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Federal Act on Private Security Services provided Abroad (PSSA)

of 27 September 2013 (Status as of 1 December 2021)

*The Federal Assembly of the Swiss Confederation,
based on Articles 54 paragraph 1, 95 paragraph 1 and 173 paragraph 2
of the Federal Constitution¹,
and having considered the Federal Council Dispatch dated 23 January 2013²,
decrees:*

Section 1 General Provisions

Art. 1 Aim

The aim of this Act is to contribute to:

- a. safeguarding the internal and external security of Switzerland;
- b. realising Switzerland's foreign policy objectives;
- c. preserving Swiss neutrality;
- d. guaranteeing compliance with international law and, in particular, of human rights and of international humanitarian law.

Art. 2 Scope of application

¹ This Act applies to legal entities and business associations (companies) that engage in any of the following activities:

- 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;

AS 2015 2407

¹ SR 101

² BBl 2013 1745

- 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 applies to persons in the service of companies subject to the present Act.

³ The provisions of this Act pertaining to companies also apply to natural persons exercising the activities designated in paragraphs 1 and 2.

⁴ It also applies to federal authorities that contract with a company for the performance of protection tasks abroad.

Art. 3 Exemptions from the scope of application

¹ This Act does not apply to companies that provide, from Switzerland, in territories subject to the Agreement of 21 June 1999³, between the Swiss Confederation, of the one part, and the European Community and its Member States, of the other, on the Free Movement of Persons or subject to the Convention of 4 January 1960⁴ establishing the European Free Trade Association, any of the following private security services:

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

² It also does not apply to companies that:

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

Art. 4 Definitions

In this Act:

- a. *private security service* means, in particular, the following activities carried out by a private company:
 - 1. the protection of persons in complex environments,
 - 2. the guarding or surveillance of goods and properties in complex environments,
 - 3. security services at events,
 - 4. the checking, detention, or searching of persons, searching of premises or containers, and seizure of objects,

³ SR 0.142.112.681

⁴ SR 0.632.31

5. guarding, caring for, and transporting prisoners; operating prison facilities; and assisting in operating camps for prisoners of war or civilian detainees,
6. operational or logistical support for armed or security forces, insofar as such support is not provided as part of a direct participation in hostilities as set out in article 8,
7. operating and maintaining weapons systems,
8. advising or training members of armed or security forces,
9. intelligence activities, espionage, and counterespionage;
- b. *service in connection with a private security service* means:
 - 1 recruiting or training personnel for private security services abroad,
 2. providing personnel, directly or as an intermediary, for a company that offers private security services abroad;
- c. *direct participation in hostilities* means:

direct participation in hostilities abroad in the context of an armed conflict within the meaning of the Geneva Conventions⁵ and the Protocols I and II⁶.

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 are considered to be controlled if:

- a. another company is a member with unlimited liability of 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 thereof with reimbursable funds in an amount exceeding one half of the difference between the association's assets and its liabilities towards third parties.

⁵ SR 0.518.12; 0.518.23; 0.518.42; 0.518.51

⁶ SR 0.518.521; 0.518.522

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 is determined in accordance with the Code of Obligations⁷.

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

¹ Companies subject to Article 2 paragraphs 1, 3 and 4 must become signatories to the International Code of Conduct for Private Security Providers, in the version dated 9 November 2010 (Code of Conduct)⁸.

² The Federal Department to which the competent authority is subordinate may determine that an amendment to the Code of Conduct applies to 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 is prohibited:

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

⁷ SR 220

⁸ The International Code of Conduct for Private Security Service Providers may be consulted at the following Internet address: www.icoc-psp.org.

Art. 9 Serious violations of human rights

It is prohibited:

- a. to provide, from Switzerland, private security services or services in connection therewith if it may be assumed that the recipients will use the services in connection with 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, if it may be assumed that the recipients will use the services in connection with the commission of serious violations of human rights;
- c. to exercise control, from Switzerland, over a company that provides private security services, or services in connection therewith, if it may be assumed that the recipients will use the services in connection with the commission of serious human rights violations.

Section 3 Procedure**Art. 10** Declaration requirement

¹ Any company intending to carry out an activity under Article 2 paragraph 1 shall declare to the competent authority, in particular, the following information:

- a. the nature, provider, and place of performance of the intended activity;
- b. such details on the principal and on the recipient of the service as are necessary for an evaluation of the situation;
- c. the personnel to be deployed for the intended activities, and the training they have received;
- d. an overview of the business sectors in which the company is active;
- e. proof of accession to the Code of Conduct⁹;
- f. the identity of all persons bearing responsibility for the company.

² For companies under Article 2 paragraph 1 letter d, the declaration requirement applies both to the company's own exercise of control and to the activities of the controlled company.

³ If any significant change in circumstances occurs subsequent to the declaration, the company shall notify the competent authority without delay. The competent authority shall inform the company forthwith as to whether it may continue to carry out the activity in question.

⁹ The International Code of Conduct for Private Security Service Providers may be consulted at the following Internet address: www.icoc-psp.org.

Art. 11 Requirement to refrain from activities

¹ Until such time as the company has received from the competent authority notification or a decision pursuant to Articles 12–14, it shall refrain from carrying out 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 refrain from activities for the duration of the procedure, if there is overriding public or private interest in doing so.

Art. 12 Notification by the authority

The competent authority shall notify the company within fourteen days of receipt of the declaration as to whether the declared activity gives cause for initiating 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 aims set out in article 1;
- b. a significant change in the circumstances relating to a declared activity has occurred subsequent to notification pursuant to article 12;
- c. it becomes aware of the exercise 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 applies *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 aims set out in Article 1. In the case of the following activities, in particular, conformity with those aims is subject to thorough review:

- a. private security services provided to, persons or companies and to foreign institutions 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 armed 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 out 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 in the past committed serious human rights violations and has not taken sufficient precautions to ensure that there is no recurrence thereof;
 - b. deploys personnel who do not possess the required training for the intended activity;
 - c. does not comply with the provisions of the Code of Conduct¹⁰.

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 out in Article 6, paragraph 1.

Art. 15 Exceptional authorisation

¹ Where a manifest national interest clearly prevails, 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.

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 matter falls within the scope of this Act as well as within that of the War Material Act of 13 December 1996¹¹, the Control of Goods Act of 13 December 1996¹², or the Embargo Act of 22 March 2002¹³, the authorities concerned shall determine which authority coordinates 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 statutory time limits.

¹⁰ The International Code of Conduct for Private Security Service Providers may be consulted at the following Internet address: www.icoc-psp.org.

¹¹ SR 514.51

¹² SR 946.202

¹³ SR 946.231

Art. 17 Fees

¹ The Federal Council shall regulate the charging of cost-covering fees for:

- a. the review procedure under Article 13;
- b. prohibitions issued under Article 14;
- c. control measures under Article 19.

² For the rest, Article 46a of the Government and Administration Organisation Act of 21 March 1997¹⁴ applies.

Section 4 Oversight**Art. 18** Requirement to cooperate

Companies shall provide the competent authority with all the information required for the review of activities governed by this Act, and shall submit to it all the necessary documents.

Art. 19 Oversight powers of the authority

¹ Where a company attempts to influence the competent authority or fails to satisfy its requirement to cooperate, and where all efforts on the part of the competent authority to obtain the necessary information and documents remain fruitless, that authority may in the cases set out in Article 13 paragraph 1 take the following oversight measures:

- 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 on the assistance of other federal authorities as well as cantonal and communal police forces.

Art. 20¹⁵**Section 5** Sanctions**Art. 21** Offences against statutory prohibitions

¹ Any person who, in contravention of Article 8, carries out an activity in connection with direct participation in hostilities, or who directly participates in hostilities, is liable to a custodial sentence not exceeding three years or to a monetary penalty.

¹⁴ SR 172.010

¹⁵ Repealed by Annex No II 2 of the FA of 18 Dec. 2020 on the Processing of Personal Data by the FDFA, with effect from 1 Dec. 2021 (AS 2021 650; BBl 2020 1349).

² Any person who carries out an activity in contravention of Article 9 shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

³ This provision does not preclude the prosecution of the person concerned under the Criminal Code¹⁶ or to the Military Criminal Code of 13 July 1927¹⁷ for a more serious offence under those codes.

Art. 22 Offences against prohibitions by the competent authority

Any person who contravenes a prohibition issued by the competent authority pursuant to Article 14 is liable to a custodial sentence not exceeding one year, or to a monetary penalty.

Art. 23 Offences against the declaration requirement or the requirement to refrain from activities

¹ Any person who:

- a. violates Article 10 by failing to declare an activity;
- b. carries out, in full or in part, an activity in breach of the requirement to refrain from activities under Article 11 or Article 39 paragraph 2,

is liable to a custodial sentence not exceeding one year, or to a fine.

² Where the act has been committed through negligence, a monetary penalty is imposed.

Art. 24 Offences against the requirement to cooperate

¹ 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,

shall be liable to a fine not exceeding 100,00 francs.

² Where the act has been committed through negligence, a fine not exceeding 40,000 francs is imposed.

³ Attempts and complicity are also offences.

⁴ The right to prosecute is limited to a period of five years.

Art. 25 Offences within a business undertaking

¹ Article 6 of the Federal Act of 22 March 1974¹⁸ on Administrative Criminal Law (ACLA) applies to offences committed within a business undertaking.

¹⁶ SR 311.0

¹⁷ SR 321.0

¹⁸ SR 313.0

² Pursuant to Article 7 of ACLA, an investigation to identify the offenders may be dispensed with and the business undertaking may be ordered to pay the fine instead in cases in which:

- a. the identification of the persons criminally liable under Article 6 of ACLA necessitates investigative measures that would be disproportionate to the penalty incurred; and
- b. the penalty for the contraventions governed by this Act does not exceed 20,000 francs.

Art. 26 Dissolution and liquidation

¹ Where the activity of a legal entity, or of a general or limited partnership, contravenes a statutory or official prohibition, the competent authority may order the dissolution and liquidation of the legal entity or partnership concerned in accordance with the Federal Act of 11 April 1889¹⁹ on Debt Enforcement and Bankruptcy.

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 surplus resulting from the liquidation.

Art. 27 Jurisdiction and requirement to report

¹ Offences under this Act are subject to federal jurisdiction.

² The authorities competent for the implementation of this Act are subject to a requirement to report any infringements of which they obtain knowledge in the course of carrying out their official activities to the Office of the Attorney General of Switzerland.

Section 6 Mutual Administrative Assistance

Art. 28 Mutual administrative assistance within Switzerland

¹ The public authorities of the Confederation and of the cantons shall provide 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;

¹⁹ SR 281.1

- b. the public authorities responsible for enforcing the War Material Act of 13 December 1996²⁰, the Control of Goods Act of 13 December 1996²¹, and the Embargo Act of 22 March 2002²²;
- c. the criminal authorities, insofar as the prosecution of felonies or misdemeanours is at issue;
- d. the federal and cantonal authorities responsible for maintaining internal security;
- e. the federal authorities responsible for foreign affairs and for maintaining external security;
- f. the cantonal authorities responsible 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 foreign authorities to provide 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 are responsible for the company.

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

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

Section 7

Contracting of Security Companies by Federal Authorities

Art. 30 Protection tasks

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

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

²⁰ SR 514.51

²¹ SR 946.202

²² SR 946.231

² The federal authority that contracts with a company (contracting authority) shall consult with the competent authority under 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 required guarantees concerning the recruitment, training, and oversight of its personnel;
- b. its good reputation and irreproachable conduct in business are attested to both by its adherence to the Code of Conduct²³ and compliance with the provisions therein and, in particular, by:
 1. experience in the field,
 2. references, or
 3. membership of a professional association;
- c. it is solvent;
- d. it has 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 the applicable law to carry out activities in the domain of private security;
- f. it has 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 with the protection task assigned to them and in accordance with applicable international and national law.

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

- a. respect for fundamental rights, personal privacy rights, and procedural law;
- b. the use of physical force and weapons when acting in self-defence or in situations of necessity;

²³ The International Code of Conduct for Private Security Service Providers may be consulted at the following Internet address: www.icoc-psp.org.

- 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 out 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 protection task cannot otherwise be accomplished.

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

Art. 33 Identification of personnel

The contracting authority shall make certain that personnel are 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 in a situation of necessity, the contracting authority shall specify this in the contract.

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

⁴ The weapons legislation of the place at which the protection task is to be performed applies.

Art. 35 Use of force and other police measures

¹ Where it is possible to accomplish a protection task only through the use of force or other police measures as defined in the Use of Force Act of 20 March 2008²⁴, the Federal Council may grant permission to do so even in situations other than those of self-defence or of necessity.

² The Federal Council shall make certain that the personnel have received the appropriate training.

³ The law at the place of deployment applies.

Art. 36 Subcontracting of protection tasks

The subcontracting of protection tasks is prohibited without the prior written consent of the contracting authority.

Section 8 Reporting**Art. 37**

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

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. In particular, it shall determine:

- a. the specifics of the declaration procedure (art. 10);
- b.²⁵ the list of particularly sensitive personal data and the categories of data to be processed under Article 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 carried out at the time of the Act's entry into force, must be declared to the competent authority within three months of the commencement date of this Act.

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

³ Where the competent authority intends to prohibit an activity that is being carried out at the time of this Act's entry into force, and which the company concerned plans to continue, the authority may grant the company a reasonable period of grace in order to achieve compliance with the statutory provisions.

²⁵ Amended by Annex No II 2 of the FA of 18 Dec. 2020 on the Processing of Personal Data by the FDFA, in force since 1 Dec. 2021 (AS 2021 650; BBl 2020 1349).

Art. 40 Referendum and commencement.

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement Date: 1 September 2015²⁶

²⁶ FCD of 24 June 2015.

