

REPUBLIC OF SOUTH AFRICA

PRIVATE SECURITY INDUSTRY REGULATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35461 of 22 June 2012)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B 27—2012]

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- (e) by the substitution for the definition of “organ of State” of the following definition:
 “**‘organ of [State] state’** means an organ of [State] state as defined in section 239 of the Constitution [(Act No. 108 of 1996)], 1996, but does not include the Security Services referred to in section 199 of the Constitution;”;
- (f) by the insertion after the definition of “property” of the following definition:
 “**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (g) by the substitution for paragraph (a) of the definition of “security officer” of the following paragraph:
 “(a) (i) who is employed or otherwise engaged by another person, including an organ of [State] state, 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; or
 (ii) who assists in carrying on or conducting the affairs of another security service provider, and who receives or is entitled to receive from such other security service provider, or any other person, any remuneration, reward, fee or benefit, as regards one or more security services;”;
- (h) by the substitution for paragraph (e) of the definition of “security service” of the following paragraph:
 “(e) manufacturing, importing, distributing or advertising of monitoring devices contemplated in section 1 of the [Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992)] Regulation of Interception of Communications and Provision of Communication-related Information Act (Act No. 70 of 2002);”;
- (i) by the deletion of paragraph (g) of the definition of “security service”;
- (j) by the substitution for paragraph (h) of the definition of “security service” of the following paragraph:
 “(h) installing, servicing, [or] repairing, distributing or transporting security equipment;”;
- (k) by the insertion after paragraph (l) of the definition of “security service” of the following paragraph:
 “(lA) protecting or safeguarding cash or other valuables when being transported from one point to another;”;
- (l) by the substitution for paragraph (m) of the definition of “security service” of the following paragraph:
 “(m) creating the impression, in any manner, that one or more of the services in paragraphs (a) to [(l)] (lA) are rendered;”.

Amendment of section 3 of Act 56 of 2001

2. Section 3 of the principal Act is hereby amended—

- (a) by the insertion after paragraph (b) of the following paragraph:
 “(bA) promote crime prevention partnerships between the private security industry and organs of state responsible for crime prevention;”;
- (b) by the insertion of the word “and” at the end of paragraph (p).

Substitution of section 10 of Act 56 of 2001

3. The following section is hereby substituted for section 10 of the principal Act: 50

“Accountability of Council

10. (1) The Council is accountable to the Minister for the performance of its functions and must supply the Minister with such information and particulars as the Minister may in writing require in connection with the functions of the Authority or any other matter relating to the Authority. 55

- (2) The Council must submit a report to the Minister—
- (a) on any matter required by the Minister under subsection (1) and on any matter which it is necessary or expedient to bring to the attention of the Minister; and
 - (b) at least once a quarter in connection with the activities of the Authority.” 5

Amendment of section 12 of Act 56 of 2001

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection: 10
- “(6) The chairperson may, after consultation with the Council, require the director [**or a deputy director**] contemplated in section 14(1)₂ and allow any person to₂ attend any meeting of the Council on such conditions as the chairperson may determine.”.

Amendment of section 14 of Act 56 of 2001

5. Section 14 of the principal Act is hereby amended— 15
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) The Council must appoint a suitably qualified and experienced person as the director of the Authority[, **as well as three deputy directors,**] on such conditions and terms as may be determined by the Council.”; 20
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “The director [**and deputy directors**] of the Authority must, subject to the Council’s direction and control—”; and
 - (c) by the substitution for subsection (3) of the following subsection: 25
 - “(3) The director [**and deputy directors**] of the Authority may in writing, with the approval of the Council, delegate any of [**their**] his or her powers, and assign any of [**their**] his or her duties, to a staff member of the Authority.”.

Substitution of section 16 of Act 56 of 2001 30

6. The following section is hereby substituted for section 16 of the principal Act:

“Finances of Authority

- 16.** (1) The Authority is financed from—
- (a) money that is appropriated by Parliament; and
 - (b) registration fees, levies or monies from any legitimate source which have accrued to the Authority in terms of this Act or any other law. 35
- (2) The Council must, subject to the Public Finance Management Act and section 16A—
- (a) account for money received or paid on account of the Authority; and
 - (b) cause the necessary accounting and other related records to be kept. 40
- (3) The records referred to in subsection (2)(b) must be audited by the Auditor-General.”.

Insertion of section 16A in Act 56 of 2001

7. The following section is hereby inserted in the principal Act after section 16:

“Annual report 45

- 16A.** (1) The Council must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year.
- (2) The annual report referred to in subsection (1) must include the following documents: 50

- (a) The audited financial statements prepared in terms of the Public Finance Management Act;
 - (b) the Auditor-General's report prepared in terms of the Public Finance Management Act; and
 - (c) a report on the activities of the Authority undertaken during the year to which the audit relates. 5
- (3) The Minister must table in Parliament a copy of the annual report, financial statements and audit report on those statements, within one month after receipt thereof if Parliament is in session or, if Parliament is not in session, within one month after the commencement of its next ensuing session. 10
- (4) The director must, upon tabling in Parliament, publish the annual report, financial statements and audit report on those statements.”.

Repeal of sections 18 and 19 of Act 56 of 2001

8. Sections 18 and 19 of the principal Act are hereby repealed. 15

Amendment of section 20 of Act 56 of 2001

9. Section 20 of the principal Act is hereby amended—
- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (a), the insertion of the word “and” at the end of paragraph (b) and the addition of the following paragraph: 20
 - “(c) if at least 51 per cent of the ownership and control is exercised by South African citizens.”;
 - (b) by the insertion after subsection (2) of the following subsection:
 - “(2A) Despite subsection (2), the Minister may, taking into account the security interests of the Republic, prescribe a different percentage of ownership and control in respect of different categories of the security business, including but not limited to— 25
 - (a) guarding;
 - (b) close protection;
 - (c) response security; 30
 - (d) assets in transit;
 - (e) event security;
 - (f) manufacturers, importers and distributors of monitoring devices;
 - (g) private investigators;
 - (h) security training; 35
 - (i) electronic security;
 - (k) locksmiths; and
 - (l) security advisers.” ; and
 - (c) by the addition after subsection (5) of the following subsection: 40
 - “(6) A security business that is registered as a security service provider at the commencement of the Private Security Industry Regulation Amendment Act, 2012, must comply with—
 - (a) the requirements of subsection (2)(c) within five years of such commencement; and
 - (b) the regulations prescribed under subsection (2A).”.

Amendment of section 21 of Act 56 of 2001

10. Section 21 of the principal Act is hereby amended by the deletion in subsection (1) of the word “and” at the end of paragraph (b) and the insertion of the following paragraph after paragraph (b): 50
- “(bA) a certified copy of a valid South African identity document of a person referred to in paragraph (a); and”.

Amendment of section 23 of Act 56 of 2001

11. Section 23 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) is a citizen of [**or has permanent resident status in**] South Africa.”;
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
“(d) was not found guilty of an offence specified in the Schedule [**within a period of 10 years immediately before the submission of the application to the Authority**];”;
- (c) by the deletion in subsection (2) of the word “and” at the end of paragraph (a), the insertion of the word “and” at the end of paragraph (b) and the addition of the following paragraph:
“(c) such security business meets the percentage of ownership and control exercised by South African citizens.”;
- (d) by the deletion in subsection (4) of paragraph (b);
- (e) by the substitution for subsection (5) of the following subsection:
“Despite any provision to the contrary, a person in the permanent employ of the Service, [**the Directorate of Special Operations,**] the National Intelligence Agency, the South African Secret Service, the South African National Defence Force or the Department of Correctional Services may not be registered as a security service provider whilst so employed.”;
- (f) by the substitution for subsection (6) of the following subsection:
“(6) Despite the provisions of subsections (1) and (2), the Authority may on good cause shown and on grounds which are not in conflict with the purpose of this Act and the objects of the Authority, register any applicant as a security service provider, provided that an applicant who is not a citizen, may not be registered as a security service provider.”; and
- (g) by the addition after subsection (6) of the following subsection:
“(7) The Minister may, on good cause shown and on grounds which are not in conflict with the purpose of this Act and the objects of the Authority, exempt any person in respect of certain categories of a security service from the exclusion referred to in subsection (1)(a) or (6).”.

Amendment of section 26 of Act 56 of 2001

12. Section 26 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(1) The Authority may suspend the registration of a security service provider if—
(a) there is a *prima facie* case of—
(i) improper conduct in terms of this Act; or
(ii) the commission of an offence referred to in the Schedule;
(b) the security service provider fails to comply with the obligation to pay the levy in terms of section 4 of the Levies Act; or
(c) a security service provider fails to comply with any provision of this Act.”;
- (b) by the substitution for subsection (2) of the following subsection:
“(2) The Authority may suspend the registration of a security business if any of the grounds contemplated in subsection (1) pertain to a [**natural**] person referred to in section 20(2).”;
- (c) by the substitution for subsection (5) of the following subsection:
“(5) The registration of a security service provider lapses if—
(a) it is not renewed as contemplated in section 22; or
(b) the amount payable for levies in terms of section 2 of the Levies Act is not paid to the Authority within three months of the date of suspension of the registration of the security service provider concerned, unless the Authority determines otherwise.”; and
- (d) by the insertion after subsection (5) of the following subsection:
“(5A) If the registration of a security service provider has lapsed in terms of subsection (5), the Authority must publish a notice in the Gazette, indicating—

- (a) the name of the security service provider;
- (b) the period after which the registration has lapsed;
- (c) the reason for the lapsing of registration; and
- (d) the effect of the lapsing of registration.”.

Amendment of section 35 of Act 56 of 2001

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13. Section 35 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) the registration by the Authority of security service providers, including the procedures in relation to the suspension, withdrawal and lapsing of registration;”;
- (b) by the insertion in subsection (1) after paragraph (c) of the following paragraph:
 - “(cA) the required percentage of ownership and control exercised by citizens in respect of security service providers;”;
- (c) by the insertion in subsection (1) after paragraph (l) of the following paragraph:
 - “(lA) the types of information which security service providers must furnish to the Authority when rendering a security service outside the Republic;”;
- (d) by the insertion in subsection (1) after paragraph (s) of the following paragraph:
 - “(sA) minimum standards applicable to security service providers responsible for the safe transportation of cash and other valuable assets;”;
- (e) by the substitution for subsection (3) of the following subsection:
 - “(3) Regulations made in terms of subsection (1) may, in respect of any contravention thereof or failure to comply therewith, prescribe as a penalty a fine or imprisonment for a period not exceeding **[24 months]** five years.”; and
- (f) by the insertion after subsection (3) of the following subsection:
 - “(4) The Minister may, after consultation with the Council, issue guidelines or policies in relation to the governance of the Authority.”.

Amendment of section 36 of Act 56 of 2001

14. Section 36 of the principal Act is hereby amended by the addition after subsection (2) of the following subsection: 35

- “(3) The Central Firearms Register in the Service must—
- (a) keep a separate updated database, in the prescribed form, of the details of every firearm issued to a security service provider; and
- (b) at the written request of the director, submit the updated database of firearms referred to in paragraph (a) to the Authority within 30 days of the request being made.”.

Insertion of section 36A in Act 56 of 2001

15. The following section is hereby inserted in the principal Act after section 36:

“Security services rendered outside Republic 45

36A. (1) Any person who, within the Republic, recruits, trains, hires out, sends or deploys any other person to provide a security service outside the Republic, must—

- (a) provide to the director on a monthly basis such information as may be prescribed regarding such recruitment, training, hiring out, sending or deployment within the prescribed time limits; and
- (b) comply with the provisions of this Act.

(2) A person referred to in subsection (1) may not engage in any activity, or render any assistance, that is prohibited in terms of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006), or the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998).”.

Amendment of section 38 of Act 56 of 2001

16. Section 38 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

- “(3A) Any person who fails to comply with the provisions of section 36A(1) is guilty of an offence and is liable—
- (a) on a first conviction, to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment; or
 - (b) on a second or subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.”.

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Repeal of section 43 of Act 56 of 2001

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17. Section 43 of the principal Act is hereby repealed.

Amendment of Schedule to Act 56 of 2001

18. The Table of Offences in the Schedule to the principal Act is hereby amended—

- (a) by the insertion after the expression “Any offence in terms of the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998).” of the following expression:

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“Any offence in terms of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006).”;

- (b) by the substitution for the expression “Any offence in terms of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992).” of the following expression:

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“Any offence in terms of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2000 (Act No. 70 of 2002).”; and

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- (c) by the substitution for the expression “Any offence in terms of the Intelligence Services Act, 1994 (Act No. 38 of 1994).” of the following expression:

“Any offence in terms of the Intelligence Services Act (Act No. 65 of 2002).”.

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Substitution of long title of Act 56 of 2001

19. The long title of the principal Act is hereby substituted for the following long title:

“To provide for the regulation of the private security industry; for that purpose to establish a regulatory authority; to provide for the authority to promote crime prevention partnerships with organs of state; to provide for the appointment of the director of the Authority; to provide for the finances and accountability of the Authority; to empower the Minister to regulate foreign ownership and control of a business operating as a security service provider; to regulate security services rendered outside the Republic; to provide for offences and penalties; and to provide for matters connected therewith.”.

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Short title and commencement

20. This Act is called the Private Security Industry Regulation Amendment Act, 2012, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PRIVATE SECURITY INDUSTRY REGULATION AMENDMENT BILL, 2012

1. BACKGROUND

- 1.1 The Private Security Industry has grown tremendously over the past years since the establishment of the Private Security Industry Regulatory Authority (the Authority). Since the promulgation of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) (the Act), government and civil society have been concerned with the regulation of the industry, in particular whether there was effective regulation, given the challenges of growth and funding of the Authority, which is wholly derived from the contributions of the private security industry.
- 1.2 The challenges of the private security industry manifested themselves in many ways which included—
- the lack of adequate resources, which compromised effective regulation;
 - the increased threat to national security posed by the participation of foreign nationals in the industry;
 - the lack of proper accountability for fire-arms in the possession of members of the private security industry;
 - the security services rendered outside the Republic by South African security companies, in particular services rendered in politically unstable countries; and
 - the criminality within the private security industry.
- 1.3 As a result of these challenges civil society called for the tightening of the South African regulatory framework for the private security industry. The call for the review of the Act was also affirmed by government's strategic plan to build a developmental state in order to ensure that every citizen feels and is safe.
- 1.4 Drawing from the valuable lessons of the application and implementation of the current private security regulatory regime as informed by the Act and the policy formulated relating to the industry, the draft Private Security Regulation Amendment Bill (the Bill) was produced.
- 1.5 The draft Bill was also a product of an open and transparent consultative process. On 30 May 2012, the Cabinet approved the Bill for introduction in Parliament.

2. OBJECTS OF THE BILL

- 2.1 The Bill seeks to give effect to the government White Paper on Peace and Security to strengthen the legislation and regulatory framework of the private security industry.
- 2.2 The provisions of the Bill can be summarised as follows:
- 2.2.1 *Ad clause 1*
- Clause 1 amends section 1 of the Act and seeks to align old definitions in the Act with new definitions.
- 2.2.2 *Ad clause 2*
- Clause 2 amends section 3 of the Act and seeks to promote crime prevention partnerships between the private security industry and organs of state responsible for crime prevention.

2.2.3 *Ad clause 3*

Clause 3 substitutes the provisions of section 10 of the Act, which deals with the accountability of the Private Security Industry Regulatory Authority Council (the Council). The clause seeks to provide for the accountability of the Council to the Minister of Police and quarterly reporting of information in connection with its functions.

2.2.4 *Ad clause 4*

Clause 4 amends section 12 of the Act, which regulates meetings of the Council and conflicts of interests.

2.2.5 *Ad clause 5*

Clause 5 amends section 14 of the Act, which deals with staff of the Authority. The clause seeks to provide for the powers of the Council to appoint the director of the Authority and removes references to “deputy directors”.

2.2.6 *Ad clause 6*

Clause 6 substitutes section 16 of the Act. The clause seeks to introduce a new funding model for the Authority, and to provide that the Authority shall in addition to fees and levies be financed from money appropriated by Parliament.

2.2.7 *Ad clause 7*

Clause 7 inserts a new section 16A in the Act. This new section provides for annual reporting by the Council to the Minister and determines the requirements which must be met for the production and the tabling of the report by the Minister in Parliament.

2.2.8 *Ad clause 8*

Clause 8 repeals sections 18 and 19 of the Act. The repealed sections deal with the auditing and financial year-end of the Authority which are adequately covered by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

2.2.9 *Ad clause 9*

- (a) Clause 9 amends section 20 of the Act. The clause seeks to provide for the additional requirements for the registration of security businesses to include a requirement that at least 51 per cent of their ownership and control must be exercised by South African citizens.
- (b) The clause also introduces subsection (2A), which—
 - (i) empowers the Minister to prescribe different percentages of ownership and control by South African citizens in respect of certain categories of security service, taking into account the national security interests of the Republic; and
 - (ii) provides that the transfer of such ownership and control to South African citizens be effected over a period of five years.

2.2.10 *Ad clause 10*

Clause 10 amends section 21 of the Act, which deals with application for registration as a security service provider. The clause seeks to provide for new requirements for documents required for registration

as a security officer. Submission of a certified copy of a valid South African identity document is inserted as a new requirement.

2.2.11 *Ad clause 11*

- (a) Clause 11 amends section 23 of the Act, which provides for the requirements for registration of a security service provider. The amendment seeks to prohibit persons with permanent residence status from registration as security officers.
- (b) The requirement of “10 years old criminal record immediately before the submission of the application” is now removed from the requirement of registration.
- (c) There is an additional requirement for newly registered security businesses to meet the required percentage of control and ownership prior to registration.
- (d) The clause also amends section 23(6) of the Act, which will now exclude applicants who are not citizens from being registered.
- (e) Clause 11 introduces a new section 23(7), which empowers the Minister to exempt any person from the exclusion of section 23(6) in accordance with categories of security service.

2.2.12 *Ad clause 12*

Clause 12 amends section 26 of the Act to provide for additional requirements for suspension of the registration of security businesses.

2.2.13 *Ad clause 13*

- (a) Clause 13 amends section 35 of the Act, which sets out the matters in respect of which the Minister may make regulations. It seeks to provide for additional powers of the Minister to make regulations in relation to the procedures for the suspension, withdrawal and lapsing of registration; the required percentage of ownership and control to be exercised by citizens in respect of a security business; information to be furnished to the Authority by security service providers operating outside the Republic; and minimum standards for security service providers responsible for transportation of cash and other valuable assets.
- (b) The clause also provides that the Minister may, after consultation with the Council, issue guidelines in relation to the governance of the Authority. The maximum term of imprisonment that may be provided for contravention of the regulations has been increased from 24 months to five years.

2.2.14 *Ad clause 14*

Clause 14 amends section 36 of the Act. The clause seeks to provide for the keeping of a separate register of fire-arms issued to private security service providers and for the provision of such information to the Authority upon request.

2.2.15 *Ad clause 15*

Clause 15 inserts a new section 36A in the Act. This new section provides for the regulation of security services rendered outside the Republic by the Authority.

2.2.16 *Ad clause 16*

Clause 16 amends section 38 of the Act, which deals with offences and penalties. The clause seeks to provide for additional offences and penalties in relation to convictions for offences as contemplated in the new section 36A.

2.2.17 *Ad clause 17*

Clause 17 repeals section 43 of the Act.

2.2.18 *Ad clause 18*

Clause 18 amends the table of offences listed in the Schedule to the Act.

2.2.19 *Ad clause 19*

Clause 19 provides for the substitution of the long title of the Act.

2.2.20 *Ad clause 20*

Clause 20 provides for the short title and commencement of the Act.

3. DEPARTMENTS / BODIES / PERSONS CONSULTED

Recent policy changes with regard to ownership and control of security businesses have not been canvassed with the private security industry. Between 21-22, 26-27 and 28-29 October 2010, the following industry associations, state departments and trade unions were consulted, and where appropriate, the comments received were accommodated:

Government Departments and State Entities

- (a) Department of International Relations and Cooperation;
- (b) Department of Labour;
- (c) South African Human Rights Commission;
- (d) Statistics South Africa;
- (e) Department of Home Affairs;
- (f) National Prosecuting Authority;
- (g) Secretariat of Police;
- (h) Department of Trade and Industry;
- (i) Department of Justice and Constitutional Development;
- (j) Department of Public Service and Administration;
- (k) Department of Defence;
- (l) National Treasury; and
- (m) State Security Agency.

Industry Associations

- (a) Vehicle Security Association of South Africa (VESA);

- (b) Security Industry Alliance (SIA);
- (c) Locksmith Association of South Africa (LASA);
- (d) Fire Detection Installers Association (FDIA);
- (e) South African Banking Risk Information Centre (SABRIC);
- (f) Security Services Employers Organization (SSEO);
- (g) South African Intruder Detection Services Association (SAIDSA);
and
- (h) South African Institute of Security.

Trade Unions

- (a) South African Private Security Workers Union (SAPSWU);
- (b) Kungwini Amalgamated Workers Union (KAWU);
- (c) South African Transport and Allied Workers Union (SATAWU);
- (d) Transport and Allied Workers Union (TAWUSA);
- (e) National Democratic Change and Allied Workers Union (NDCAWU);
- (f) South African Cleaning and Allied Workers Union (ACSAAWU);
- (g) Protector's Workers Union;
- (h) United Peoples Union of South Africa (UPUSA);
- (i) United Private Sector Workers Union; and
- (j) Professional Transport Workers Union (PTAWU).

4. FINANCIAL IMPLICATIONS FOR STATE

The proposed amendments will require a significant investment of revenue in respect of the Authority. Major costs will, amongst others, be in the following areas:

- 4.1 Funding of the Authority;
- 4.2 capacity building;
- 4.3 national foot print; and
- 4.4 renewal of registration.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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