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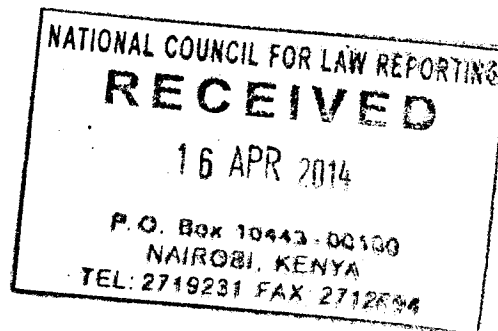
NATIONAL ASSEMBLY BILLS, 2014

NAIROBI, 3rd March, 2014

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**THE PRIVATE SECURITY REGULATION
BILL, 2014**

A Bill for

AN ACT of Parliament to provide for the regulation of the private security industry, to provide for a framework for cooperation with National Security Organs; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART 1—PRELIMINARY

Short title.

1. This Act may be cited as the Private Security Regulation Bill, 2014.

Interpretation

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

“Authority” means the Private Security Regulatory Authority” established by section 7(1);

“Board” means the Board of the Authority established by section 11;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to internal security;

“Director” means the director of the Board appointed in accordance with section 18;

“member of a disciplined services” includes a member of the—

- (a) National Police Service;
- (b) Kenya Defence Forces;
- (c) National Intelligence Service;
- (d) Kenya Forest Service;
- (e) Kenya Wildlife Service;
- (f) Prisons Department; and
- (g) any other Service established under an Act of Parliament that offers security or quasi-security related services;

“misconduct” means any action, failure or refusal to act, which may not necessarily constitute a contravention of the law but does not meet—

- (a) the requirements of the code of conduct referred to under section 27;
- (b) the values set out under Article 10 of the Constitution; or
- (c) applicable norms and standards provided for in international instruments applicable to Kenya;

“National Security Organs” means the national security organs established under Article 239 of the Constitution;

“private security service provider” means a person or body of persons, other than a state agency, registered under this Act to provide private security services to any person;

“private security firms” means a body corporate, including a partnership, which provides private security services;

“private security services” means any of the following services whether performed by an individual or firm—

- (a) installation of burglar alarms and other protective equipment;
- (b) private investigations and consultancy;
- (c) car tracking or surveillance;
- (d) close-circuit television;
- (e) provision of guard dog services;
- (f) security for cash in transit;
- (g) access control installation;
- (h) locksmiths; or
- (i) any other private security service as may be determined from time to time by the Board by a notice in the Gazette;

“security service” means one or more of the following services or activities:

- (a) protecting or safeguarding a person or property in any manner;
- (b) giving advice on the protection or safeguarding of a person or property, on any other type of security service as defined in this section, or on the use of security equipment;

- (c) providing a reactive or response service in connection with the safeguarding of a person or property in any manner;
- (d) providing a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or similar purposes;
- (e) manufacturing, importing, distributing or advertising of monitoring devices for interception and monitoring provided for under any written law;
- (f) performing the functions of a private investigator;
- (g) providing security training or instruction to a security service provider or prospective security service provider;
- (h) installing, servicing or repairing security equipment;
- (i) monitoring signals or transmissions from electronic security equipment;
- (j) performing the functions of a locksmith;
- (k) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in paragraphs (a) to (j) and (l), to another person;
- (l) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (j);
- (m) creating the impression, in any manner, that one or more of the services in paragraphs (a) to (l) are rendered;

"person" includes—

- (a) a natural person;
- (b) a partnership;
- (c) a business trust;
- (d) a foundation;
- (e) any company incorporated or registered in terms of any law; and

- (f) any other body of persons corporate or unincorporated;

“private security services industry” means the people and activities involved in the provision of private security services;

"property" means any movable, immovable or intellectual property, or any right to such property;

"security equipment" means—

- (a) an alarm system;
- (b) a safe, vault or secured container;
- (c) a satellite tracking device, closed circuit television or other electronic monitoring device or surveillance equipment;
- (d) a device used for intrusion detection, access control, bomb detection, fire detection, metal detection, x-ray inspection or for securing telephone communications;
- (e) a specialised device used to open, close or engage locking mechanisms; or
- (f) a specialised device used to reproduce or duplicate keys or other objects which are used to unlock, close or engage locking mechanisms;

“private security officer” means a person who is authorized and registered under this Act to offer private security services at a fee;

"security guard" means a person employed as such by a contract security organization or proprietary security organization; and

"register", with regard to a security service provider, means entering the name of a security service provider in the register contemplated in this Act.

3. The Object of the Act is to—

Object of the Act.

- (a) provide for a framework of regulation of the private security services industry in accordance with the values and principles set out in the Constitution;
- (b) provide for a framework for the regulation of foreign ownership and control of a business operating as a security service provider;

- (c) regulate private security services registered in Kenya rendered outside the Republic; and
- (d) provide for a framework for cooperation between the private security services industry and the state agencies that deal with security.

Application of the Act.

4. This Act shall apply to—

- (a) private security officers;
- (b) security guards;
- (c) private security service providers; and
- (d) private security firms.

Guiding principles

5. All persons subject to this Act shall at all times—

- (a) respect, uphold and defend the values and principles enshrined in the Constitution; and
- (b) uphold and respect Article 238 (1) and 238 (2) (a) and (b) of the Constitution; and
- (c) recognize and respect the role of national security organs under Chapter Fourteen of the Constitution and any written law.

Mandatory registration

6. Any person or firm offering private security services shall be registered by the Authority in accordance with this Act.

PART II—ESTABLISHMENT AND COMPOSITION OF THE AUTHORITY

Establishment of Authority

7. (1) There is established an Authority to be known as the Private Security Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may be lawfully done by a body corporate.

Access to services.

8. (1) The Headquarters of the Authority shall be in Nairobi.

(2) The Authority shall ensure reasonable access of its services in all parts of the Republic, so far as it is appropriate to do so, having regard to the nature of the service.

9. The Functions of the Authority shall be to—

Functions of the Authority.

- (a) ensure the effective administration, supervision, regulation and control of the private security services industry in Kenya;
- (b) formulate and enforce standards for the conduct of the private security services industry in Kenya;
- (c) register and license all persons involved in or conducting private security services in Kenya;
- (d) promote the development of the private security services industry;
- (e) advise the Cabinet Secretary on the national policy on any matter affecting the private security industry;
- (f) ensure that private security service providers act in the public and national interest when rendering their services;
- (g) determine, prescribe and enforce minimum standards of occupational conduct in respect of the private security services industry;
- (h) encourage and promote efficiency and responsibility in the rendering of private security services;
- (i) set standards and accredit institutions offering training of security service providers and prospective security service providers to ensure a high quality of training and in particular with regard to—
 - (i) the accreditation and withdrawal of the accreditation of persons and institutions providing security training;
 - (ii) the monitoring and auditing of the quality of training functions performed by accredited persons;

- (iii) the participation in the activities of other bodies or persons entitled by law to set standards in respect of training of private security service providers or bodies entitled to formulate, implement or monitor skills development plans for the private security services industry;
 - (iv) the appointment of persons to monitor and assess achievements or outcomes in respect of standards applicable to training;
 - (v) the determination and accreditation of qualifications required by security service providers to perform particular types of security services; and
 - (vi) the taking of reasonable steps to verify the authenticity of training certificates presented by persons for the purposes of this Act;
- (j) set standards to encourage equal opportunity employment practices in the private security services industry;
 - (k) promote the protection and enforcement of the rights of security guards, private security officers and other employees in the private security services industry;
 - (l) develop and maintain a computerized data base with information required for the proper performance of its functions;
 - (m) cooperate with any person or body in the performance of an act which the Authority by law is permitted to perform;
 - (n) provide information to the users, prospective users or representatives of users of security services regarding the compliance of private security service providers with the provisions of this Act;
 - (o) provide or disseminate information promoting and encouraging compliance with this Act and the code of conduct by private security service providers;
 - (p) provide and set standards that ensure compliance with the minimum wage regulations; and

- (q) protect the interests of the users of private security services by offering the users avenues to seek redress where there are violations of the law.

10. In the exercise of its functions, the Authority has power to— Powers of the Authority.

- (a) establish relations with or enter into co-operation agreements with bodies or offices regulating the private security industry in other countries, or bodies representing such regulators;
- (b) conduct, or cause to be conducted, hearings, investigations and inquiries with regard to any matter falling within the scope of its functions; and
- (c) generally perform any act that contributes to the attainment of its objects.

11. (1) The Authority shall be governed by a Board consisting of— The Board of the Authority.

- (a) a chairperson appointed by the President, and the following members appointed by the Cabinet Secretary—
- (b) four members representing—
 - (i) the Principal Secretary responsible for matters relating to internal security ;
 - (ii) the Principal Secretary responsible for matters relating to finance;
 - (iii) the Principal Secretary responsible for matters relating to labour; and
 - (iv) the National Police Service;
- (c) two members of registered associations representing employee organizations elected in accordance with regulations prescribed by the Cabinet Secretary;
- (d) two members of registered associations representing private security firms elected in accordance with regulations prescribed by the Cabinet Secretary; and
- (e) one member nominated by registered residents associations to represent the interests of residents.

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(2) The Cabinet Secretary shall make regulations generally to provide for the procedure for the appointment of members of the Board and in particular—

- (a) to regulate the appointment of the representatives under subsection (2) (c), (d), and (e);
- (b) ensure that the appointment of representatives under subsection (2) (c) and (d) is representative of industry players and if possible, provide for rotational appointment to ensure representation of small and large scale firms and associations;
- (c) ensure that the Board respects and upholds the principles and requirements under Article 232 (1) and 27 of the Constitution.

(3) A person shall be qualified for appointment as the chairperson of the Board if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of Chapter Six of the Constitution has served the public with distinction; and
- (c) has at least fifteen years experience in security matters.

Allowances of the Board.

12. The Chairperson and members of the Board shall be paid such allowances as the Cabinet Secretary in consultation with the Salaries and Remuneration Commission shall determine.

Term of Board members

13. The Chairperson and members of the Board shall serve the Authority for a period of three years and shall be eligible for reappointment for one further term.

Committees of the Board.

14. (1) The Board may establish such committees as may be necessary for the proper discharge of its functions under this Act or any other written law.

(2) The Board may co-opt into the membership of the committees established under subsection (1) any person whose knowledge and expertise may be required.

Delegation by the Board.

15. (1) The Authority may, by resolution generally of the Board or in any particular case, delegate in writing, to a committee or any officer, member of staff or agent of the Authority, the exercise of any of the powers or the

performance of any of the functions or duties of the Authority under this Act.

(2) A delegation under subsection (1) shall not prevent the Authority from exercising the power in question.

(3) A delegation under this section—

- (a) shall be subject to any conditions as the Board may impose;
- (b) shall not divest the Authority of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or varied by the Authority.

16. The conduct of the business and affairs of the Board shall be as set out in the First Schedule.

Meetings of the Board.

17. (1) The Authority shall operate under the supervision of the Cabinet Secretary.

Powers of the Cabinet Secretary.

(2) Where the Authority fails to maintain any prescribed standard in the fulfillment of its functions under this Act, the Cabinet Secretary may give general or special directions to the Authority describing the extent of the failure and stating the steps required to remedy the situation.

18. (1) The Board, in consultation with the Cabinet Secretary, shall competitively appoint a Director of the Authority who shall be the Chief Executive Officer and Secretary to the Board.

Director.

(2) A person is qualified for appointment as the Director to the Authority if that person—

(a) holds a degree from a university recognized in Kenya in any of the following disciplines—

- (i) public administration and management;
- (ii) law;
- (iii) business administration; or
- (iv) security studies;

(b) meets the requirements of Chapter Six of the Constitution; and

(c) has at least ten years experience, five of which shall be experience at senior management level.

(3) The Director shall serve the Authority for a term of three years and shall be eligible, subject to satisfactory performance of his or her functions, for reappointment for one further term.

(4) A person shall not be appointed as the Director or an officer of the Authority if such person has any direct or indirect interest in the private security services industry.

(5) The Director may be removed from office for gross misconduct, violation of the Constitution or any other law or on any other ground as may be provided for in the contract of employment.

(6) The Director shall be responsible to the Board for the day to day operations of the Authority.

Staff of the
Authority.

19. (1) The Board shall competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Authority.

(2) In the appointment of the staff of the Authority, the Board shall comply with the values and principles set out in the Constitution and in particular—

(a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;

(b) exercise transparency in the recruitment process; and

(c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

Terms and
conditions of
service.

20. The staff of the Authority shall serve the Authority—

(a) on such conditions of service as the Board in consultation with the Public Service Commission may determine; and

(b) on such terms of service as the Board, on recommendation of the Salaries and Remuneration Commission may determine.

**PART III—REQUIREMENTS FOR
REGISTRATION AS AN INDIVIDUAL
PRIVATE SECURITY SERVICE PROVIDER**

21. A person shall not engage in the provision of private security services or offer private security services in Kenya at a fee unless that person is registered by the Authority in accordance with this Act.

Registration of individual private security service provider.

22. In this Part an “individual private security service provider” means—

Interpretation.

- (a) a security guard;
- (b) a private security officer employed in a private security firm; or
- (c) a private security provider.

23. (1) An individual private security services provider shall make an application for registration to the Authority in such form and manner as may be prescribed and the application shall be accompanied by the prescribed application fee.

Requirement for Registration.

(2) An individual shall be eligible for registration as an individual private security provider if that person—

- (a) is a citizen of Kenya or a person who is ordinarily resident in Kenya;
- (b) is over eighteen years of age;
- (c) submits a certificate of good conduct issued by the Directorate of Criminal Investigation;
- (d) where he or she previously served in any of the disciplined services, produces a certificate of discharge and a certificate of clearance from such service;
- (e) has no criminal record; and
- (f) is of sound mind.

24. The Authority shall issue a certificate of registration to all successful applicants as evidence of registration.

Issuance of a certificate of registration.

25. A registration done under this Act—

Registration terms and conditions.

- (a) shall remain in force for such period as may be specified therein not exceeding one year and may



be renewed from time to time for periods not exceeding one year;

- (b) may be granted subject to such restrictions and on such conditions as may be specified in the certificate of registration; and
- (c) shall be subject to the payment of such annual fee as may from time to time be prescribed by the Authority.

Renewal of registration.

26. (1) An individual private security service provider shall annually register with the Authority in a manner prescribed by the Authority.

(2) An application for renewal under this section shall be made to the Authority in such form and manner as may be prescribed and shall be accompanied by the prescribed application fee.

(3) The Authority shall consider the application for renewal of registration referred to under subsection (1) and may renew or decline to renew the registration.

(4) The Authority may decline to register or renew the registration of any individual private security service provider where the Authority after undertaking investigations is convinced that the applicant no longer meets the requirements set out under section 23 (2), is a threat to national security; or for any other compelling and justifiable cause.

(5) Where the Authority declines to renew the registration of an applicant as provided under subsection (4), the Authority shall communicate, in writing, the reasons for declining.

(6) Where an application for renewal of registration is refused, any fee paid under subsection (2) shall be refunded to the applicant.

Compliance with the code of conduct.

27. An individual private security service provider shall at all times comply with the code of conduct set out in the Second Schedule.

PART IV—REGISTRATION AS A CORPORATE PRIVATE SECURITY SERVICE PROVIDER

Mandatory registration.

28. A person shall not engage in the provision of private security services or offer private security services

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in Kenya at a fee unless that person is licensed by the Authority in accordance with this Act.

29. (1) An application for a licence to offer private security services in Kenya shall be made to the Authority in writing, in the manner prescribed and shall be accompanied by such fees as shall be prescribed by the Authority.

Requirements for licensing.

(2) A person shall be eligible for registration as a private security service provider if that person—

- (a) is incorporated and established in Kenya;
- (b) if a foreign company, is registered whether as a limited liability company or a partnership in accordance with the laws of Kenya and has at least twenty five percent local shareholding; and
- (c) has persons performing executive or management functions in respect of security business who are registered as private security service providers under this Act.

30. The Authority shall consider applications for a licence received under this Act and shall if the applicants meet the requirements under this Act issue a licence.

Approval or decline to issue a licence.

(2) The Authority shall refuse to grant a licence under this Act to any person who—

- (a) a resolution has been passed or an order as been made by a court of competent jurisdiction for its winding up;
- (b) a receiver has been appointed for any of its property;
- (c) any of its directors has been convicted of an offence and sentenced to imprisonment for a period exceeding six months; or
- (d) has been convicted, during the period of ten years immediately preceding the application, of an offence and fined in accordance with this Act or any other written law;
- (e) it considers that the applicant is not a fit and proper person to be granted a licence.

(3) Where the Authority refuses to grant a licence on any of the grounds specified in subsection (2) the Authority

shall state the reasons therefor and inform the applicant of the right of appeal conferred by this Act or any other written law.

Licence.

31. A licence granted by the Authority under section 30—

- (a) shall remain in force for such period as may be specified therein not exceeding five years, subject to annual renewal; and
- (b) may be granted subject to such restrictions and on such conditions as may be specified in the licence.

Cancellation of a licence.

32. (1) Subject to this Act, the Authority shall cancel a licence granted under this Act where it is satisfied that—

- (a) the licensee has had an order in bankruptcy made against him or her which remains undischarged;
- (b) the licensee knowingly and willfully gave false information of a material nature in connection with its application for the grant or renewal of its licence;
- (c) the condition upon which the licence was originally granted or renewed can no longer be fulfilled by the licensee; or
- (d) the licensee is convicted of any offence under this Act or any offence and sentenced to a fine exceeding five hundred thousand shillings.

(2) Where the Authority cancels a licence under subsection (1), it shall notify the licensee in writing of such cancellation, stating the reasons therefor, and of the right of appeal conferred by this Act or any other written law.

Registration of officers in a firm.

33. (1) A private security service firm shall not employ a private security service provider, a security guard or a trainer who is not registered under this Act.

(2) Every person who is employed in a private security service firm, including a person offering security services training shall apply to the Authority to be registered under this Act.

(3) Every person who is the holder of a licence to operate the business of a private security service firm shall apply to the Authority to be registered under this Act.

(4) An application under this section shall be made to the Authority in such form and manner as may be prescribed

34. A licence or certificate of registration issued under this Act shall be issued by the Authority in the prescribed form within fourteen days from the date of registration.

Issuance of a licence or certificate.

35. Every licensee under this Act shall forthwith notify the Authority in writing of—

Duties of a licensee.

- (a) any dismissal, resignation or retirement of any director or partner in the organization or firm;
- (b) the reasons for any dismissal, resignation, retirement or termination of service of any armed or unarmed private security guard; and
- (c) the names and addresses of any new partner or director in the organization.

36. A private security guard or an individual private security services provider shall forthwith notify the Authority in writing of any termination or change in his or her employment.

Particulars of employment.

PART V—GENERAL PROVISIONS ON REGISTRATION.

37. An application under this Act shall be accompanied by—

Additional requirements for registration.

- (a) a clear and complete set of fingerprints taken in the prescribed manner—
 - (i) of the applicant, if the applicant is a natural person;
 - (ii) if the applicant is a private security firm, of every natural person performing executive or managing functions in respect of such private security firm;
 - (iii) of each director, if the applicant is a company;
 - (iv) of each member, if the applicant is a corporation;
 - (v) of each partner, if the applicant is a partnership;

(vi) of each trustee, if the applicant is a business trust; and

(vii) of each administrator or person in control

(b) any other document or certificate required in terms of this Act or by the Authority to be submitted with an application for registration.

Inspection for registration compliance.

38. The Authority may cause such inspection to be conducted, as it may consider necessary to establish whether an applicant meets the requirements for registration contemplated under this Act.

Ineligibility for registration.

39. (1) A person shall not be registered to provide private security services under this Act if that person—

(a) is in the permanent employment of the Authority, the National Intelligence Service, the disciplined services or the prisons department;

(b) has been convicted by a competent court of an offence involving violence, theft or fraud;

(c) is an undischarged bankrupt;

(d) is found to be associating with any organization which is prohibited under any law for the time being in force; or

(e) being a public officer, is dismissed from service on grounds of misconduct or moral turpitude.

(2) A partner, owner or shareholder of a private security firm who becomes disqualified under subsection (1) shall cease to be a partner, owner or shareholder of the firm for purposes of providing private security services and the provisions of the Companies Act shall apply.

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Authority Register.

40. (1) The Authority shall keep a register of persons licensed and registered under this Act, and shall enter in such register the following particulars-

(a) the names, addresses and occupations of licensees;

(b) the names of persons issued with a registration certificate or a licence and the registration number and date of issue of such certificate or licence;

- (c) a description of any licence, permit or certificate issued to the licensee pursuant to the Firearms Act;
- (d) the terms and conditions (if any) subject to which a licence is granted;
- (e) any other information as the Authority may consider necessary for purposes of realizing the principles under Article 35 (1) and 35 (3) and the principles of national security enshrined in Article 238 (1) and 238 (2) of the Constitution.

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(2) The register referred to in subsection (1) shall, at all reasonable times, be open to inspection by any person.

41. (1) A private security provider shall keep a register of all persons employed for purposes of providing security.

Registered person to keep register.

(2) The register referred to under subsection (1) shall include the names of the employees, particulars of employment and any other information as may be prescribed by the Authority.

42. (1) The Authority shall maintain an up-to-date official website where the register and any other information as may be necessary shall be availed.

Access to information.

(2) In publicizing and publishing information under this Act, the Authority shall respect and uphold the human rights and fundamental freedoms of others including the right to privacy.

43. Any person aggrieved by a decision of the Authority may within thirty days of such decision, appeal to the Cabinet Secretary.

Appeals to the Cabinet Secretary.

(2) The Cabinet Secretary shall within seven days of receipt, constitute an ad hoc committee, comprising of not more than three persons to hear and determine the appeal.

(3) The Cabinet Secretary shall ensure that any appeal brought before him or her is heard and determined within thirty days of receipt.

(4) The Cabinet Secretary shall within fourteen days of the hearing of an appeal under this section deliver his or her decision in writing.

(5) Where an appeal is lodged under this section, the Authority shall not take any action until the appeal has been heard and determined.

(6) Any person making an appeal under this section may either in person or by his or her representative make oral or written submissions to the Cabinet Secretary or the Committee established under subsection (2).

Appeals to courts.

44. Any person aggrieved by a decision of the Authority or the Cabinet Secretary under this Act may appeal to any court of competent jurisdiction.

PART VI—COOPERATION WITH NATIONAL SECURITY ORGANS

Duty to cooperate.

45. (1) Whenever called upon by a National Security Organ, the Inspector General of the National Police Service or the Cabinet Secretary, a private security service provider shall cooperate in the maintenance of law and order or in any other manner as may be provided for in the instrument of request.

(2) The Cabinet Secretary in consultation with the Inspector-General and the Authority shall make regulations generally to provide for any matter relating to the cooperation, scope, mechanism and command in the case of cooperation with the private security service provider.

PART VII—GENERAL POWERS OF A PRIVATE SECURITY SERVICE PROVIDER

Power to arrest.

46. (1) In exercise of the citizens right to arrest, a private security service provider, a security guard or a security officer may arrest a person who commits an offence within the premises in which that provider, guard or officer is responsible for and immediately hand over the person to the nearest police station or post.

(2) The right to arrest under subsection (1) shall be responsibly exercised and shall not infringe on any right or fundamental freedom of a person.

(3) A private security service provider, a security guard or security guard who violates an individual right or fundamental freedom in exercise of the right to effect arrest under this section commits an offence and shall be liable on conviction to the penalty prescribed under this Act or any other written law whichever is higher.

(4) The Cabinet Secretary shall make regulations generally to provide for the responsible exercise of the power of arrest granted under this section.

47. (1) A private security service provider, a security guard or security officer manning a building or responsible for any property may search a person on entry or exit of that building or property without a warrant.

Power to search.

(2) In the exercise of the power to search under subsection (1), a private security service provider, a security guard or a security officer shall not infringe on any right or fundamental freedom of an individual under the Constitution.

(3) The power to search under subsection (1) shall be exercised responsibly and shall be subject to any other written law.

(4) A private security service provider, a security guard or security guard who violates an individual right or fundamental freedom in exercise of the right to search under this section commits an offence and shall be liable on conviction to the penalty prescribed under this Act or any other written law whichever is higher.

(5) The Cabinet Secretary shall make regulations generally to provide for the responsible exercise of the power of search granted under this section.

48. At the entry of any premises or property within the jurisdiction and care of a private security service provider, a security guard or a security officer, the private security service provider, security guard or officer may request a person to identify themselves, register the time of entrance and exit of the person and retain temporarily the identification document of such person.

Power to record and temporarily withhold identification documents.

(2) The identification document surrendered under subsection (1) shall—

- (a) be given back to the person at the point of exit;
- (b) not be used for any other purpose save for identification;
- (c) be kept in safe custody until given back to the owner.

(3) Any information obtained in the registration of a person under subsection (1) shall not be used for any other purposes save for identification of the person.

(4) The Cabinet Secretary shall make regulations generally to give full effect to this section.

5) A person who violates any provision of this section or any regulations made thereunder commits an offence and shall be liable on conviction to a penalty prescribed under this Act.

right to report a
violation of the
w.

49. (1) Any person subject to this Act who witnesses the commission of an offence is obliged to report any violation of a written law to the relevant state authority.

(2) Any person subject to this Act who aids or abets the commission of an offence under any written law commits an offence and shall be liable upon conviction to penalty prescribed in this Act or any other written law.

(3) The law relating to witness protection or any other law shall be applicable to security guards, private security officer or any private security services provider who is a witness and whose identity shall be withheld in the interest of justice.

PART VIII— EQUIPMENT AND OTHER TOOLS OF TRADE FOR PRIVATE SECURITY SERVICES

equipment.

50. (1) A private security provider shall not—

- (a) use or allow the use of uniforms similar to any of the uniforms worn by any disciplined forces or any national security organ in Kenya;
- (b) brand its vehicles in similar colors with any disciplined force or national security organ in Kenya; or
- (c) install communication tools or systems capable of interfering with a communication system used by any disciplined forces or national security organ in Kenya.

(2) The Cabinet Secretary in consultation with the Authority shall make regulations generally to give full effect to this section.

(3) Without prejudice to the generality of the power to make regulations under subsection (2), the Cabinet Secretary shall make regulations on—

- (a) the use or otherwise of certain types of equipment by security service providers in the rendering of a security service;
- (b) the manufacture, importation, selling, distribution and possession of certain security equipment; and
- (c) classification of security equipment that may not be used without the authority of the Cabinet Secretary.

51. (1) A private security service provider shall handle animals used for security purposes under their care or use in a manner that is not cruel to the animal.

Use of animal for security purposes.

(2) The laws applicable to the protection and welfare of animals shall be applicable to private security service providers.

(3) The Cabinet Secretary in consultation with the Board shall make regulations providing for—

- (a) the use of animals in the provision of private security services;
- (b) the care of animals in the provision of private security services;
- (c) the training, registration, use, treatment, transportation and general care of animals used by private security service providers and other persons who employ private security officers, or in connection with rendering a security service; and
- (d) any other relevant matter to give full effect to this section.

(4) A person who contravenes any provision of this section commits an offence.

PART IX—INQUIRY INTO CONDUCT OF PRIVATE SECURITY SERVICES PROVIDERS

52. (1) The Authority may—

- (a) by notice in writing to a licensee specify the books, documents and records to be kept by the licensee under this Act; and
- (b) request any licensee to make available to the Authority for its inspection such books,

Inspection of books, documents etc.

documents or records as may be specified in the notice.

(2) Any person who refuses to comply with a request made under subsection (1) commits an offence and upon conviction, shall be liable to a fine not exceeding five hundred thousand shillings and the Authority may cancel his or her licence.

Conduct of
inquiry.

53. (1) The Authority may establish a complaints office to receive, process, refer or deal with complaints regarding the quality of service rendered by private security service providers;

(2) The Authority may, on its own initiative or upon a complaint addressed to it in writing by or on behalf of any person alleging misconduct, unprofessionalism or breach of this Act or the Code of Conduct on the part of any registered private security service provider, institute an inquiry into the conduct of such provider.

(3) The Authority shall institute an inquiry where a pattern emerges of illegal actions of the employees of a particular private security service provider.

(4) The Authority may conduct the inquiry or refer the matter to a committee that it has established.

(5) The Authority may require the complainant to provide additional particulars of any of the matters complained of and may require the complaint or any part thereof to be verified by affidavit.

(6) Upon receipt of any complaint against a registered private security service provider, the Authority shall notify the person of the complaint and the grounds of the complaint, under a cover of registered letter, sent to the address recorded in the register of the Authority.

(7) The Authority may, in writing, call upon the person whose conduct is complained of or is under investigation to file, within ten days after receipt of the notice, an explanation to be verified by affidavit.

(8) The Authority may, upon receipt of a complaint against any person, or where it appears to it that any person's conduct requires investigation, summon such person to appear before it or before its committee and to produce such documents in such person's custody or

adduce such evidence as may relate to the matter under investigation.

(9) The person summoned under subsection (7) shall have the right to appear before the Authority and to be heard either personally or through his or her advocate, and may call such evidence and produce such documents as may be appropriate.

(10) The Authority, after inquiring into the alleged misconduct of any person may take such action as it may consider appropriate, including—

- (a) cautioning the person;
- (b) imposing a fine, not exceeding two hundred thousand shillings on the person;
- (c) suspending the certificates of operation; or
- (d) cancelling registration.

(11) In an inquiry under subsection (2), the Authority may recommend all or any of the following actions—

- (a) further training;
- (b) discipline; or
- (c) removal and prosecution of the affected employees of a private security service provider.

54. (1) Subject to the provisions of this Act, the Board may appoint inspectors as staff members of the Authority in terms of this Act.

Appointment of
inspector.

(2) The director shall furnish every inspector with a certificate in the prescribed form to the effect that he or she has been so appointed.

(3) An inspector shall at the request of any interested person produce the certificate when performing a function in terms of this Act.

(4) The Board, or the Director if he or she has been authorized generally or specifically by the Board, may, if it is considered necessary in the circumstances to acquire special expertise or to augment the capacity of the Authority temporarily, appoint any person, who is not in the full-time employment of the Authority, as an inspector for a particular inspection or to assist an inspector with a particular inspection.

(5) When performing any function in terms of this Act, an inspector may be accompanied by and utilise the services of an assistant, an interpreter or any member of the National Police Service.

Code of conduct of inspectors.

55. (1) The Authority shall prescribe a code of conduct for inspectors, which is legally binding on all the inspectors.

(2) The code of conduct referred to under subsection (1), shall contain rules relating to compliance by inspectors with a set of minimum standards of conduct which are necessary to realize the objects of the Authority.

(3) In addition to the offences provided for under this Act or any other written law, inspectors shall be subject to the offences and penalties prescribed in the code of conduct.

Inspection of private security service providers

56. (1) An inspector may, subject to any direction of the Director, carry out an inspection of the affairs or any part of the affairs of a private security service provider, of any other person who employs a private security officer, or of a person whom the Director has reason to believe is a private security service provider or employs a private security officer.

(2) An inspector who carries out an inspection in terms of this section shall, on completion of the inspection, compile a report of the inspection, provide a copy thereof to the relevant private security service provider or other person contemplated in subsection (1) and submit the original to the Director.

Powers of inspectors relating to private security service providers

57. An inspector shall have all powers necessary to discharge his or her functions under this Act and may in particular—

(a) without prior notice, enter any premises—

(i) occupied by or used in connection with the rendering of a private security service by a private security service provider; which the Director has reason to believe are occupied by or used in connection with the rendering of a private security service by a private security service provider or another person subject to this Act; or

- (ii) where or from where a private security service is rendered or the Director has reason to believe that such a service is rendered;
- (b) use any applicable equipment which has not been prohibited by the Authority during such inspection and conduct such inspection, examination and investigation as may be necessary for the purpose of monitoring or enforcing compliance with this Act ;
- (c) use any computer system or equipment on the premises which is or appears to be utilised for the control or administration of the rendering of a private security service, or require reasonable assistance from any person on the premises to use that computer system; and
- (d) exercise any other powers as may be prescribed by the Authority.

PART X—PRIVATE SECURITY FIDELITY FUND

58. (1) The Cabinet Secretary shall on the advice of the Authority, impose a levy, to be known as the Private Security Fidelity Levy, on all private security service firms licensed under this Act to provide private security services.

Private Security
Fidelity Levy.

(2) Notwithstanding subsection (1) the Cabinet Secretary may impose the levy on all private security providers registered under this Act.

(2) The levy shall be in such amount as the Cabinet Secretary may prescribe, and the Cabinet Secretary may impose different amounts of levy to be paid by individuals and private security firms licensed under this Act.

59. (1) There is established a Fund to be known as the Private Security Fidelity Fund which shall vest in and be operated by a Board of Trustees under the control of the Cabinet Secretary.

Private Security
Fidelity Fund.

(2) There shall be paid—

- (a) into the Fund, the levy imposed under this Act; and
- (b) out of the Fund, all payments required under this Act.

(3) The purpose of the Fund shall be to sustain the operations of the Authority.

(4) The Cabinet Secretary may make regulations to provide for—

- (a) the qualifications and appointment of the Board of Trustees of the Fund;
- (b) any other thing which he or she may consider necessary to prescribe with regard to the Fund.

60. The Private Security Fidelity Fund shall be administered and managed in accordance with the Public Finance Management Act and any other relevant written law.

Fund subject to relevant laws
Act No. 18 of 2012

PART XI—FINANCIAL PROVISIONS

Funds of the Authority.

61. (1) The funds of the Authority shall comprise—

- (a) such funds as may be provided by Parliament;
- (b) such funds as may be collected under the Private Security Fidelity Fund;
- (c) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or any other written law; and
- (d) all moneys from any other source provided for or donated or lent to the Authority.

(2) Notwithstanding subsection (1) (b), (c) and (d) the Authority shall not accept funds, gifts or other donations from any person it regulates.

(3) Any moneys donated to the Authority shall be declared at the end of each financial year.

(4) There shall be paid out of the funds of the Authority all sums required to defray the expenditure incurred by the Authority in the exercise of its powers and the performance of its functions under this Act.

Financial year

62. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual Estimates.
Act No. 18 of

63. (1) Subject to the Public Finance Management Act, at least three months before the commencement of

each financial year, the Authority shall cause to be prepared estimates of revenue and expenditure of the Authority for that year. ²⁰¹²

(2) The annual estimates shall make provision for the estimated expenditure of the Authority for the financial year, and in particular, the estimates shall provide for—

- (a) the payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Authority;
- (b) the proper maintenance of the buildings and grounds of the Authority;
- (c) the maintenance, repair and replacement of the equipment and other property of the Authority;
- (d) the creation of such reserve funds as the Authority may consider appropriate to meet the recurrent expenditure and contingent liabilities of the Authority;

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval with the concurrence of the Treasury, and thereafter the Authority shall not increase the annual estimates without the consent of the Cabinet Secretary.

64. (1) The Authority shall cause to be kept all proper books and other records of accounts of the income, expenditure, assets and liabilities of the Authority.

Accounts and Audit.

(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

PART XII—MISCELLANEOUS PROVISIONS

65. (1) At the end of each financial year or upon request by the Cabinet Secretary, the Authority shall submit an annual report on the discharge of its functions under this Act or any other written law.

Annual reports.

(2) The report referred to under subsection (1) shall include—

- (a) the number of registration certificates and licenses issued in the period under review;

- (b) the number of applications for registration and licenses declined or registration and licenses cancelled and the justifications thereof;
- (c) any impediment encountered in the discharge of its functions;
- (d) any policy matters that the Authority may require to be redressed by the Cabinet Secretary; and
- (e) any other matter that the Authority may consider necessary to the discharge of its functions under this Act.

(4) Reports made under this section shall be published and publicized.

Code of conduct.

66. (1) The Cabinet Secretary may after consultation with the Authority, amend the code of conduct for private security service providers set out in the Second Schedule.

(2) Without prejudice to the generality of subsection (1), the code of conduct shall contain sufficient procedures and rules of evidence for its enforcement.

(3) The code of conduct shall be legally binding on all private security service providers, to the extent provided for in this Act, on every person using his or her own employees to protect or safeguard his or her own property or other interests, or persons or property on his or her premises or under his or her control.

(4) The code of conduct must contain rules—

- (a) that security service providers must obey in order to promote, achieve and maintain—
 - (i) a trustworthy and professional private security service industry which acts in terms of the law applicable to the members of the industry;
 - (ii) compliance by private security service providers with a set of minimum standards of conduct which is necessary to realize the objects of the Authority; and
 - (iii) compliance by private security service providers with their obligations towards the State, the Authority, consumers of private security services, the public and the private security industry in general; and

(b) to ensure the payment of minimum wages and compliance with standards aimed at preventing exploitation or abuse of employees in the private security industry, including employees used to protect or safeguard merely the employer's own property or other interests, or persons or property on the premises of, or under the control of the employer.

(5) The code of conduct must be drawn up with due regard to—

(a) the objects of the Authority; and

(b) the different categories or classes of private security service providers, different types of security services and any other factor meriting differentiation not amounting to unfair discrimination.

(6) The code of conduct may provide for different penalties in respect of different categories or classes of private security service providers or other persons who employ a private security officer.

(7) The code of conduct drawn up in terms of subsection (1) must first be published by the Cabinet Secretary in the Gazette with a notice indicating that the Minister intends to issue such a code and inviting interested persons to submit to the Cabinet Secretary within a stated period, but not less than four weeks from the date of publication of the notice, any objections to or representations.

67. (1) A person who—

Offences.

(a) operates as a private security organization without being the holder of a valid licence under this Act for that purpose;

(b) employs as an armed or unarmed security guard or any person who is not registered as such under this Act;

(c) knowingly makes any false declaration or statement of a material nature in any application made under this Act;

(d) falsely represents himself or herself to be the holder of a valid licence or registration certificate issued under this Act;

- (e) knowingly hires, employs or otherwise engages the services of any unlicensed private security firm or unregistered private security guard; or
- (f) otherwise fails to comply with the provisions of this Act or any regulations made hereunder or the code of conduct,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to both such fine and imprisonment in the case of a natural person and two million shillings in the case of a firm or corporate.

(2) Any private security guard who—

- (a) fails to return a registration certificate to the Authority when required so to do;
- (b) falsely represents himself or herself to be the person named in a registration certificate issued under this Act; or
- (c) divulges to any person (other than his employer or some other person as directed by his employer or as required by law) any information acquired in the course of his employment which could compromise or endanger the security of any premises owned or occupied by or under the control any person who is doing business or has done business with the employer of the private security guard,

commits an offence and shall be liable on conviction by a court to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Regulations.

68. (1) The Cabinet Secretary in consultation with the Authority may make regulations for the purpose of the proper administration of and giving effect to this Act.

- (2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for—
 - (a) the various forms to be used under this Act;
 - (b) the procedure for applications for the grant or renewal of licences and registration certificates and any appeals under this Act;

- (c) the employment of personnel by registered private security firms;
- (d) the provision of uniforms and equipment to employees of private security firms; or
- (e) guidelines for registered private security providers.

FIRST SCHEDULE (s. 16)

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The chairperson and the members of the Board, other than *ex-officio* members, shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

Tenure of office.

(2) The members of the Board shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.

2. A member other than an *ex-officio* member may—

Vacation of office.

- (a) at any time resign from office by notice in writing, in the case of the Chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;
- (b) be removed from office by the President or the Cabinet Secretary, as the case may be, if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

- (v) is incapacitated by prolonged physical or mental illness;
- (vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
- (vii) fails to comply with the provisions of this Act relating to disclosure; or
- (viii) is otherwise unable or unfit to discharge his or her functions as member of the Board.

Vice-chairperson.

3. At the first meeting of the Board, the members shall elect a vice-chairperson, from among the members appointed under section 11.

Meetings.

4. The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairperson may call a special meeting of the Board at any time where he or she considers it expedient for the transaction of the business of the Board.

Notice of Meeting.

5. Other than a special meeting or unless three quarters of members agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

Quorum.

6. The quorum for the conduct of business of the Board shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

Chairperson to preside.

7. The chairperson shall preside over all meetings of the Board in which he or she is present, but in his or her absence, the vice-chairperson shall preside and in the absence of the vice-chairperson, the members present shall elect one of their members who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

Disclosure of interest.

8. (1) If a member is directly or indirectly interested in any matter before the Board and is present at the meeting of the Board at which the matter is the subject of

consideration, he or she shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded at the meeting at which the matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

9. Subject to the provisions of this Schedule, the Board may regulate its own procedure.

Board
regulate
procedure. may
own

**SECOND SCHEDULE: CODE OF CONDUCT (s
66(1))**

**CODE OF CONDUCT FOR PRIVATE
SECURITY PROVIDERS**

- A registered private security provider shall—
- (a) not accept any contract or act in a manner which violates the national or international law;
 - (b) strive to ensure the highest standards within the private security services industry and support the application of a transparent and fair licensing system throughout the sector, regardless of the size of the individual companies concerned;
 - (c) provide basic training for new employees, where state institutions do not provide it, and internal training systems which shall cover international and national law, cultural sensitivity, first aid and gender issues and further training on a continuous basis;
 - (d) ensure that the staff it engages are recruited according to objective criteria and have —
 - (i) no criminal record ;
 - (ii) not committed past human rights violations; and
 - (iii) not been dishonourably discharged from state organs that provide security services or similar agencies abroad;
 - (e) develop standard operating procedures and put in place strict and detailed guidelines on the use of minimal force in accordance with international best practices;

- (f) ensure that employees of private security firms are not subjected to human rights abuses and that services provided to them are examined for their potential impact on human rights;
- (g) ensure that minimum national standards of health and safety at the employees workplace are maintained, or surpassed, and that risk assessment and prevention is at the highest possible level;
- (h) cooperate with national law enforcement authorities, providing any information necessary for law enforcement or crime prevention while respecting client confidentiality and without contravening the law;
- (i) not have any affiliation with political movements, paramilitary or criminal groups, or security agencies in a manner likely to contravene the law or this Code;
- (j) develop internal systems of governance including a code of conduct, and policies on the recruitment, training, financial and contractual policies and registration of employees, amongst other things, and these systems will be open to public scrutiny at all times;
- (k) promptly and thoroughly investigate complaints of inappropriate or illegal behaviour by staff, and shall inform the police of these actions when appropriate; and
- (l) work with other members of the private security sector and other relevant bodies to promote adherence to this Code and general professionalism across the sector.

MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill has been submitted by Cabinet Secretary of the Ministry of the Interior and the Co-ordination of National Government. The Bill seeks to provide a framework for the regulation of private security service providers. The Bill seeks to ensure that private security service providers operate efficiently in accordance with the principles of good governance and sound commercial principles.

Part 1 provides for the preliminary matters. **Part II** provides for the establishment of the Private Security Regulatory Authority (the Authority) as a body corporate. **Clause 9** provides for the Authority's functions which include the supervision and regulation of the private security service industry (industry), the formulation and enforcement of standards for the regulation of the industry, the promotion and the enforcement of the rights of the employees in the industry, and the registration and licensing of all private security providers among others. **Clause 5** sets out the guiding principles for the Authority such as the respect and defence of the values set out in Articles 10 and 238 of the Constitution.

Part III provides for the registration of individual private security service providers. **Clause 23** contains the requirements for such registration while **clause 25** provides for the terms and conditions for such registration.

Part IV provides for the registration of corporate private security service providers. **Clause 29** provides for the licensing of private corporations intending to offer security services. Under **clause 30**, the Authority may grant or decline to issue licences in accordance with the provisions of the Bill. **Clause 35** sets out the duties of a licensed security provider.

Part V contains the general provisions of the Bill. **Clause 37** sets out additional requirements for registration which include the submission of clear and complete sets of the fingerprints of each applicant. **Clause 40** mandates the Authority to keep a register of all persons registered and licensed under the Bill and **clause 41** requires all private security service providers to keep a register of all their employees.

Part VI makes it mandatory for all private security providers to cooperate with the National Police Service in the maintenance of law and order and **clause 45** empowers the Cabinet Secretary in consultation with the Inspector General and the Authority to make regulations to effect such cooperation.

Part VII provides for the general provisions. **Clauses 46, 47 and 48** set out the powers of a private security service provider to arrest, search, record and temporarily withhold identification documents respectively.

Clause 50 prohibits private security providers from using uniforms similar to the disciplined forces or any national security organ, branding its vehicles in similar colours with any disciplined force and installing communications tools or systems capable of interfering with a communication system used by any disciplined forces or any other national security organ in Kenya. **Clause 51** provides for the use of animals for security purposes and prohibits the cruel handling of such animals. The same clause also empowers the Cabinet Secretary in consultation with the Board to make regulations on the use, training, registration and general care of animals used by the private security service providers.

Part IX provides for a complaints process where any person aggrieved by the quality of service of private security service providers may seek redress while **clause 52** empowers the Authority to inspect the books and documents of a private security service provider. Under **clause 53** the Authority may appoint inspectors to enable it to enforce the Act and **clause 55** sets out the code of conduct for such inspectors.

Part X contains provisions on the Private Security Fund Levy. **Clause 58** establishes the Private Security Fidelity Levy Fund which shall vest in and be operated by a Board of Trustees.

Part XI contains the financial provisions. **Clause 64** provides for the preparation and audit of the financial accounts of the Authority before the end of each financial year.

Part XII contains the miscellaneous provisions. **Clause 65** makes it mandatory for the Authority to prepare and submit annual reports to the Cabinet Secretary while **clause 68** empowers the Cabinet Secretary in consultation with the Authority to make regulations for the better carrying out of the purposes of the Bill. The Bill also contains the Code of Conduct for private security service providers in the Second Schedule to the Bill.

This Bill is not a Bill concerning county governments

The enactment of this Bill will occasion additional expenditure of public funds to be provided through the annual estimates.

Dated the 25th February, 2014.

ADEN DUALE,
Leader of the Majority Party.