

PRIVATE SECURITY SERVICES ACT, 2015

No. 11



of 2015

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An Act to provide for the regulation of the private security services industry and for matters connected or incidental thereto.

Date of Assent: 29.09.2015

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Private Security Services Act, 2015, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“Board” means the Private Security Services Licensing Board established under section 3;

“licence” means a private security service licence issued under section 19;

“licensee” means a person issued with a licence under this Act;

“member” means a member of the Board;

“private security service” includes —

- (a) protecting or safeguarding a person or property in any manner;
- (b) giving advice on the protection or safeguarding of a person or property, or on the use of security equipment;
- (c) providing a reactive or response service in connection with the safeguarding of a person or property;
- (d) providing a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or any similar purposes;
- (e) manufacturing, importing, distributing or advertising of monitoring devices or surveillance equipment;
- (f) performing the functions of a private investigator;
- (g) providing security training or instruction to a security service provider or prospective security service provider;

- (h) installing, servicing or repairing security equipment;
- (i) monitoring signals or transmissions from electronic security equipment;
- (j) performing the functions of a locksmith;
- (k) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in the above paragraphs to another person; and
- (l) managing, controlling or supervising the rendering of services referred to in paragraph (a) to (j).

“private security service provider” means a person who renders a security service to another for a remuneration, reward, fee or benefit;

“secretary” means a person appointed under section 4;

“Security Association” means a body registered under the Societies Act, which shall not comprise of less than 30 security services providers registered under the Companies Act;

Cap. 18:01

Cap. 42:01

“security equipment” means —

- (a) an alarm system;
- (b) a safe, vault or secured container;
- (c) a satellite tracking device, closed circuit television or other electronic monitoring device or surveillance device;
- (d) a device used for intrusion detection, access control, bomb detection, metal detection, x-ray inspection or for securing telephone communications;
- (e) a specialised device used to open, close or engage locking mechanisms;
- (f) a specialised device used to reproduce or duplicate keys or other objects which are used to unlock, close or engage locking mechanisms; or
- (g) any other equipment as may be prescribed;

“security guard” means any person —

- (a) who is employed by another person, and who receives or is entitled to receive from such other person any remuneration, reward, fee or benefit, for rendering one or more security services;
- (b) who assists in carrying on or conducting the affairs of a security service provider, and who receives or is entitled to receive from such other security service provider, any remuneration, reward, fee or benefit, in respect of one or more security services;
- (c) who renders a security service under the control of security service provider and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for such service; or
- (d) whose services are directly or indirectly made available by a private security service provider to any other person, and who receives or is entitled to receive any remuneration, reward, fee or benefit for rendering one or more security services; and

“Security Officers Association” means a body registered under the Societies Act, which adequately demonstrates to the Minister that it is representative of the majority of security guards working in Botswana at any given time.

Part II — *Establishment of Private Security Services Licensing Board*

Establishment
of Private
Security
Services
Licensing
Board

3. (1) There is hereby established a Private Security Services Licensing Board to perform the functions under this Act.

(2) The Board shall consist of the following members appointed by the Minister —

- (a) three representatives of Government;
- (b) two representatives of the private sector;
- (c) two representatives of the Security Association, elected by the Association upon notification from the Minister to elect members;
- (d) two representatives of the Security Officers Association, elected by the Association upon notification from the Minister to elect members; and
- (e) two additional members from the public.

(3) The Minister shall appoint the Chairperson of the Board from amongst the members.

(4) The members shall appoint the Vice Chairperson of the Board from amongst the members.

(5) The Minister shall appoint a member where the Security Association or Security Officers Association fails, neglects or refuses to elect a member, within 21 days of notification by the Minister to elect a member, in accordance with sub-section 2 (c) and (d).

Secretary of
Board

4. (1) The Minister shall appoint in writing, any public officer with the relevant qualifications and experience to be the secretary to the Board.

(2) The secretary to the Board shall attend the meetings of the Board but shall have no right to vote, and shall be responsible for the accurate and complete recording of the proceedings and decisions of the Board.

Functions of
Board

5. The Board shall —

- (a) receive applications for licences, verify information contained in the applications or submitted with the applications, and issue licences in accordance with this Act;
- (b) set the minimum standards of training for security service providers and security guards and ensure compliance with the minimum standards;
- (c) encourage and promote efficiency in and responsibility within the private security service industry;
- (d) set a code of conduct for private security service providers and ensure compliance with the code of conduct;
- (e) promote the protection and enforcement of rights of security guards and other employees in the security service industry;
- (f) ensure compliance with existing legislation by security service providers through active monitoring and investigation of the affairs of security service providers;
- (g) protect the interests of users of security services;
- (h) receive reports of inspections undertaken by inspectors under section 27; and
- (i) within two months of the end of each financial year, submit to the Minister a comprehensive report on its operations during that financial year.

Tenure of office

6. A member shall hold office for a period not exceeding three years, and shall be eligible for reappointment for a further term of three years.

7. A person shall not be appointed as a member of the Board or be qualified to continue to hold office if he or she —

Disqualification
of members

- (a) has in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment to, arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has within the period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for a term of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

- (c) is a member of the National Assembly, a Councilor in a local authority or the holder of an office in a political party.

8. (1) The Minister may, in writing, suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, the member shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

Removal from
office

(2) The Minister may remove a member from the Board if the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
- (d) has failed to comply with the provisions of section 14 and section 15; or
- (e) has been convicted of an offence under this Act.

(3) A member may resign from office by giving 30 days notice in writing, to the Minister.

(4) For the purposes of subsection (2) (c), “misconduct” includes any act done without reasonable excuse by a member which —

- (a) amounts to a failure to perform in a proper manner, any duty imposed on the member as such;
- (b) is prejudicial to the efficient carrying out of the functions of the Board; or
- (c) tends to bring the Board into disrepute.

9. A member shall vacate his or her office and his or her office shall become vacant —

Vacation of
office

- (a) if the member becomes disqualified, in terms of section 7, to hold office as a member or is removed in terms of section 8 (2);
- (b) where a period of 30 days has elapsed from the date the member is given notice, in writing by the Minister to vacate office;
- (c) on the expiry of one month’s notice in writing, to the Minister of the member’s intention to resign from office;
- (d) where the member appeals after a period of 30 days from the date a ruling against the member is made on an appeal in respect of a conviction against the member in terms of section 7 (b); or
- (e) where the member does not appeal within a period of 30 days from the date the member was convicted of an offence referred to in terms of section 7 (b).

Filling of vacancy	<p>10. Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint another person to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.</p>
Remuneration and allowances	<p>11. A member shall be paid such remuneration, and such travelling expenses, incurred in connection with his or her service on the Board, if any, as the Minister may determine.</p>
Proceedings of Board	<p>12. (1) Subject to the provisions of this Act, the Board shall regulate its own proceedings.</p> <p>(2) The Board shall meet for the transaction of its business at least four times in a year.</p> <p>(3) A meeting of the Board may be called by the Chairperson on giving notice, in writing, of not less than 14 days and shall be called if not less than one half of the members so request in writing.</p> <p>(4) Where the urgency of any matter does not permit the giving of notice of 14 days, a special meeting may be called giving a shorter notice.</p> <p>(5) The quorum at any meeting of the Board shall be a simple majority of the members of the Board.</p> <p>(6) There shall preside at any meeting of the Board —</p> <ul style="list-style-type: none"> (a) the Chairperson; (b) in the absence of the Chairperson, the Vice Chairperson; or (c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting. <p>(7) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.</p> <p>(8) The Board may invite any person whose presence it considers necessary, to attend and participate in the deliberations of a meeting of the Board, but the person shall not have a vote.</p>
Committees	<p>13. (1) The Board may, for the purpose of performing its functions, establish such committees as it considers appropriate, and may delegate, to any such committees, such of its functions as it considers necessary.</p> <p>(2) The Board may appoint to the committees, such number of members of the Board and such number of persons with specialised skills, not being members of the Board, as it considers appropriate, and the members of the committees shall hold office for such period as the Board may determine.</p> <p>(3) The members of the committees who are not members of the Board may take part in the proceedings of the committees, but shall not have the right to vote.</p> <p>(4) Subject to the specific or general directions of the Board, a committee established under this section may regulate its own procedure.</p> <p>(5) The chairperson of any of the committees shall be a member of the Board.</p> <p>(6) The Board may revoke or amend any delegation made under subsection (1) and may attach conditions to such delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.</p>

(7) Meetings of a committee shall be held at the times and places as the committee may determine, or as the Board may direct.

(8) The provisions of sections 11 shall apply with any necessary modifications, to the members of a committee.

14. (1) If a member is present at a meeting of the Board or any committee of the Board at which any matter in which the member or his or her immediate family member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching on the matter.

Disclosure of interest

(2) For the purposes of this section "immediate family member" means the spouse, son, daughter, sibling or parent of the member.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member, or his or her immediate family member, such decision shall be null and void to the extent that it benefits such member or family member.

(5) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding twelve months, or to both.

15. (1) A member and any other person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of their terms of office or their mandates.

Confidentiality

(2) Any member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding twelve months, or to both.

Part III — *Private security services licences*

16. (1) No person shall establish or carry on the business of providing security services unless such person is issued with a licence by the Board.

Private security services to be licensed

(2) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding twelve months, or to both.

17. (1) An application for a licence to carry out a private security services shall be made to the Board, in the prescribed form and accompanied by the prescribed fee.

Application for licence

18. (1) Where an application for a licence, in terms of section 17, is lodged with the Board, the Board shall consult the Commissioner of Police and may make whatever investigations it thinks fit and shall, having regard to the interests of the public, thereafter determine the application.

Investigations by Board

Issue of licence	<p>(2) Where the Commissioner of Police is of the opinion that the interests of the public might otherwise be prejudiced, the Commissioner of Police may require the Board to treat as confidential, any information provided by him or her in consequence of any consultation required by this section.</p> <p>19. Where the application meets the requirements of this Act, the Board shall issue a licence for the provision of private security services subject to any condition, if any, in such form as may be prescribed.</p>
Restriction on provision of security guards	<p>20. (1) A person who is issued with a licence under this Act shall not, in the course of engaging in or carrying on the business in respect of which the licence is held, employ a person as a security guard, without the written permission of the Board if the person has a conviction of which dishonesty is an element, within or outside Botswana or criminal proceedings are pending against him or her within or outside Botswana and the licence holder knows or suspects the same.</p> <p>(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding three months, or to both.</p> <p>(3) Where, on the trial of any person for an offence in terms of this section, it is proved that at the material time the person employed as a security guard had a conviction or criminal proceedings pending against him or her, it shall be presumed that the accused person then knew or suspected the same, unless the contrary is proved.</p>
Application for Board's permission	<p>21. A request for a permission to employ a person as a security guard under section 20, shall be made to the Board, in the prescribed form and accompanied by the prescribed fee.</p>
Reservation of trades and businesses for citizens	<p>22. (1) The Minister may, by regulations, reserve certain trades or businesses in the security service industry for citizens of Botswana.</p> <p>(2) Regulations made in accordance with subsection (1) may further provide that only citizens of Botswana shall be entitled —</p> <p>(a) to carry on as security service providers in such areas in the country as may be prescribed; or</p> <p>(b) to engage in certain security services.</p> <p>(3) Notwithstanding the provisions of subsection (2), where it is necessary to do so, the Board may approve the operation of a joint venture business between a citizen security service provider and a non-citizen security service provider.</p>
Disclosure of criminal convictions to Board	<p>23. (1) Where a licensee or a partner or director of a licensee company is convicted of a criminal offence within or outside Botswana punishable by imprisonment for six months or more or has criminal proceedings instituted against him or her within or outside Botswana, he or she shall lodge forthwith with the Board a written statement disclosing such convictions or the institution of such proceedings and the particulars of the proceedings.</p> <p>(2) Any person who, with intent to deceive the Board, fails to lodge with the Board a written statement or lodges a falsified statement, as required by subsection (1), commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding twelve months, or to both.</p>
Suspension or cancellation of licence	<p>24. (1) The Board may, where it considers it to be in the public interest, suspend provisionally, pending further investigation, any licence issued under this Act.</p>

(2) The Board may, on the completion of an investigation and where it considers it to be in the public interest, suspend any licence issued under this Act for a period specified in the suspension notice.

(3) The Board may cancel a licence if it is satisfied that the licensee —

- (a) has been convicted of an offence within or outside Botswana punishable by imprisonment for six months or more;
- (b) has been convicted of an offence under this Act;
- (c) has failed to comply with any condition attached by the Board to the issuance or renewal of the licence or to the grant of the Board's permission in terms of section 20;
- (d) has failed to pay a judgment debt against himself or herself for damages sustained by reason of an act or omission of his or her or of an employee of his or her occurring in connection with the business in respect of which the licence is held;
- (e) has, in respect of any information required by or under this Act to be provided to the Board, included or knowingly caused to be included therein any information which he or she knew to be false or did not believe to be true or knowingly omitted or caused to be omitted therefrom any material information; or
- (f) has neglected or refused to provide information to the Board as required under this Act.

25. (1) The Minister shall appoint an Appeals Committee which shall consist of five members, who possess suitable qualifications and have the relevant experience.

Appeals
Committee

(2) The members of the Appeals Committee shall elect, from among their number, a Chairperson.

(3) A person aggrieved by the Board's decision —

- (a) not to issue or renew a licence;
- (b) to suspend or cancel a licence; or
- (c) to grant a permission,

may appeal, in writing, to the Appeals Committee within 30 days of notification of the decision.

(4) The provisions of sections 11, 14 and 15 shall apply, with the necessary modifications, to the members of the Appeals Committee.

(5) Before determining an appeal under this section, the Appeals Committee shall give the Board a reasonable opportunity to submit its own written submissions in connection with the appeal and may give both the appellant and the Board a reasonable opportunity to make oral submissions before it.

(6) In determining an appeal under this section, the Appeals Committee shall give due consideration to every submission made to it by virtue of this section and shall thereafter proceed to confirm, reverse or vary the decision of the Board against which the appeal is brought and may make any decision in respect of the subject matter of the appeal that the Board might have made and the Board shall comply with the order of the Appeals Committee.

Part IV — *Inspectors*

Appointment of
inspectors

26. (1) The Minister may appoint such public officers, as the Minister considers necessary, to be private security inspectors.

(2) Notice of the appointment of every inspector shall be published in the *Gazette*.

(3) An inspector shall be furnished with an identity card and shall, when performing any of his or her duties, if so required by any person to whom this Act applies, produce the identity card.

(4) An inspector shall not disclose to any person the details of any manufacturing, commercial, or working process which may come to the inspector's knowledge in the course of his or her duties, except —

- (a) for the purposes of legal proceedings;
- (b) to a court of law or to a person invested by law with the power to compel disclosure of such information; or
- (c) to a police officer or other public officer acting in the execution of his or her duties.

(5) An inspector shall treat as confidential the source of any complaint bringing to the inspector's notice a contravention of the provisions of this Act, and shall give no intimation to a security service provider or his or her representative that an inspection was made in consequence of such complaint.

(6) An inspector who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P25 000 or to a term of imprisonment not exceeding six months, or to both.

Routine
inspection
of private
security
services

27. (1) An inspector may at any time inspect the affairs of a person licensed under this Act to check whether the holder of the licence is complying with the Act and the conditions of the licence.

(2) For the purposes of carrying out an inspection of the affairs of a security service provider, an inspector may —

- (a) enter, inspect and examine any premises occupied by a private security service provider or used in connection with the rendering of a private security service;
- (b) use any computer system or equipment which appears to be utilised for the control or administration of a security service, or require reasonable assistance from any person on the premises to use that system to —
 - (i) access any data contained in or available to that computer,
 - (ii) reproduce any record from that data, and
 - (iii) seize, against the issuance of a receipt, any output from that computer for examination and copying;
- (c) require from any person on the premises who is in control of the premises or appears to be performing managerial, supervisory, administrative or clerical functions relating to the rendering of a private security service —
 - (i) to disclose information, either orally or in writing, on any matter relating to compliance with the provisions of this Act, or
 - (ii) to produce to the inspector all or any records or documentation relating to the activities of the private security service provider; and

- (d) be accompanied by a police officer if he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty.

28. A person who obstructs an inspector in the carrying out of any duty under this Act commits an offence and is liable to a fine not exceeding P25 000 or to imprisonment for a term not exceeding six months, or to both.

Obstructing
inspectors

Part V — *General provisions*

29. Any person who, in respect of any information required by or under this Act to be provided to the Board, includes or knowingly causes to be included any information which the person knows to be false or does not believe to be true or knowingly omits or causes to be omitted any material information, commits an offence and is liable to a fine not exceeding P25 000 or to imprisonment for a term not exceeding six months, or to both.

Penalty for
false
information

30. (1) A licensee shall issue an identity card in the prescribed form to every security guard employed by the licensee, in the course of engaging in or carrying on the business in respect of which the licence is held.

Identity
cards

(2) A licensee shall take every reasonable step to ensure that every security guard to whom that licensee has issued an identity card in accordance with this section has that card on his or her person at all times when carrying out his or her duties as a security guard.

(3) Any licensee who fails to comply with this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two months, or to both.

31. (1) A licensee or former licensee shall not divulge to anyone, either directly or indirectly, any information acquired by him or her in the course of engaging in or carrying on the business in respect of which the licence is or was held, except —

Confidentiality
by licensee

- (a) for the purposes of legal proceedings;
- (b) to a court of law or to a person invested by law with the power to compel disclosure of such information; or
- (c) to a police officer or other public officer acting in the execution of his or her duties.

(2) Any person who contravenes this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding twelve months, or to both.

32. (1) A licensee under this Act shall not —

- (a) act, either with or without remuneration, as a collection agency or as a collector of debts or accounts for any other person or advertise himself or herself or hold himself or herself out in any other manner as a collection agency or as a collector of debts or accounts for other persons; or
- (b) advertise himself or herself or hold himself or herself out in any other manner as performing or providing duties or services in association with the Botswana Police Service or with any other law enforcement agency established or constituted by law or as if he or she were commanded by or had at his or her disposal a police force established or constituted by law.

Prohibition
of certain acts
by licensee

(2) A licensee who contravenes this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two months, or to both.

Proof of being licensee

33. A certificate purporting to be signed by the Board to the effect that the person named in the certificate was or was not at any given time or during any given period a licensee shall, in proceedings before any court, be admissible in evidence without further proof thereof and the court shall presume that the facts stated in the certificate are true unless the contrary is proved.

Insurance cover

34. A licensee shall take an insurance cover for any damage or loss of property sustained to a person being provided with security services.

Regulations

35. (1) The Minister may, by regulation, prescribe all matters which are required or permitted to be prescribed, or which are necessary or convenient for the carrying out of or giving effect to this Act.

(2) Without derogation from the generality of provisions of subsection (1), the Minister may, by regulations, provide for —

- (a) the display of licences;
- (b) fees to be paid under this Act;
- (c) forms to be used;
- (d) a code of conduct for private security services and ensure compliance with the code of conduct;
- (e) the surrender of licences that have been suspended or cancelled or have expired;
- (f) the prescription of the form of identity cards to be issued by licence holders to security guards;
- (g) the uniforms that may be worn and the equipment that may be used by licence holders or security guards;
- (h) the labelling of vehicles of security services providers;
- (i) the use of animals in the provision of security services; and
- (j) training standards of security guards.

Minister's powers of exemption

36. (1) The Minister may, by Order published in the *Gazette*, limit or suspend the application of all or any of the provisions of this Act, either generally or in respect of a particular person, class or description of persons, for such period and subject to such conditions as he or she thinks fit.

(2) The Order under subregulation (1) shall state the reasons for exemption.

Repeal of Cap. 21:07

37. The Control of Security Guard Services Act is hereby repealed.

38. (1) Notwithstanding the repeal under section 37, anything done or included in any contract concluded, or any action taken or purported to have been done under the legal provisions so repealed shall, in so far as it is not inconsistent with the provisions of this Act. Saving

(2) Any subsidiary legislation relating to the control of security guard services in existence prior to the commencement of this Act shall be deemed to be subsidiary legislation made under this Act, in so far as they are not inconsistent with the provisions of this Act and shall remain in force until such time as the Minister may revoke or amend them in accordance with this Act.

(2) A licence or any document issued under the Control of Security Guard Services Act shall remain valid until its expiry date.

PASSED by the National Assembly this 28th day of July, 2015.

BARBARA N. DITHAPO,
Clerk of the National Assembly.