

140304 SC DEFENCE security

Gurshwyn Dixon - Private Security Amendment Bill

From: <Andrew.Henderson@fco.gov.uk>
To: <tjmofokeng@parliament.gov.za>
Date: 3/1/2014 10:49 AM
Subject: Private Security Amendment Bill
CC: <gdixon@parliament.gov.za>, <jfubbs@parliament.gov.za>, <LOctober@thedti...>
Attachments: 140228 PSIRA NCOP final.doc

Dear Chairperson

I am writing in my capacity as British Trade Commissioner to South Africa to express our support for the concerns expressed by my colleague from the European Union about the implications of the amendments to the Private Security currently under consideration by your committee.

On behalf of two of the major foreign security companies operating in South Africa (ADT and G4S) we fully support the reservations expressed in the attachment to Mr Pougin de la Maisonneuve's letter to you and urge that these amendments be deferred for further consideration by your committee.

We are grateful for your attention to this matter. I would be grateful if this email could be distributed to all members of the committee.

Yours sincerely

Andrew Henderson

Andy Henderson | Trade Commissioner
UK Trade & Investment - Johannesburg | Dunkeld Corner | 275 Jan Smuts Ave | Dunkeld West
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 With professional advisers both within the UK and across more than 100 international markets, UK Trade & Investment is the Government Department that helps UK-based companies succeed in the global economy and assists overseas companies to bring their high-quality investment to the UK.

From: POUGIN DE LA MAISONNEUVE Axel (EEAS-PRETORIA)
Sent: Friday, February 28, 2014 10:55 AM
To: 'tjmofokeng@parliament.gov.za'
Cc: 'gdixon@parliament.gov.za'
Subject: PSIRA - follow up to our meeting of 18 February
Importance: High

Att. Honorable Harry MOFOKENG
Chairperson : SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL DEVELOPMENT
National Council of Provinces

Dear Chairperson,

Many thanks again for the opportunity to meet and discuss the Private Security amendment bill, and especially its amendment regarding limiting foreign ownership – in presence of several of your colleagues, the Ambassador of Austria and a representative of the UK High Commission in your offices on 18 February.

As promised, I have followed up on a number of the points we have discussed, and have assembled the

Gurshwyn Dixon - Private Security Amendment Bill

From: Sara Aulin <sara.aulin@gov.se>
To: "tjmofokeng@parliament.gov.za" <tjmofokeng@parliament.gov.za>
Date: 3/3/2014 03:06 PM
Subject: Private Security Amendment Bill
CC: "gdixon@parliament.gov.za" <gdixon@parliament.gov.za>, "jfubbs@parliamen...
Attachments: 140228 PSIRA NCOP final.doc

Dear Chairperson,

Greetings from the Embassy of Sweden in Pretoria! I am writing in my capacity as Counsellor for Economic and Commercial Affairs at the Embassy of Sweden, to express the Swedish concerns about the implications of the amendments to the Private Security legislation, currently under consideration by your committee. We are following the process closely, and appreciate the time you have already given to this matter in dialogue with my colleagues from the European Union and the UK Trade & Investment.

The reservations expressed in a letter to you by Mr Pougin de la Maisonneuve capture the concerns that we also have, and we support the request to defer the amendments from the committee's consideration.

We are grateful for your attention to this matter. I would highly appreciate if this email could be distributed to all distinguished members of the committee.

Yours sincerely

Sara Aulin

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Dear Chairperson,

Many thanks again for the opportunity to meet and discuss the Private Security amendment bill, and especially its amendment regarding limiting foreign ownership – in presence of several of your colleagues, the Ambassador of Austria and a representative of the UK High Commission in your offices on 18 February.

EMBASSY OF THE
UNITED STATES OF AMERICA

Pretoria, South Africa
February 28, 2014

Dear Mr. Sizane and Mr. Mofokeng:

I am following up on my November 2013 letter to you regarding the proposed 51 percent domestic ownership minimum for private security firms in draft amendments to the Private Security Industry Regulation Amendment Bill (PSIRA). As I stated then, we believe the proposed 51 percent domestic ownership requirement would violate South Africa's commitments under General Agreement on Trade in Services (GATS) and send a negative message to foreign investors. I would also like to reiterate that the United States does not maintain sector-wide restrictive policies on foreign investment for national security reasons. We are open to foreign investment by private security firms and, in fact, the two largest private security firms in the United States are foreign-owned.

I am concerned the Portfolio Committee on Police has re-approved the proposed 51 percent domestic ownership restriction. The proponents of the amendment argued the United States has limitations on foreign investment in industries with national security implications. The briefing note presented to the committee by the government correctly states that, "There are no across-the-board, blanket restrictions on foreign investment in the United States." However, it then notes that "Instead, over the years Congress has believed that certain industries which could affect national security should have limits on

The Honorable

Phumelele Stone Sizani,
Member of Parliament,
ANC Chief Whip,
Cape Town, Republic of South Africa

The Honorable

Tjheta Makwa Harry Mofokeng,
Member of Parliament,
NCOP Chairperson of the Select Committee
on Security and Constitutional Development,
Cape Town, Republic of South Africa

foreign investment.” This is misleading. The United States does not have blanket prohibitions or restrictions on foreign investment in any industry. Though we agree governments should be concerned with the national security implications of foreign investment, we do not restrict foreign investment into any sector based on such concerns. Instead, the U.S. government maintains an interagency committee, the Committee on Foreign Investment in the United States (CFIUS), to examine foreign investments that are notified to the committee with the potential for national security risks. The goal of the CFIUS process is to facilitate investments that may pose national security risks through the negotiation of mitigation agreements on a case by case basis. Only in very specific circumstances, and only on a transaction-specific basis, has the United States intervened to block a proposed foreign investment. This is compliant with our GATS commitments, and investors present most of the cases to the Committee for review themselves.

CFIUS investigations are conducted on a case-by-case basis. CFIUS examines the specific facts and circumstances to determine whether the specific transaction would adversely affect national security and pose a national security risk. Transactions involving foreign control of U.S. businesses that CFIUS has reviewed cover a wide range of industries and present a broad range of national security considerations.

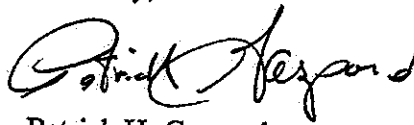
If a transaction presents national security risks, there are options. CFIUS may enter into an agreement with, or impose conditions on, parties to mitigate the risks or may refer the case to the President for action. CFIUS does not have the authority to restrict foreign ownership.

If mitigation is not possible, our President can suspend or prohibit mergers, acquisitions, and takeovers, but this is rare. Between 1998, when CFIUS was established, and 2012 there were 2380 notifications to the Committee, of which 206 were investigated and 15 drew a presidential decision. Of the 15 presidential decisions, only four occurred after 2001. Even mitigation measures are rare. Between 2010 and 2012, only eight percent of investigations resulted in legally binding mitigation measures.

South Africa’s proposed approach to managing national security risks by limiting foreign ownership of all private security firms represents a very different approach in principle and application from that of the United States. South Africa might consider other ways to mitigate national security risks that would not contrast its commitments to GATS or affect foreign investment in the country.

Foreign-owned private security companies have transferred technology, developed skills, and provided employment opportunities to many South Africans and play a critical role in developing the commercial interests of the sector, benefitting the entire industry and the country. Almost all security technology, from alarm systems to CCTV systems are manufactured and distributed by international companies. The proposed amendments could compel many of these companies to divest, leaving skills, capability, and technical support gaps. I strongly urge you to consider the potential negative impacts this draft bill would have. Please do not hesitate to contact my team at the U.S. Embassy in Pretoria or the Consulate in Cape Town if you would like additional information about CFIUS.

Sincerely,



Patrick H. Gaspard
Ambassador

CC:

Chairwoman Annelize van Wyk, Member of Parliament,
Chairwoman Portfolio Committee on Police,
Cape Town, Republic of South Africa

Jenni Irish-Qhobosheane, Secretary of Police
Civilian Secretariat for Police Service,
Pretoria, Republic of South Africa

Xavier Carim, Deputy Director General,
Department of Trade and Industry,
Pretoria, Republic of South Africa

