

**THE PRIVATE SECURITY INDUSTRY REGULATION BILL, 2004**

A Bill for

An Act of Parliament to provide for the regulation of the private security industry; to establish a regulatory authority; to prescribe conditions for the operation of private security firms, and for connected purposes.

**Enacted by the Parliament of Kenya as follows :-**

Citation.

1. This Act may be cited 'as the Private Security Industry Regulation Bill, 2004, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires -

"Authority" means the Private security Industry Regulatory Authority established under section 3(1);

"Board" means the Board of the Authority set up under section 5;

“disciplined forces” includes the Kenya Police and the Administration Police;

"private security industry" means the provision *of* security services by civilian persons as opposed to ' members *of* the disciplined forces;

"security services" means any of the services specified in 21; ,

**PART II - ADMINISTRATION**

Establishment of  
Authority

**3.** (1) There is hereby established an Authority to be known as the Private Security Industry Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and capable in its corporate name of -

- (a) suing and being sued;
- (b) acquiring, fielding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act.

Objects of the  
Authority

**4.** (1) The object for which the Authority is established is to regulate the private security industry and to exercise effective control over the provision of private security services in the public interest.

(2) For the achievement of its objects, the Authority shall –

- (a) ensure that all security services providers act in the public and national interest in the rendering of security services;
- (b) promote professionalism, transparency, accountability, stability, equity and accessibility in the private security industry;
- (c) promote and encourage trustworthiness of the security services providers and their employees;
- (d) determine, prescribe and enforce minimum standards of occupational conduct in respect of security services providers;

- ( e) encourage and promote efficiency and responsibility in the rendering of security services;
- (f) promote, maintain and protect the status and interests of the occupation of security services provider;
- (g) ensure that the process of registration of security services providers is transparent, fair, objective and concluded timeously;
- (h) promote high standards in the training of security services providers and prospective security service providers;
- (i) encourage equal opportunity employment practices in the private security industry;
- (j) promote the protection and enforcement of the rights of security officers and other employees in the private security industry
- (k) ensure that compliance with existing legislation by security service providers is promoted and controlled through a process of active monitoring and investigating of the affairs of security services providers;
- (l) protect the interests of the users of security services; and
- (m) promote the development of security services which are responsive to the needs of the users of such services and of the community;

Establishment of  
The Board

**5. (1)** The management of the Authority shall vest in a Board of the Authority which shall consist of a chairman appointed by the President and the following members appointed by the Minister

- (a) four members representing the following Ministries respectively -
  - (i) the Office of the President
  - (ii) Finance;
  - (iii) Labour; and
  - (iv) The Office of the Attorney-General;
- (b) one member representing the Federation of Kenya Employers;
- (c) one member representing the insurance industry;
- (d) two members representing workers' organisations;
- (e) two members representing private security associations;
- (f) one member representing the Kenya Bankers' Association; and
- (g) one member representing a recognized residents' association.

(2) The Director shall be secretary to the Board.

Functions of the Board.

**6.** For the purpose of achieving its objects the Board shall have powers to

- (a) enquire into and report to the Minister on any matter concerning the objects of the Authority;

- (b) advise the Minister on any matter deemed by the Authority to be necessary or expedient to be considered by the Minister in connection with the provisions of this Act, or the application thereof, and on any other matter relating to security services which has been referred by the Minister to the Authority for the advice and recommendations of the Authority;
- (c) conduct investigations with regard to the provision of security services and the activities of security services providers, and to deal with any evasion, abuse or violation of the procedures or any policy or rule made in terms thereof;
- (d) institute legal proceedings and defend or oppose any legal proceedings against the Authority;
- (e) receive and consider applications for registration or renewal of registration as security services providers and grant or renew registration to applicants who comply with the requirements for such registration or renewal of registration in terms of this Act;
- (f) suspend or withdraw the registration of a security service provider in terms of this Act;
- (g) take such steps as may be necessary to develop and maintain standards and regulate practices in connection with the occupation of security service providers, and persons pursuing or intending to pursue such occupation;
- (h) gather information relevant to the occupation of security service providers in connection with persons who are registered or seeking registration as such;
- (i) take steps to protect and assist security officers and other employees against or with regard to acts, practices and consequences of exploitation or abuse;
- (j) facilitate the training of security services providers and prospective security services providers to ensure a high quality of training, and in particular with regard to -
  - (i) the registration and withdrawal of registration of persons and institutions providing training in security provision; -
  - (ii) the monitoring and auditing of the quality of training performed by registered persons;
  - (iii) the participation in the activities of other bodies or persons entitled by law to set standards in respect of training of security services providers or bodies entitled to formulate, implement or monitor skills development plans for the private security industry;
  - (iv) the appointment of persons to monitor and assess achievements or outcomes in respect of standards applicable to training;

- (v) the determination of qualifications required by security service providers to provide particular types . of security services; and
  - (vi) the taking of reasonable steps to verify the authenticity of training certificates presented by persons for the purposes of this Act;
- (k) develop and maintain a data base with information required for the proper performance of its functions;
  - (l) establish and manage branch offices;
  - (m) provide or disseminate information promoting and encouraging compliance with this Act;
  - (n) provide information to the users, prospective users or representatives of users of security services regarding the compliance of security service providers with the provisions of this Act;
  - (o) establish a complaints office to receive, process, refer or deal with complaints regarding the quality of services rendered by security services providers;
  - (p) furnish information required by any department or any organ of the Government for the purposes of its official functions;
  - (q) receive, expend and generally administer funds;
  - (r) open accounts with any banking or other financial institution approved by the Treasury;
  - (s) invest money with financial institutions registered in terms of any law;
  - (t) determine charge and collect fees as provided for in this Act or in respect of any service rendered by the Authority or any object made available by the Authority;
  - (u) accept donations with the approval of Minister;
  - (v) raise finance from other sources in the course of normal business;
  - (w) manage and safeguard its assets;
  - (x) determine minimum internal control systems for security businesses, including but not limited to, accounting and reporting procedures and any other procedures or systems;
  - (y) become a member of an association or organisation which seeks to promote any matter in which the Authority has an interest
  - (z) establish relations with or enter into co-operation agreements with bodies or offices regulating the private security industry in other countries, or bodies representing such regulators;
  - (aa) conduct, or cause to be conducted, hearings, investigations and inquiries with regard to any matter falling within the scope of its functions;
  - (bb) enter into agreements with or obtain the assistance of any department or organ of the Government to conduct or assist it

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in conducting any investigation or performing any other function in terms of this Act;

- (cc) cooperate with any person or body in the performance of an act which the Authority is by law permitted to perform; and
- (dd) generally perform any act which contributes to the attainment of its objects.

Power of  
Ministry

**7.**(1) The Authority shall operate under the supervision of the Minister responsible for matters relating to security.

(2) Where the Authority fails to maintain an acceptable standard in the fulfillment of its functions under this Act, the Minister may-

- (a) give general or special directions to the Authority describing the extent of the failure and stating the steps required to remedy the situation; or
- (b) assume responsibility for the relevant function or duty to the extent necessary to maintain standards or to prevent the Board from taking any action which is prejudicial to the objects of the Authority.

Staff of the  
Authority

**8.** (1) The Board may, on such terms and conditions as it deems fit, appoint a suitably qualified and experienced person to be the Director of the Authority.

(2) The Director shall be the chief executive officer of the Board and shall be responsible to the Board for the day to day operations of the Authority.

(3) The Board shall appoint three deputy directors and such other staff as may be necessary for the efficient performance of the functions of the Authority.

(4) No person shall be appointed under this subsection if such person has any direct or indirect interest in the private security industry.

Meetings of the  
Board

**9.** The Schedule shall have effect with respect to the procedure at meetings of the Board.

Funds of the  
Authority

**10.** (1) The funds of the Authority shall comprise

- (a) such funds as may be provided by Parliament;
- (b) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or any other written law; and
- (c) all moneys from any other source provided for or donated or lent to the Authority.

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(2) There shall be paid out of the funds of the Service all sums required to defray the expenditure incurred by the Authority in the exercise of its powers and the performance of its functions under this Act.

Financial Year

**11.** The financial year of the Authority shall be the period of twelve months ending on the thirtieth of June in each year.

Annual estimates

**12.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for the estimated expenditure of the Authority for the financial year, and in particular, the estimates shall provide for -

- (a) the payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Authority;
- (b) the proper maintenance of the buildings and grounds of the Authority;
- (c) the maintenance, repair and replacement of the equipment and other property of the Authority;
- (d) the creation of such reserve funds as the Authority may deem appropriate to meet the recurrent expenditure and contingent liabilities of the Authority.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval with the concurrence of the Treasury, and thereafter the Board shall not increase the annual estimates without the consent of the Minister.

Accounts  
And  
Audit

**13.** (1) The Authority shall cause to be kept all proper books and other records of accounts of the income, expenditure and assets of the Authority.

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(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

**PART III- REGISTRATION AS A PRIVATE SECURITY SERVICES PROVIDER.**

Requirement  
for Registration

**14.** No person shall engage in the provision of security services in a private capacity unless such person is registered by the Board in accordance with this Act.

Condition for  
registration

**15.** (1) An application for registration under this Act shall be in the prescribed form, and may be made by a natural or a corporate person.

(2) A person who wishes to seek employment as a private security officer shall -

- (a) be a citizen of or, a person who is ordinarily resident in Kenya;



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- (b) be over eighteen years of age;
- (c) have a minimum academic qualification of the Kenya Certificate of Secondary Education
- (d) submit a certificate of good conduct issued by the National Security Intelligence Service;
- (e) where such person previously served in any of the disciplined forces, produce a certificate of clearance\* from such force.

(3) A corporate body shall only be registered as a security services provider-

- (a) if such body has a valid certificate registration under the relevant law;
- (b) if such body has a valid trading licence;
- (c) if the persons performing executive or managing functions in respect of security business are registered as security service providers;
- (d) where such body is a partnership, if every partner thereof is registered as a security services provider;
- (e) if the body has a valid trading licence and demonstrates its ability to pay wages to, and other statutory benefits on behalf of, its employees.

(4) An application for registration under this Act shall be in writing and shall be accompanied by such fee as may be prescribed.

Inspection

**16.** The Authority may cause such inspection to be held as it may deem necessary to establish whether an applicant meets the requirements contemplated in section 15, upon payment by the applicant of an amount determined by the Authority for that purpose.

Ineligibility for registration

**17.** No person in the permanent employment of the Authority, the National Security Intelligence Service, the disciplined forces or the prisons department shall be registered as a security services provider.

Registration

**18.** (1) The Board shall examine every application forwarded under this Part, and where the applicant meets all the requirements prescribed hereunder, register the applicant as a security services provider.

(2) The Authority shall issue a certificate of registration to any corporate person and a certificate of identification to any natural person, registered as a security services provider.

(3) A certificate issued under this section shall be subject to such conditions as the Board may impose.

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Registration

**19.** The Board shall keep a register of the names and particulars of every security services providers registered in terms of this Act.

Certificate of operation

**20.** A person who is registered under this Act may apply to the Board for a certificate of operation to commence the provision of services under this Act.

**21.** A person registered and issued with a certificate under this Act may provide security in any of the following areas -

Provision of Security Services

- (a) provision of guard services;
- (b) installation of burglar alarms;
- (c) private investigations and consultancy;
- (d) car tracking;
- (e) close-circuit television;
- (f) provision of guard dog services;
- (g) installation of fencing and gates;
- (h) security for cash in transit;
- (i) access control installation;

Provided that an applicant shall indicate clearly in application documents submitted to the Board the area in respect of which registration is applied for.

Weapons

Cap. 114

**22.** A registered security services provider, being a corporate body may, subject to the provisions of the Firearms Act and any other written law, provide weapons for the use of the personnel in its employ.

**23.(1)** Where the Board declines to approve an application for registration under this Act it shall notify the applicant accordingly within a period of fifteen days, specifying the reasons for the refusal.

(2) Any person who is aggrieved by the refusal of the Board to approve his application may appeal to the Minister within a period of thirty days from the date of receipt of the notice from the Board.

(3) The Minister may confirm or vary the decision of the Board.

(4) The decision of the Minister on any matter referred to him shall be final:

Provided that the appellant may, on a matter of law, appeal to the High Court.

Code of Conduct

**24.(1)** The Minister may, in consultation with the Board, prescribe a code of conduct for security services providers, which shall contain sufficient procedures and rules for its enforcement.

(2) A code of conduct shall first be published in the Gazette with a notice from the Minister inviting interested persons to make representations to the Minister within a stated period, but not less than four weeks from the date of such publication, giving their objections to the proposed code of conduct.

(3) Where, after the expiry of the period prescribed under subsection (2), the Minister decides on any alterations of the proposed code as a result of the representations made under that subsection, the Minister shall publish the altered code of conduct.

(4) A code of conduct published under this section shall be legally binding on all registered security services providers.

## **INQUIRY INTO CONDUCT OF PRIVATE SECURITY SERVICES PROVIDERS**

Complaint against  
Private Security  
Provider

**25.** (1) Inquiry into the conduct of a registered Private security services provider may be instituted by the Board upon the Board's initiative or upon complaint addressed to the Board in writing, made by or on behalf of any person alleging unprofessional conduct on the part of such provider.

(2) The Board may conduct such inquiry or may refer to the inquiry to a sub-committee appointed by the Board for the purpose.

(3) The Board may require the complainant to file further particulars of any ,of the matters complained of and may require the complaint or any part thereof to be verified by affidavit.

(4) Upon receipt of any complaint against a registered private security services provider, the Board shall notify the person complained against, giving the grounds of the complaint, under cover of registered letter, sent to his last address acknowledged by Director.

(5) The Board may call upon the person whose conduct is complained of or is under investigation to file, within ten days thereafter, an explanation to be verified by affidavit.

(6) The Board may summon before it any person against whom any complaint may be lodged or whose conduct may appear to the Board to require investigation, or order such person to appear before a subcommittee appointed for the purpose of investigation, and may call upon such person to produce any document, contract, book, paper, or other writing in his possession or under his control in any way relating to or concerning the complaint or matter under investigation, any may hear any evidence and inspect any document which the complainant or the party complained against may desire to adduce.

(7) The person against whom the complain is made shall have the right to appear before the Board and to be heard either personally or through his advocate, and may call such evidence and produce such documents as may be relevant.

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(8) The Board, having inquired into the alleged misconduct of any person may take such action as it may deem appropriate including

- (a) cautioning the person;
- (b) imposing a fine, not exceeding ten thousand shillings, on the person;
- (c) suspending the certificates of operation; or
- (d) canceling registration.

Regulations

**26.** (1) The Minister may, on the recommendation of the Board, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, regulations made under this section may provide for -

- (a) the employment of personnel by registered private security firms; and
- (b) the provision of uniforms and weapons to employees of private security firms.

## **SCHEDULE**

( s. 9)

### **PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

Tenure of office  
and conduct of the  
board.

**1.** (1) The chairman of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

(2) Other than ex-officio members, a member of the Board shall, subject to the provisions of this section, hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term of three years.

(3) The members of the Board shall be appointed in such a manner that their respective expiry dates of their terms of office fall at different times.

(4) A member other than an ex-officio member may -

- a) at any time resign from office by notice in writing, in the case of the Chairman, to the President, and in the case of any other member, to the Minister;
- (b) be removed from office by the President or the Minister, as the case

may be, if the member -

- (i) has been absent from three consecutive meetings of the Board without the permission of the chairman;
- (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (iii) is convicted of an offence involving dishonesty or fraud;
- (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (v) is incapacitated by prolonged physical or mental illness;
- (vi) is found to have acted in a manner prejudicial to the aims and objectives of the Act.
- (vii) fails to comply with the provisions of this Act relating to disclosure; or
- (viii) is otherwise unable or unfit to discharge his functions as a member of the Board.

Meetings of the Board

**2.** (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Provided that the chairman may call a special meeting of the Board at any time where he deems it expedient for the transaction of the business of the Board.

(2) Other than a special meeting or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(3) The quorum for the conduct of business of the Board shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of the votes, the chairman or the person presiding shall have a casting vote.

(4) The chairman shall preside over all meetings of the Board in which he is present, but in his absence, the vice-chairman shall preside and in his absence the members present shall elect one of their member who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(5) At the first meeting of the Board, the members shall elect a vice-chairman, not being a public servant, from among its members.

(6) Subject to the provisions of this section, the Board may regulate its own procedure.

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Disclosure of  
Interests

**3.** (1) If a member is directly or indirectly interested in any matter before the Board and is present at the meeting of the Board at which the matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the or matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.