

Grudko Associates

SECURITY AND INVESTIGATION LEGISLATION IN SOUTH AND SOUTHERN AFRICA

(The following does not constitute legal advice)

LOCAL and VISITING security officers, practitioners, consultants, advisors and persons or companies offering similar services or products are subject to laws in South Africa that have been designed to control the security industry very closely.

There are various laws that relate directly to the performance of Security Officers in South Africa but the main legislation is the PRIVATE SECURITY INDUSTRY REGULATION ACT, 2001 and the accompanying PRIVATE SECURITY INDUSTRY REGULATIONS, 2002.

Under this Act ALL PRIVATE INVESTIGATORS are required to register with the Authority as of March 1 2003. Persons or companies that offer investigation services but attempts to conceal these activities under other titles such as 'detective, 'consultant' or 'researcher' etc. are included in the legislation.

The Act specifically excludes non-citizens and non-residents (and certain categories of citizens and residents) with penalties of up to 2 years in jail for the offender if prosecuted. This legislation also makes it an offence to employ an unregistered person and company, meaning that the client can also be prosecuted.

The wording of the Act is deliberately very broad so as to cover any description of a security function although some specialities that are subject to their own current or pending legislation, such a polygraphy and TSCM services have been removed from the original definitions.

We have included 2 extracts below, but the full documents can be read at www.psira.co.za

Other Acts control:

- Conditions of employment
- Qualifications and skills development
- Minimum wages

- Uniforms
- Mercenary operations
- Firearms possession and use
- Communications equipment possession and use
- Protection of information and privacy

Zimbabwe also has very strict regulation of their security industry, including the activities of private investigators. Other southern African countries, such as Botswana, Lesotho, Swaziland and Mozambique do not have specific legislation for the security industries but do have laws relating to related issues such as:

- Conditions of employment
- Minimum wages
- Firearms possession and use
- Communications equipment possession and use
- Protection of information and privacy

Visiting overseas security practitioners would be well advised to make enquiries with their Embassy Trade Representatives in any countries that they will be operating in.

Extract 1

NO. 56 OF 2001: PRIVATE SECURITY INDUSTRY REGULATION ACT, 2001.

(English text signed by the President - Assented to 15 January 2002.)

Definitions

"private investigator" means a person who, in a private capacity and for the benefit of another person, investigates the identity, actions, character, background or property of another person, without the consent of such a person, but does not include-

- auditors, accountants, attorneys, advocates or forensic scientists conducting investigations that fall within the normal and reasonable course and scope of their professional functions;
- internal investigators conducting normal and reasonable investigations into employee

misconduct;

(c) internal investigators conducting investigations that a business, other than an investigating business, may undertake in the course and scope of its normal and reasonable endeavours to safeguard its security, strategic, operational or business interests:

Provided that no person is excluded from the definition of a private investigator if he or she conducts any investigation that falls within the exclusive function of the State;

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

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

"security officer" means any natural person-

(a)

(i) who is employed by another person, including an organ of State, and who receives or is entitled to receive from such other person any remuneration, reward, fee or benefit, for rendering one or more security services; or

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

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

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

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

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

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

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

or property in any manner;

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

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

(f) performing the functions of a private investigator;

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

(h) installing, servicing or repairing security equipment;

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

(j) performing the functions of a locksmith;

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

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

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

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

Requirements for registration

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

(a) is a citizen of or has permanent resident status in South Africa;

(b) is at least 18 years of age;

(c) has complied with the relevant training requirements prescribed for registration as a security service provider;

(d) was not found guilty of an offence specified in the Schedule within a period of 10 years immediately before the submission of the application to the Authority;

- (e) was not found guilty of improper conduct in terms of this Act within a period of five years immediately before the submission of the application to the Authority;
- (f) submits a prescribed clearance certificate, together with such other information as the Authority may reasonably require, if the applicant is a former member of any official military, security, police or intelligence force or service in South Africa or elsewhere;
- (g) is mentally sound;
- (h) is not currently employed in the Public Service in circumstances where such registration may conflict with a legislative provision applicable to the applicant;
- (i) has paid the relevant application fee; and
- (j) is not a person referred to in subsection (5).

(2) A security business applying for registration as a security service provider in terms of section 21(1), may be so registered only if-

(a) every natural person referred to in section 20(2) complies with the requirements of subsection (1) and is not an unrehabilitated insolvent; and

(b) such security business meets the prescribed requirements in respect of the infrastructure and capacity necessary to render a security service.

(3) The Authority may cause any inspection to be held which it deems necessary to establish whether an applicant meets the requirements contemplated in subsection (2)(b), against payment by the applicant of an amount determined by the Authority for this purpose.

(4) The Authority may refuse the registration of any person who-

* (a) at the time of submission or consideration of the application, is under State investigation in respect of an offence specified in the Schedule or who is being criminally prosecuted in respect of such an offence; or

* (b) was convicted of an offence specified in the Schedule more than 10 years immediately before the submission of the application for registration to the Authority.

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

(6) Despite the provisions of subsections (1) and (2), the Authority may on good cause shown and on grounds which are not in conflict with the purpose of this Act and the objects of the Authority, register any applicant as a security service provider.

Penalties

(2) Any security service provider or other person referred to in section 33, who-

* (a) refuses or fails to comply with any request of an inspector or member of the Service in terms of section 34;

* (b) without lawful excuse refuses or fails to answer a question put to him or her by an inspector or a member of the Service; or

* (c) makes any statement to an inspector or a member of the Service which is materially false or produces any document to an inspector or member of the Service which is false in any material respect, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. Extra-territorial application of Act and jurisdiction

39. (1) Any act constituting an offence in terms of this Act and which is committed outside the Republic by any security service provider, registered or obliged to be registered in terms of this Act, is deemed to have been committed in the Republic.

Extract 2

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

PRIVATE SECURITY INDUSTRY REGULATIONS, 2002

The Minister for Safety and Security has, acting under section 35 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), made the Regulations in the Schedule hereto

(Applicants must provide)

an authenticated copy of the first page of the official identity document of the applicant or an authenticated copy of any other official document demonstrating the applicant's identity and South African citizenship;

(or)

proof to the satisfaction of the Authority that an applicant who is not a South African citizen has permanent resident status in South Africa;