

# Federal Act (Draft) on Private Security Services Provided Abroad (PSSA)

of ...

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*The Federal Assembly of the Swiss Confederation,*

in conformity with article 54, paragraph 1, with article 95, paragraph 1, and with article 173, paragraph 2, of the Federal Constitution,<sup>1</sup> and upon consideration of the Message of the Federal Council dated....<sup>2</sup>

*enacts:*

## **Section 1      General Provisions**

### **Art. 1            Purpose**

The intent of this Act is to contribute to:

- a. the safeguarding of the internal and external security of Switzerland;
- b. the realisation of Switzerland's foreign policy objectives;
- c. the preservation of Swiss neutrality;
- d. the assurance of respect of international law and, in particular, of human rights and of international humanitarian law.

### **Art. 2            Scope of application**

1 This Act shall apply to natural persons, legal persons, and business associations (companies), that:

- a. provide, from Switzerland, private security services abroad;
- b. provide services in Switzerland in connection with private security services provided abroad;
- c. establish, base, operate, or manage a company in Switzerland that provides private security services abroad or provides services in connection therewith in Switzerland or abroad;
- d. exercise control from Switzerland over a company that provides private security services abroad or provides services in connection therewith in Switzerland or abroad.

2 It shall apply to persons in the service of companies subject to the present Act.

3 It shall further apply to Federal authorities that contract with a company for the performance of security tasks abroad.

<sup>1</sup> RS 101

<sup>2</sup> BBl 2013 ...

**Art. 3** Exemptions from the scope of application

1 This Act shall not apply to companies that provide, from Switzerland, in territories subject to the Agreement on the Free Movement of Persons, of 21 June 1999, between the Swiss Confederation, of the one part, and the European Community and its Member States,<sup>3</sup> of the other, or subject to the Convention of 4 January 1960 establishing the European Free Trade Association,<sup>4</sup> any of the following private security services:

- a. protection of persons;
- b. guarding or surveillance of goods and properties;
- c. security services at events,

2 It shall further not apply to companies that:

- a. provide, in Switzerland, a service in connection with a private security service as set forth in paragraph 1;
- b. establish, base, operate, or manage in Switzerland a company that provides services as set forth in paragraph 1 or paragraph 2 (a);
- c. exercise control, from Switzerland, over a company that provides services as set forth in paragraph 1, or paragraph 2 (a).

**Art. 4** Definitions

As used in this Act:

- a. *private security service* shall refer, in particular, to the following activities carried out by a private company:
  1. the protection of persons,
  2. the guarding or surveillance of goods and properties,
  3. security services at events,
  4. the monitoring, detention, or searching of persons, searching of premises or containers, and confiscation of objects,
  5. the guard, care, and transport of prisoners; operation of prison facilities; and assistance in the operation of camps for prisoners of war or civilian detainees,
  6. the operational or logistical support of combat or security forces, insofar as such support is not provided as part of a direct participation in hostilities as set forth in article 8,
  7. the operation and maintenance of weapons systems,
  8. the advising or training of members of combat or security forces,
  9. intelligence activities, espionage, and counterespionage;
- b. *service in connection with a private security service* shall mean:

<sup>3</sup> SR 0.142.112.681

<sup>4</sup> SR 0.632.31

- 1 the recruiting or training of personnel for private security services abroad,
  2. the furnishing of personnel, directly or as an intermediary, for a company that offers private security services abroad;
- c. *direct participation in hostilities shall mean:*
- the direct participation in hostilities abroad in the context of an armed conflict within the meaning of the Geneva Conventions<sup>5</sup> and the Protocols I and II.<sup>6</sup>

**Art. 5** Control over a company

1 A company exercises control over another company if it:

- a. directly or indirectly holds a majority of the votes in the highest decision-making body thereof;
- b. directly or indirectly holds the right to appoint or remove a majority of the members of the highest executive or management body thereof; or
- c. pursuant to the articles of incorporation, foundation charter, a contractual agreement, or similar instrument, is able to exert a controlling influence thereon.

2 Business associations shall be considered as being controlled if:

- a. another company is a member with unlimited liability in that business association;
- b. the controlling company, as a general partner in the business association, contributes funds in an amount exceeding one third of the equity of the business association; or
- c. the controlling company furnishes the business association or the general partners therein with reimbursable funds in an amount exceeding one half of the difference between the association's assets and its liabilities towards third parties.

**Art. 6** Subcontracting

1 Where a company subcontracts the provision of a security service or of a service connected therewith to another company, it shall ensure that the other company performs that service in keeping with the constraints to which the subcontracting company is itself subject.

2 The liability of the subcontracting company for harm caused by the other company shall be determined in keeping with the provisions of the Code of Obligations.<sup>7</sup>

<sup>5</sup> SR 0.518.12;0.518.23; 0.518.42; 0.518.51

<sup>6</sup> SR 0.518.521; 0.518.522

<sup>7</sup> SR 220

**Art. 7** Adherence to the International Code of Conduct for Private Security Service Providers

1 Companies subject to article 2, paragraphs 1 and 3, shall have an obligation to become signatories to the International Code of Conduct for Private Security Providers, in the version dated 9 November 2010 (Code of Conduct).<sup>8</sup>

2 The Federal Department to which the competent authority is subordinated may determine that an amendment to the Code of Conduct shall be applicable to subject matters governed by this Act, provided that such amendment is not contrary to the provisions of this Act.

**Section 2 Prohibitions**

**Art. 8** Direct participation in hostilities

1 It shall be prohibited:

- a. to recruit or train personnel in Switzerland for purposes of direct participation in hostilities abroad;
- b. to furnish personnel, from Switzerland, directly or as an intermediary, for purposes of direct participation in hostilities abroad;
- c. to establish, base, operate, or manage, in Switzerland, a company that recruits, trains, or furnishes personnel, directly or as an intermediary, for purposes of direct participation in hostilities abroad;
- d. exercise control, from Switzerland, over a company that recruits, trains, or supplies personnel, directly or as an intermediary, for purposes of direct participation in hostilities abroad.

2 Persons who are domiciled, or have their habitual place of residence, in Switzerland and are in the service of a company that is subject to this Act shall be prohibited from directly participating in hostilities abroad.

**Art. 9** Serious violations of human rights

It shall be prohibited:

- a. to provide, from Switzerland, private security services, or services in connection therewith, of which it may be assumed that they will be utilised by the recipient or recipients in the commission of serious human rights violations;
- b. to establish, base, operate, or manage, in Switzerland, a company that provides private security services, or services in connection therewith, of which it may be assumed that they will be utilised by the recipient or recipients in the commission of serious violations of human rights;

<sup>8</sup> The International Code of Conduct for Private Security Service Providers may be consulted at the following Internet address: [www.icoc.psp.org](http://www.icoc.psp.org)

- c. to exercise control, from Switzerland, over a company that provides private security services, or services in connection therewith, of which it may be assumed that they will be utilised by the recipient or recipients in the commission of serious human rights violations.

### **Section 3 Procedure**

#### **Art. 10 Declaration**

1 Any company intending to conduct such activities as set forth in article 2, paragraph 1, shall declare to the competent authority, in particular, the following information:

- a. the nature, provider, principal, recipient, and place of performance of the intended activity;
- b. the personnel to be deployed for the intended activities, and the training they have received;
- c. an overview of the business sectors in which the company is active;
- d. an attestation of adherence to the Code of Conduct;
- e. the identity of all persons bearing responsibility for the company.

2 For companies as designated in article 2, paragraph 1 (d), the declaration requirement applies both to the company's own exercise of control and to the activities of the controlled company.

3 In the event of any significant change in circumstances occurring, or having occurred, subsequent to the declaration, the company shall alert the competent authority without delay. The competent authority shall inform the company forthwith as to whether it may continue to conduct the activity in question.

#### **Art. 11 Duty to forbear**

1 Until such time as the company has received from the competent authority notification or a decision pursuant to articles 12-14, it shall forbear from conducting the declared activities.

2 Where the competent authority initiates a review procedure pursuant to article 13, it may, by way of exception, release the company from its duty to forbear, for the duration of the procedure, in the presence of an overriding public or private interest.

**Art. 12** Notification by the authority

The competent authority shall notify the company within fourteen days following the declaration as to whether the activity gives cause for the initiation of a review procedure at that time.

**Art. 13** Review procedure

1 The competent authority shall initiate a review procedure where:

- a. there are indications to suggest that the declared activity could be in conflict with the purposes set forth in article 1;
- b. a significant change in the circumstances relating to a declared activity occurs, or has occurred, subsequent to notification pursuant to article 12;
- c. it becomes aware of the conduct of an activity that has not been declared;
- d. it becomes aware of a violation of Swiss law or of international law.

2 Where the competent authority becomes aware of the exercise of an activity that has not been declared, it shall inform the company of the initiation of a review procedure, and shall allow the company an opportunity to submit within ten days a statement in that regard. Article 11, paragraph 1, shall apply *mutatis mutandis*.

3 The competent authority shall consult with the authorities concerned.

4 It shall inform the company of the outcome of the review procedure within thirty days. This time limit may be extended as circumstances require.

**Art. 14** Prohibition by the competent authority

1 The competent authority shall prohibit in full or in part any activity that is contrary to the purposes set forth in article 1. In the case of the following activities, in particular, conformity with those purposes shall be subject to thorough review:

- a. private security services provided to foreign institutions, persons, or companies in crisis or conflict regions;
- b. private security services, or a service in connection therewith, that may be of service to institutions or persons in the commission of human rights violations;
- c. operational or logistical support for foreign combat or security forces;
- d. services in the domain of military expertise in connection with a private security service;
- e. private security services, or a service in connection therewith, that may be of service to terrorist groups or criminal organisations;
- f. the establishment, basing, operating, management, or control of a company that provides such services as set forth under the foregoing letters a-e.

2 The competent authority shall prohibit in full or in part the exercise of an activity by a company that:

- a. has committed, in the past, serious human rights violations, and has not taken sufficient precautions to ensure that there is no recurrence thereof;
- b. deploys personnel that does not possess the requisite training for the intended activity;
- c. does not comply with the provisions of the Code of Conduct.

3 The competent authority shall prohibit a company from subcontracting the providing of a private security service, or a service in connection therewith, where the company that is to provide that service fails to comply with the constraints set forth in article 6, paragraph 1.

#### **Art. 15**            Exceptions

1 The Federal Council may, by way of exception, authorise an activity to which articles 8 and 9 do not apply, but which would be subject to prohibition pursuant to article 14, where a high national interest manifestly takes precedence.

2 The competent authority shall submit the case to the Federal Council for a ruling.

3 The Federal Council shall determine the necessary control measures.

#### **Art. 16**            Coordination

1 Where a given subject-matter falls within the scope of application of this Act as well as within that of the War Material Act of 13 December 1996,<sup>9</sup> the Control of Goods Act of 13 December 1996,<sup>10</sup> or the Embargo Act of 22 March 2002,<sup>11</sup> the authorities concerned shall determine which authority is to coordinate the procedure.

2 That Authority shall ensure that the procedure is conducted in as simple a manner as possible, and shall make certain that the company is informed of all results of the procedure within the time limits foreseen by law.

#### **Art. 17**            Fees

1 The Federal Council shall regulate, in keeping with the principle of cost recovery, the charging of fees for:

- a. the review procedure pursuant to article 13;
- b. prohibitions issued pursuant to article 14;
- c. control measures pursuant to article 19.

2 For the rest, article 46a of the Government and Administration Organisation Act of 21 March 1997<sup>12</sup> shall apply.

<sup>9</sup> SR 514.51

<sup>10</sup> SR 946.202

<sup>11</sup> SR 946.231

<sup>12</sup> SR 172.010

## **Section 4    Oversight**

### **Art. 18        Duty of cooperation**

Companies as set forth in article 2 shall furnish the competent authority with all information required for the review of activities governed by this Act, and shall submit to it all necessary documents.

### **Art. 19        Oversight powers of the authority**

1 Where a company attempts to influence the competent authority or fails to satisfy its duty of cooperation, and where all efforts on the part of the competent authority to obtain the necessary information and documents remain fruitless, that authority shall be entitled, in the cases foreseen in article 13, paragraph 1, to take the following measures of oversight:

- a. unannounced on-site inspection of company premises;
- b. examination of relevant documents;
- c. seizure of material.

2 The competent authority may, to that end, call in other Federal authorities as well as cantonal and municipal police officials.

### **Art. 20        Processing of personal data**

The competent authority, in the performance of its legally assigned tasks, shall be authorised to process personal data of particular sensitivity in connection with administrative or criminal prosecution and penalties, and other personal data.

## **Section 5    Sanctions**

### **Art. 21        Infringements of legal prohibitions**

1 Any person who, in contravention of article 8, conducts an activity in connection with a direct participation in hostilities, or who directly participates in hostilities, shall be punished by imprisonment for up to three years, or by a fine.

2 Any person who conducts an activity in contravention of article 9 shall be punished by imprisonment for up to three years, or by a fine.

3 The present provision shall not preclude punishment of the perpetrator pursuant to the Criminal Code<sup>13</sup> or to the Military Criminal Code of 13 July 1927<sup>14</sup>, for commission of a more serious criminal offence under those laws.

<sup>13</sup> SR 311.0

<sup>14</sup> SR 321.0

**Art. 22** Infringements of prohibitions by the competent authority

Any person who contravenes a prohibition issued by the competent authority pursuant to article 14 shall be punished by imprisonment for up to one year, or by a fine.

**Art. 23** Infringements of the duty to declare or of the duty to forbear

1 Shall be punished by imprisonment for up to one year, or by a fine, any person who:

- a. violates article 10 by failing to declare an activity;
- b. conducts, in full or in part, an activity in breach of the duty to forbear under article 11 or article 39, paragraph 2.

2 Where the act has been committed through negligence, punishment shall be in the form of a fine.

**Art. 24** Infringements of the duty of cooperation

1 Shall be subject punishment by a penalty of up to 100,000 francs any person who:

- a. refuses to furnish information, to allow the examination of documents, or to grant access to premises, pursuant to article 18 or article 19, paragraph 1;
- b. makes false statements.

2 Where the act has been committed through negligence, punishment shall be in the form of a penalty of not more than 40,000 francs.

3 Attempt and complicity shall be punishable.

4 The limitation of time within which a person may be prosecuted shall be of five years.

**Art. 25** Infringements within a business undertaking

1 For infringements committed within a business undertaking, article 6 of the Federal Act of 22 March 1974 on Administrative Criminal Law (ACLA)<sup>15</sup> shall apply.

2 Prosecution of the offenders may be waived, pursuant to ACLA article 7, and the business undertaking condemned to payment of the penalty in their place, in cases in which:

- a. identification of the persons liable for punishment under article 6 of the ACLA necessitates investigative measures that would be disproportionate to the punishment incurred; and
- b. the penalty that comes into consideration for the infringements governed by the present Act would not exceed 20,000 francs.

<sup>15</sup> SR 313.0

**Art. 26**          Dissolution et liquidation

1 Where the activity of a legal person, or of a general or limited partnership, infringes a prohibition by the law or by a public authority, the competent authority may order the dissolution and liquidation thereof pursuant to the Federal Act of 11 April 1889 on Debt Enforcement and Bankruptcy.<sup>16</sup>

2 Where the business undertaking is a sole proprietorship, the competent authority may order the liquidation of the business assets and, as the case may be, deletion of the undertaking from the Commercial Register.

3 The competent authority may confiscate any balance resulting from the liquidation.

**Art. 27**          Jurisdiction and duty to report

1 Infringements of this Act shall be subject to Federal jurisdiction.

2 The public authorities competent for the implementation of this Act shall be subject to a duty to report to the Office of the Attorney General any infringements of which they obtain knowledge in the course of conducting their official activities.

**Section 6**      **Mutual administrative assistance**

**Art. 28**          Mutual administrative assistance within Switzerland

1 The public authorities of the Confederation and of the cantons shall furnish the competent authority with the information and personal data required for the enforcement of this Act.

2 The competent authority shall disclose information and personal data to the following public authorities for the performance of their legal tasks:

- a. the Federal and cantonal public authorities responsible for the enforcement of this Act;
- b. the public authorities competent for the enforcement of the War Material Act of 13 December 1996,<sup>17</sup> the Control of Goods Act of 13 December 1996,<sup>18</sup> and the Embargo Act of 22 March 2002;<sup>19</sup>
- c. the criminal authorities, insofar as the prosecution of crimes or misdemeanours is at issue;

<sup>16</sup> SR 281.1

<sup>17</sup> SR 514.51

<sup>18</sup> SR 946.202

<sup>19</sup> SR 946.231

- d. the Federal and cantonal authorities competent for the maintenance of internal security;
- e. the Federal authorities competent in the domains of foreign affairs and the maintenance of external security;
- f. the cantonal authorities competent for the licensing and oversight of private security services.

**Art. 29** Mutual administrative assistance between Swiss and foreign authorities

1 The competent authority may request from foreign authorities the communication of information and personal data required for the enforcement of this Act. To this end, it may disclose to them, in particular, information concerning:

- a. the nature, provider, principal, recipient, and place of performance of the activity;
- b. the sectors in which the company offering private security services abroad is active, and the identity of all persons who bear responsibility for the company.

2 Where the foreign state grants reciprocity, the competent authority may disclose to it the information set forth in paragraph 1, subject to assurance by the foreign authority that the data:

- a. will be processed only for purposes in conformity with this Act; and
- b. will be used in criminal proceedings only in conformity with the provisions concerning international mutual legal assistance.

## **Section 7 Contracting of security companies by Federal authorities**

**Art. 30** Tasks of protection

1 The Confederation shall be authorised to contract with companies that provide private security services for the performance of the following tasks of protection abroad:

- a. the protection of persons;
- b. the guarding or surveillance of goods and properties.

2 The Federal authority that contracts with a company (contracting authority), shall consult with the authority competent pursuant to article 38, paragraph 2, and with the Federal Department of Defence, Civil Protection, and Sport.

**Art. 31** Requirements with regard to the company

1 Prior to contracting with a company, the contracting authority shall ascertain that the company in question meets the following requirements:

- a. it is able to provide the requisite guarantees concerning the recruitment, training, and oversight of its personnel;
- b. its good repute and irreproachable conduct in business have been attested to, in particular, through:
  1. adherence to the Code of Conduct and compliance with its provisions,
  2. experience in the field,
  3. references, or
  4. membership in a professional association;
- c. it is solvent;
- d. it disposes of an adequate internal control system which ensures that its personnel comply with established standards of conduct and that disciplinary measures are taken where misconduct occurs;
- e. it is authorised under applicable law to conduct activities in the domain of private security;
- f. it possesses liability insurance coverage in an amount commensurate with the risk incurred.

2 The contracting authority may, by way of exception, contract with a company that does not possess liability insurance coverage, where:

- a. purchasing such insurance would engender disproportionate costs to the company; and
- b. the liability risk and the amount of any compensatory damages to be borne by the Confederation may be assessed as low.

### **Art. 32** Training of personnel

1 The contracting authority shall ascertain that the security personnel of the company have received adequate training, commensurate to the task of protection assigned to them and in accordance with applicable international and national law.

2 Training shall cover, in particular, the following issues:

- a. basic rights, protection of personality rights, and procedural law;
- b. the use of physical force and weapons when acting in self-defence or in emergency situations;
- c. dealing with persons offering resistance or prepared to resort to violence;
- d. providing first aid;
- e. assessing health risks entailed in the use of force;
- f. combating corruption.

3 The contracting authority may, by way of exception, contract with a company that does not fully meet the requirements set forth in paragraphs 1 and 2, on condition that there is no other company that meets those requirements at the place at which

the service is to be provided and that the task of protection cannot otherwise be accomplished.

4 In such case, the maximum duration for which an contract may be concluded shall be of six months. The contracting authority shall take measures to ensure that the company fulfills the requirements set forth in paragraphs 1 and 2 within as short a time as possible. Such measures shall be explicitly stipulated in the agreement.

**Art. 33** Identification of personnel

The contracting authority shall make certain that the personnel is identifiable when acting in the exercise of their function.

**Art. 34** Arming of personnel

1 All personnel shall, as a general rule, be unarmed.

2 Where the situation abroad requires that any personnel, by way of exception, carry a weapon so as to be able to react in self-defence or emergency situations, the contracting authority shall so stipulate in the contract.

3 The contracting authority shall ascertain that the personnel is in possession of the requisite permits under applicable law.

4 Applicable weapons legislation at the place at which the task of protection is to be performed shall apply.

**Art. 35** Use of force and other police measures

1 Where it is possible to accomplish a task of protection only through the use of force or other police measures as defined in the Federal Act of 20 March 2008 on the Use of Force,<sup>20</sup> the Federal Council may grant permission to do so even in situations other than those of self-defence or emergency.

2 It shall make certain, that the personnel has received the appropriate training.

3 Applicable law at the place of deployment shall apply.

**Art. 36** Subcontracting of protection tasks

The subcontracting of tasks of protection shall be prohibited without the prior written consent by the contracting authority.

**Section 8 Reporting**

**Art. 37**

1 The competent authority shall prepare annually a report on its activities, to be submitted to the Federal Council.

<sup>20</sup> SR 364

2 The report shall be made public.

## **Section 9 Final provisions**

### **Art. 38 Implementation provisions**

1 The Federal Council shall enact provisions for the implementation of this Act. Specifically, it shall determine:

- a. the specifics of the declaration procedure (art. 10);
- b. the list of particularly sensitive personal data and the categories of data to be processed pursuant to articles 20 and 28, as well as their retention periods;
- c. the required terms and conditions of contracts by a Federal authority for the services of a company.

2 It shall appoint the competent authority.

### **Art. 39 Transitional provision**

1 Any activity subject to declaration under this Act, and which is being conducted at the time of the Act's entry into force, must be declared with the competent authority within three months from the date of the entry into force of this Act.

2 Where the competent authority initiates a review procedure, it shall inform the company as to whether it must provisionally forbear, in full or in part, from conduct of the declared activity.

3 Where the competent authority intends to prohibit an activity that is being conducted at the time of this Act's entry into force, and of which continued conduct is foreseen, the authority may grant the company a reasonable period of grace for achieving compliance with the provisions of the law.

### **Art. 40 Referendum and entry into force.**

1 This Act shall be subject to a facultative referendum.

2 The Federal Council shall fix the date of its entry into force.