

**DEPARTMENT OF SAFETY AND SECURITY
DEPARTEMENT VAN VEILIGHEID EN SEKURITIET**

No. 1253

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**REGULATIONS MADE UNDER THE PRIVATE SECURITY INDUSTRY
REGULATION ACT, 2001 (ACT NO. 56 OF 2001)**

**REGULATIONS RELATING TO APPEALS AND APPLICATIONS
FOR EXEMPTIONS, 2003**

I, Charles Nqakula, Minister for Safety and Security, have, acting under section 35 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), made the Regulations in the Schedule.

SIGNED at Pretoria on this 11th day of April 2003.

C NQAKULA
Minister for Safety and Security

SCHEDULE

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ANNEXURE: FORM FOR LODGING AN APPEAL

Definitions

1. 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 indicates otherwise -

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

“Annexure” means the Annexure to these regulations;

“appeal” means an appeal to an appeal committee against a decision referred to in section 30(1) of the Act, or any other decision of the Authority in respect of which an aggrieved person is entitled to lodge an appeal in terms of the Act;

“appeal committee” means an appeal committee appointed under section 30(2) of the Act;

“appeal file” means the appeal file referred to in regulation 4(1);

“appellant” means any person who –

- (a) is lodging an appeal; or
- (b) is entitled to appeal and requests the Authority for the reproduction of the record of an improper conduct enquiry or who requests the assistance referred to in regulation 2(5);

“appellant documentation” means the documentation referred to in regulation 3(2);

“applicant” means a person lodging an application for exemption or the renewal of an exemption;

“applicant documentation” means the documentation referred to in regulation 6(1);

“application for exemption” means an application by any person in terms of section 1(2) or 20(5) of the Act to the Minister for an exemption from the operation of any or all of the provisions of the Act;

“cost of reproduction”, in relation to the reproduction of the record of an improper conduct enquiry, means R14.50 (exclusive of VAT) per A4 page for the year 2003, whereafter the amount will increase at a rate of 5% per year;

“director” includes a staff member of the Authority appointed as the acting director by the Council or to whom any of the powers or duties of the director have been delegated or assigned, as the case may be;

“exemption” means an exemption as contemplated in section 1(2) or 20(5) of the Act;

“improper conduct enquiry” means an enquiry into alleged improper conduct as contemplated in the Act;

“lodging an appeal” means the submission to the Authority of the appellant documentation in terms of these regulations;

“photocopying cost” means the amount of R0.50 (exclusive of VAT) per A4 page copied;

“postal address”, in relation to the head office of the Authority, means Private Bag X817, Pretoria, 0001;

“presiding officer” means the presiding officer of an appeal committee referred to in section 30(2)(a) of the Act;

“register of exemptions” means the register referred to in regulation 9(3)(b)(vii);

“renewal of an exemption” means the renewal of an exemption referred to in regulation 8(2)(a);

“repealed regulations” means the regulations repealed in terms of regulation 11;

“street address”, in relation to the head office of the Authority, means 481 Belvedere Street, Arcadia, Pretoria;

“these regulations” means the regulations contained in this Schedule and includes the Annexure.

PART I APPEALS

Reproduction of records, form used for an appeal and assistance to appellants

2.(1) An appellant who intends to lodge an appeal against a finding or punishment contemplated in section 30(1)(c) of the Act must, before lodging the appeal, request the Authority, against payment of the amount contemplated in sub-regulation (2), to reproduce the record of the relevant improper conduct enquiry and furnish a copy thereof to the appellant.

(2) The amount payable by an appellant for the record of an improper conduct enquiry is calculated on the basis of an estimation by the Authority of the number of pages of the record in question, multiplied by the cost of reproduction.

(3) The Authority must as soon as possible after an appellant has paid the amount contemplated in sub-regulation (2), cause a copy of the record in question to be reproduced and furnished to the appellant, subject, if applicable, to any further payment by the appellant in terms of sub-regulation (4).

(4) If it appears after the reproduction of the record in question that there is a difference between the amount paid by the appellant as calculated in terms of sub-regulation (2) and the amount that the appellant should have paid on the basis of the actual number of pages of the record -

- (a) the Authority must on demand refund to the appellant any amount overpaid by the appellant; or
- (b) the appellant must on demand pay to the Authority any amount still due to the Authority.

(5) The Authority must at the request of an appellant provide the appellant with -

- (a) a copy of the form contained in the Annexure; and
- (b) the information, as well as copies of relevant documentation, against payment of the photocopying cost in respect thereof, to which the appellant is entitled for the purposes of completing the form in question, and which the Authority is able to provide.

Lodging of appeal

3.(1) An appellant lodges an appeal at the street address of the head office of the Authority, or by registered post remitted to the postal address of the head office of the Authority, within the period of 60 days referred to in section 30(1) of the Act.

(2) An appeal -

- (a) is lodged in a written form corresponding materially to the form contained in the Annexure, which must be completed in full and be accompanied by all applicable documentation referred to in the form; and
- (b) must set out fully and clearly the grounds of appeal as well as any arguments and representations which the appellant wishes to advance in support of the appeal.

(3) The Authority must provide an appellant -

- (a) with a written acknowledgement of receipt of the appellant documentation; and

- (b) with a reasonable opportunity to rectify the appellant documentation or add relevant documentation before the submission of the appeal file to the appeal committee.

Prosecution of appeal

4.(1) The Authority must, within 30 days after an appellant has lodged an appeal referred to in section 30(1)(c) of the Act, and within 14 days after an appellant has lodged any other appeal, submit the appeal file to the presiding officer, containing -

- (a) the appellant documentation;
- (b) the documentation contemplated in regulation 3(3)(b) (if any);
- (c) the record of the improper conduct enquiry reproduced by the Authority, if it is an appeal referred to in section 30(1)(c) of the Act;
- (d) copies of relevant documentation in possession of the Authority relating to the decision appealed against; and
- (e) the response which the Authority wishes to submit in respect of the appeal.

(2) The presiding officer may at any stage after submission of the appeal file, request the Authority for the submission of -

- (a) further documentation, information, submissions or reasons of the Authority relating to the decision against which the appeal is lodged; and
- (b) further documentation, information or submissions of the appellant relating to the appeal.

(3) The Authority must within the period determined for this purpose by the presiding officer making the request referred to in sub-regulation (2), or if no such period has been determined, within a reasonable period -

- (a) submit the requested documentation, information, submissions or reasons to the presiding officer;
- (b) communicate the request of the presiding officer referred to in sub-regulation (2)(b) to the appellant in writing; and
- (c) submit to the presiding officer any documentation, information or submissions submitted by the appellant to the Authority in response to the request of the presiding officer.

(4) The appeal committee -

- (a) may deal with an appeal in terms of this regulation in any manner it deems fair and just and without hearing any oral evidence, representations or submissions;
- (b) must deal with an appeal within a reasonable time; and
- (c) must, in considering the merits of an appeal, properly consider, in addition to any other relevant fact or consideration -

- (i) the objects of the Act and of the Authority; and

(ii) whether the appellant has demonstrated, on a balance of probabilities, good cause for interference with the decision against which an appeal is lodged.

(5) The appeal committee may, after consideration of the grounds of the appeal and any other information at its disposal -

- (a) dismiss an appeal that does not comply with the requirements contemplated in regulation 3(1) and (2);
- (b) direct that the appellant be given an opportunity to remedy any defect in the appeal;
- (c) confirm, set aside or vary the decision against which an appeal has been lodged or substitute for such decision any other decision which in its opinion ought to have been taken;
- (d) give any order which is appropriate and just in the circumstances.

(6) The presiding officer must as soon as possible inform the Authority in writing of the decision of the appeal committee in terms of sub-regulation (5) and, if the appeal has been finalised, cause the appeal file to be returned to the Authority.

(7) The Authority must as soon as possible after receipt of the communication referred to in sub-regulation (6), inform the appellant in writing of such decision and take any further steps required from the Authority to ensure the implementation of the decision of the appeal committee.

PART II APPLICATIONS FOR EXEMPTIONS

Lodging of an application for exemption

5. An applicant lodges an application for exemption in writing, addressed to the director at the street address of the head office of the Authority, or by registered post remitted to the director at the postal address of the head office of the Authority.

Requirements for an application for exemption and related matters

6.(1) An application for exemption must be in writing and must contain -

- (a) the full and accurate identification and contact particulars of the applicant;
- (b) the provisions of the Act from which an exemption is sought; and
- (c) the full and detailed grounds on which the application is based.

(2) The Authority must provide an applicant -

- (a) with a written acknowledgement of receipt of the applicant documentation;
- and

- (b) with a reasonable opportunity to rectify or add to the applicant documentation before it is submitted to the Minister.

(3) The Authority may after receipt of an application for exemption –

- (a) request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as it may deem necessary; and
- (b) conduct such investigation or inspection of the applicant in terms of the Act as it may deem necessary in the circumstances.

Submission of applications for exemptions and consideration thereof by Minister

7.(1) The Authority must as soon as possible after receipt of an application for exemption that materially complies with the requirements of regulation 6(1), and after having taken any of the steps contemplated in regulation 6(3) that are necessary in the circumstances, submit to the Minister –

- (a) the applicant documentation; and
- (b) the information and submissions which the Authority wishes to place before the Minister in terms of section 1(2) or 20(5) of the Act.

(2) The Minister may at any stage after the submission of the documentation contemplated in sub-regulation (1), request the Authority for the submission of –

- (a) further documentation, information or submissions of the Authority relating to the application; and
- (b) further documentation, information or submissions of the applicant relating to the application.

(3) The Authority must within the period determined by the Minister for this purpose, or within a reasonable period if no such period has been determined –

- (a) submit any further documentation, information or submissions to the Minister as requested by the Minister;
- (b) communicate any request of the Minister referred to in sub-regulation (2)(b) to the applicant in writing; and
- (c) submit to the Minister any documentation, information or submissions submitted by the applicant to the Authority in response to the request of the Minister.

(4) After the Minister has decided an application for exemption, the Minister may –

- (a) communicate this decision in writing to the director and request him or her to inform the applicant accordingly;
- (b) request the director to enter the particulars of any exemption granted by the Minister into the register of exemptions; and

- (c) direct the Service, if the Minister has granted the exemption, to publish a notice in the *Gazette* as contemplated in section 1(2) or 20(5) of the Act.

(5) The director must as soon as possible after receipt of a communication from the Minister contemplated in sub-regulation (4)(a), inform the applicant in writing of the decision of the Minister.

Lapsing, renewal and review of exemptions

8.(1) An exemption granted by the Minister in terms of section 1(2) or 20(5) of the Act lapses, subject to these regulations, one year after the date on which the applicable notice was published in the *Gazette*, unless the Minister determined otherwise when the exemption was granted or the exemption has been renewed in terms of these regulations.

(2)(a) Any person who wishes an exemption to be renewed, must apply for a renewal not earlier than 90 days and not later than 45 days before the date on which the exemption will lapse as contemplated in sub-regulation (1).

(b) An application for the renewal of an exemption is subject to the provisions, with the necessary changes, applicable to the submission and consideration of an application for exemption in terms of these regulations.

(c) If an application for the renewal of an exemption has been submitted to the Authority in terms of these regulations, the exemption remains valid, subject to these regulations, until the application is decided by the Minister.

(3) The Minister may at any time review an exemption that has been granted or renewed in terms of the Act and, if there is a sound reason therefor -

- (a) withdraw the exemption;
- (b) amend or remove any condition to which the exemption is subject, or add the conditions that may be necessary;
- (c) amend the scope of the exemption; or
- (d) take any other step permitted by law in regard to the exemption.

PART III GENERAL PROVISIONS

Duties of director and role of the Authority

9.(1) The director must ensure that -

- (a) proper administrative systems are in place to enable the Authority to perform its administrative functions in terms of these regulations;
- (b) the Authority complies with all its duties in terms of these regulations properly and timeously; and

(c) the Authority respects and promotes the independence of any appeal committee.

(2) The administrative work relating to the functioning of appeal committees and the submission of applications for exemptions to the Minister is performed by the Authority.

(3) The director must appoint a staff member of the Authority -

(a) for the purposes of dealing with appeals -

- (i) to generally communicate and liaise with a presiding officer, subject to regulation 9(1)(c), as may be necessary to facilitate the performance of his or her functions in terms of the Act;
- (ii) to prepare and submit an appeal file to a presiding officer;
- (iii) to receive and deal with requests and other communications from a presiding officer as contemplated in these regulations;
- (iv) to communicate and liaise with an appellant at the request of a presiding officer as contemplated in these regulations;
- (v) to submit documentation, information, submissions or reasons referred to in regulation 4(3) to a presiding officer;
- (vi) to facilitate the provision of administrative support from the Authority to a presiding officer as may be required by him or her for the performance of his or her functions; and
- (vii) to perform any other function incidental to the above; and

(b) for the purposes of dealing with applications for exemptions and renewals of exemptions -

- (i) to liaise with an applicant as may be necessary in respect of an application;
- (ii) to submit applicant documentation to the Minister;
- (iii) to submit documentation, information or submissions referred to in regulation 7(3) to the Minister;
- (iv) to liaise with the Minister on behalf of the Authority as contemplated in section 1(2) and 20(5) of the Act;
- (v) to receive and deal with any requests and communications from the Minister regarding an application for exemption;
- (vi) to perform the administrative tasks contemplated in these regulations in regard to renewals and reviews of exemptions;
- (vii) to keep a register in which the particulars, as determined by the director, of all exemptions and renewals of exemptions are recorded; and
- (viii) to perform any other function incidental to the above.

Transitional provisions

10.(1) With effect from the date of commencement of these regulations, any appeal pending in terms of the repealed regulations must continue and be disposed of as though these regulations have not been made, unless the interests of justice require otherwise.

(2) The provisions of sub-regulation (1) apply, with the necessary changes, to any application for exemption.

(3) An exemption granted before the date of commencement of these regulations, lapses one year after such commencement, unless it has been renewed in terms of these regulations.

Repeal of regulations

11. The Appeal Regulations, 2002 are hereby repealed.

Authoritative text

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

Short title and commencement

13. These regulations are called the Regulations Relating to Appeals and Applications for Exemptions, 2003 and come into operation on the date that they are published in this *Gazette*.

ANNEXURE

FORM FOR LODGING AN APPEAL

PRIVATE SECURITY INDUSTRY REGULATION ACT, 2001 (ACT NO. 56 OF 2001)

REFERENCE NUMBER _____

(for official use)

1 PARTICULARS OF APPELLANT

1.1 Full name (and name of natural person acting on behalf of a security business which appeals)

1.2 Contact address for correspondence on the appeal

1.3 Contact telephone and fax numbers and other electronic contact particulars

1.4 Registration number as security service provider (if any)

1.5 Name, capacity and contact particulars of person submitting or preparing an appeal on behalf of the appellant

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2 NATURE OF DECISION APPEALED AGAINST

(Make cross in the appropriate box)

2.1 Refusal to grant application for registration	
2.2 Refusal to grant application for renewal of registration	
2.3 Cancellation of renewal of registration	
2.4 Suspension of registration	
2.5 Withdrawal of registration	
2.6 Conviction of improper conduct	
2.7 Penalty imposed in consequence of finding of improper conduct	
2.8 Other decision – describe:	

3 SUMMARY OF PARTICULARS OF DECISION APPEALED AGAINST

Provide a brief description of the decision appealed against, mentioning the person taking the decision and the date of the decision (if this is known to the appellant)

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4 SUMMARY OF GROUNDS OF APPEAL

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5 DOCUMENTS THAT SHOULD BE ATTACHED TO THIS FORM (DEPENDING ON THE FACTS AND CIRCUMSTANCES)

5.1 True copy of resolution of security business authorising the lodging of the appeal
5.2 True copies of all documents received from the Authority in respect of the decision appealed against
5.3 True copies of record of improper conduct enquiry and all exhibits admitted at the enquiry
5.4 A document containing full and clear details of the grounds of appeal and the arguments and representations submitted by the appellant (including factors in mitigation of punishment, if applicable)

6 LIST OF DOCUMENTS ATTACHED BY THE APPELLANT TO THIS FORM

Provide a complete list of all documents attached to the form

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7 SIGNATURE OF APPELLANT AND DATE OF SUBMISSION TO THE AUTHORITY

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End.

Important note:

<p>In terms of section 38(3)(c) of the Private Security Industry Regulation Act 56 of 2001, any person who in any application, inquiry, improper conduct proceedings, appeal or other proceedings in terms of this Act or the Levies Act, wilfully furnishes information or makes a statement which is false in any material respect, is guilty of an offence and liable to a heavy fine or to imprisonment for a maximum period of 2 years.</p>
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