is to specify the -

- (a) requirements and procedures for the recruitment and placement of cadets in the Intelligence Services or the Academy, as the case may be;
- (b) training period of cadets in the Academy or other recognised training institutions; and the
- (c) conditions applicable to cadets placed in the Intelligence Services or the Academy, as the case may be.

2. RECRUITMENT

- (1) Recruitment of cadets must be done at institutions of Higher Learning as defined in the Higher Education Act, 1997 (Act 101 of 1997).
- (2) The Director-General or CEO, as the case may be, may under exceptional circumstances recruit a limited number of cadets directly from high schools: Provided that recruited cadets are in Grade 12.
- (3) A committee, responsible for the selection of cadets, must be established comprising-
 - (a) the Deputy Head of the Academy;
 - (b) the senior manager who performs a human resources function within the Intelligence Services, the Academy or a spending centre, as the case may be;
 - (c) the relevant general managers representing line function;
 - (d) a member from the Ministry responsible for Public Relations;
 - (e) a senior manager responsible for training.
- (5) The Intelligence Services or the Academy, as the case may be, may provide study bursaries to recruited cadets, under circumstances determined by the Director-General or CEO, as the case may be, and contemplated in Chapter XIV.
- (6) The rules applicable to study bursaries to members of the Intelligence Services or the Academy, as the case may be, must apply to cadets.

3. ASSESSMENTS

- (1) Cadets must prior to placement at the Academy, undergo relevant assessment tests and exercises to determine their suitability for placement at the Academy.

- (2) The CEO may, after consultation with the Intelligence Services and the NCC, issue directives on the assessment programmes for cadets.

4. ADMITTANCE TO THE ACADEMY

- (1) The CEO may issue directives on the –
- (a) qualifying requirements that need to be met by each student for admittance to the Academy;
 - (b) training curriculum and relevant learnership programmes for cadets;
 - (c) duration of the training programme for cadets.
- (2) No cadet may be placed at the Academy without a security screening certificate unless the Minister has issued a temporary clearance certificate in accordance with section 14(6) of the Act.

5. CONDITIONS OF SERVICE

- (1) All cadets must be employed on contract during the training period: Provided that the terms and conditions of the contract are determined by the Minister after consultation with the Director-General and the CEO.
- (2) A cadet may not be a member of a trade union.
- (3) A cadet is not a member as defined in the Act.

6. PERMANENT EMPLOYMENT AND PLACEMENT

- (1) A cadet may be appointed in an Intelligence Service or the Academy, as the case may be, after successful completion of the learnership programme.
- (2) For permanent employment within the Intelligence Services or the Academy, as the case may be, a cadet must comply with the recruitment, selection and appointment requirements contemplated in Chapter V.
- (3) For purposes of placement, a cadet must have successfully undergone competency assessment tests and a security clearance test according to the provisions of Chapter V.
- (4) A selection board must be established to consider the various assessment reports, including the learnership results, comprising -
- (a) Deputy Directors-General responsible for core and human resource function within the Intelligence Services or a spending center as the case may be;
 - (b) the Deputy Head of the Academy;
 - (c) general managers responsible for the relevant core functions and human resources;
 - (d) the Chairperson of the Staff Council.

7. EXIT PROCEDURE

- (1) A cadet who does not –
- (a) comply with the requirements for appointment in the Intelligence Services or the Academy, as the case may be;
 - (b) successfully complete the prescribed courses at the Academy; or
 - (c) qualify for placement within a specific post, in the Intelligence Service or the Academy, may be placed as follows –
 - (i) within the Public Service;
 - (ii) within another institution determined by the Director-General or CEO, as the case may be, or
 - (iii) in a cover environment on contract:

Provided that if a cadet does not meet the academic criteria for admittance, he or she must re-register for the cadet programme within a period of one (1) year.

- (2) Notwithstanding the provisions of regulation 7(1), the CEO may terminate the contract of a cadet who does not meet the requirements contemplated in regulation 7(1) or in terms of Chapters XVIII or XIX according to procedures applicable to members on probation or in terms of Chapter XX.
- (3) The CEO may accept a cadet's request for termination of the contract.

8. PROBATION

After appointment of a cadet as a member in the Intelligence Services or the Academy, as the case may be, he or she must be on probation for a period of twelve (12) months according to the provisions contemplated in Chapter V.

CHAPTER XXIII
VETERANS ASSOCIATION

1. PURPOSE

The purpose of this Chapter is to provide a regulatory framework for the formation of a Veterans Association for former members who would like to serve the Association.

2. APPLICATION OF THE REGULATION

- (1) The formation of a Veterans Association must be according to the "Intelligence Officer for Life" principle.
- (2) The Veterans Association must represent the interest of its members at national level.
- (3) The Veterans Association, the Intelligence Services and the Academy must establish and maintain a close relationship with each other.
- (4) The Veterans Association must promote comradeship and social interest among the members of the Association.
- (5) The Veterans Association may not discriminate against any member of the Association on one or more grounds, including race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV-status, conscience, belief, political opinion, culture, and language.

3. HEADQUARTERS

The seat of the headquarters of the Veterans Association must be determined by the Executive Committee contemplated in regulation 9.

4. LANGUAGE

- (1) English must be the official language.
- (2) Affiliated groups may decide which language(s) they must use within the groups: Provided that all correspondence is conducted in English.

5. PATRON

The Minister or a person delegated by the Minister must act as the Veterans Association's patron.

6. MEMBERSHIP OR AFFILIATION

- (1) Membership to the Veterans Association is voluntary.

- (2) A former member of the Intelligence Services or the Academy, as the case may be, or the widow or widower of a retired member or groups of retired members, may obtain membership without any restriction on location whether inside or outside the borders of the Republic of South Africa: Provided that such a former member was not discharged from the Intelligence Services or the Academy, as the case may be, due to misconduct contemplated in Chapter XVIII or poor performance contemplated in Chapter XIX.
- (3) Membership or affiliation may be granted to individuals and groups who apply in writing to the Veterans Association Board.
- (4) A minimum of ten (10) former members of the Intelligence Services, who comply with the criteria contemplated in regulation 6(2), may affiliate with the Veterans Association as a group.
- (5) If former members, regardless of the reason, prefer not to join an affiliated group, the Association must accommodate such persons as members: Provided that –
 - (a) they comply with the criteria contemplated in regulation 6(2);
 - (b) such members accept that they must forgo the social togetherness and support that are characteristic of affiliated groups; and
 - (c) that they do not have the right to vote at the annual or any special general meeting.

7. **TERMINATION OF MEMBERSHIP**

Membership of an affiliated group or as an associate member may be terminated after a notice period of 30 consecutive days if -

- (a) such an affiliated group or individual terminates membership in writing at a date prior to the date the affiliation/membership fee is payable;
- (b) an affiliated group or individual continually fails to pay the affiliation/membership fee after a written reminder by the National Board;
- (c) a newly registered affiliated group or individual fails to pay the affiliation/membership fee;
- (d) it was found after an investigation that the Association was dishonoured or embarrassed by an individual member or affiliated group's conduct to the extent that the objectives of the Association were prejudiced.

8. **MEMBERSHIP OR AFFILIATION FEE**

- (1) An affiliation fee for affiliated groups and individuals must be determined annually at a general meeting. Associate members must be assessed individually on the same basis as members of affiliated groups and fees are payable in advance.
- (2) It is the responsibility of the National Board to revise the affiliation fee annually.

9. COMPOSITION OF THE VETERANS ASSOCIATION**(1) National Board**

- (a) The Association must be governed and managed by a National Board consisting of -
 - (i) a chairperson;
 - (ii) a vice chairperson;
 - (iii) a secretary;
 - (iv) a treasurer;
 - (v) the chairperson of each affiliated group (ex-officio members);
 - (vi) a maximum of two (2) co-opted members who must be members of the Association;
 - (vii) a manager whose responsibility incorporate the Veterans Association within the Intelligence Services.
- (b) The election procedures are as follows -
 - (i) notice of the annual general meeting, the date, venue and time must be given to affiliated groups and associate members at least three (3) months in advance of the meeting;
 - (ii) the notification must include a nomination form;
 - (iii) on receipt of the notification, affiliated groups must arrange for their own annual general meeting to take place at least 30 consecutive days prior to the annual general meeting of the Association -
 - (aa) candidates must be nominated for the respective positions in a manner decided upon by the affiliated group itself;
 - (bb) nominees must accept their nomination in writing and this must reach the secretary of the National Board not later than four (4) consecutive days prior to the date of the annual general meeting;
 - (cc) all valid nominations for the election of the respective positions must be presented at the annual meeting and the election of members to the National Board must be made by means of secret ballot.

(2) Executive Committee

- (a) The Executive Committee must consist of a chairperson, a vice chairperson, a secretary, a treasurer and an additional member elected by the National Board for this purpose.
- (b) It is the responsibility of the Executive Committee to ensure effective daily functioning of the Association. Their functions must include addressing of general enquiries, processing membership applications and to providing approval to the treasurer of the National Board for ongoing expenses.

- (c) The Executive Committee may act on behalf of the Board for the day-to-day managing of the Association: Provided that the Committee reports to the Board on all decisions taken.

10. FUNCTIONS OF THE NATIONAL BOARD

The Board is responsible for –

- (a) annual planning;
- (b) meeting objectives set out for the Association;
- (c) the execution of objectives and directives decided upon at the annual general meeting;
- (d) written communication of decisions and directives to all affiliated members;
- (e) regular meetings;
- (f) assuring that proper records are kept of decisions taken at such meetings;
- (g) generating donations and affiliation fees and ensuring that proper record is kept of all income and expenditure according to sound financial principles and as determined by the Minister from time to time.

11. AFFILIATED GROUPS

Affiliated groups must promote the general welfare and communal spirit of their members, including social needs and any other need arising from sickness or personal circumstances. In addition they must, in a spirit of cooperation support other affiliated groups and the Board of the Association.

12. DISBANDMENT OF THE ASSOCIATION

- (1) The annual general meeting or a special general meeting may, if convened and constituted for this purpose and by a majority vote, decide to disband the Association and dispose of its assets.
- (2) If an annual general meeting cannot be convened, the Board may be convened, or should the Board fail to convene, the Executive Committee may, on behalf of the Board address a notice to all affiliated groups in which the intention and reasons to disband the Association are set out. The notice must be accompanied by ballot papers to enable members to vote on this aspect.
- (3) A return date of at least 21 consecutive days, calculated from the day on which the notice was posted or otherwise issued, must be set as return date for the ballot papers. Should the majority of the returned votes be in favour of the disbandment, the Board or Executive Committee, according to the circumstances, may disband the Association after all debts have been paid.
- (4) The National Board and/or the Executive Committee, as the case may be, must decide how to dispose of any remaining funds or assets of the Association and associated members must be advised accordingly.

13. **RESPONSIBILITY OF THE INTELLIGENCE SERVICES AND THE ACADEMY FOR THE ASSOCIATION**

- (1) The Intelligence Services and the Academy must, on a monthly basis, contribute an amount to the Association to enable it to render its services.
- (2) The Executive Committee of the Association must be invited to attend the annual year-end function of the Intelligence Services and the Academy.
- (3) The Minister may host a function for the members of the Association.

CHAPTER XXIV**RESTRICTIONS OF FORMER MEMBERS****1. PURPOSE**

The purpose of this Chapter is to regulate the manner in which any former member of the Intelligence Services or the Academy, as the case may be, may apply -

- (a) for consent to disclose classified information in terms of the Act; and/or
- (b) for a clearance certificate permitting employment in the private security industry.

2. CONFIDENTIALITY

No person who comes into possession of information as a result of an application or appeal made in terms of this Chapter may disclose such information unless -

- (a) the Director-General or CEO, as the case may be, consents to such disclosure; or
- (b) such disclosure is authorised by the Act, this Chapter or a Court order.

3. APPLICATION FOR CONSENT TO DISCLOSE CLASSIFIED INFORMATION**(1) Application**

- (a) Any former member who applies for the disclosure of classified information in terms of the Act must do so according to form 1 contained in Appendix A.
- (b) The application must *inter alia* contain -
 - (i) details of the classified information which form the subject of the application;
 - (ii) the reasons for disclosure of the information;
 - (iii) the purpose for which the information will be used;
 - (iv) details of any person who may receive the information;
 - (v) the manner in which the information will be disclosed.
- (c) If the Director-General or CEO, as the case may be, is of the opinion that he or she has been provided with insufficient information in the application, he or she may -
 - (i) reject the application; or
 - (ii) request further written information.

(2) Hearing

- (a) The Director-General or CEO, as the case may be, may, at his or her discretion, request the former member to appear at a hearing for the purpose of considering the application.
- (b) The Director-General or CEO, as the case may be, must determine the date for and place of the hearing.
- (c) The former member may attend the hearing, but at his or her own expense.
- (d) If the former member refuses or fails to attend a hearing when he or she was requested by the Director-General or CEO, as the case may be, to do so according to regulation 3(2)(a), the respective Director-General or CEO may make his or her decision on the information available.

(3) Decision and record of hearing

- (a) The Director-General or CEO, as the case may be, must make a decision within a period not exceeding 30 consecutive days upon receiving the application.
- (b) The Director-General or CEO, as the case may be, must inform the former member of his or her decision, in writing, within a period of twenty (20) consecutive days after reaching a decision.
- (c) The decision of the Director-General or CEO, as the case may be, accompanied by a record of the hearing must be provided to the former member who applied. This notification must include -
 - (i) the name and address of the former member;
 - (ii) a brief description of the application;
 - (iii) if the application is approved, the conditions upon which the consent is provided, which must include -
 - (aa) the manner of disclosure;
 - (bb) the information that may be disclosed;
 - (cc) to whom the information may be disclosed.
 - (iv) the date of the decision;
 - (v) if the application is unsuccessful, the reason(s) for the Director-General's or CEO's, as the case may be, decision;
 - (vi) the right of the former member to appeal against the Director-General's or CEO's, as the case may be, decision and/or the conditions to the Minister.
- (d) The Director-General or CEO, as the case may be, must keep record of all applications made to him or her as well as of decisions made by him or her.

4. **APPLICATION FOR A CLEARANCE CERTIFICATE PERMITTING EMPLOYMENT IN THE PRIVATE SECURITY INDUSTRY**

(1) **Application**

- (a) A former member who applies for a clearance certificate to render a security service in terms of the Act must do so according to form 2 contained in Appendix A.
- (b) The application must contain the following -
 - (i) detailed description of the nature of the service to be rendered;
 - (ii) skills, knowledge or information gained while in the service of the Intelligence Services or the Academy, as the case may be, that may be utilised by him or her in rendering the intended service;
 - (iii) detail of the person(s), if any, in whose service he or she will be;
 - (iv) details of the business, if any, he or she plans to start;
 - (v) person(s) to whom the intended service will be provided.

(2) **Decision**

- (a) The Director-General or CEO, as the case may be, must make a decision within a period not exceeding 30 consecutive days upon receiving the application.
- (b) Where the Director-General or CEO, as the case may be, is of the opinion that the information provided is insufficient, he or she may request further information.
- (c) The Director-General or CEO, as the case may be, must inform the former member of his or her decision in writing within a period of twenty (20) consecutive days after reaching a decision as well as his or her right to appeal to the Minister.

5. **APPEALS**

(1) **Right to appeal**

- (a) A former member may appeal to the Minister against the decision of the Director-General or CEO, as the case may be, in terms of regulations 3 or 4.
- (b) The appeal must be lodged with the Minister within a period of 30 consecutive days upon receipt of the decision of the Director-General or CEO, as the case may be.

(2) **Appeal format**

- (a) An appeal against a decision of the Director-General or CEO, as the case may be, must be lodged according to form 3 contained in Appendix A.
- (b) The appeal format must set out the relevant facts concisely as well as the grounds for the appeal.

- (c) An appeal against a decision of the Director-General or CEO, as the case may be, must be accompanied by the record of the hearing contemplated in regulation 3.
- (d) The appeal must be served on the Director-General or CEO, as the case may be.
- (e) The Director-General or CEO, as the case may be, must forward all relevant documentation to the Minister and former member who applied within a period of twenty (20) consecutive days upon receipt of the appeal.
- (f) The former member may supplement his or her appeal within a period of fourteen (14) consecutive days upon receiving documentation in terms of regulation 5(2)(e).

(3) The decision of the Minister

The Minister concludes the appeal by informing the former member who applied and the Director-General or CEO, as the case may be, of his or her decision in writing.

CHAPTER XXVI
SECURITY SCREENING

1. GENERAL

- (1) These security screening regulations provide a framework for determining the security competency of a person or member.
- (2) All information acquired during a security screening investigation procedure must be treated with confidentiality and may not be used for any other purpose except for determining the security competency of the person or member with due regard for section 2(1)(b)(iii) of the National Strategic Intelligence Act, 1994 (Act 39 of 1994).
- (3) The security screening investigation procedure may only be used to –
 - (a) protect the Intelligence Services and the Academy from foreign and hostile intelligence operations;
 - (b) safeguard the Intelligence Services and the Academy from the unauthorised dissemination or disclosure of classified information and material; and
 - (c) determine the person's or member's integrity, reliability and loyalty to the Intelligence Services and the Academy in safeguarding the interests of the Republic of South Africa and its Constitution.
- (4) All security screening investigation procedures must be undertaken -
 - (a) with due regard for the vision, mission and core values of the respective Intelligence Services and the Academy;
 - (b) subject to the fundamental rights assigned in the Constitution.
- (5) For purpose of this Chapter -
 - (a) "General Manager" means the General Manager responsible for the security screening function;
 - (b) "applicant" means a person or member who is subject of a security screening investigation.

2. CLEARANCE LEVELS

- (1) The following clearance levels apply to the Intelligence Services -
 - (a) top secret – as contemplated in Chapter XXV: Provided that this classification includes access to information and/or premises;
 - (b) secret - as contemplated in Chapter XXV: Provided that this classification includes access to information and/or premises;
 - (c) confidential - as contemplated in Chapter XXV: Provided that this classification includes access to information and/or premises;

- (2) The Director-General must determine the clearance level that any person and member must acquire before being employed or being permitted to perform any specific task for or on behalf of the Intelligence Services and the Academy.
- (3) The Director-General must determine the frequency with which an applicant's security screening must be evaluated.

3. FACTORS RELEVANT TO ACQUIRING A SECURITY CLEARANCE

- (1) The following factors are, *inter alia*, relevant in determining whether an applicant should acquire a security clearance -
 - (a) criminal offences and misconduct;
 - (b) use of dependency forming substances;
 - (c) financial considerations;
 - (d) behavioural disorders;
 - (e) citizenship and/or foreign influence; and
 - (f) loyalty to the Constitution.
- (2) The factors in regulation 3(1) must be evaluated to determine the competency of the applicant to be entrusted with classified or sensitive information.
- (3) The Director-General must weigh the merits and weight of the factors referred to in regulation 3(1), in determining the security competency of an applicant.

4. SECURITY INVESTIGATION PROCEDURES

- (1) The following procedures are applicable -
 - (a) a security screening investigating officer must gather all available information that might reasonably have a bearing on the outcome of a security clearance;
 - (b) the Director-General may request the fingerprints of all persons or members for verification by the South African Police Services (SAPS);
 - (c) the security screening investigating officer must, on behalf of the Intelligence Services or the Academy, as the case may be, request an applicant to submit the following -
 - (i) financial statements for at least three (3) months preceding the date of the security screening investigation;
 - (ii) certified copies of identity documents;
 - (iii) any other information or documents which may assist the security screening investigation officer to perform his or her duties.
 - (d) the security screening investigating officer must collect the necessary information by means of an in-depth interview with the applicant and the references;

- (e) after gathering all the relevant information, the security screening investigating officer must evaluate the information, compile a report and make a recommendation for the attention of the General Manager with regard to the security competency of the applicant concerned;
- (f) the General Manager must, upon receipt of the report, evaluate the facts presented to him or her and make a recommendation to the Director-General on the security competency of the applicant;
- (g) the General Manager must, in the event of finding the applicant security incompetent, provide the Director-General with reasons for his or her finding;
- (h) where the General Manager is unable to make a recommendation to the Director-General on the basis of the report presented to him or her, the Director-General may refer the matter for recommendations to the Security Clearance Advisory Board (SCAB), established in terms of regulation 5;
- (i) the Director-General must, after considering the recommendations of the General Manager or SCAB, as the case may be, evaluate the information presented to him or her, degrade, withdraw or refuse to grant a security clearance certificate;
- (j) the applicant must, in writing, be notified of the outcome of the security screening investigation: Provided that information which may be prejudicial to national security, criminal investigations, identity of sources and members, may not be disclosed to the applicant;
- (k) any applicant may appeal against the decision of the Director-General, in terms of regulation 8;
- (l) the security clearance level, if any, issued to an applicant in terms of regulation 4(1)(i) must -
 - (i) be specified in a certificate issued by the Director-General, which is, *prima facie* proof of the security clearance level;
 - (ii) remain in force until the next security screening investigation in respect of the applicant, or until such security clearance has lapsed, been downgraded or withdrawn; and
 - (iii) be subject to periodic revision at such times or intervals as the Director-General may determine from time to time.
- (2) The Director-General must determine the procedure applicable to different security clearance levels.

5. **SECURITY CLEARANCE ADVISORY BOARD (SCAB)**

- (1) The Director-General may appoint not fewer than five (5) members of the Intelligence Services to serve on SCAB, one of whom will be the chairperson.
- (2) SCAB must evaluate the report of the General Manager contemplated in regulation 4(1)(h).

- (3) SCAB may be constituted of a member(s) from the following structures in the Intelligence Services -
- (a) security screening;
 - (b) human resources;
 - (c) legal services;
 - (d) labour relations; and
 - (e) any other member(s) designated by the Director-General.

6. **POLYGRAPH**

- (1) The security screening investigating officer may request an applicant to undergo a polygraph examination to determine the reliability of information gathered in terms of regulation 4.
- (2) The polygraph must be used as an investigative aid, and not as conclusive proof of security competency.
- (3) The refusal by an applicant to undergo a polygraph examination does not, in itself, constitute a reason for refusal of a security clearance, instead further investigations must be conducted.
- (4) The Director-General may issue directives on polygraph testing.

7. **REPRESENTATION**

- (1) An applicant adversely affected by a withdrawal, downgraded or refusal of a security clearance and who intends to lodge an appeal against the decision of the Director-General is entitled to representation: Provided that the Director-General must be notified of such representation.
- (2) The services of a legal practitioner who is not a member of the Intelligence Services or the Academy, as the case may be, may only be utilised according to regulation 10.
- (3) The Director-General must implement measures which he or she deems necessary and advisable to protect intelligence information and documents in the possession or under the control of the Intelligence Services and the Academy from unauthorised disclosure, which are the subject of an appeal.

8. **WITHDRAWAL, DOWNGRADING OR REFUSAL OF SECURITY CLEARANCES**

- (1) If the Director-General is reasonably of the opinion that an applicant may not be appointed as a member or continue as a member without the possibility that such an applicant could be a security risk or could possibly act in any manner prejudicial to the security interests of the Republic of South Africa, he or she may withdraw, downgrade or refuse to grant security clearance.

- (2) The applicant whose security clearance has been refused, withdrawn or downgraded must be notified, in writing, of the decision of the Director-General with reasons therefore: Provided that information which may be prejudicial to national security, criminal investigations, identity of sources and members, may not be disclosed to the applicant.
- (3) Within 30 consecutive days after having received the notification contemplated in regulation 8(2), the applicant who is adversely affected thereby may lodge a written appeal with the Director-General, together with all such written representations, statements and documents deemed necessary, and a notice of intention to have representation.
- (4) The Minister may upon such written appeal by the applicant within the period contemplated in regulation 8(3) and on good reason shown, extend the period.
- (5) The Director-General must, upon receipt of any appeal lodged with him or her in terms of regulation 8(3), provide the following information to the Minister within 21 consecutive days -
 - (a) written representations together with all supporting documents and any representation;
 - (b) notification to the applicant by the Director-General with the reasons for withdrawal, downgrading or refusal of security clearance;
 - (c) all documents, information and particulars considered in its evaluation by the Director-General in coming to a decision;
 - (d) any further reasons which may have influenced the decision:

Provided that the Director-General must as far as is reasonably practicable, take steps to ensure that national security methods, intelligence collection methods, sources of information and the identity of members of the Intelligence Services and the Academy are protected from unauthorised disclosure.

- (6) In addition to the information contemplated in regulation 8(5), the Director-General must satisfy the Minister that -
 - (a) the information or intelligence which forms the basis of the decision contemplated in regulation 8(1) was evaluated by him, according to intelligence methods, and that it was correct and true;
 - (b) in his or her opinion, the information or intelligence that is withheld from the applicant contemplated in regulations 8(2) and 8(5), if any, is of such a nature that the applicant concerned should not be notified thereof, and or should not even know that the Intelligence Services has the ability to obtain that information or intelligence;
 - (c) he or she personally considered and studied the information or intelligence; and that he or she, acting in good faith and in the interests of national security, in the light of the contents of the information or intelligence received cannot entrust the applicant with the most sensitive secrets of the Republic of South Africa.

9. APPEALS BOARD

- (1) The Minister may appoint five (5) persons to constitute an Appeals Board and to consider appeals: Provided that the persons so appointed and who are not members of the Intelligence Services or the Academy, as the case may be, must meet the requirements of a security clearance: Provided further that two (2) of the appointed persons must be legal and labour relations experts.
- (2) The members of the Appeals Board may also be members of the Intelligence Services and/or the Academy.
- (3) The Minister may, for each appeal lodged, appoint at least three (3) of the members to form an Appeals Panel, of whom one (1) must be the chairperson: Provided that two (2) of the appointed persons must be legal and labour relations experts.
- (4) The Minister must determine the terms and conditions of appointment of persons on the Appeals Panel who are not members of the Intelligence Services or the Academy, as the case may be, in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999).
- (5) The chairperson of the Appeals Panel must, in consultation with the Director-General, ensure that the Appeals Panel is given the necessary administrative support.

10. APPEALS

- (1) The notice of appeal must set out the grounds for appeal.
- (2) Upon receipt of the documents referred to in regulation 8(5), the Minister may, within ten (10) consecutive days, consider the appeal, or appoint a panel to constitute the Appeals Board and provide it with the documents referred to in regulation 8(5).
- (3) Upon being appointed, the chairperson of the Appeals Board must, without undue delay, send a written notice to the applicant who lodged the appeal. The written notice must specify –
 - (a) the date on which representations may be made by the parties to appeal. This date must not exceed five (5) consecutive days upon receipt of the written notice;
 - (b) the time and venue for representations to be heard.
- (4) The applicant may be represented by any person, co-member, member or legal practitioner in the appeal process: Provided that if he or she is represented by a legal practitioner who is not a member, the following prerequisites are met –
 - (a) such a legal practitioner must satisfy the requirements for security clearance;
 - (b) the members of the Appeals Board give their consent thereto, after considering –
 - (i) the complexity of the case;
 - (ii) the nature of the questions of law raised by the appeal;
 - (iii) public interest;

- (iv) the comparative ability of the opposing parties or their representatives to deal with the appeal.
- (5) The legal costs incurred by the applicant must be paid by him or her.
- (6) If an applicant fails to appear in person or make representations through a representative on the specified date, the chairperson may rule to consider the appeal in his or her absence or postpone the appeal hearing.
- (7) The chairperson of the Appeals Board must determine and issue rules for the proper noting and consideration of appeals.
- (8) The Appeals Board must, within fifteen (15) consecutive days upon consideration of the appeal, make a recommendation thereon in accordance with the provisions of the Act.
- (9) The majority of members of the Appeals Board form a quorum at any meeting of the Appeals Board.
- (10) On an equality of votes in any meeting of the Appeals Board, the chairperson has a second vote in addition to the deliberate vote.
- (11) The recommendation of the Appeals Board must be forwarded to the Minister for consideration.

11. **CONSIDERATION OF THE APPEAL BY THE MINISTER**

- (1) Where the Minister has appointed an Appeals Board in terms of regulation 9(3), he or she must within 21 consecutive days of receipt of the recommendations of the Appeals Board either confirm or set aside the recommendations.
- (2) Where the Minister considers the appeal, he or she must confirm, set aside or vary the decision of the Director-General.
- (3) The Minister's decision is final and binding.
- (4) The decision of the Minister must be submitted to the Director-General in writing within fourteen (14) consecutive days after having made a decision in terms of regulation 11(1) or 11(2), for purposes of notification to the applicant who lodged the appeal.
- (5) The Director-General must, within ten (10) consecutive days of receipt of the Minister's decision, inform the applicant in writing of the outcome of the appeal.

NATIONAL SECURITY SCREENING REGULATIONS

1. DEFINITIONS

In these regulations, unless the context otherwise indicates-

- 1.1 **'Act'** means the National Strategic Intelligence Act, 1994 (Act 39 of 1994);
- 1.2 **'Agency'** means the National Intelligence Agency established in terms of the Intelligence Services Act, 2002 (Act 65 of 2002);
- 1.3 **'Candidate'** means an applicant, an employee, a member, contract employee or a person acting on behalf of a contract appointee or outside contractor;
- 1.4 **'Director-General'** means the Director-General of the Agency;
- 1.5 **'General Manager'** means a General Manager responsible for vetting in the Agency;
- 1.6 **'Joint Standing Committee on Intelligence'** means the Joint Standing Committee established in terms of the Intelligence Services Oversight Act, 1994,(Act 40 of 1994);
- 1.7 **'organ of state'** means an organ of state as defined in section 239 of the Constitution;
- 1.8 **'Personnel Security Appeals Board'** means an Appeals Board contemplated in regulation 11;
- 1.9 **'Security Clearance Advisory Board'** means an Advisory Board established in terms of regulation 7;
- 1.10 **'Security competency'** includes but is not limited to the integrity, reliability and loyalty of a person to act in accordance with his/her level of security clearance. This includes the person's susceptibility to extortion, manipulation and corruption;
- 1.11 **'Security competency investigating officer'** means a member of the Agency designated by the General Manager to conduct security clearance investigations;
- 1.12 **'Service'** means the South African Secret Service established in terms of the Intelligence Services Act, 1994 (Act 38 of 1994);
- 1.13 **'Services'** means the Agency, Service, intelligence divisions of the South African National Defence force and the South African Police Service respectively;
- 1.14 **'South African Police Service'** means the South African Police Service established in terms of the South African Police Act, 1995 (Act 68 of 1995);

- 1.15 **'South African National Defence Force'** means the South African National Defence Force established in terms of the Defence Act, 1957 (Act 44 of 1957);

2. APPLICATION OF THE REGULATIONS

These regulations shall regulate the national security screening investigations by the National Intelligence Structures, of candidates of organs of state.

3. PURPOSE AND FUNDAMENTAL PRINCIPLES

- (1) The purpose of these regulations is to create a standard framework for determining the security competency of a candidate of an organ of state.
- (2) Security screening investigation procedures may only be used to-
 - (a) Safeguard information belonging to an organ of state from unauthorised dissemination or disclosure.
 - (b) Determine a person, body, organisation or institution's integrity, reliability, compliance with and loyalty to the Constitution and national legislation.
- (3) All information acquired during security competency investigation procedures shall be treated with confidentiality, and may not be used for any other purpose but for determining the security competency of the person, body, organisations or institution concerned: Provided it is in keeping with section 2(1)(b)(iii) of the National Strategic Intelligence Act, 1994 (Act 39 of 1994).

4. RESPONSIBILITIES OF HEADS OF ORGANS OF STATE

- (1) The Head of an organ of state shall-
 - (a) Ensure that there are adequate security measures within an organ of state.
 - (b) Ensure that all applicants and employees are security cleared to the relevant levels of classification.

5. FACTORS RELEVANT TO THE SECURITY SCREENING PROCESS

- (1) When assessing a person's security competency, the following factors may amongst others, be considered:
 - (a) Criminal offences, and misconduct in the workplace.
 - (b) The use of addictive substances.
 - (c) Financial position.
 - (d) Security threatening and endangering behaviour.
 - (e) Behavioural disorder.
 - (f) Irresponsible behaviour.
 - (g) Citizenship.
 - (h) Values and behaviour.
 - (i) Loyalty to the Constitution.
- (2) The Director-General may issue directives to determine guidelines to be followed when assessing a candidate's security competency.

6. SECURITY COMPETENCY INVESTIGATING PROCEDURES

- (1) The following procedures are applicable in the security competency investigation process:
 - (a) A security competency investigating officer shall gather all available information that might reasonably have a bearing on the outcome of a security clearance.

- (b) The relevant National Intelligence Structure will as a matter of routine request the fingerprints of all candidates. The fingerprints will be taken by the South African Police Service (SAPS) and security competency investigating officers. The fingerprints shall accompany the security questionnaire to the relevant National Intelligence Structure, where after these fingerprints will be submitted to the South Africa Police Services Criminal Record Centre for verification.
- (c) The security competency investigating officer will on behalf of the relevant National Intelligence Structure request the candidate to submit the following:
 - (i) financial statements for at least four months preceding the date of the security competency investigation, or any other period required by the security competency investigating officer.
 - (ii) identity documents.
 - (iii) any other information or documents, which will assist the security competency investigating officer to perform his or her duties.
- (d) The security competency investigating officer will collect the necessary information by means of an in-depth interview with the candidate, inside and outside references.
- (e) After gathering all the relevant information, the security competency investigating officer will evaluate the information, compile a report and make a recommendation for the attention of the Senior Manager responsible for security screening, with regard to the security competency of the candidate.
- (f) The Senior Manager responsible for security screening will after receipt of the report, evaluate the facts presented to him or her and make a recommendation to the head of the relevant National Intelligence Structure on the security competency of the candidate.

- (g) The Senior Manager responsible for security screening will, in the event of any negative recommendation, provide the head of the relevant National Intelligence Structure with reasons for his or her findings.
- (h) Where the Senior Manager responsible for security screening is unable to make a recommendation to the head of the relevant National Intelligence Structure on the basis of the report presented to him or her, the head of the relevant National Intelligence Structure may refer the matter to the Security Clearance Advisory Board established in terms of regulation 7, for recommendations.
- (i) The head of the relevant National Intelligence Structure will after considering the recommendations of the Senior Manager responsible for security screening or of the Security Clearance Advisory Board, issue or refuse to issue a security clearance certificate.
- (j) The security clearance certificate will be forwarded to the respective head of an organ of state who shall in turn inform the candidate of the outcome of the security clearance.
- (k) Any candidate who is in disagreement with the outcome or the security clearance process, will be given a reasonable opportunity to review the decision of the head of the relevant National Intelligence Structure, in terms of regulation 10.
- (l) The grade of security clearance if any, accorded to a candidate in terms of regulation 6.1(i), shall-
 - (i) be specified in a certificate issued by the head of the relevant National Intelligence Structure pursuant to the security investigation conducted for that purpose in terms of these regulations, which certificate shall be prima facie proof of the grade of security clearance;
 - (ii) remain in force until the next security investigation in respect of the candidate or until such security clearance has lapsed, downgraded or withdrawn; and

- (iii) be subject to periodic revision at such times or intervals as the head of the relevant National Intelligence Structure after consultation with the Head of an organ state, may determine.

2. The following procedure will apply for different levels of security clearance:

(a) **Top Secret clearance**

- (i) The security competency investigating officer will interview at least five references, two of whom will be outside references.
- (ii) A personal interview will be conducted with the candidate concerned as well as his or her partner or co-habitant.
- (iii) Enquiries with regard to the candidate and his or her partner or co-habitant's record will be conducted at the centralised inquiry systems in the National Intelligence Agency, the South African Secret Service, the South African Police Service and the South African National Defence Force.
- (iv) A set of fingerprints of the candidate and his or her partner or co-habitant will be submitted to the South African Police Service's criminal record centre for verification.
- (v) Financial statements of the candidate and his or her partner or cohabitant for at least four months preceding the date of the security investigation will be obtained.

(b) **Secret clearance**

- (i) The security competency investigating officer will interview at least four references, two of whom will be outside references.
- (ii) Regulations 6(2)(ii) to 6(2)(v) shall *mutatis mutandis* apply.

- (c) **Confidential clearance**
- (i) The security competency-investigating officer will interview at least three references, two of whom shall be outside references.
 - (ii) A personal interview will be conducted with the candidate concerned.
 - (iii) Regulations 6(2)(iii) to 6(2)(v) will *mutatis mutandis* apply
- (3) Upgrading of security clearance will be as follows:
- (1) In cases where a post requires a higher level of security clearance, a thorough investigation including at least two further interviews with inside and outside references shall be conducted before an upgraded security clearance may be issued.
 - (2) The period of validity of the higher level of security clearance obtained in this way is calculated from the date that the higher clearance was issued.

7. SECURITY CLEARANCE ADVISORY BOARD

- (1) The head of the relevant National Intelligence Structure shall appoint not less than five members of his or her National Intelligence Structure to serve in the Security Clearance Advisory Board, of which one will be Chairperson.
- (2) The Security Clearance Advisory Board shall be constituted on an *ad hoc* basis to assist the Senior Manager responsible for security screening in event of uncertainty with regard to the security competency of a candidate.
- (3) The Security Competency Advisory Board may be constituted by a member or members of the following divisions within an organ of state:
 - (a) Security clearance;
 - (b) Human Resources;

- (c) Legal Services;
- (d) Labour Relations; and
- (e) Any other member(s) designated by the head of the relevant National Intelligence Structure.

8. **POLYGRAPH EXAMINATION**

- (1) The security competency-investigating officer may on behalf of the relevant National Intelligence Structure request a candidate to undergo a polygraph examination to complement the entire security competency investigation process.
- (2) The polygraph shall be used as an investigative aid, and not as conclusive proof of security competency.
- (3) The security competency investigating officer shall advise the candidates of the manner in which the polygraph will be used during the process of security clearance.
- (4) The head of the relevant National Intelligence Structure may issue directives on the usage and application of the polygraph.

9. **REPRESENTATION**

- (1) Candidates adversely affected by a withdrawal, downgrading or refusal of a security clearance who intend to lodge an appeal against the decision of the head of the relevant National Intelligence Structure will be entitled to representation: Provided that the respective Head of the organ of state shall be notified of such representation in the written objections contemplated in regulation 11(3).
- (2) The nature of representation and the terms applicable to representatives shall be determined by the Chairperson of the respective Personnel Security Appeals Board in consultation with the Head of the respective organ of state.

- (3) The head of the relevant National Intelligence Structure may issue directives, which he or she deems necessary and advisable to protect intelligence, information and documents in the possession or under the control of the Agency from unauthorised disclosure, which shall apply to such representatives.

10. **WITHDRAWAL, DOWNGRADING AND REFUSAL OF SECURITY CLEARANCE**

- (1) When it comes to the attention of the head of the relevant National Intelligence Structure that a candidate may no longer be employed for any purpose or in or at any level or capacity as before, without the candidate possibly being a security risk, or possibly acting in a manner prejudicial to the interests of the Republic, the head of the relevant National Intelligence Structure may withdraw or downgrade the security clearance of the candidate.
- (2) The candidate affected by a withdrawal, downgrading or refusal of security clearance shall be notified in writing of such refusal to issue a security clearance certificate, or the possibility of, or downgrading or withdrawal of a security clearance certificate, and shall be afforded an opportunity to present information regarding such matter.
- (3) Within 14 days after having received a notification in terms of the above, of refusal, downgrading or withdrawal of a security clearance, the candidate who is adversely affected thereby may lodge written objections thereto, together with all such written representations, statements, documents as the candidate may deem necessary, and a notice of intention to have representation, with the head of the relevant National Intelligence Structure.
- (4) The head of the relevant National Intelligence Structure may extend upon such written objections by the candidate within the 14 days period contemplated above, may on good reason shown extend this for a further period.
- (5) The head of the relevant National Intelligence Structure shall upon receipt of any objection lodged with him or her in terms of regulation 10(3), forthwith refer to the respective Head of an organ of state for purposes of review by the relevant Personnel Security Appeals Board:

- (a) Such written representations together with all supporting documents and any representation;
- (b) The notification to the candidate by the head of the relevant National Intelligence Structure with the reasons for withdrawal of security clearance, refusal of security clearance or downgrading thereof as the case may be;
- (c) All documents, information and particulars considered in its evaluation by the head of the relevant National Intelligence Structure in coming to a decision and determination;
- (d) Any further reasons which may have been given for the determination in question:

Provided that the head of the relevant National Intelligence Structure shall as far as is reasonably practicable, take steps to ensure that national security methods, intelligence collection methods, sources of information and identity of members of his or her National Intelligence Structure, are protected from unauthorised disclosure.

11. APPEAL PROCEDURES

1. APPEALS BY CANDIDATES OF ORGANS OF STATE

- (a) Written objections lodged in terms of regulation 10 shall be submitted to the relevant Minister.
- (b) The relevant Minister shall in a manner, on the terms and conditions determined by him or her, appoint a Personnel Security Appeals Board consisting of three people or more, one of whom will be Chairperson to consider the appeal.
- (c) The Personnel Security Appeals Board-

- (i) shall consider and decide on all appeals instituted in terms of these regulations; and
 - (ii) may perform all functions that are necessary or expedient to the exercise of such power.
- (d) The Personnel Security Appeals Board-
- (i) shall review any determination made in terms of regulation 12 upon any objection against such determination having been referred to the Personnel Security Appeals Board.
 - (ii) may perform all functions that are necessary or expedient to the exercise of such power.
- (a) Upon appointment, the Chairperson of the Personnel Security Appeals Board shall send a written notice to the candidate, the head of the relevant National Intelligence Structure and the respective Head of an organ of state which shall specify-
- (i) the date on which the parties may make oral representations to the appeal. This date shall be at least 14 days after sending the written notice.
 - (ii) the time and venue at which oral representations would be heard; and
 - (iii) the place at which the representations shall be made.
- (b) If a candidate fails to appear in person or through a representative (who will give an account of the whereabouts of the candidate), or to make oral representations, on the specified date, the Chairperson may dismiss the appeal or may make any other appropriate order.
- (c) The Personnel Security Appeals Board, on good cause shown, may excuse any party from compliance with any procedure specified in this

- (k) The Personnel Security Appeals Board shall within 5 days of making the decision, inform the head of the relevant National Intelligence Structure and the Head of the organ of state concerned in writing of their decision, who will in turn inform the candidate in writing of the decision of the Personnel Security Appeals Board.

12. TITLE AND COMMENCEMENT OF THE REGULATIONS

These regulations shall be called the National Security Screening Regulations, and shall come into effect on the date of signature by the Minister, in consultation with the Minister of Safety and Security, and the Minister of Defence.

Contact Person and Details of person to be consulted:

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