



Tonga

PRIVATE SECURITY SERVICES ACT 2010

Act No. 45 of 2010



PRIVATE SECURITY SERVICES ACT 2010

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PRIVATE SECURITY SERVICES ACT 2010

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AN ACT TO PROVIDE FOR THE REGULATION OF PRIVATE SECURITY SERVICES

I assent,
GEORGE TUPOU V,
1st October 2010.

BE IT ENACTED by the King and the Legislative Assembly in the Legislature of the Kingdom as follows:

PART I — PRELIMINARY

1 Short Title

- (1) This Act may be cited as the Private Security Services Act 2010.
- (2) This Act may come into force on a date to be declared by Cabinet in a Notice published in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires —

“**bodyguard**” means a person who is employed or retained to provide a close personal protection service;

“**Authority**” means the Private Security Services Licensing Authority established under this Act;

“**crowd controller**” means a person who is employed or retained principally to maintain order at any public place by doing all or any of the following—

- (a) screening entry into;
- (b) monitoring or controlling behaviour in;
- (c) removing any person from; or
- (d) otherwise maintaining order in any such place, unless that person is doing nothing more than securing or checking that persons allowed admission—
 - (i) have paid for admission; or
 - (ii) have invitations or passes allowing for admission;

“**disqualifying offence**” means any offence under the Illicit Drugs Control Act 2003, or any conviction for a criminal act punishable by imprisonment for a period of 2 years or more;

“**Minister**” means the Minister for Police;

“**prohibited person**” means a person convicted of a disqualifying offence in the 10 years prior to being included in an application for a licence;

“**Provider**” means a person granted a licence under this Act to provide private security services;

“**security activity**” means any one of the following activities—

- (a) acting as a security guard;
- (b) acting as a crowd controller; or
- (c) acting as a bodyguard;

“**security equipment**” means any mechanical, electronic, acoustic or other equipment—

- (a) designed, adapted or purporting to provide or to enhance security; or
- (b) for the protection or watching of property—

that is prescribed by the regulations;

“**security gear**” means for the purposes of this Act only two-way radios and duty belts;

“**security guard**” means a person who is employed or retained to protect, watch or guard any property by any means including by —

- (a) patrolling the property in person; or
- (b) monitoring the property by operating a security system that utilises closed circuit television, a closed monitoring system, radio or other similar alarm device;

“**security service**” means the act of performing any security activity as defined by this Act, as part of a person’s employment; and

“**Trainer**” means any person granted a licence under this Act to be a private security services trainer.

3 Objectives

The objectives of this Act are to —

- (a) provide for the licensing of private security service providers;
- (b) provide for the licensing of security service trainers;
- (c) establish criteria and requirements which must be satisfied by providers and trainers prior to being issued a licence; and
- (d) regulate the provision of private security services.

PART II – ESTABLISHMENT OF PRIVATE SECURITY SERVICES AUTHORITY

4 Establishment of the Private Security Services Licensing Authority

- (1) The Private Security Services Licensing Authority is hereby established.
- (2) The Minister shall, with the consent of Cabinet, appoint the members of the Authority, and the members shall consist of the following persons:
 - (a) a representative from the Tonga Police, who shall be the chairperson;
 - (b) a representative from the Tonga Defence Services;
 - (c) a representative from the Ministry of Labour, Commerce and Industries; and
 - (d) the secretariat shall be from Tonga Police.
- (3) The Authority shall have power to co-opt to any of its meetings any person it requires.

5 Functions and Powers of the Authority

The Authority shall have the following functions and powers –

- (a) review and decide on applications for a Provider’s or Trainer’s licence;
- (b) monitor and supervise the private security services sector;
- (c) receive and decide on complaints against Providers and Trainers;
- (d) issue a Code of Conduct for Providers and Trainers;
- (e) propose regulations to regulate the private security services sector; and
- (b) review and advise the Minister on any matter relating to this Act, including any reforms that should be made.

PART III — LICENSING OF PROVIDERS AND TRAINERS

6 Application for licence

- (1) Any person who intends to be a Provider or Trainer, or both, as a business offered to the general public, shall submit an application to the Authority.
- (2) An application for a licence under section 5 shall be accompanied by a written statement setting out —
 - (a) the name, residential and postal address of the officers of the company, if the applicant is a company;
 - (b) the name, residential and postal address of the sole proprietor, if the applicant is not a company;
 - (c) two written references from persons of good character;
 - (d) the names and details of employees, accompanied by proof of identity for each employee;
 - (e) Police clearance for all employees;
 - (f) medical clearance from a registered medical practitioner for all employees;
 - (f) details of all security gear, security equipment or the means of security services to be used by the applicant;
 - (g) details of the uniform to be worn, and the logo, insignia or trademark of the applicant; and
 - (h) details of the applicant's experience in providing security services, if any; and
 - (i) details of any training that the applicant and employees have received in providing private security services, if any.

7 Consideration of an application

- (1) Upon receipt of an application under section 5, the secretariat of the Authority shall first review the application for compliance with section 6(2), before submitting the application for the Authority to consider.
- (2) The Authority shall consider any application presented by the secretariat of the Authority, and may decide whether to approve or refuse the application.
- (3) The secretariat shall inform the applicant in writing the decision of the Authority.

8 Powers of inquiry

- (1) The Authority may inquire into any application that is submitted for consideration.
- (2) In conducting an inquiry under this section, the Authority may have regard to any information that is relevant to the application about —
 - (a) the person applying, if a sole proprietor;
 - (b) any officer of the company, if a company; or
 - (c) any employee of the applicant.

9 Grant of Licensing

- (1) The Authority may issue a license authorising a person to be a Provider or Trainer in any one or combination of the following activities —
 - (a) security guard;
 - (b) bodyguard; or
 - (c) crowd controller.
- (2) The licence issued under subsection (1) shall be in the form determined by the Authority, and shall be displayed at the head office of the applicant for the public.

10 Restrictions on Licensee

- (1) Any person who has been issued with a licence under sub-section (1) shall only do so if he has also been granted a business licence issued under the Business Licences Act.
- (2) No licence issued under this Act shall be deemed in any way to mean that a licensee has the powers of a Police officer or any law enforcement officer.

11 Grounds for approval

The Authority may grant an application if it is satisfied that —

- (a) the granting of the licence is in the interest of public safety;
- (b) the applicant has or will be able to obtain financial resources that are adequate to ensure the financial viability of the business;
- (c) that each person stated in the application;
 - (i) is aged 18 years or more;
 - (ii) has not contravened or failed to comply with any provision of this Act, the regulations or any corresponding previous enactment, to the extent that warrants the refusal of the licence;
 - (iii) is not a prohibited person;

- (iv) has not, within the preceding 5 years, been declared bankrupt;
- (v) is not insolvent or under administration; or
- (vi) is medically fit to provide security services.

12 Refusal of an application

- (1) If the Authority decides not to grant a licence, it must notify the applicant in writing as to –
 - (a) the reason for refusal; and
 - (b) invite the applicant to make a written submission in accordance with subsection (2).
- (2) An applicant who has been served a notice under subsection (1) may, within 28 days after the day on which he is served with the notice, may make a written submission to the Authority requesting a reconsideration of the refusal to grant the licence and the grounds for such reconsideration.

13 Reconsideration of application

- (1) After receiving a submission within the time specified under section 12(2), the Authority may—
 - (a) further consider the application and grant the licence; or
 - (b) decide not to grant the licence and notify the applicant in writing of the reasons for this decision.
- (2) Any person who is not satisfied with a decision of the Authority under subsection (1), may lodge an appeal in writing to the Minister within 7 days of receipt of such decision, accompanied by the prescribed fee set by regulations made under this Act.
- (3) The Minister may grant or refuse the appeal, and notify the applicant his decision within 14 days of receipt of the appeal.
- (4) The decision of the Minister shall be final.

14 Fees

The Authority may prescribe by regulations the appropriate fees for matters performed under this Act, including but not limited to –

- (a) application for a licence;
- (b) renewal applications;
- (c) licence certificate;
- (d) late renewal; and

- (e) provision of duplicate of licence.

15 Duration of licence

A licence issued under this Act shall be valid for a period not exceeding 12 months.

16 Renewal

- (1) A licensee may apply to the Authority to renew his licence issued under this Act.
- (2) An application under subsection (1) shall be —
 - (a) made no later than one month before the expiration of the licence;
 - (b) in a form approved by the Authority;
 - (c) accompanied by written confirmation from the Ministry of Revenue that the applicant has no outstanding tax obligations;
 - (d) accompanied by written confirmation from the Registry of the Supreme Court that the applicant has no outstanding judgment against the applicant;
 - (e) accompanied by a Police clearance that none of the employees of the applicant has any criminal record;
 - (f) submitted with written references from two persons of good character; and
 - (g) the prescribed renewal application fee.
- (3) The Authority may treat an application for renewal as a new application for a licence.

PART IV – DISCIPLINE

17 Code of Conduct

The Authority shall issue a Code of Conduct for Private Security Service Providers and Trainers, upon consultation with providers and trainers, and with the consent of the Minister.

18 Breach of Code of Conduct

Any licensee or employee of a licensee who breaches a Code of Conduct shall be subject to disciplinary proceedings to be conducted in accordance with disciplinary regulations made by the Authority, with the consent of the Minister.

19 Sanctions

Any licensee or employee of a licensee who is found to have breached the Code of Conduct, may be subject to one or a combination of the following sanctions –

- (a) reprimand;
- (b) undergo counselling or training, or both;
- (c) make apology and pay compensation to the complainant;
- (d) pay a fine not exceeding \$1,000;
- (e) suspension for a period not exceeding 2 years; or
- (f) permanent disqualification from holding a licence or being employed by a licensee.

20 Appeal against discipline decision

- (1) Any person who is not satisfied with a decision under this Part may lodge an appeal in writing to the Minister within 14 days of receipt of the decision, along with the prescribed fee set by regulations made under this Act.
- (2) The Minister may decide to either grant or refuse the appeal.
- (3) The Minister shall notify the appellant his decision in writing no later than 28 days from the date of receipt of the appeal.
- (4) The decision of the Minister shall be final.

PART V — OFFENCES**21 Providing private security services or training without a licence**

Any person who acts as a provider or trainer without a licence commits an offence, and shall be liable upon conviction to pay a fine of up to \$5,000, or a term of imprisonment not exceeding 2 years imprisonment, or both.

22 Holding out offence

Any person who holds out to be a provider or trainer and has no licence commits an offence, and shall be liable upon conviction to pay a fine of up to \$5,000, or a term of imprisonment not exceeding 2 years six months, or both.

23 Unlawful use of protective gear

- (1) Any licensee who distributes to his employees for use, or permits or causes the use of, or any employee who carries or uses –

- (a) batons;
- (b) handcuffs;
- (c) debilitating spray, such as mace, capsium pepper spray or similar apparatus;
- (d) taser gun or similar apparatus; or
- (e) any item used for restraining or debilitating any person,

commits an offence and shall be liable upon conviction to pay a fine not exceeding \$10,000 or to imprisonment not exceeding 3 years, or both.

- (2) In addition to any penalty imposed by the Court under sub-section (1), the Court may also order the disqualification of the licensee or employer of the employee convicted under sub-section (1) from holding a licence indefinitely or for a period not exceeding 2 years.

PART VI — MISCELLANEOUS

24 Regulations

The Minister may, with the consent of Cabinet, make regulations in order to further the objectives of this Act.

25 Transition

Any person who has been issued with a business licence under the Business Licences Act to carry out security services, shall continue to provide such services as if granted a licence under this Act until the expiry of his licence, provided that he shall submit an application for a licence under this Act no later than one month from the expiry of his business licence.

Passed by the Legislative Assembly this 22nd day of September 2010.