

**PRESENTATION ON PRIVATE SECURITY INDUSTRY**  
**REGULATION AMENDMENT BILL TO THE**  
**PORTFOLIO**  
**COMMITTEE FOR POLICING**

**PREPARED BY M J HOOD & ASSOCIATES ATTORNEYS  
ON BEHALF OF:**

**SSG OPERATIONAL RISK SERVICES (PTY) LIMITED  
PSIRA REGISTRATION NO. 2087708**

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**EVENTSAFE SECURITY SERVICES C C  
REGISTRATION NO. 2008/171304/23**

**TO: THE HONOURABLE CHAIRPERSON OF THE PORTFOLIO  
COMMITTEE AND MEMBERS**

- 1 We have been mandated by the abovementioned private security service provider to make comment on the proposed Private Security Industry Regulation Amendment Bill (hereinafter referred to as "the Bill").
- 2 A few preliminary points need to be placed before the Portfolio Committee for discussion. The writer would like the opportunity to make a personal presentation to the Portfolio Committee, should public hearings be held.
- 3 There is an attitude of distrust between the Private Security Industry Regulatory Authority ("the Authority") and the private security industry. This has resulted in a number of instances in litigation where the authority has been found to be in default of proper administrative procedures and has been found to be non compliant with the Promotion of Administrative Justice Act.

4 The Authority itself is at present dysfunctional and our instructions are that there is an urgent need to address the atmosphere of distrust that in essence has been created by the failure of the Authority to effectively communicate with the industry that it is supposed to control and that proper consultation must take place with essential role players within the industry.

5 A simple example of the lack of communication is that the explanatory note attached to the back of the Bill on page 20, states:

*"The draft Amended Bill was also a product of an open and transparent consultative process."*

6 This is simply incorrect. The writer has consulted the South African Intruder Detection Association, the Security Industry Alliance and numerous individual role players (many of whom he represents) and they have all confirmed that there has been no consultation with these entities concerning the Bill.

- 7 This is of great concern to the industry and besides not being in good faith and being in conflict with the Constitution, re-enforces the attitude of mistrust and antipathy.
- 8 We would therefore urge that a reasonable time be allocated to open and transparent hearings on the contents of the Bill.
- 9 The legislators are to be congratulated that steps have been taken to remedy a number of actual problem areas in the private security legislation to increase control over and in the industry. It is essential however that unintended consequences be avoided should amendments be made to the Act, without proper consideration of what their long terms effects would be.
- 10 It is to be borne in mind that the private security industry is one of, if not the largest, single employer per industry in the Republic of South Africa. Whilst it is essential that such an industry be regulated, such regulation must not constitute a bar to entry, i.e the industry must be as accessible as possible to promote employment and redress post discrimination, particularly at entry level.

- 11 It should also be borne in mind that legislation should be as precise and comprehensive as possible and utilize the principle that the legislation is intended to exclude what cannot be done as opposed to state what merely can be done, because this will allow the legislation to be more precise in its intent and purpose.
- 12 The use of regulations should be discouraged and minimized. In an open and democratic society, all law making should be scrutinized by Parliament and the relevant Portfolio Committee and the giving of broad sweeping and unspecified powers to any Minister must be discouraged, particularly where it may have a negative impact on business.
- 13 This will minimize misunderstandings and legal challenges to regulations that the industry may perceive to be unlawful or *ultra vires*.

## **PARTNERSHIPS**

- 14 There are some positive aspects of the Bill that must be recognized and expanded upon. There has been several failed

initiatives between the South African Police Services and the private security industry to promote crime prevention partnerships.

- 15 The Bill provides that the authority promotes crime prevention partnerships with organs of State.
- 16 The Minister should be given the power to proclaim such partnerships, not only with a view of fostering a better co-operation between the public and the private sector, but with the intent to cut down on and eradicate crime.
- 17 One of the most important ways in which such partnerships can be promoted and implemented is the giving of selected categories of security officers some of the powers conferred upon the South African Police Services in terms of the Criminal Procedure Act. In particular, selected categories of security officers should be given expanded powers of arrest, search and seizure.
- 18 We now need to examine certain selected parts of the Bill.

- 19 We would suggest that the drafters of the legislation place before the Portfolio Committee the rationale for each of the amendments and the projected purpose they seek to achieve.
- 20 For example, if one has reference to the proposed amendment to the definition of "security officer", we must be aware that a potential unintended consequence of the proposed amendments is that the informal car guarding industry that exists at most established shopping centres may fall within this amended definition, when it may not have been the intention of the legislator to do so. This may have a negative impact on informal sector employment.
- 21 With reference to the proposed amendment to the definition of "security service", paragraph (h), the inclusion of ".....*distributing or transporting security equipment*", this will be extremely onerous on sectors of industry (the transport industry) that merely service the security industry, but do not make up part of the security industry. For example, it would be patently ridiculous to suggest that the board members of Transnet be registered as Grade A or Grade B security officers, but should Transnet transport any security equipment, then it

appears that this would be necessary.

- 22 In respect to the proposed amendment of Section 3, this amendment is to be applauded, but it needs to be refined to give content and direction to exactly what type of crime prevention partnerships can be entered into.

## **LIMITATION ON FOREIGN OWNERSHIP OF SECURITY COMPANIES**

- 23 This is going to be an extremely contentious part of the proposed amendments.
- 24 If one has reference to the explanatory notes of the drafters on page 19, they state:

*"The challenges of the Private Security Industry manifested themselves in many ways which included, lack of adequate resources which compromised effective regulations, the threat to increased national security posed by the participation of foreign nationals.....".*

- 25 We call upon the drafters to explain this perceived xenophobic threat, because our instructions are that there is no security risk or risk to national security by foreign ownership whether in part or in full of registered security companies. If the drafters of the Bill have concrete evidence of this threat, then it must be disclosed. It is the writer's instructions that not only is there no such threat to national security, but that this statement is a statement designed to mislead the Portfolio Committee into accepting a need to make radical changes to the Act, where no such need exists and where a threat to national security is non-existent. Evidence must be produced to substantiate this.
- 26 We have used the example of Transnet, but large international companies, particularly electronics companies, manufacture, distribute and transport systems or components that are used in the security industry. To suggest that international companies such as Samsung or Siemens must have 51% local ownership, will not be well received by the companies themselves and investors in those companies, particularly if they are listed on foreign stock exchanges. This may result in disinvestment.

- 27 It must be borne in mind that some security companies might be owned in part or in full by a listed company. It will be impossible in such circumstances to dictate that 51% of a listed company must be locally owned, because the shares are freely traded on the Johannesburg Stock Exchange and there is no control over who buys or sells such shares.
- 28 This concept of local ownership must be carefully revisited and a proper assessment needs to be done of the potential adverse financial consequences of such proposal.
- 29 South Africa does not make up a large part of the overall world market and this may well result in commercial decisions being made that will result in the withdrawal of certain industries or manufacturers from the South African market with a consequent loss of jobs. It is patently ridiculous in an unattended consequence that for example Phillips or Siemens, because a small part of their production is electronics testing for the security industry, that they must be 51% locally controlled and owned.

- 30 The proposed sub-section 2(a) is extremely dangerous in as much as it is proposed that the Minister be given the power, based upon the security interests of South Africa. This in effect gives the Minister the power to make decisions without any form of Parliamentary or public scrutiny under the guise of national security, particularly in the light of the impending Protection of Information Act. This in effect makes the Minister unaccountable to anybody. This falls back to Apartheid style legislation.
- 31 There are no guidelines contained in the Act as to how the Minister should make such a decision and what factors he should take into account when coming to such a decision.
- 32 Likewise, the proposed amendment to Section 23 confers upon the Minister effectively an unfettered discretion to prescribe requirements for the infrastructure and capacity of a security business to render a security service.
- 33 This may well conflict with Section 22 of the Constitution (Freedom of Trade Occupation and Profession) as read with the Section 36 limitation clause of the Constitution, because it is an unfettered power conferred upon the Minister, without

reasonable or defined limitation.

- 34 An unintended consequence of this may also be that start-up companies, particularly those owned and/or managed by previously disadvantaged individuals, may not be able to meet the start-up criteria prescribed by the Minister and an unintended consequence may be that black ownership of and the participation in the security industry may be limited and ultimately frustrated.

Should the Portfolio Committee require any further comment or amplification on what is contained herein, the writer will gladly address such concerns.

Yours faithfully

**M J HOOD**  
**M J HOOD & ASSOCIATES ATTORNEYS**