



legalWATCH

KILLING ONE BIRD WITH TWO STONES?

THE PSIRA REGISTRATION SAGA CONTINUES

In 2012, CASA submitted a detailed application to the national Minister of Police motivating the exemption of casino surveillance personnel from the obligation to register as security service providers in terms of the Private Security Industry Regulation Act, No 56 of 2001 ("PSIRA").

The manifest purpose of PSIRA is to provide a framework for the regulation of the burgeoning private security industry in South Africa. As the overall levels of crime have continued to increase in the country and the resources of the state remain insufficient to provide adequate protection to citizens, the private security industry has sprung up (and mushroomed significantly in the past years) to fill the gap in the market. In view of the extensive (and often coercive) powers conferred on private security personnel, and the capacity of these to impact profoundly upon the rights of others, there is a clear need to ensure that people who perform these services are fit and proper to do so (and therefore are unlikely to overstep the bounds of their mandate and in the process cause harm to others). According to the Preamble, the object of the Act is to "achieve and maintain a trustworthy and legitimate private security industry which acts in terms of the principles contained in the

constitution and other applicable law, and is capable of ensuring that there is safety and security in the country". Accordingly, PSIRA establishes a regulatory authority; viz. the Private Security Industry Regulatory Authority ("the Authority"), which is responsible for the licensing and regulation of the private security industry, in much the same way as provincial gambling boards license and regulate certain categories of persons who are employed in the context of a gambling operation.

PSIRA requires the registration of all persons who provide a private security service. However, the legislation itself contains an extremely broad definition of the concept "security service", which includes, inter alia, protecting or safeguarding property, monitoring signals or transmissions from electronic security equipment or managing, controlling or supervising any such activity. As a result of the fact that surveillance staff in the casino environment indeed "monitor signals or transmissions from electronic security equipment", the Authority has continued to insist that they be registered in terms of PSIRA, despite the fact that such personnel have undergone a more extensive probity investigation in terms of the applicable gambling legislation and are closely

Continued on page 2

CASA concerned with the draft national liquor norms and standards



CASA has voiced its concerns about government's proposed changes to liquor trading hours as outlined in the Draft National Liquor Norms and Standards ("Draft Liquor Standards") as published in the Government Gazette Notice 80 of 2014 dated 11th February 2014.

In a submission to the Department of Trade and Industry, we cautioned government about the possible negative impact that the proposed restricted trading hours could have on the industry as well as government revenues. While we support government initiatives to reduce the harmful effects of excessive alcohol consumption, we believe that the limitation on the trade in liquor at casinos is misdirected and will not achieve the above mentioned objective. A casino complex is unlike any other typical on-consumption liquor licensed premises.

In our submission, we stated that the South African casino industry already operates in a highly regulated environment and is subject to stringent governance and compliance audits in order to maintain their licences. Furthermore, gambling areas within the casino licensed premises are accessible only to adults (persons over 18 years of age). Casino licensees thus strictly control the sale, dispensing and consumption of liquor within the gambling areas.

Continued on page 2

CASA concerned with the draft national liquor norms and standards *cont from page 1*

It is significant to note that no complaints of noise, nuisance or disturbance have been levelled against casino licensees in all their years of conducting business at the various licensed premises that relate to the sale and dispensing of liquor.

Licensed casino developments are substantial tourism and entertainment investments, attracting persons from other provinces (domestic travellers) and from outside South Africa. The expectation of those persons is that liquor will be available for the hours commensurate with the hours that the business trades, namely 24 hours a day and 7 days a week as per the casino licences. Not to do so will cause the South African tourism and leisure sector to be less competitive and less viable for investors. If casino licensees cannot cater for their demands, the customers will likely simply disappear. It could also encourage the development of illegal gambling venues throughout the country which do not contribute to the fiscus, do not create employment, are not empowerment driven and are otherwise unregulated and generally associated with social ills, including the misuse of liquor. That will in turn erode the significant fiscal benefits that accrue to the local, regional, provincial and national government.

Through a series of uncoordinated and ill-considered regulatory amendments, the

industry is already hampered in contributing at optimum levels.

National, provincial and local taxes and the uncertainty of operating in an environment that is reliant on disposable income are key reasons for casinos to be concerned about the Draft Liquor Standards. We believe that the proposed amendments will have significant financial consequences. The effect of restricting the trade in liquor to between 10am and midnight on an industry that trades 24 hours a day and seven days a week will be highly detrimental. We also do not believe that such a restriction is likely to have a positive social impact in the context of casino complexes. Investment by casino operators in both maintaining and growing gaming and non-gaming facilities will also be severely curtailed.

The Draft Liquor Standards will deny casino licensees the opportunity to trade in liquor in the hours which prevailed when they made applications to the various Provincial Licensing Authorities for their casino licences, and the basis on which they committed themselves to substantial capital expenditure.

The Draft Liquor Standards also propose to restrict the trade in liquor by hotels to between 10am and midnight. This means that all mini-bars in hotel rooms would be

required to be locked or sealed between midnight and 10am everyday which is neither practical nor possible. In addition, hotels will be precluded from serving champagne breakfasts prior to 10am, which would reduce the services and facilities available to guests and patrons at hotels.

An economic downturn in the casino industry will also have a longer term impact on jobs, at a time when President Jacob Zuma has called on business and labour to work with government to grow the economy and stimulate job creation. In his State of the Nation Address on 13th February 2014, the President asserted that: "We have to work together as government, business and labour to grow our economy at rates that are above 5 per cent to be able to create the jobs we need."

In conclusion, we submit that, given the unique characteristics of casino premises, casinos ought to be permitted to continue trading in liquor during the hours that are commensurate with their business trading hours as envisaged in their respective casino licences. This will have no detrimental social or economic effect on any person or establishment in the country.



continued from page 1

regulated on an ongoing basis. The further registration of these persons as private security services providers in terms of PSIRA amounts to nothing more than a duplication in regulatory effort and costs, in circumstances when none is objectively required.

However, PSIRA itself does make provision for exemptions from compliance with provisions of the Act, which may be sought by making formal application to the Minister responsible for the administration of the Act (viz. the Minister of Police). The only proviso, contained in section 1(2) of the Act, is that an exemption should not be granted if it would "prejudice the achievement of the objects of this Act".

Accordingly, CASA applied for an exemption in terms of which the surveillance personnel employed in licensed casinos in the country would be relieved of the responsibility also to be registered as private security service providers in terms of PSIRA. The application was supported by detailed motivation, including reference to case law emanating from the Constitutional Court on the same subject matter¹, which refers to the broadness of the definition of "security service", confirms that not all persons performing services which are listed in the relevant definition will be required to register as security service providers in terms of the Act, and provides guidelines for drawing the distinction between persons who

should be registered in order to give effect to the objects of the Act, and those who do not require such registration.

In brief, the Constitutional Court found that the mere fact that an individual performs services which fall within any component of the (deliberately) broad definition of "security service" provided in the Act, does not mean that such person will automatically be required to be registered as a security service provider. In view of the broad scope of the various provisions of the Act, the Constitutional Court considered the registration requirement against the backdrop of the clear objectives of the legislation, in order to provide

legalWATCH



¹ *Bertie van Zyl and Another v Minister for Safety and Security and Others* 2010 (2) SA 181 (CC)



guidance regarding the categories of “security service” which would warrant registration. Against this backdrop, the Court held as follows in Paragraphs 38 and 39 of the judgment:

- “38. *The need for private security services arises at once from the pervasive crime that targets people and property, and the necessity to enhance state security services. Private security services, which by their very nature impose upon others, bear the duty of **providing safety and protection from criminal threats and actions and responding to those threats and actions.** It must be borne in mind that, by its very nature, a service is not a once-off action taken out of necessity, for example, but instead connotes an element of repeated performance of a duty, however frequent or infrequent.*
39. *That duty is therefore not incidental to the role of a security service provider. It lies at its core. Given the context of the Act and its express objective of regulating the private security industry, the plain meaning of a security service cannot extend to a security activity that is merely a by-product or once-off incident of the core activity. Teachers, nurses and shop tellers might all, in the regular course of their duties, protect people and property. But that protection is merely incidental to those duties. Conversely, a security service provider will direct his or her attention and expertise towards the security duties with which he or she has been specifically tasked for some form of remuneration at that time.” [Emphasis added]*

Accordingly, the Constitutional Court regarded the provision of a security service as encompassing the “duty of providing safety and protection” from threats of a criminal nature “and responding to” such threats, which is performed on a repeated

basis. In addition, the Court stressed that in cases where a person performs a security activity which is a by-product of (or incidental to) the performance of other duties, and not by definition at the core of the duties performed by such person, such person would not be regarded as providing a “security service” for the purposes of the Act, and as such, would not require registration.

In the same context, the Constitutional Court found that one of the central features of the work performed by a security service provider was that he or she would be required to “provide protection or take action against unlawful acts against persons or property over which he or she has charge”.

A surveillance employee’s core duties are not to provide safety and protection against, or to respond to, criminal threats. The core duties of such a position are to monitor and record gambling areas and activities, and to conduct audits and investigations with a view to ensuring compliance with gambling legislation and the internal control standards of the casino operator. These activities are primarily directed at ensuring the ongoing integrity of the operation and the monitoring and capturing of gambling transactions in order to ensure the correct calculation and payment of gambling taxes, as well as fair play (in the context of the investigation of patron disputes).

The fact that, in the course of conducting their core functions, surveillance personnel may assist in safeguarding the property of the casino operator against criminal activities such as theft, is incidental to (or a by-product) of the performance of their core duties. In addition, surveillance personnel do not (and are not required to) take action against or respond to criminal threats or actions. In the event that any criminal activity (in relation to gambling only) is suspected, surveillance personnel are required by the applicable Rules to “investigate, record and report upon” such activity. They do not interact with suspected criminals, and, in this

context any criminal conduct which takes place in a casino would be dealt with by dedicated security officials and merely monitored by surveillance personnel. As such, surveillance employees do not exercise any form of “coercive power, authority and control” in the conduct of their functions.

Moreover, in the application for exemption, it was pointed out that surveillance personnel are already strictly regulated by the provincial gambling boards by which they are licensed. It was noted that the extent of this scrutiny and regulation goes further than that authorised by PSIRA, so that inevitably, the efforts of the Authority’s personnel in investigating the relevant surveillance personnel could not be expected to bring any further information to light regarding their suitability for licensing or registration. Their further registration as security service providers in terms of PSIRA therefore would entail nothing more than a duplication (to a more limited extent) of the same regulatory effort and further costs, without any corresponding benefits.

Despite the compelling considerations outlined above, in January 2014, CASA was informed that its application for exemption had not been successful. The high watermark of the reasons provided for the refusal is that the Minister is of the view that “it will be prejudicial to the objects of the Act” to extend the exemptions applied for. No underlying reasons for this view are provided in the Minister’s correspondence.

CASA remains committed to ensuring that stumbling blocks standing in the way of the effective and efficient regulation of the casino industry are addressed and eliminated. As such, it plans to request detailed reasons for the decision taken, so that the duplication of regulatory effort which continues to surround this matter, as well as the associated costs implications, may be appropriately addressed.

MAKING A DIFFERENCE TOGETHER

Moses Kotane Municipality and Sun City declare war on garbage

Sun City's Environmental Department and the Moses Kotane Municipality's Waste Management Department recently joined forces to tackle the mound of rubbish that had piled up at the ZipSlide area next to Sun City.



Sun City together with the newly appointed environmental team from the municipality has also implemented a programme to counter the problem of illegal dumping by running a door-to-door environmental awareness campaign alongside an on-the-ground litter collection.

The team participating in the clean-up included 30 staff from Sun City. The municipality provided 21 team members plus an additional 46 litter collectors to assist on the day. They form part of the Extended Public Works Programme which, in addition to cleaning up the environment, also aims to create jobs for the unemployed.

Platinum Waste Resources (PWR) not only provided a team to assist with the cleanup and transported the waste to the landfill site at the

end of the day, they were also prepared to schedule an additional nightshift to make up the time needed to assist with the clean-up.

In all, over 100 people participated in the clean-up of identified sites and not even soaring summer temperatures could deter the team who soldiered on. They succeeded in clearing the mountain of rubbish from all the sites in less than two hours.

The litter had gathered over many months during which time it was exposed to elements such as fire and rain and had become cross-contaminated from other waste, so clearing it was not a simple task. Together they removed a total of 2 630kg of waste, of which 840kg was recycled. The unrecyclable waste was eventually disposed of at the Sun City landfill site by PWR.



As a precursor to the SA Basic Education Conference which will be held at Emperors Palace from March 31 to April 1, the Conference Chairs, Gail Campbell of the ZenexFoundaton and Prof Mary Metcalfe of Wits PDM, along with a group of journalists, visited a low-resource high and primary school in Daveyton on Tuesday morning, March 25. The tour, hosted by Emperors Palace, showcased the innovative iPad, fixed computer laboratory and MacBook initiative that forms part of the five-year R40-million Peermont School Support Programme (PSSP) at 25 public schools in the Ekurhuleni and Sedibeng areas. Here Campbell of Observatory is pictured during her visit to Gugulesizwe Primary School with grade 7 learners, Gareth Masango, Nkosinathi Moloi, Alicia Mlotshwa and Lusanda Mhlanga as they use one of the PSSP sponsored iPads during a lesson.

(Photograph by Yolanda van der Stoep)



As a precursor to the SA Basic Education Conference (SABEC) which will be held at Emperors Palace next week the Palace of Dreams took a group of guests on a visit to Gugulesizwe Primary School and Unity Secondary School in Daveyton, two of the 25 schools that benefit from the five-year R40-million Peermont School Support Programme (PSSP), on Tuesday, March 25. The PSSP is an initiative designed to create centres of excellence around these schools and to this end has provided the schools with iPads, fixed computer laboratories and MacBooks. Here one of the guests on the tour, the FPD's Dineo Moerane of Lynwood is pictured with grade 3 learners at Gugulesizwe, Bonginkosi Mtsweni and Samukelo Nkosi as they do a lesson on one of the iPads supplied by the PSSP.

(Photograph by Yolanda van der Stoep)



At a time when most South African schools are struggling to deal with issues such as teenage pregnancies and drug and alcohol abuse, one company is trying to make a positive difference in the lives of youngsters.

SUN CITY AND CELEBRITIES GET 'BEHIND THE CLASS'

Project aims to inspire youth to overcome social handicaps



For the second consecutive year, Sun International's Sun City Resort will team up with actor and television and radio presenter Akhumzi Jezile, to address youth at the nearby Charora High School every quarter, as part of their on-going Behind the Class project.

The school, which was brought to Sun City's attention by Vuyisile Tapile, a former learner there and now employed by Sun City, will benefit from motivational addresses by different celebrity role models.

At the first address on 21 February 2014, Akhumzi awarded bursaries on behalf of

Boston College in Johannesburg to two lucky recipients.

Charora High School in Rustenburg caters specifically for grades 10 to 12, an age group that is particularly affected by problems. Every year, a minimum of 15 young girls drop out because they're pregnant, while 40 or more boys fall out as a result of drug addiction. Despite enjoying a 100% pass rate, tragically, approximately 100 more learners leave school each year due to loss of interest in studying further, even though the school has 100% pass rate.

Behind the Class aims to address the issues facing learners at Charora through Peer Support and motivational talks from role models such as Akhumzi and others, encouraging them to focus on learning if they want to have the hope of a bright future.

As the ambassador of the Behind the Class campaign, Akhumzi is a popular character amongst a younger generation and his 32 000 Twitter followers bear testimony to this. He regularly encourages responsible behaviour among youth.

Giving the disabled their place in the company



Louis Eastern, Montecasino IT Technician

A company that has embraced this duty and taken it a step further is Tsogo Sun's flagship entertainment destination, Montecasino, which recognised that there are many untapped skills among people with disabilities (PWD) and more opportunities within its workforce for the disabled than initially considered.

Montecasino's leadership team determined that the issue needed to be dealt with on a strategic level rather than on an ad hoc basis, and it partnered with Bradshaw LeRoux Consulting, experts in disability integration, and appointed Lesa Bradshaw, who is project manager on the Montecasino account, to be their change champion.

Montecasino's Disability Integration Programme launched in March 2012 with the first intake of 17 existing employees with a disability. The programme saw a new intake in 2013 and today there are 27 PWD employees at Montecasino. In 2014, the programme will continue to support the career development of PWD through identifying training needs, providing

With an estimated 8-12 percent of the South African population experiencing some form of disability, corporate South Africa has a responsibility to ensure that its employee base is more representative of this ratio.

training to develop their competence and skills, and removing barriers as careers develop.

Montecasino has focused on removing barriers to the integration of PWD across the three principal areas that prevent inclusion. These include:

- Environmental accessibility audits to remove the most obvious barriers presented in the infrastructure and workflow aspects of the environment. This was done on an individual level with each existing PWD, as well as in general for future PWD.
- Disability Awareness training to remove attitudinal barriers and to promote more empowered decision making among staff, management and PWD themselves.



Sipho Moloko, Montecasino Admin Clerk

- A review of recruitment, selection and induction policies to establish fair access to employment opportunities for PWD. An analysis of the various job profiles of existing PWD was conducted with each individual to minimise organisational barriers.



(L-R): Bayshadhan Govindasami (HRD Practitioner, Montecasino), Lesa Bradshaw (Bradshaw LeRoux Consulting), Linnet Bryan (HR Consultant, Montecasino) and Tati Tsunke (HR Manager, Montecasino)