

No. 10 of 2007

VIRGIN ISLANDS

PRIVATE SECURITY INDUSTRY ACT, 2007

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No. 10 of 2007

**Private Security
Industry Act, 2007**

**Virgin
Islands**

I Assent

**(Sgd.) DAVID PEAREY,
Governor.**

19th June, 2007

VIRGIN ISLANDS

No. 10 of 2007

An Act to regulate the Private Security Industry and to provide for related matters.

[Gazetted 5th July, 2007]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

1. This Act may be cited as the Private Security Industry Act, 2007 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.

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

“employer” means a private security service provider who employs security guards for purposes of providing a private security service to the public;

“licensee” means a private security service provider licensed under section 4;

“Minister” means the Minister responsible for trade;

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“Police Force” means the Royal Virgin Islands Police Force established under the Police Act;

“private security service provider” means a person licensed to provide a private security service to other persons under section 4, and “private security service” shall be construed accordingly; and

“Regulations” means Regulations made under this Act.

Disapplication of Cap. 200.

3. The Business, Professions and Trade Licences Act does not apply to the licensing of a private security service provider.

PART I LICENSING

Application for a licence.

4. (1) A person shall not engage in the provision of a private security service unless the person is licensed to do so under this Act, and

(a) the Minister may in this regard establish different classes of licences as may be prescribed in the Regulations; and

(b) any class of licence that may enable a private security service provider to apply for a firearms licence under the Firearms Act shall, without prejudice to section 19(2), be issued only with the approval of the Executive Council.

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(2) A person may apply for a licence to operate as a private security service provider by submitting a written application to the Minister accompanied by the prescribed fee and the following information:

(a) a police certificate of character in respect of

(i) each director and manager, where the applicant is a body corporate,

(ii) each partner, where the applicant is a partnership business, or

(iii) the person, where the applicant is an individual;

- (b) two character references in respect of
 - (i) each director and manager, in the case of a body corporate,
 - (ii) each partner, in the case of a partnership business, or
 - (iii) the person, in the case of an individual applicant,from reputable persons in the Territory;
- (c) a certified copy of the
 - (i) certificate of incorporation and other documents issued by the Registry of Corporate Affairs in respect of the applicant's incorporation, where the applicant is a body corporate; or
 - (ii) certificate of partnership or certificate of a registered business name, where the applicant is a partnership firm or a registered business name;
- (d) a detailed training programme instituted by the applicant for the applicant's employees, approved by the Commissioner of Police;
- (e) a certified copy, where applicable, of the applicant's payroll tax and social security certificates of good standing; and
- (f) other information the Minister may require.

(3) The Minister may refuse an application within thirty days from the date of receipt of the application and shall inform the applicant in writing accordingly stating his reasons.

(4) The Minister may require the applicant to provide further information and may for that purpose extend the period for a maximum of another thirty days for the grant of a licence under subsection (3).

(5) Notwithstanding subsection (3), the Minister may in writing delegate the authority to issue a licence under this Act to a person the Minister considers fit.

(6) An application granted under subsection (3) shall be subject to conditions specified in the licence, this Act and the Regulations.

(7) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to a term of imprisonment not exceeding three years or both.

Duration and renewal of a licence.

5. (1) A licence shall be valid for one year, commencing from the date of issue and may be renewed yearly or at a lesser period as the Minister may determine.

(2) Every licence issued or renewed under subsection (1) shall be liable to the payment of such fee as may be prescribed by Regulations.

Application for the renewal of a licence.

6. (1) An application for renewal of a licence shall be made to the Minister not later than sixty days prior to the expiry of the licence desired to be renewed.

(2) The procedure for renewal of a licence granted under this Act shall be the same as that applicable to the grant of the original licence.

(3) A licensee who fails to renew a licence granted or whose application for renewal is refused by the Minister shall cease to provide the services to which the licence relates.

(4) A licensee who fails to apply for a renewal of licence within the period prescribed in subsection (1) may be granted a renewed licence on condition that

- (a) the application for renewal of licence is received within fourteen days prior to the expiration of the current licence; and
- (b) the licensee pays a renewal fee which is twice the applicable fee for the renewal of the licence.

Power to modify a licence.

7. (1) The Minister may, with the approval of the Executive Council and subject to this Act and the Regulations, modify a licence granted under this Act if the modification is permissible under the terms of the licence or is required in the public interest.

(2) The Minister shall not exercise the power to modify a licence under subsection (1) unless the Minister has given at least sixty days notice

- (a) stating the Minister's intention to make the modification; and

- (b) setting out the reasons for, and the effect of, the modification.

(3) The Minister shall in all cases consider representations or objections made by the licensee with respect to the modification before modifying a licence.

(4) A notice under subsection (2) shall be given by publication in a manner as the Minister considers appropriate for purposes of bringing the matter to which the notice relates to the attention of a person likely to be affected by the intended modification and by sending a copy of the notice to the licensee concerned.

(5) Neither the Minister nor the Government shall be liable for any expense incurred by or damages caused to the licensee as a result of a modification of a licence made under subsection (1).

Suspension
and
cancellation
of a licence.

8. (1) The Minister shall suspend or cancel a licence

- (a) where the Minister is satisfied that the licensee is not complying with or has not complied with a condition of the licence; or
- (b) in compliance with the Governor's order given in the interest of national security.

(2) A suspension or cancellation of a licence shall not be made under subsection (1)(a) unless the Minister has given the licensee concerned a written notice specifying in it the cause of dissatisfaction and giving directions for rectification of the breach and the action proposed to be taken by the Minister in the event of non-compliance with the notice.

(3) Subject to subsection (1) (b), the Minister shall not suspend or cancel a licence granted under this Act without first giving the licensee an opportunity to be heard and shall, where he considers appropriate, give the licensee a period as the Minister considers reasonable for the licensee to comply with the Minister's directions.

(4) Subject to subsection (1) (b), the Minister shall, in determining whether it is necessary to suspend or cancel a licence granted under this Act, consider the extent to which a person is likely to sustain loss or damage as a result of the suspension or cancellation.

9. Where a decision under section 4(3) is taken by a person delegated in that behalf under section 4(5), any person who is aggrieved by that decision may appeal to the Minister whose decision shall be final.

Appeals.

Employment and qualifications of an employee.

10. (1) A private security service provider shall

- (a) not employ a person as a security guard unless the person
 - (i) is eighteen years and above;
 - (ii) is of sound health as evidenced by a certificate issued by a registered medical practitioner;
 - (iii) is entitled to work in the Virgin Islands and, in the case of a non-belonger, is a holder of a valid work permit or has been exempted from holding a work permit in accordance with section F3 of the Labour Code Ordinance;
 - (iv) has at least completed a high school education, or such other educational qualifications as may be prescribed by Regulations;
 - (v) has passed all the required drug tests in respect of any controlled drugs;
 - (vi) produces to the private security service provider, a police certificate of character; and
 - (vii) has successfully completed a training programme organised by the employer and approved by the Commissioner of Police; and
- (b) maintain a record of the information required under subsection (1) in respect of every person who is employed as a security guard.

(2) A private security service provider shall provide each person the private security service provider employs as a security guard with a photo identification card upon appointment.

(3) The identification card issued under subsection (2) to a security guard is to be

- (a) carried along with and worn by the security guard when that security guard is on duty; and
- (b) produced by the security guard for inspection upon request by a police officer not below the rank of a Sergeant.

(4) A private security service provider shall terminate the appointment of a security guard where the Minister notifies the private security service provider of

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the Governor's order given in respect of that security guard in the interest of national security.

(5) A private security service provider who contravenes subsection (1), (2) or (4) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding three years or both.

(6) A security guard who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding two years or both.

11. (1) A person who is appointed by a private security service provider as a security guard shall Powers of a security guard.

- (a) perform such lawful duties as are assigned by the private security service provider; and
- (b) exercise, in relation to the performance of his duties, and with respect to the area he is assigned, the power to arrest without a warrant, any person
 - (i) who commits in his presence an offence; or
 - (ii) whom he suspects upon reasonable grounds of having committed or of being about to commit such an offence.

(2) Where a security guard arrests a person pursuant to subsection (1)(b), he shall, as soon as reasonably practicable, hand over that person to a member of the Police Force.

(3) In the exercise of his powers under subsection (1) (b), a security guard may seek the assistance of a member of the Police Force.

12. The Governor may after consultation with the Minister, by Order, Power of Governor to issue Order.

- (a) order the licence of a private security service provider to be suspended or cancelled, or
- (b) order the termination of employment of a security guard, in the interest of national security.

Persons not entitled to be employed or to be issued a licence.

13. (1) Without prejudice to sections 4 and 6, the following persons shall not be employed or issued with a licence to operate, in the private security service industry:

- (a) a person who has been convicted of an offence involving fraud, dishonesty or moral turpitude or an offence relating to arms or ammunition;
- (b) a person who has been sentenced to a term of imprisonment;
- (c) a person who has been
 - (i) dismissed, or
 - (ii) removed or discharged on disciplinary grounds,from the Royal Virgin Islands Police Force; and
- (d) a person whom, in the interest of national security, the Governor is of the opinion should not be employed or registered to operate in the private security service industry.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or both.

PART II CONTROL AND ADMINISTRATION

Code of conduct.

14. (1) The Minister may, acting on the advice of the Commissioner of Police, prescribe a Code of Conduct for private security service providers and their employees.

(2) The Code of Conduct shall contain procedures and rules of conduct and evidence for its enforcement.

Uniforms and titles to be approved.

15. (1) An employee of a private security service provider shall not wear, carry or bear a uniform, cap, badge, accoutrement or other identification mark unless the uniform, cap, badge, accoutrement or other identification mark has been approved in writing for use by the Minister acting on the advice of the Commissioner of Police.

(2) The Commissioner of Police shall not advise the Minister to approve an article for use by an employee of a private security service provider under this Act, where the Commissioner is of the opinion that the article has resemblance to a similar article used by the Police Force or officers of the prison, customs or immigration departments.

16. (1) A private security service provider shall, through the Commissioner of Police, notify the Minister in writing within one month after employing a person in its service, of the name and address of the employee and other particulars relating to the employee that the Minister may direct.

Filing of employee returns.

(2) The private security service provider shall, through the Commissioner of Police, submit a return to the Minister indicating the names and addresses of its employees and other information the Minister may direct, on 1st January and 1st July, in each year.

(3) The Commissioner of Police shall, within sixty days of the receipt of a return under subsection (2), conduct enquiries to establish whether or not any person listed on the return has satisfied any of the disqualifications provided in section 13(1) and submit such information to the Minister.

17. A private security service provider shall keep books and records of its operations and other information, as prescribed by the Minister.

Licensee's books and records.

18. (1) A Trade Inspector designated as such under section 18 of the Business, Professions and Trade Licences Act may, after the issue of a licence,

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- (a) inspect any building or premises and vehicles,
- (b) examine books, records and other documents, and
- (c) interview the management and other employees of a security service provider,

during normal working hours, to verify that the private security service being carried on in that building or premises complies with the terms or conditions of the licence and that their operation does not violate any other law they are to comply with.

(2) Subject to subsection (3), a Trade Inspector may seize and take away any books, records, documents, papers or other similar things or articles where in the course of the Trade Inspector's inspection or search it appears to the Trade Inspector that there has been a violation of this Act or some other law.

(3) The Trade Inspector shall make copies of the books, records, documents, papers or other similar things and return the originals to the licensee, where the books, records, documents, papers or other similar things are necessary for the continued operation of the licensee.

(4) Notwithstanding subsection (3), an article seized under subsection (2) may be retained for a period and for such purpose, as may be reasonably necessary.

(5) A Trade Inspector may for the purposes of this section, inspect or search premises with the assistance of a member of the Police Force.

(6) A person required by this Act to obtain a licence shall produce the licence for inspection to a Trade Inspector or to a police officer on request by the Trade Inspector or the police officer.

(7) A person who

(a) hinders, molests or interferes with a Trade Inspector in the discharge of the Trade Inspector's duties under this Act, or

(b) fails or refuses to discharge an obligation imposed on that person under this section,

commits an offence and is liable on summary conviction to fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding five years or both.

Control of use
of firearms.

19. (1) A private security service provider or its employees shall not bear or possess a firearm or ammunition for the purposes of carrying out their services, unless licenced under the Firearms Act.

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(2) Notwithstanding the definition of "firearm" or anything contained in the Firearms Act, the Minister may authorise in writing a private security service provider to provide such weapon designed or adapted for the discharge of any noxious liquid, gas or similar thing as the Minister may approve for use by persons employed by the private security service provider as security guards in relation to the performance of their duties.

Bodily injury to
a security guard.

20. A private security service provider shall meet the cost of medical attention, medicines and medical comfort of a security guard in the private security service provider's employ, when the security guard sustains any injury in the course of discharging an assigned duty.

Insurance of a
security guard.

21. (1) A security guard employed by a private security service provider shall be insured by the private security service provider against occupational hazards.

(2) An insurance benefit payable to a private security service provider for or on behalf of a security guard shall be paid to the security guard, the security guard's beneficiary or estate.

22. (1) A private security service provider may cease operations by a written notification to the Minister.

Ceasure of operations of a private security service provider.

(2) The written notification shall be submitted with the operating licence granted to the private security service provider.

(3) A private security service provider shall on the submission of the notice of cessation, retrieve from its employees, identification cards, equipment and other articles issued to them on or in the course of their employment.

(4) A private security service operator who ceases operations under subsection (1) but fails to comply with subsections (2) and (3) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to a term of imprisonment not exceeding twelve months or both.

23. (1) The powers and duties conferred on a security guard on appointment shall cease on the termination of the appointment.

Termination of employment of a security guard.

(2) A security guard's appointment may be terminated on the

(a) resignation of the security guard in writing, addressed to the employer;

(b) retirement of the security guard; or

(c) dismissal of the security guard by the employer, in writing.

(3) A security guard shall deliver to his employer forthwith and in any case not later than twenty four hours after the receipt of the termination of the security guard's appointment, any identity card, equipment and article given by the employer to the security guard on appointment for the purposes of the security guard's assigned duties.

(4) A security guard who fails to comply with subsection (3) upon the termination of his appointment commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to a term of imprisonment not exceeding twelve months or both.

24. (1) A person in possession of an identification card, equipment or other article issued by an employer to a security guard who is deceased shall deliver the items to the deceased's employer within twenty one days after the death of that security guard.

Delivering up of identification card, equipment and other articles of a deceased security guard.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding six months or both.

**PART III
MISCELLANEOUS**

Other offences.

25. A person who

- (a) makes a false declaration or statement in an application made under this Act, knowing it to be false or having no reason to believe it to be true,
- (b) makes a false representation to the effect that a licence has been issued under this Act to that person to operate as a private security service provider,
- (c) hires, employs or engages the services of an unlicensed private security service provider,
- (d) wears a uniform or bears an article not authorised by the Minister under section 15 to be worn or borne by that person, or
- (e) fails to issue the required notification or to submit the required return under section 16,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding five years or to both.

Regulations.

26.(1) The Minister may make Regulations to give effect to the provisions of this Act and, in particular, may make Regulations prescribing

- (a) training programmes for security guards; prescribing the manner in which books and records of operation of a private security service provider is to be kept;
- (b) the modalities for retrieving arms and ammunition in the possession of private security service providers; and
- (c) such additional powers as may be exercisable by a security guard in the performance of his duty;
- (d) the application, with such modification as may be necessary, of any domestic or international standards of security to a private security service provider;
- (e) fees for the issue and renewal of licences;

- (f) other educational qualifications to be considered for employing a person as a security guard;
- (g) the requirements for drug tests with respect to controlled drugs, including the need or otherwise for carrying out random drug tests; and
- (h) different classes of licences for security service providers and the obligations and powers relating thereto.

(2) Regulations made under subsection (1) shall be subject to a negative resolution of the Legislative Council.

Transitional provisions.

27. (1) A private security service provider operating in the Territory prior to the commencement of this Act shall take steps necessary to bring its operations into conformity with this Act within six months after the commencement of this Act, or within such extended period not exceeding six months as the Minister may by an Order published in the *Gazette* determine.

(2) A loss suffered or expenditure incurred by a private security provider as a direct consequence of a modification made to the scope of operation of the private security service provider's business in complying with subsection (1) shall not be actionable against the Crown.

Passed by the Legislative Council this 29th day of May, 2007.

(Sgd.) V. INEZ ARCHIBALD,
Speaker.

(Sgd.) ALVA MCCALL,
Acting Clerk of the Legislative Council.