

THE PRIVATE SECURITY SERVICE BILL
(No. VI of 2004)

Explanatory Memorandum

The object of this Bill is to provide for the licensing of private security services, the registration of security guards, the training of licensed persons in relation to private security services, and the establishment of criteria for the management of private security services and standards, and codes of conduct in relation thereto.

P. R. Bérenger
Prime Minister,
Minister of Defence, and Home Affairs

26 March 2004

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(No. VI of 2004)

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A BILL

To provide for the licensing and control of private security services and the registration of security guards

Enacted by the Parliament of Mauritius, as follows -

1. Short title

The Act may be cited as the Private Security Service Act 2004.

2. Interpretation

In this Act –

“badge” means a badge issued to a security guard under section 7(4);

“certificate” means a certificate of registration issued to a security guard under section 7(4);

“Commissioner” means the Commissioner of Police;

“licence” means a licence issued under section 4;

“licensee” means a person issued with a licence under section 4;

“Minister” means the Minister to whom the responsibility for the subject of home affairs is assigned;

“Police Force” has the meaning assigned to it by section 111 of the Constitution;

“private security service” means the business of providing, for remuneration or reward, a security service, the services of a security guard, and the secure transportation and delivery of property;

“security guard” means a person employed by a private security service who guards, patrols or provides any other security service for the purpose of protecting person or property;

“security service” includes the provision of security through electronic means or any other device.

3. Application of Act

This Act shall not apply to a person who –

- (a) is employed by another person for the purpose of protecting that other person or his property; and

(b) is not employed by a private security service.

4. Private security services to be licensed

(1) Any person who wishes to operate a private security service shall make an application for a licence to the Commissioner in such form as may be approved by the Commissioner and furnish such information as the Commissioner may require.

(2) On receipt of an application under subsection (1), the Commissioner shall –

- (a) cause notice thereof to be published in the *Gazette* and, for 3 consecutive days, in not less than two daily newspapers; and
- (b) invite all interested persons, who so wish, to lodge with the Commissioner such objections as they may have against the application.

(3) Any person who wishes to object to an application shall, not later than 21 days after the last date of the publication specified in subsection (2), lodge his objection in writing with the Commissioner.

(4) The Commissioner may require an applicant to furnish additional information and may make such investigations, and conduct such examinations, as he considers necessary respecting the character, financial position and competence of the applicant.

(5) The Commissioner shall, in determining whether to grant an application for a licence, have regard, *inter alia*, to –

- (a) any objection made under subsection (3); and
- (b) whether or not the applicant is disqualified under subsection (6);

(6) The Commissioner may refuse to issue a licence where –

- (a) he reasonably believes that the applicant is not a fit and proper person to be granted a licence;
- (b) the applicant is a company, a partnership or an association and the Commissioner reasonably believes that in view of the past and present conduct of its members, officers or directors, it is not a fit and proper entity to be granted a licence;

- (c) the applicant, or the person who will manage the private security service, does not have the experience and training that, in the opinion of the Commissioner, is necessary to operate such a service;
- (d) the facilities proposed for the operation of the private security service are inadequate;
- (e) the applicant, or where the applicant is a company, partnership or an association, a member, officer or director thereof has been convicted in Mauritius or elsewhere, of an offence involving fraud and dishonesty;
- (f) the applicant is medically unfit to operate a private security service; or
- (g) the applicant is under the age of 18.

(7) Where the Commissioner grants the application, he shall issue, on payment of the prescribed fee and upon the applicant furnishing the guarantee required under section 6, a licence in the prescribed form and subject to such conditions as he may deem fit, which may include -

- (a) a requirement for the training of security guards;
- (b) that the licensee takes out the requisite firearm licence under the Firearms Act;
- (c) that every security guard in the employment of the licensee to whom it is intended to give possession of a firearm and ammunition for the purpose of carrying and using the firearm or ammunition, holds the appropriate permit under the Firearms Act;
- (d) the types of firearms or other arms that may be used by the licensee in the course of his duties;
- (e) the number of firearms or other arms and ammunition which the licensee may have in his possession;
- (f) the type of firearm, other arm and the number of ammunition that the licensee shall issue to a security guard for the purposes set out at paragraph (c);
- (g) the surrender of all firearms, other arms and ammunition immediately upon cessation of business, suspension or cancellation of a licence;

- (h) the type of uniform to be worn by security guards;
- (i) the types of armouries or other storage for firearms, other arms, ammunition, and other related equipment, to be kept and maintained.

5. Duties of licensees

Every licensee shall –

- (a) display a copy of his licence in a conspicuous place in the office of the licensed premises;
- (b) where the licensee has more than one office, display a copy of the licence in his main office and every sub-office;
- (c) display in a conspicuous place outside every office a signboard stating the name of the licensee and the words “LICENSED UNDER THE PRIVATE SECURITY SERVICE ACT 2004”;
- (d) notify the Commissioner in writing within 7 days of –
 - (i) any change in the address of his office, or sub-office, as the case may be;
 - (ii) any change in its officers, directors or members where the licensee is a company or a partnership or an association; or
 - (iii) the recruitment or termination of employment by him of a security guard.
- (e) keep such books, documents or records as may reasonably be required by the Commissioner and ensure that such books, documents or records are readily accessible.

6. Security

(1) The guarantee required under section 4(7) shall be furnished to, and maintained with, the Accountant General and shall be in the sum of 3 million rupees or such other sum as may be prescribed and shall be furnished -

- (a) by deposit in cash;
- (b) by a guarantee issued by a bank or insurance company registered in Mauritius; or
- (c) in such other form as may be approved by the Minister.

(2) The guarantee shall be applied towards the payment of any amount by way of compensation, damages or otherwise to which a customer is entitled in virtue of a judgment of a Court, or an award, or a binding agreement.

(3) Where a licensee ceases to provide private security services, he may apply to the Commissioner for the discharge of the guarantee.

(4) On receipt of an application under subsection (3), the Commissioner shall, at the expense of the applicant, by notice published in the *Gazette* and 2 daily newspapers, require any person who may have any claim against the licensee to notify the Accountant General of the nature and amount of his claim within 3 months of the last publication.

(5) The guarantee shall be discharged –

- (a) where no claim has been received within the time limit specified in subsection (4);
- (b) after disposal of any claim made under subsection (2) or (4).

7. Security guards to be registered

(1) Any person who wishes to perform the duties of a security guard shall make an application for a certificate of registration to the Commissioner in such form as may be approved by the Commissioner.

(2) The Commissioner may require an applicant to furnish such additional information, and make such investigations and conduct such examinations, as he considers necessary respecting the character and competence of the applicant.

(3) The Commissioner may refuse to register an applicant who –

- (a) is under the age of 18;
- (b) is medically unfit;
- (c) does not have the appropriate training and skills necessary for him to perform the duties of a security guard;
- (d) has made, in the application for registration, a statement containing information which is false in any material particular;
- (e) has been convicted, in Mauritius or elsewhere, of an offence involving fraud and dishonesty, or of any other offence punishable by imprisonment;

(f) is otherwise not a fit and proper person to be registered.

(4) Where the Commissioner is satisfied that the applicant meets the requirements of this section, he may, subject to such conditions as he thinks fit to impose, issue a certificate of registration and a badge to the applicant on payment of the prescribed fee.

8. Duration and renewal licences and certificates

(1) A licence or certificate granted under this Act shall, subject to subsection (2), be valid for a period of one year.

(2) Where a licensee or the holder of a certificate wishes to renew the licence or certificate, he shall apply to the Commissioner for renewal in the form as may be approved by the latter, not later than 21 days before the expiry of the licence or certificate.

(3) A licensee applying for the renewal of his licence shall submit to the Commissioner a return showing –

- (a) the names and address of every security guard who was employed by him during the preceding year;
- (b) the address of the office, or main office and sub-offices, as the case may be, where he proposes to continue to operate his private security service;
- (c) the services offered during the preceding year; and
- (d) such other information as the Commissioner may require.

(4) Where an application for renewal is made after the expiry of the licence or certificate, but within 15 days after the expiry, the Commissioner may renew the licence or certificate upon the payment by the holder of the licence or certificate of a surcharge of 50 per cent in addition to the prescribed renewal fee.

(5) A licence or certificate shall lapse if an application for its renewal is not made within 15 days of the expiry of the licence or certificate.

(6) The Commissioner may, after considering an application under subsection (2), renew a licence or certificate where –

- (a) the licensee or the holder of a certificate is still qualified to hold a licence or certificate; and
- (b) on payment of such fee as may be prescribed.

9. Cessation of business by licensees

- (1) Where a licensee does not intend to renew his licence, he shall -
 - (a) notify the Commissioner of such intention at least 3 months before the expiry of his licence; and
 - (b) surrender his licence to the Commissioner within 15 days after its expiry.

(2) Where during the currency of a licence, the licensee ceases to provide a private security service authorised by the licence, he shall notify the Commissioner and return the licence to him within 5 days for cancellation.

(3) On receipt of a notification under this section, the Commissioner shall cause a notice thereof to be published in the *Gazette* and, for 3 consecutive days, in not less than 2 daily newspapers.

10. Registers

(1) The Commissioner shall establish and maintain a register of persons licensed or granted a certificate and badge under this Act.

(2) The register shall contain particulars of every licensee and person holding a certificate and badge and shall include –

- (a) his name;
- (b) his address, or address of his office, or main office and sub-offices, as the case may be, in the case of a licensee;
- (c) the expiry date of the licence and certificate;
- (d) the terms and conditions of the licence and certificate; and
- (e) such other particulars as the Commissioner thinks fit.

11. Identification of security guards

Every security guard shall, while on duty -

- (a) wear his badge conspicuously on his uniform; and
- (b) carry his certificate and, on request from a police officer or any other person acting in the lawful exercise of his duties, produce his certificate for inspection.

12. Duplicate and temporary licences, certificates or badges

(1) Where a licence, certificate or badge is lost, destroyed or defaced, the licensee or the security guard may apply in writing to the Commissioner for a duplicate licence, certificate or badge, as the case may be.

(2) Where the Commissioner is satisfied as to the genuineness of the circumstances of the loss, destruction or defacement, the Commissioner may issue a duplicate licence, certificate or badge on payment of such fee as may be prescribed.

(3) Where a licensee dies, or in the case of a company, is wound up, the Commissioner may grant a temporary licence to such person for such period as he deems appropriate.

13. Cancellation or suspension of licences and certificates

(1) The Commissioner may, at any time, cancel or suspend a licence where –

- (a) the person, or in the case of a company or a partnership or an association, one of its members, directors or officers has become disqualified under section 4(6) from obtaining a licence;
- (b) in the case of a partnership, one of the partners withdraws from the partnership;
- (c) in the case of a company, the company is no longer qualified to be registered under the Companies Act;
- (d) the licensee does not comply with the requirements of this Act or any regulations made under the Act;
- (e) the licensee breaches any condition of the licence;
- (f) the licensee has knowingly made or caused to be made any false or misleading statement in his application for the licence;
- (g) the licence has been obtained by fraud or misrepresentation;
or
- (h) he would have been entitled to refuse to grant a licence under section 4.

(2) The Commissioner may, at any time, cancel or suspend a certificate granted under section 7 where the security guard –

- (a) becomes disqualified under that section from obtaining a certificate;
- (b) does not comply with the requirements of this Act or any regulations made under the Act; or
- (c) was not at the time of his registration qualified to be registered.

(3) Where a licence or a certificate has been cancelled or suspended pursuant to subsections (1) or (2), the Commissioner shall –

- (a) notify the licensee or certificate holder in writing, requesting him to surrender the licence, or certificate and badge, as the case may be, within 5 days of receipt of the notice.
- (b) in the case of a licensee, cause a notice thereof to be published in the *Gazette* and, for 3 consecutive days, in not less than 2 daily newspapers.

(4) Upon receiving a notice under subsection (3), the licensee or the certificate holder, as the case may be, shall surrender the licence, or certificate and badge, to the Commissioner within the specified period.

14. Application for restoration of licences or certificates

(1) A private security service or a security guard whose licence or certificate has been suspended or cancelled under section 13 may apply to the Commissioner for the restoration of the licence or certificate.

(2) The Commissioner may after such inquiry as he considers appropriate –

- (a) approve the application for restoration on such terms and conditions as he deems fit; or
- (b) refuse the application.

15. Appeal Board

(1) Where a person is aggrieved by the –

- (a) refusal of the Commissioner to grant a licence or a certificate; or
- (b) suspension or cancellation of his licence or certificate, or the refusal by the Commissioner to restore the licence or certificate,

he may, within 21 days of the notification to him of the decision of the Commissioner appeal, in writing, setting down the grounds of appeal, to an Appeal Board appointed on an *ad hoc* basis by the Minister, with written notice to the Commissioner.

(2) The Appeal Board shall consist of –

- (a) a Chairperson, who shall be a barrister of no less than 5 years standing;
- (b) two public officers not below the rank of Principal Assistant Secretary.

(3) After considering the appeal and affording the appellant an oral hearing, where necessary, the Appeal Board may confirm, set aside or vary the decision of the Commissioner, setting down in writing the reasons for its decision.

(4) The Appeal Board shall communicate its decision to the appellant and the Commissioner within 7 days thereof.

16. Training of licensees and security guards

Notwithstanding any other enactment, the Commissioner may, for the purposes of this Act, conduct such training and courses for the licensees and security guards, subject to the payment of such fees as the Commissioner may claim.

17. Powers of Commissioner

The Commissioner shall –

- (a) keep under review the provision of private security services;
- (b) for the purpose of protecting the public, monitor the activities and effectiveness of persons carrying on the business of providing private security services; and
- (c) carry such inspections, as he considers necessary, of the activities of private security services.

18. Offences

(1) No person shall operate a private security service unless he is the holder of a licence.

(2) No licensee or security guard shall hold himself out in any manner as a police officer, or as providing services, or performing duties connected with the Police Force.

(3) No person shall employ another person as security guard, unless the latter is the holder of a certificate.

(4) No person shall perform the duties of security guard for a private security service, unless he holds a certificate issued by the Commissioner.

(5) No person shall wear, or have in his possession, a uniform approved for a private security service, unless he is registered as a security guard for that private security service.

(6) Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 5 years.

19. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

- (2) Any regulations made under subsection (1) may provide for –
- (a) the payment of fees and levying of charges;
 - (b) the criteria for the setting up and management of, recruitment of personnel by, private security services;
 - (c) the standards to be maintained by private security services; and
 - (d) codes of conduct and guidelines for private security services and security guards.

20. Consequential amendments

The Police Act is amended -

- (a) in the heading of Part IV, by deleting the words “SECURITY AND PROPERTY PROTECTION SERVICES”;
- (b) in section 20 -
 - (i) in subsection (1), by deleting the words “or provide security and property protection services”;
 - (ii) in subsection (3), by deleting the words “or security and property protection services”; and
 - (iii) by deleting subsection (4); and

- (c) in section 21, in subsection (3), by deleting the words “or security or protecting service” wherever they appear.

21. Transitional provisions

Any licence issued to provide security and property protection services pursuant to regulations made under section 20 of the Police Act and in force immediately before the coming into operation of this Act, shall continue to be in force until its expiry as if it had been issued under this Act and, may be renewed under the Police Act and regulations made thereunder only for another period of 3 months.

22. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.