



# AMERICAN CHAMBER OF COMMERCE

IN SOUTH AFRICA (NPC)

## AMERICAN CHAMBER OF COMMERCE (AMCHAM) SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON POLICE REGARDING THE PRIVATE SECURITY INDUSTRY REGULATION AMENDMENT BILL

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### 1. Introduction to Amcham

The American Chamber of Commerce in South Africa (AmCham) represents 250 American companies in South Africa, 60 of which are Fortune 500 companies. These companies contributed over R62.7 billion (portfolio investments: R568.7 billion) to the South African economy in 2010<sup>1</sup> and employ more than 120 000 South Africans directly.

AmCham strives to make a positive contribution to position South Africa as a globally competitive destination to attract scarce foreign direct investment. AmCham supports the objectives of the New Growth Path and the National Development Plan which target job creation as a key element in achieving growth of the South African economy. We laud the South African government's stance that it has a critically important role to play in accelerating social and economic development through effective regulation of markets and we also recognize the role of the private sector in assisting the South African government to reach its goals.

It is with this mindset that AmCham is providing commentary on the Private Security Industry Regulation Amendment Bill 2012 (PSIRA) and we thank the Department of Police and the Parliamentary Portfolio Committee on Police for this opportunity.

### 2. Background on the PSIRA Amendment Process

The South African Cabinet approved amendments to the Private Security Industry Regulation Act of 2001 drafted by the Ministry of Police in May 2012 and forwarded them to Parliament. A Cabinet statement noted that the amendments were undertaken to "address gaps that are caused by the lack of effective regulation of the private security industry, in particular, the threat to national security posed by the participation of

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<sup>1</sup> South African Reserve Bank Quarterly Bulletin, December 2011

foreigners.” We submit that there are both positive and negative aspects to the amendments and we will draw attention to these.

### **3. Review of the Private Security Industry in South Africa**

The United Nations Office on Drugs and Crime (UNODC) Expert Group on Civilian Private Security Services reported in October 2011 that globally the size and role of the civilian private security industry has grown dramatically in recent years. South Africa reported a growth from 115,000 in 1997 to 390,000 in 2010. In India, there are 7 million security personnel, outnumbering police officers 4.98 to 1. In South Africa this ratio is 2.57, in the U.S. 2.26, and in Australia 2.19.

The industry is now the second largest employer after the mining sector, with 412,000 active employees (this number includes management and technicians such as alarm installers). The number of 1.8 million cited by the regulatory authority includes non-active security officers.

Many large South African companies, including some listed on the Johannesburg Stock Exchange, have ownership interests in private security firms. Some ANC members have ownership interests in such firms. Private security firms provide the majority of security to residential neighborhoods and commercial business properties, all cash transfer services, and security for key national facilities including ports, airports, judicial institutions, and some police stations, all of which were formerly police functions.

Foreign-owned firms participate in the “guarding” market and currently make up 20-30% of the market.

The Private Security Industry Regulation Act was passed in 2001 to establish standards for private security organizations. The Act includes provisions for security guard codes of conduct and the appointment of inspectors to investigate claims of improper behaviour. To administer these regulations, the Act provided for the establishment of the Private Security Industry Regulatory Authority (PSIRA). Security providers must be registered with the PSIRA to “render a security service for remuneration, reward, a fee or benefit.”

Although many security companies are registered with PSIRA, there is a concern regarding the number of unregistered and non-compliant businesses, which lead to fly-by-night companies that do not pay the minimum wage to their workers, resulting in them undercutting the market, and thus making it difficult for the registered companies to compete fairly. These fly-by-night companies provide services that are below standard, further reflecting negatively on the image of the security industry. There may be as many as 200,000 unregistered security officers working within the industry.

### **4. Comment on the Private Security Industry Regulation Amendment Bill 2012**

The PSIRA Amendment Bill, 2012, seeks to:

- Regulate foreign ownership and control of private security businesses in South Africa
- Regulate operations of security firms outside the borders of South Africa
- Provide for the role of the Regulatory Authority in promoting crime prevention partnerships with state entities



- Provide for accountability of a Council of Authority, including the formulation of regulations on the transportation of cash and other valuables
- Provide for a separate database on firearms issued to security service providers
- Provide for limitations on the participation of individuals with criminal records
- Ensure that the PSIRA receives state funding

To mitigate the perceived “threat to national security” allegedly posed by foreign ownership, the amendments stipulate that South African citizens must own at least 51% of any private security company registered in South Africa. Companies whose majority ownership is non-South African will be given a period of five years to meet this requirement.

#### **4.1 Positive Aspects contained in the Legislation**

- The amendments change the way the regulator will be funded and operate. It will gain status as an “organ of the state” which brings access to government funding and fiscal oversight. Funding currently comes from the companies and each individual registered as a “security officer.” The industry believes this change in status will alleviate pressures on the regulator and allow it to do its job rather than worry about budget.
- The amendments also recognize that the industry provides more than guarding services. Guarding, installation of electronic systems, armed reaction, and cash-in-transit are covered by the new legislation, which allows for unique and tailored regulations for the different sectors.
- Enforcement of the regulations will be through joint accountability for compliance by providers and customers. The burden currently lies solely on providers, so this proposed change is welcomed.
- Given the history of some mercenary activities originating from South Africa, industry representatives are unanimous that the additional limitations proposed in the draft legislation are positive. (They point out that cases that have occurred were masterminded by or included participation of South Africans and were not instigated by foreigners, let alone foreign-owned private security companies.)

#### **4.2 Negative Aspects**

- The amendments require that any private security company registered in South Africa must be 51% owned by “South African citizens” within 5 years of passage of the legislation. All sectors of the industry must meet this requirement including companies providing guarding, cash-in-transit services, installation of electronics, locksmithing, fire protection, and transport of security equipment. Companies that manufacture electronic security equipment are also required to meet this requirement.
- The vagueness of the legislation lends itself to interpretation. It provides for exemptions, with no detail about who would qualify or how to obtain them. There is no clarity regarding what happens to existing investments.

- Who will benefit if ownership interests are sold pursuant to this legislation? Who might be the logical purchasers? Several of the locally owned private security firms have strong political connections.
- Much of the security technology installed around South Africa, including at key points, involves foreign-sourced electronics. This raises concern about what could happen if support for existing equipment is limited or cut off by the new regulations limiting foreign participation.
- Many of the companies providing electronic equipment are also IT companies. The draft legislation is unclear regarding whether the ownership requirement applies to the company as a whole or only those aspects dealing directly with security.

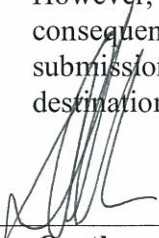
#### **4.3 Possible International Violations of the Proposed Amendments**

- Concern is raised as to whether the proposed amendments are consistent with South Africa's World Trade Organisation (WTO) General Agreement of Trade in Services (GATS) commitments, where South Africa has undertaken full market access (Article XVI) and national treatment commitments (Article XVII) with respect to "investigation and security" services. As a result, private companies of other WTO members must be able to provide these services without restriction (on the level of foreign equity or otherwise) and on terms no less favorable than those applicable to locally owned firms.
- Limiting foreign ownership will send negative signals to other foreign investors, at a time when South Africa is actively seeking foreign investment as part of its industrial growth plan.
- Compelling firms to sell 51% ownership to South African citizens within the five year timeframe could result in oligopolies as the number of companies decreases. While there is a fairly large number of private security companies registered in South Africa, the number capable of buying out the interests of large firms is limited. The result will be more concentrated ownership which is less than ideal.

#### **5. Conclusion**

Amcham supports Government's move to regulate and monitor the private security industry.

However, we are of the view that this legislation will give rise to many unintended consequences. We urge Government to take into account the concerns raised in this submission to ensure that South Africa's reputation as a country which is an attractive destination for foreign direct investment remains unblemished.




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**Donna Oosthuysen**  
President

5 October 2012