

REPUBLIC OF SOUTH AFRICA

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# **REGULATION OF FOREIGN MILITARY ASSISTANCE BILL**

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*(As amended by the Portfolio Committee on Defence (National Assembly))*

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(MINISTER OF DEFENCE)

**[B 54B—97]**

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REPUBLIEK VAN SUID-AFRIKA

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# **WETSONTWERP OP DIE REGULERING VAN BUITELANDSE MILITÊRE BYSTAND**

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*(Soos gewysig deur die Portefeuljekomitee oor Verdediging (Nasionale Vergadering))*

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(MINISTER VAN VERDEDIGING)

**[W 54B—97]**

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# BILL

To regulate the rendering of foreign military assistance by South African juristic persons, citizens and persons resident within the Republic.

## PREAMBLE

The Constitution of the Republic of South Africa, 1996, provides in section 198(b) that the resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in the Constitution or national legislation. In order to implement aspects of this provision and in the interest of promoting and protecting human rights and fundamental freedoms, universally, it is necessary to regulate the rendering of foreign military assistance by South African juristic persons, citizens and persons resident in the Republic.

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**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “armed conflict” includes any armed conflict between— 5
    - (a) the armed forces of foreign states;
    - (b) the armed forces of a foreign state and dissident armed forces or other armed groups; or
    - (c) armed groups; (ii)
  - (ii) “Committee” means the National Conventional Arms Control Committee as constituted by the National Executive by the decision of 18 August 1995; (iv) 10
  - (iii) “foreign military assistance” means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of—
    - (a) military assistance to a party to the armed conflict by means of— 15
      - (i) advice or training;
      - (ii) personnel, financial, logistical, intelligence or operational support;
      - (iii) personnel recruitment;
      - (iv) medical or para-medical services; or
      - (v) procurement of equipment; 20
    - (b) security services for the protection of individuals involved in armed conflict or their property;
    - (c) any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;
    - (d) any other action that has the result of furthering the military interests of 25 a party to the armed conflict, but not humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict; (i)
  - (iv) “mercenary activity” means direct participation as a combatant in armed conflict for private gain; (iii) 30

- (v) “Minister” means the Minister of Defence; (v)
- (vi) “person” means a natural person who is a citizen of or is permanently resident in the Republic, or a juristic person registered or incorporated in the Republic; (vi)
- (vii) “Republic” means the Republic of South Africa; (viii) 5
- (viii) “register” means the register of authorisations and approvals maintained in terms of section 6. (vii)

### **Prohibition on mercenary activity**

**2.** No person may within the Republic or elsewhere recruit, use or train persons for or finance or engage in mercenary activity. 10

### **Rendering of foreign military assistance prohibited**

- 3.** No person may within the Republic or elsewhere—
- (a) offer to render any foreign military assistance to any state or organ of state, group of persons or other entity or person unless he or she has been granted authorisation to offer such assistance in terms of section 4; 15
  - (b) render any foreign military assistance to any state or organ of state, group of persons or other entity or person unless such assistance is rendered in accordance with an agreement approved in terms of section 5.

### **Authorisation for rendering of foreign military assistance**

- 4.** (1) Any person who wishes to obtain the authorisation referred to in section 3(a) shall submit to the Committee an application for authorisation in the prescribed form and manner. 20
- (2) The Committee must consider any application for authorisation submitted in terms of subsection (1) and must make a recommendation to the Minister that such application be granted or refused. 25
- (3) The Minister, in consultation with the Committee, may refuse an application for authorisation referred to in subsection (2), or may grant the application subject to such conditions as they may determine, and may at any time withdraw or amend an authorisation so granted.
- (4) Any authorisation granted in terms of this section shall not be transferable. 30
- (5) The prescribed fees must be paid in respect of an application for authorisation granted in terms of subsection (3).

### **Approval of agreement for rendering of foreign military assistance**

- 5.** (1) A person who wishes to obtain the approval of an agreement or arrangement for the rendering of foreign military assistance, by virtue of an authorisation referred to in section 3(b) to render the relevant military assistance, shall submit an application to the Committee in the prescribed form and manner. 35
- (2) The Committee must consider an application for approval submitted to it in terms of subsection (1) and must make a recommendation to the Minister that the application be granted or be refused. 40
- (3) The Minister, in consultation with the Committee, may refuse an application for approval referred to in subsection (2), or grant the application subject to such conditions as they may determine, and may at any time withdraw or amend an approval so granted.
- (4) Any approval granted in terms of this section shall not be transferable.
- (5) The prescribed fees must be paid in respect of an application for approval granted in terms of subsection (3). 45

### **Register of authorisations and approvals**

- 6.** (1) The Committee shall maintain a register of authorisations and approvals issued by the Minister in terms of sections 4 and 5.
- (2) The Committee must each quarter submit reports to the National Executive, Parliament and the Parliamentary Committees on Defence with regard to the register. 50

## **Criteria for granting or refusal of authorisations and approvals**

7. (1) An authorisation or approval in terms of sections 4 and 5 may not be granted if it would—
- (a) be in conflict with the Republic's obligations in terms of international law;
  - (b) result in the infringement of human rights and fundamental freedoms in the territory in which the foreign military assistance is to be rendered; 5
  - (c) endanger the peace by introducing destabilising military capabilities into the region where the assistance is to be, or is likely to be, rendered or would otherwise contribute to regional instability and would negatively influence the balance of power in such region; 10
  - (d) support or encourage terrorism in any manner;
  - (e) contribute to the escalation of regional conflicts;
  - (f) prejudice the Republic's national or international interests;
  - (g) be unacceptable for any other reason.
- (2) A person whose application for an authorisation or approval in terms of section 4 or 5 has not been granted by the Minister may request the Minister to furnish written reasons for his or her decision. 15
- (3) The Minister shall furnish the reasons referred to in subsection (2) within a reasonable time.

## **Offences and penalties** 20

8. (1) Any person who contravenes any provision of section 2 or 3, or fails to comply with a condition with regard to any authorisation or approval granted in terms of section 4 or 5, shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and imprisonment.
- (2) The court convicting any person of an offence under this Act may declare any armament, weapon, vehicle, uniform, equipment or other property or object in respect of which the offence was committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the State. 25

## **Extraterritorial application of Act**

9. Any court of law in the Republic may try a person for an offence referred to in section 8 notwithstanding the fact that the act or omission to which the charge relates, was committed outside the Republic. 30

## **Regulations**

10. The Minister, in consultation with the Committee, may make regulations relating to— 35
- (a) any matter which is required or permitted in terms of this Act to be prescribed;
  - (b) the criteria to be taken into account in the consideration of an application for an authorisation or approval in terms of section 4 or 5;
  - (c) the maintenance of the register; and
  - (d) any other matter which may be necessary for the application of this Act. 40

## **Exemptions**

11. The Minister, in consultation with the Committee, may exempt any person from the provisions of sections 4 and 5 in respect of a particular event or situation, and subject to such conditions as he or she may determine.

## **Short title** 45

12. This Act shall be called the Regulation of Foreign Military Assistance Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE REGULATION OF FOREIGN MILITARY ASSISTANCE BILL**

1. In May 1996 the Constitution adopted certain principles for governing national security in the Republic. One of these principles pronounces the resolve to live in peace and harmony, which would preclude any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.

2. Furthermore, although the Constitution recognises freedom of movement and occupation, these rights are not absolute and may be regulated by law. The Constitution also contains a prohibition on mercenary activities, unless specifically permitted by legislation.

3. The Bill therefore is intended to give effect to the constitutional provisions by regulating the provision of military assistance by individuals or juristic persons. The Bill expands the present functions of the National Conventional Arms Control Committee by including the regulation of all forms of military-related assistance abroad by South African individuals or juristic persons by the imposition of strict control measures to give effect to the Government's stated policies and the Constitution's requirements.

4. "Foreign military assistance" is defined in section 1. It includes engaging in armed conflict or providing military advice, training or cooperation, various forms of support, recruitment, medical or paramedical services, procurement of equipment and also providing security services for individuals or in respect of property. The Bill empowers South African courts to adjudicate upon any such acts committed outside the country. The Bill will apply not only to citizens of the Republic, but also to persons permanently resident therein and to all juristic persons registered or incorporated in the country.

5. Sections 4 and 5 describe the procedure to be followed for obtaining authorisation for foreign military assistance. Individuals or juristic persons who wish to provide military-related services abroad will in future be obliged, firstly, to obtain approval from the Government to market these services and, secondly, to receive authorisation to enter into a contract with a third party to provide such services. These steps are broadly in line with the present two-stage control system used by the National Conventional Arms Control Committee in respect of arms transfers. The Minister of Defence, acting on the recommendations of the Committee, has been empowered by the Government to decide on such authorisation.

6. Section 7 details the criteria which determine when authorisation may not be granted, while offences and penalties are mentioned in section 8. A contravention of the provisions can result in the imposition of a fine or imprisonment or both.

7. South African citizens who wish to provide any form of foreign military assistance will in future encounter the same comprehensive regulatory procedures and rigorous control measures that arms transfers are subjected to.

8. In the opinion of the State Law Advisers and the Department the Bill should be dealt with in accordance with section 75 of the Constitution.