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Ordinance on Private Security Services provided Abroad (OPSA)

of 24 June 2015 (Status as of 1 September 2015)

The Swiss Federal Council,

based on the Article 17 and 38 of the Federal Act of 27 September 2013¹ on Private Security Services provided Abroad (PSSA),

ordains:

Section 1: General Provisions

Art. 1 Complex environment

¹ A complex environment is any area:

- a. experiencing or recovering from unrest, or instability due to natural disaster or armed conflict in terms of the Geneva Conventions² and Additional Protocols I and II³;
- b. where the rule of law has been substantially undermined; and
- c. in which the capacity of the state authority to handle the situation is limited or non-existent.

² If the Confederation contracts with a company for the performance of protection tasks in an area that is not a complex environment in terms of paragraph 1, the Ordinance of 24 June 2015⁴ on the Use of Private Security Companies applies.

Art. 2 Accession to the International Code of Conduct for Private Security Service Providers

Companies are deemed to have acceded to the International Code of Conduct for Private Security Service Providers (the Code of Conduct) in its version of 9 Novem-

AS 2015 2423

1 SR 935.41

2 SR 0.518.12; 0.518.23; 0.518.42; 0.518.51

3 SR 0.518.521; 0.518.522

4 SR 124

ber 2010 if they are members of the International Code of Conduct for Private Security Service Providers Association (ICoCA)⁵.

Section 2: Procedures

Art. 3 Competent authority

The competent authority is the Directorate of Political Affairs of the Federal Department of Foreign Affairs (Directorate of Political Affairs).

Art. 4 Content of the declaration requirement

The declaration requirement covers:

- a. with regard to the intended activity:
 1. the nature of the service under Article 4 letters a and b PSSA,
 2. the weapons and other means used to provide the private security service,
 3. the extent and duration of the operation and the number of persons deployed,
 4. the place where the activity is carried out,
 5. the special risks that the activity entails;
- b. with regard to the company:
 1. the company name, registered office and legal form as well as, if available, an extract from the commercial register,
 2. the objects, areas of business, areas of operation abroad and main categories of clients,
 3. proof of accession to the Code of Conduct,
 4. the name, first name, date of birth, nationality and certificate of residence of the members of the management and the supervisory bodies,
 5. the measures taken for the basic and advanced training of personnel,
 6. the internal control system for personnel;
- c. with regard to the persons who carry out management duties within the company or on its behalf or who are permitted to carry a weapon in the course of their activities for the company:
 1. the name, first name, date of birth, nationality and certificate of residence,
 2. confirmation of good character,
 3. the required authorisation under the relevant law for exporting, carrying and using weapons, weapons accessories and ammunition,

⁵ The international Code of Conduct for Private Security Service providers may be consulted at the following Internet address: www.icoc-psp.org

4. basic and advanced training in the fields of fundamental rights and humanitarian international law,
5. basic and advanced training in the use of weapons and aids as well as the use of force and other police measures.

Art. 5 Requirement to report identity

The company shall inform the Directorate of Political Affairs of the identity of the principal or the recipient of a service under Article 4 letters a and b PSSA if the person or entity concerned is:

- a. a foreign state or its institutions;
- b. an international organisation or its institutions;
- c. a group that regards itself as the government or as a state institution, or its institutions;
- d. an organised armed group or its units participating in an armed conflict in terms of the Geneva Conventions⁶ and the Additional Protocols I and II⁷;
- e. a high representative of a foreign state or of an international organisation, a leader or a senior executive of a group under letters c and d, irrespective of whether the person concerns acts in the course of their duties or as a private individual.

Art. 6 Declaration in the case of a private security service in standardised form

Where a company has declared a private security service under Article 4 letter a number 1 or 2 PSSA and intends to provide this service in standardised form to similar recipients subject to the same conditions, it shall report the conclusion of each new contract to the Directorate of Political Affairs and state that the service agreed therein will be provided in standardised form.

Art. 7 Declaration when continuing the same activity

Where a company intends to continue to carry on an activity that it has declared in same manner, and if the information provided under Article 4 is still correct, so the company shall confirm to the Directorate of Political Affairs that the intended activity corresponds to the reported activity.

Art. 8 Accelerated procedure

Where a private security service under Article 4 letter a sections 1–3 PSSA must be provided in an emergency situation, the Directorate of Political Affairs shall notify the company if possible within two working days of receipt of the declaration of whether the review procedure will be initiated.

⁶ SR 0.518.12; 0.518.23; 0.518.42; 0.518.51

⁷ SR 0.518.521; 0.518.522

Art. 9 Withdrawal or exclusion from the ICoCA

¹ Where a company withdraws from the ICoCA or if the ICoCA decides to exclude the company, the company shall immediately notify the Directorate of Political Affairs of this and provide the reasons.

² If the reasons for the company's withdrawal or exclusion from the ICoCA do not fundamentally preclude its renewed accession, the Directorate of Political Affairs shall request the company to take the measures required to join again within six months.

³ Where the company does not join the ICoCA again within the period specified in paragraph 2, the Directorate of Political Affairs shall prohibit all or part of its activities.

Art. 10 Assessment of fees

¹ The fee is assessed on the basis of the time worked.

² An hourly rate of 150–350 francs applies. The rate is based in particular on the seniority of the employee concerned.

³ Otherwise, the General Fees Ordinance of 8 September 2004⁸ applies.

Section 3: Controls**Art. 11** Duty to keep records

¹ The company is obliged to keep records of its activities. It must be able to provide the Directorate of Political Affairs with the following information and documents at any time:

- a. the identity and address of the principal, the provider and the recipient of the service;
- b. a copy of the contract concluded with the principal;
- c. the identity of the persons implementing the contract;
- d. details of the equipment used, in particular weapons;
- e. documentary evidence of performance of the contract.

² The members of management board shall retain the information and documents mentioned in paragraph 1 for ten years. This period does not end if the company ceases business operations.

Art. 12 Processing of personal data

¹ In order to fulfil its statutory duties, the Directorate of Political Affairs is authorised to process particularly sensitive personal data on administrative or criminal

⁸ SR 172.041.1

prosecutions and sanctions as well as other personal data provided it relates to the following persons:

- a. the members of the management board and the supervisory bodies;
- b. the company personnel;
- c. the company concerned;
- d. the principal and the recipient of the service within the limits set out in Article 5.

² The following personal data may be processed:

- a. name, first name, date of birth, domicile and nationality of the person concerned;
- b. all personal data related to the company concerned;
- c. all information related to the company's business operations.

³ The Directorate of Political Affairs is also authorised to process the following particularly sensitive personal data on administrative or criminal prosecutions and sanctions:

- a. name, first name, date of birth, domicile and nationality the person concerned;
- b. identity of the company concerned;
- c. the offence with which the person concerned is charged;
- d. details on the form of procedure;
- e. name of the authorities concerned;
- f. copy of the judgment and any other information connected with the judgment.

⁴ Personal data and particularly sensitive personal data shall be offered 15 years after its final processing to the Federal Archives for archiving (Art. 21 of the Federal Act of 19 June 1992⁹ on Data protection).

Section 4: Administrative Assistance in Switzerland

Art. 13

¹ The Directorate of Political Affairs shall provide the authorities mentioned in Article 28 PSSA, ex officio or on request, with the following information and personal data:

- a. with regard to the intended activity:
 1. the type of service under Article 4 letters a and b PSSA,

⁹ SR 235.1

2. the identity of the principal or the recipient of the service within the limits set out in Article 5,
 3. the location abroad where the activity is being carried out;
- b. with regard to the company:
1. company name, registered office and legal form as well as, if available, an extract from the commercial register,
 2. objects, areas of business, areas of operation abroad and main categories of clients,
 3. name, first name, date of birth, nationality and certificate of residence for the members of the management board and the supervisory bodies.

² It shall also provide the authorities mentioned in Article 28 paragraph 2 letters c and d PSSA and the federal authorities responsible for safeguarding external security (Art. 28 para. 2 let. e PSSA), ex officio or on request, with the following particularly sensitive personal data:

- a. name, first name, date of birth, domicile and nationality of the person concerned;
- b. identity of the company concerned;
- c. the offence with which the person concerned is charged;
- d. details on the form of procedure;
- e. name of the authorities concerned;
- f. copy of the judgment and any other information connected with the judgment.

Section 5: Use by Federal Authorities of Private Security Companies for Protection Tasks Abroad

Art. 14 Content of the contract

¹ The contract with the company shall require the company in particular to:

- a. provide information on progress with the performance of the contract if the contracting authority so requests;
- b. disclose the identity of the personnel deployed to the contracting authority;
- c. prepare a report for submission to the contracting authority;
- d. immediately replace any personnel who do not have the required skills or who adversely affect the performance of the contract;
- e. immediately report to the contracting authority any circumstances that could adversely affect the performance of the contract;

- f. immediately report to the contracting authority any incidents in which personnel have used force or police measures in accordance with Article 35 PSSA or have acted in self-defence or in a situation of necessity;
 - g. immediately report to the contracting authority if the requirements for the company or for training are no longer being met.
- ² The contract shall also contain:
- a. the details required by Articles 34 paragraph 2 and 35 PSSA;
 - b. provision for contractual penalties in the event of non-fulfilment.

Art. 15 Model contract

¹ The Federal Department of Foreign Affairs (FDFA) shall issue a model contract.

² The model contract shall be made accessible online.

Art. 16 Communication

The contracting authority shall provide the Directorate of Political Affairs and the head of security of its department with a copy of the contract concluded with the company and inform the head of security of any problem related to the performance of the contract.

Art. 17 Support from the FDFA

In regions where there is no company that is a member of the ICoCA, the FDFA shall endeavour to ensure that companies join the association.

Section 6: Final Provisions

Art. 18 Transitional provision

The contracting authority shall by 1 September 2018 amend existing contracts that do not meet the requirements of this Ordinance.

Art. 19 Commencement

This Ordinance comes into force on 1 September 2015.

