Section 1 (b) – Regulating the definition of a "locksmith"	**Specific Concerns** The inclusion of the provision at 1 (b) (e) which deals with locking systems by means of a specialised device in any manner may have the unintended consequence of extending the mandate and jurisdiction of PSIRA to include regulation of persons and companies that are involved in the IT industry insofar as they deploy electronic and software based locking systems.
	Recommendations The Alliance proposes an alternative wording as follows: "locksmith" means a person who, for the benefit of another person, engages in any activity or business which is related to the opening, closing or engaging of locking mechanisms of any nature, by means of lock picking or other tools or specialised devices, or who duplicates or copies keys from a sample, or originates keys, access cards, discs, tags, or other objects which are used to unlock, close, release or engage locking mechanisms, by means of tools including electronic devices, key cutting machines, files or other equipment or any other specialised devices designed for the purpose of originating, electronically enabling or copying keys, access cards, discs, tags, but does not include the manufacture of keys in bulk by or for lock manufacturers.
Section 1 (j) (h) – Defining a security service	**Specific Concerns** The extension of the definition of a security service those persons or companies involved in the distributing or transporting of security equipment will have the consequence of including persons and companies involved in the road freight industry such as couriers, freight forwarders and other such businesses into the security industry as service providers of security services. It is our view that this over-extends the mandate of PSIRA in the Private Security Industry.
	Recommendations These extensions to the definitions should be removed from any finally promulgated legislation.
Section 1 (k) (IA) – Defining a Security Service	**Specific Concerns** The new provisions seek to expressly include those security activities involved with the Cash/Assets in Transit sub-sector of the private security industry. Whilst in general, the Alliance welcomes the more express and tailored approach to regulating different activities within the industry, the definition in this clause insofar as it includes "other valuables" is too wide. This would possibly have the unintended effect of rendering the transportation of ostensibly "valuable" items such as cigarettes, cellular telephones, computer equipment, and many other such items; a security service. This in our view over-extends the mandate of PSIRA in regulating the Private Security Industry.

	Recommendations The definition of which valuables will fall under the ambit of the Act and therefore be the subject of regulation by PSIRA should be more clearly defined, so as to limit regulation to those activities that are involved in the secure transportation of cash and other such instruments that are regulated under the legislation of the South African Reserve Bank.
Sections 20, 23 and 35 – Seeking to regulate and limit foreign ownership in the Private Security Industry	**Specific Concerns** The provisions set out in the Bill that seek to amend Section 20 and 23 such that they regulate and limit foreign ownership are both unconstitutional and are in breach of South Africa's international obligations under the General Agreement on Trade in Services (GATS) which is applicable to all countries that are members of the World Trade Organization (WTO), South Africa's international obligations under the 1994 Agreement for the Promotion and Protection of Investments Between the Government of the United Kingdom and Northern Ireland and the Government of the Republic of South Africa, in particular Article 2 which provides that :investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party"; and South Africa's international obligations under the 1999 Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part. It is our view that the proposed amendments are inconsistent with the Constitution and invalid because: • They are irrational and therefore in breach of the rule of law • They constitute an arbitrary deprivation of property in violation of section 25(1) of the Constitution and; • They amount to constructive expropriation and give rise to an uncompensated expropriation of property in violation of Section 25 (2) (b) of the Constitution *Irrationality* • There is no rational connection between this proposed legislative provision and a legitimate government purpose; • In this case, the legislature seeks to introduce amendments to the Act which will extend the requirements for registration as a security service provider to include a majority stake in the ownership and control of security businesses by South African citizens. By expanding the definition of security services to include the distribution and transportation of security equipment, the legislature also intends to extend this requirement to businesses which have never previously been regulated by the Act. • It is not entirely clear at this stage what the rationale behind the proposed amendments to the Act are. An explanatory memorandum accompanied the Bill. Although no explanation is given in that memorandum in relation to any of the specific clauses of the Bill, in the background section of the memorandum it is recorded that the amendments are a product of concerns about "the threat to increased national security posed by the participation of foreign nationals". A number of media reports indicate that the Ministry of Police believes that foreign-owned private security companies pose a threat to the national security because there are more private security officials in the country than there are police officers and soldiers combined. • If this is, in fact, the motivation behind the amendments to the Act then the amendments are irrational.

	• Moreover, if the aim sought to be achieved by the Bill is the protection of national security from alleged threats posed by the number of private security officials, then introducing a requirement of South African citizen ownership of security businesses will have no impact whatever on the comparative numbers of private security officials as compared with police officers. This is because imposing an ownership requirement on security businesses has no direct impact on who is employed by those businesses to act as security officials. If what the Bill seeks to do is protect the police against an expanding number of private security officials, then the way to achieve that objective is to place restrictions on who may be registered as a private security official. Imposing a requirement of ownership at the shareholder level of a company which conducts a security business has no impact whatever on the individuals who will be performing the security services. • In any event, as the Act already stands, there are detailed requirements for the registration by natural persons as security service providers. There are also requirements that the directors of a security business, as well as the people who undertake executive and management functions in the business, themselves be registered as security service providers. In order to be registered as a security service provider, a person must be a South African citizen or a permanent resident. • The absurdity of the mechanism which has been employed in the Bill to seek to protect the police force against the increasing number of private security providers, is most evident when one considers its impact on the breadth of businesses which are now caught within the ambit of the Act. If the expanded definition of security service is incorporated in the Act, not only those persons who are involved in the installation, repair and servicing of security equipment, but also those businesses which are responsible for distributing and transporting that equipment will have to be 51% owned and controlled by South African citizens. In addition, all businesses involved in guarding, cash-in-transit services, locksmithing, fire protection and the distribution of security equipment, such as Sony, Panasonic and Siemens, will have to restructure their shareholding to ensure majority ownership by South African citizens. This restructuring at the shareholder level of these businesses will have no impact whatever on the number of security officials registered under the Act to provide security services and therefore, it will have no impact at all on the governmental objective of protecting the police force against the increasing number of private security providers. • The irrationality of the proposed amendments is not cured by the power given under section 23(6) of the Act to the Authority to register an applicant as a security service provider in circumstances where the requirements of subsections (1) or (2) are not met. This is because, as the reasoning above makes plain, it would be irrational, *in all cases*, to require of a security business that it be majority owned by South African citizens before it may be registered as a security service provider. Because there is no link between this requirement for registration and any legitimate government purpose, it will always be the case that a business, which applies to register as a security provider but does not have 51% South African citizen ownership, should be registered by the Authority. In other words, because there is no rational basis for the requirement of ownership by South African citizens, in every single case where a business applied for registration but was not 51% controlled or owned by South African citizens, the Authority would be bound to register the business. This is not, however, what section 23(6) provides. It does not require the Authority to register such applicants. Instead, it vests the Authority with a discretion to do so on good cause shown. The creation of such a discretion presupposes that there will be some cases in which it should be exercised in favour of an applicant and others in which it should not. Because of that necessary feature of a discretion, it cannot cure the irrationality of the requirement that all businesses seeking to be registered as security service providers be 51% owned or controlled by South African citizens.

	Arbitrary Deprivation of Property • If the amendments proposed in the Bill are adopted, foreign and juristic shareholders of security businesses will be required to sell their shares within a five year period in order to ensure that the businesses are 51% owned and controlled by South African citizens. This would constitute a forced sale of shares and, given that the sale will be made at a time when the market would know that the sale had to take place, it is unlikely that the sellers would receive a fair market value for those shares. In the circumstances, the forced sale at a less than fair market value of the shares would constitute a deprivation of property. • For all the reasons given in the previous section, there would be no sufficient reason for that deprivation because there is no link between protecting the police force from increasing numbers of private security officials and a requirement at the shareholder level of businesses that they be 51% owned and controlled by South African citizens. • The amendments would therefore constitute an arbitrary deprivation of property and be in violation of section 25(1) of the Constitution. Unlawful Expropriation • The proposed amendments may also constitute an invalid expropriation. • An expropriation is generally interpreted as involving a public authority taking property for a public purpose. In this case, the effects of the amendments proposed in the Bill would not be to vest in the state, the property which is taken from the shareholders of security businesses which are forced to sell their shares. Instead, that property would be acquired by the purchasers of the shares, that is, by South African citizens. The Bill makes no provision for the payments of compensation to the shareholders who are forced to relinquish their ownership in the security business concerned. • The provisions of these amendments are in violation of Section 25 (2) of the Constitution and thus amount to unlawful expropriation.
	Recommendations It is recommended that all of these provisions be removed prior to the promulgation of the Bill
Section 23 (1) (a) – The preclusion of persons with permanent residence from being registered	**Specific Concerns** There is no rational basis for arbitrarily precluding a person who is a permanent resident in South Africa from participating in employment opportunities within the sector.
	Recommendations This provision should not be amended.

Section 26 (1) and (5) - Providing for the suspension of security services providers	**Specific Concerns** The grounds upon which security service providers can be suspended have been expanded to include contraventions of the Levies Act. Whilst in principle the strengthening of the powers of PSIRA to deal with non-compliance is welcomed, we are concerned about the possible arbitrary undue exercise of suspensions, in particular when related to payment of levies.
	Recommendations We believe that in all circumstances, the suspension of a security service provider is an administrative act as envisaged under the Promotion of Administrative Justice Act (PAJA) and should thus be subject to fair process prior to being applied. These provisions should be amended accordingly.