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DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 790

01 JULY 2016

PRIVATE SECURITY INDUSTRY REGULATORY AUTHORITY

[DATE]

PRIVATE SECURITY INDUSTRY REGULATION ACT NO. 56 OF 2001

AMENDMENT TO THE REGULATIONS MADE UNDER THE PRIVATE SECURITY INDUSTRY
REGULATION ACT, 2001 (ACT NO. 56 OF 2001)

NOTICE . . . OF 2016

I, Nkosinathi Phiwayinkosi Thamsanqa Nhleko, Minister of Police, acting under section 35 of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001), read with section 32(1) of the Security Officers Act, 1987 (Act 92 of 1987) and after consultation with the Council for the Private Security Industry Regulatory Authority, hereby make amendments to the Improper Conduct Regulations in the Schedule hereto.

SCHEDULE

AMENDMENT OF THE IMPROPER CONDUCT REGULATIONS MADE UNDER THE PRIVATE SECURITY
INDUSTRY REGULATION ACT, 2001 (ACT 56 OF 2001)

Definitions

1. In this Schedule-
 - (a) "Authority" means the Private Security Industry Regulatory Authority established in terms of section 2(1) of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001) and has the same meaning as the "Board" as defined in section 1 of the Security Officers Act, 1987 (Act 92 of 1987); and
 - (b) "the Improper Conduct Regulations" means the Improper Conduct Enquiries Regulations, 2003 published under Government Notice No. 306 in *Government Gazette* 24971 of 28 February 2003.

Commencement

The amendments to the Improper Conduct Regulations contained in this Schedule will come into effect on [09 July 2016]

Substitution of regulation 3(4) of the Improper Conduct Regulations

3. The following regulation is hereby substituted for regulation 3(4) of the Improper Conduct Regulations:

“(4) If the director is satisfied that the requirements contemplated in sub-regulations (2) and (3) have been met, he or she may direct a prosecutor in writing to—

(a) cause:

- (i) a copy of the charge as contained in a charge sheet;
- (ii) a summons under the signature of the director to appear at an enquiry, at a date, time and place referred to in the summons, and to produce at the enquiry any document so referred to which may be relevant to the enquiry, and which is, or presumably is, in possession of the respondent; and
- (iii) all the other notices and documentation contemplated in this sub-regulation,

to be served on the respondent;

(b) ...

(c) request the respondent in writing to give written notice to the director within the period stated in the request of whether the respondent intends to plead guilty or not guilty to the charge as contained in the charge sheet;

(d) notify the respondent in writing that if the respondent intends to plead not guilty to the charge, the respondent may make substantiated submissions to the director within the stated period, indicating the basis of the defence in such a manner and with such detail that it will enable the director to make a decision on whether the enquiry should proceed on the basis set out in the summons, should proceed in respect of certain charges only, or which may shorten the proceedings at an enquiry;

(e) notify the respondent in writing that if the respondent intends to plead guilty to the charge, the respondent must submit an affidavit to that effect within the stated period to the director and may also submit substantiated representations in connection with the imposition of an appropriate penalty;

(eA) notify the respondent in writing that the respondent may, within the stated period, contact the prosecutor with a view to agreeing the terms and conditions of a settlement in respect of the alleged improper conduct with the prosecutor;

(f) notify the respondent in writing that the affidavit contemplated in paragraph (e), submitted on behalf of a respondent which is a security business, must be accompanied by a certified resolution

or other adequate proof that the person acting on behalf of the respondent is authorised to plead guilty and submit representations in connection with the imposition of a penalty;

(g) inform the respondent in writing of the respondent's rights as contemplated in sub-regulation (6);

(h) request the respondent in writing to give written notice to the director within the period mentioned in the request of whether the respondent intends to be present at the enquiry or not, and whether the respondent will be represented by a legal practitioner or assisted by a person appointed by him or her; and

(i) notify the respondent in writing of the possible penalties provided for in the Code of Conduct if the respondent is found guilty of improper conduct."

Insertion of new regulations 3(5A) and 3(5B) in the Improper Conduct Regulations

4. The following regulations are inserted in the Improper Conduct Regulations as regulations 3(5A) and 3(5B):

"(5A) A summons referred to in sub-regulation (4) (a) (ii) is in the form that the director determines from time to time, and may be amended, substituted or withdrawn at any time by service of a notice to that effect under the signature of the director on the respondent.

(5B) The date for the enquiry contemplated in sub-regulation (4) (a) (ii) may not be less than 20 days from the date of the serving of the summons, unless the respondent agrees to an earlier date."

Substitution of regulation 4(1) of the Improper Conduct Regulations

5. The following regulation is hereby substituted for regulation 4(1) of the Improper Conduct Regulations:

"4. Conviction on plea of guilty without enquiry.—(1) Where an affidavit referred to in regulation 3 (4) (e) is submitted to the director, the director may—

- (a) if it appears from the affidavit that the respondent intends to plead guilty to the charge, find the respondent guilty of the charge in question and cause the summons referred to in sub-regulation (4) (a) (ii) to be withdrawn by notice in writing to the respondent; or
- (b) if there is a sound reason therefor—

(i) require supplementary relevant information from the respondent or any other person in order to again consider the matter in terms of paragraph (a) and, to the extent appropriate in the circumstances, postpone the enquiry referred to in sub-regulation (4) (a) (ii) by notice in writing to the respondent; or

(ii) decide to proceed with the enquiry referred to in sub-regulation (4) (a) (ii)."

Repeal of regulation 7 of the Improper Conduct Regulations

6. Regulation 7 (Summons to respondent to attend enquiry) of the Improper Conduct Regulations is hereby repealed in its entirety.

Substitution of regulation 10(1) of the Improper Conduct Regulations

7. The following regulation is hereby substituted for regulation 10(1) of the Improper Conduct Regulations:

"10. **Tendering of plea and related procedures.**—(1) At the commencement of an enquiry the prosecutor must:

- (a) put the charge to the respondent and request the respondent to plead to the charge; or
- (b) put a settlement agreement referred to in regulation 3 (4) (eA) to the presiding officer."

Insertion of new regulation 10(5) in the Improper Conduct Regulations

8. The following regulation is inserted in the Improper Conduct Regulations as regulation 10(5):

"(5) If the presiding officer is satisfied that a settlement agreement referred to in sub-regulation (1) (b) is appropriate having regard to all relevant circumstances, the presiding officer may make the settlement agreement an order of the enquiry."

Substitution of regulation 18(1) of the Improper Conduct Regulations

9. The following regulation is hereby substituted for regulation 18(1) of the Improper Conduct Regulations:

“18. Confirmation, review and substitution of findings, penalties and other orders.—(1) After the conclusion of an enquiry, the presiding officer must submit the record of the proceedings to the director, whereupon the director may—

- (a) where the respondent has been found guilty, confirm the conviction or set it aside;
- (b) where the conviction is so confirmed, confirm the penalty imposed, or replace it with any lesser penalty contemplated in the Code of Conduct;
- (c) where the conviction is so confirmed, replace the penalty imposed with any other appropriate penalty contemplated in the Code of Conduct, after the applicable rules of administrative justice have been complied with;
- (cA) confirm or set aside any settlement agreement which was made an order by the presiding officer, and where the settlement agreement is so confirmed, any amount payable in terms of the settlement agreement shall with immediate effect be a debt which is due and payable to the Authority;
- (d) confirm or set aside any order relating to costs or any other order made by the presiding officer; and
- (e) give any other order which is fair and just in the circumstances.”

DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 791

01 JULY 2016

PRIVATE SECURITY INDUSTRY REGULATORY AUTHORITY

[DATE]

PRIVATE SECURITY INDUSTRY REGULATION ACT NO. 56 OF 2001

AMENDMENT TO THE CODE OF CONDUCT MADE UNDER THE PRIVATE SECURITY INDUSTRY
REGULATION ACT, 2001 (ACT NO. 56 OF 2001)

NOTICE . . . OF 2016

I, Nkosinathi Phiyayinkosi Thamsanqa Nhleko, Minister of Police, acting under section 28(1) of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001) and after consultation with the Council for the Private Security Industry Regulatory Authority, hereby make amendments to the Code of Conduct in the Schedule hereto.

SCHEDULE

AMENDMENT OF THE CODE OF CONDUCT UNDER THE PRIVATE SECURITY INDUSTRY
REGULATION ACT, 2001 (ACT 56 OF 2001)

Definitions

1. In this Schedule-

- (a) "Authority" means the Private Security Industry Regulatory Authority established in terms of section 2(1) of the Private Security Industry Regulation Act, 2001 (Act 56 of 2001) and has the same meaning as the "Board" as defined in section 1 of the Security Officers Act, 1987 (Act 92 of 1987); and
- (b) "the Code of Conduct" means the Code of Conduct for Security Service Providers, 2003 published under Government Notice No. 305 in *Government Gazette* 24971 of 28 February 2003.

Commencement

- 2. The amendments to the Code of Conduct contained in this Schedule will come into effect on [09 July 2016].

Substitution of regulation 5(1) of the Code of Conduct

3. The following regulation is hereby substituted for regulation 5(1) of the Code of Conduct:

"5. General obligation to act in terms of applicable law.—(1) A security service provider must comply with the provisions of the Act and with all other legal provisions and obligations, whether they are based on or form part of common law or statutory law, including but not limited to any directives, determinations, findings, orders or rulings issued by any competent authority including a court, tribunal, commission, regulator, forum or organ of state, that are applicable or relevant to—

- (a) practising the occupation of security service provider;
- (b) rendering a security service;
- (c) carrying on business in the rendering of a security service;
- (cA) employing security officers; and
- (d) performing any other act or function which is subject to the Act."

Substitution of regulation 25 of the Code of Conduct

4. The following regulation is hereby substituted for regulation 25 of the Code of Conduct:

"25. Penalties in respect of improper conduct by a security service provider.—(1) A security service provider who has been found guilty of improper conduct in terms of the procedures contemplated in regulation 29, is subject to the following penalties—

- (a) a warning or a reprimand;
- (b) suspension of registration as security service provider for a period not exceeding 12 months;
- (c) withdrawal of registration as security service provider;
- (cA) withdrawal as accredited training establishment
- (d) a fine not exceeding R1 000 000,00 which is payable to the Authority;
- (e) publication of appropriate details of the conviction of improper conduct and any penalty imposed;
- (f) endorsement against the register of security service providers, any certificate of registration or other documentation issued by the Authority, of the conviction of improper conduct and any penalty imposed; or

(g) any combination of the above.

(2) The penalty contemplated in sub-regulation (1) (b), (c), (cA) or (d) may be suspended on any condition that is reasonably likely to promote compliance with this Code by the security service provider.

(3) In addition to any other relevant fact, the following must be considered and properly taken into account in imposing any penalty contemplated in this regulation—

- (a) the gravity and nature of the improper conduct, including the duration or frequency of the improper conduct;
- (b) the known relevant circumstances of the security service provider including its annual or monthly income and its profitability, and such other relevant circumstances as the security service provider may prove to exist;
- (c) the national interest as well as the interest of the public and of the private security industry;
- (d) the risk posed by the improper conduct to the rights or legitimate interests of any person, and any other remedies available to any person affected by the improper conduct;
- (e) any previous conviction of the security service provider of improper conduct in terms of this Code or the repealed code of conduct;
- (f) the financial or other benefit or likely benefit obtained or that may be obtained by the security service provider through the commission of improper conduct; and
- (g) any actual or potential harm caused by the security service provider through the commission of improper conduct.

(4) In imposing a penalty contemplated in sub-regulation (1) (d) on a security service provider who has previously been convicted of improper conduct in terms of this Code or the repealed code of conduct, and subject to the monetary limit prescribed in sub-regulation (1) (d), the director or presiding officer as the case may be must set the fine at an amount which is at least equal to the aggregate of any fines imposed for such previous convictions, unless the security service provider can satisfy the presiding officer why it would be unjust or inequitable in the circumstances to do so.”

Substitution of regulation 27 of the Code of Conduct

5. The following regulation is hereby substituted for regulation 27 of the Code of Conduct:

“27. Penalties in respect of improper conduct by an employer of in-house security officers.—(1) An employer of in-house security officers who has been found guilty of improper

conduct in terms of the procedures contemplated in regulation 29, is subject to the following penalties—

- (a) a warning or a reprimand;
- (aA) withdrawal as accredited training establishment
- (b) a fine not exceeding R1 000 000,00 which is payable to the Authority;
- (c) publication of appropriate details of the conviction of improper conduct and any penalty imposed; or
- (d) any combination of the above.

(2) The penalty contemplated in sub-regulation (1) (Aa), (b), (c) or (d) may be suspended on any condition that is reasonably likely to promote compliance with this Code by the employer of in-house security officers.

(3) In addition to any other relevant fact, the following must be considered and properly taken into account in imposing any penalty contemplated in this regulation—

- (a) the gravity and nature of the improper conduct, including the duration or frequency of the improper conduct;
- (b) the known relevant circumstances of the employer of in-house security officers including its annual or monthly income and its profitability, and such other relevant circumstances as the employer of in-house security officers may prove to exist;
- (c) the national interest as well as the interest of the public;
- (d) the risk posed by the improper conduct to the rights or legitimate interests of any person, and any other remedies available to any person affected by the improper conduct;
- (e) any previous conviction of the employer of in-house security officers of improper conduct in terms of this Code;
- (f) the financial or other benefit or likely benefit obtained or that may be obtained by the employer of in-house security officers through the commission of improper conduct; and
- (g) any actual or potential harm caused by the employer of in-house security officers through the commission of improper conduct.

(4) In imposing a penalty contemplated in sub-regulation (1) (b) on a security service provider who has previously been convicted of improper conduct in terms of this Code, and subject to the monetary limit prescribed in sub-regulation (1) (b), the director or presiding officer as the case may

be must set the fine at an amount which is at least equal to the aggregate of any fines imposed for such previous convictions, unless the security service provider can satisfy the presiding officer why it would be unjust or inequitable in the circumstances to do so."