



DIRECTIVE

ON THE HIRING OF PRIVATE SERVANT

BY STAFF MEMBERS OF DIPLOMATIC MISSIONS,

PERMANENT MISSIONS,

CONSULAR POSTS

AND INTERNATIONAL ORGANISATIONS

IN SWITZERLAND

English translation of the original version in French

entry into effect on 1 May 2006

amended on 1 January 2011

CONTENTS

Preamble	4
1 Scope of application and definitions of terms	4
1.1 Competencies	4
1.2 Private servant	4
1.3 Service personnel of diplomatic missions, permanent missions and consular posts	5
1.4 Local personnel of diplomatic missions, permanent missions and consular posts	5
2 Persons authorised to hire a private servant	5
2.1 Categories of persons authorised to employ a private servant	5
2.11 In diplomatic missions and permanent missions	5
2.12 In consular posts	5
2.13 In international organisations	5
2.2 Personnel of diplomatic missions, permanent missions and consular posts who are Swiss nationals or holders of a B or C permit	6
2.3 Personnel of international organisations who are Swiss nationals, and persons in other categories	6
2.4 Number of private servants per household	6
3 Admission and residence conditions for private domestic staff	6
3.1 Principles	6
3.2 Dispensations	6
3.21 Working for two employers at the same time	6
3.22 Married couples	6
3.3 Occupancy rate and duration of employment of the private servant	7
3.31 Occupancy rate	7
3.32 Duration of employment	7
3.4 Change of employer	7
4 Hiring of a private servant abroad: conditions and procedure	7
4.1 Persons subject to a visa requirement	7
4.11 Required documents	7
4.12 Procedure	7
4.13 Delivery of visa	8
4.2 Persons not subject to a visa requirement	8
4.21 Required documents	8
4.22 Procedure	8
4.3 Application for a legitimization card for the private servant	8
5 Employment of a private servant in Switzerland: conditions and procedure	8
5.1 General principle	8
5.2 Exceptions	9
5.3 Application for legitimization card for the private servant	9
5.4 Swiss nationals and holders of a B or C permit	9
6 Delivery and return of legitimization card of the private servant	9
6.1 Application for legitimization card	9
6.2 Possession of legitimization card	9
6.3 Return of legitimization card	9
7 Change of civil status of the private servant	10
7.1 Change of civil status	10
7.2 Marriage and childbirth	10

8	Rights and obligations of the employer and private servant	10
8.1	Protection of, and respect for, private domestic staff	10
8.2	Accommodation and nourishment conditions of the private servant	10
8.3	Due care and attention, loyalty of the private servant	11
8.4	Working conditions of the private servant	11
9	Swiss social security and compulsory insurance	12
9.1	Swiss social insurance scheme AVS/AI/APG/AC	12
9.11	Obligation of registration	12
9.12	Exemptions of registration	12
9.13	Private servants who are Philippine nationals	13
9.14	Private servants employed by a member of diplomatic mission, permanent mission or consular post of the Philippines	13
9.15	Reimbursement of contributions	13
9.2	Occupational pension insurance (LPP)	14
9.3	Health insurance (LAMal)	14
9.31	Obligation or exemption of registration	14
9.32	Responsibility of the private servant	14
9.4	Accident insurance (LAA)	14
9.41	Compulsory insurance	14
9.42	Insurance abroad	15
9.43	Responsibility of employer	15
9.5	Private servants, who are nationals of a Member State of the EU or EFTA, of members of diplomatic missions, permanent missions and consular posts of Member States of the EU or EFTA	15
9.51	Private servants, who are nationals of the country of their employer, if the employer's country is a Member State of the EU or EFTA	15
9.52	Private servants who are nationals of a Member State of the EU or EFTA other than the sending state/receiving State, Member State of the EU or EFTA of their employer	16
9.6	Family allowance (AF)	16
9.61	Responsibility of the employer	16
9.7	Health insurance to cover loss of income	16
10	Information for private servant	16
11	Privileges and immunities of the employer	17
12	Labour disputes	17
13	Privileges and immunities of the private servant	17
13.1	Fiscal privileges	17
13.2	Immunities	17
14	Failure to observe the provisions of the Directive	17
15	Concluding clauses	17
16	Transitory clauses	18
16.1	Entry into effect	18
16.2	Private servant who holds a type "E" legitimation card	18
	Enclosures	18

Preamble

In Switzerland, the Vienna Convention on Diplomatic Relations of 18 April 1961¹ applies to diplomatic missions and their members and to permanent missions² and their members. The Vienna Convention on Consular Relations of 24 April 1963³ applies to consular posts and their members. These Conventions define the legal framework for privileges and immunities of diplomatic missions, permanent missions, consular posts and their members.

The privileges and immunities of international organisations in Switzerland⁴ and their officials are based on headquarters agreements concluded by Switzerland⁵.

Members of diplomatic missions, permanent missions, consular posts and international officials may, under certain conditions and in accordance with their rank, employ private servants who hold a legitimisation card issued by the Federal Department of Foreign Affairs (hereinafter referred to as "DFA") as the federal authority responsible for determining the status of holders of legitimisation cards in Switzerland.

The admission conditions for private servants in Switzerland are governed by the under-mentioned rules of the DFA. The working relations of the private servants are governed by Swiss labour law (cf. section 8.4 of the Directive).

1 Scope of application and definitions of terms

1.1 Competencies

The Protocol of the DFA in Bern (hereinafter referred to as "Protocol") is the official body responsible for matters relating to diplomatic missions and consular posts, and their members and private servants. The Permanent Mission of Switzerland to the Office of the United Nations and the other international organisations in Geneva (hereinafter referred to as "Swiss Mission") is responsible for matters relating to permanent missions and international organisations, and their members and private servants.

1.2 Private servant

In accordance with Article 1h of the Vienna Convention on Diplomatic Relations of 18 April 1961 and Article 1i of the Vienna Convention on Consular Relations of 24 April 1963, the term "private servant" covers male or female persons who are employed as members of the domestic staff of a member of a diplomatic mission, permanent mission or consular post, and who are not employees of the sending State.

Private servants as per the definition cited above, including those employed by heads of diplomatic missions, heads of permanent missions and heads of career consular posts, and by members of the senior management of international organisations, are issued with a type "F" legitimisation card and are subject to the provisions of the Directive.

¹ Vienna Convention on Diplomatic Relations of 18 April 1961: www.admin.ch/ch/f/rs/c0_191_01.html (in French, German, Italian).

² For the purposes of this Directive, the term "permanent mission" refers to Permanent Missions to the Office of the United Nations at Geneva and other international organisations, Permanent Missions to the World Trade Organisation, Permanent Representations to the Conference on Disarmament, Permanent Delegations to international organisations (Observer Offices) as well as Special Missions governed by the Convention of New York on Special Missions of 8 December 1969.

³ Vienna Convention on Consular Relations: www.admin.ch/ch/f/rs/c0_191_02.html (in French, German, Italian).

⁴ List of the 25 international organisations concerned (as of 01.01. 2011): AITIC (Geneva), ACWL (Geneva), EFTA (Geneva), IBE/UNESCO (Geneva), BIS (Basle), South Center (Geneva), CERN (Geneva), ICRC (Geneva), OSCE Court (Geneva), IFRC (Geneva), GAVI Alliance (Geneva), Global Fund (Geneva); IOM (Geneva), ICDO (Geneva); ILO (Geneva), WTO (Geneva), WMO (Geneva), WIPO (Geneva), WHO (Geneva), UNOG (Geneva), OTIF (Berne), IPU (Geneva), ITU (Geneva), UPOV (Geneva) and UPU (Berne).

⁵ Headquarters agreements concluded by Switzerland: www.admin.ch/ch/f/rs/0.19.html#0.191 (in French, German, Italian).

1.3 Service personnel of diplomatic missions, permanent missions and consular posts

In accordance with Article 1g of the Vienna Convention on Diplomatic Relations of 18 April 1961 and Article 1f of the Vienna Convention on Consular Relations of 24 April 1963, the term “service personnel” refers to persons employed as members of the domestic staff of a diplomatic mission, permanent mission or consular post. It therefore encompasses persons who are employed for the purpose of performing domestic services, but who are employees of the sending State who hold an official passport or a service/transferable employee passport.

Members of the service personnel of diplomatic missions and permanent missions are issued with a type “E” legitimisation card, while members of the service personnel of consular posts are issued with a type “K- violet” legitimisation card. The working relations between these employees and their State employer are governed by foreign public law. Directive No. 3 of the Protocol of the DFA dated 1 April 1987 applies to service personnel of diplomatic missions and consular posts, while Directive CD3 of the Swiss Mission dated 1 April 1987 applies to service personnel of permanent missions.

1.4 Local personnel of diplomatic missions, permanent missions and consular posts

The Swiss system also includes the concept of local personnel, who are defined as employees of the sending State who have been employed for the purpose of carrying out administrative or domestic tasks within the diplomatic mission, permanent mission or consular post on the basis of Swiss or foreign private law, and do not belong to the transferable personnel of the sending State.

Local personnel who are not Swiss nationals or do not hold a working (B permit) or residence (C permit) authorisation in accordance with Swiss law, are issued with a type “E” legitimisation card if they are employed at a diplomatic mission or permanent mission, and with a type “K – violet” legitimisation card if they are employed at a consular post. Directive No. 3 of the Protocol of the DFA dated 1 April 1987 applies to local personnel of diplomatic missions and consular posts, while Directive CD3 of the Swiss Mission dated 1 April 1987 applies to local personnel of permanent missions.

2 Persons authorised to hire a private servant

2.1 Categories of persons authorised to employ a private servant

Providing they live in Switzerland, the following persons are entitled to hire a private servant who holds a type “F” legitimisation card in accordance with the Directive:

2.11 In diplomatic missions and permanent missions

- Heads of mission (type “B” legitimisation card)
- Members of diplomatic staff (type “C” legitimisation card)
- Members of administrative and technical staff (type “D” legitimisation card)

2.12 In consular posts

- Heads of career consular posts (type “K- pink” legitimisation card)
- Career consular officials (type “K – pink” legitimisation card)
- Career Consular employees (type “K – blue” legitimisation card)

2.13 In international organisations

- Members of the senior management (type “B” legitimisation card)
- High-level officials (type “C” legitimisation card)
- Officials in a professional category (type “D” legitimisation card)

2.2 Personnel of diplomatic missions, permanent missions and consular posts who are Swiss nationals or holders of a B or C permit

Regardless of the position they may occupy, members of diplomatic missions, permanent missions and consular posts who are Swiss nationals or hold a working (B permit) or a residence (C permit) authorisation, and members of the service personnel (holders of a type "E" legitimisation card), are not authorised to employ a private servant on the basis of a legitimisation card.

2.3 Personnel of international organisations who are Swiss nationals, and persons in other categories

Regardless of the position they may occupy, officials who are Swiss nationals, general service staff, short-term employees, non-officials and consultants are not authorised to hire a private servant on the basis of a legitimisation card.

2.4 Number of private servants per household

In principle, only one private servant per household is allowed; however, heads of diplomatic missions, heads of permanent missions, heads of career consular posts and members of the senior management of international organisations are authorised to hire several private servants.

3 Admission and residence conditions for private domestic staff

3.1 Principles

Subject to the dispensations cited in section 3.2 of the Directive, the private servant must meet all the following conditions:

- be over 18 years of age;
- not be member of the employer's family or of the family of another member of the diplomatic mission, permanent mission, consular post or international organisation;
- hold a valid national passport;
- not be a refugee or a stateless person recognised by another country;
- be single, widowed or divorced;
- enter Switzerland unaccompanied;
- work full-time for one single employer;
- reside in the same household as the employer (subject to the dispensation cited in section 8.2 of the Directive);
- have been made aware that his/her residence in Switzerland is authorised only for as long as he/she is in the service of a member of diplomatic mission, permanent mission, consular post or international organisation entitled to hire a private servant.

3.2 Dispensations

3.2.1 Working for two employers at the same time

A private servant employed in accordance with section 3.1 of the Directive may, by way of exception, be given permission by the Protocol or the Swiss Mission to work for two employers at the same time. Both employers concerned must be authorised to hire a private servant who holds a legitimisation card in accordance with the provisions of the Directive.

The first of the two employers who hire the same person is regarded as principal employer and assumes all obligations and responsibilities towards the Swiss authorities associated with the employment relationship. However, the second employer has to pay his/her portion of social costs on a proportional basis. The accumulated occupancy rate of the private servant must be equivalent to a full-time employment.

3.2.2 Married couples

In exceptional and justifiable cases, a married couple (with or without children) may be authorised to accompany their employer to Switzerland providing they were both in the service of that same employer prior to his/her posting to Switzerland and both private servants work for the same employer.

The length of stay of the couple shall be limited strictly to the length of stay of the employer whom they have accompanied, and it is not possible for them to change employer.

A married couple with children must ensure that their children are cared for outside Switzerland throughout the whole of their stay in Switzerland.

3.3 Occupancy rate and duration of employment of the private servant

3.31 Occupancy rate

The private servant must be employed on a full-time basis.

3.32 Duration of employment

The working relations are concluded for an indefinite or fixed period of time as agreed between the employer and the private servant. The working relations take effect from the arrival of the private servant in Switzerland or, if he/she is already holding a legitimisation card in Switzerland (change of employer – cf. section 3.4 of the Directive) from the time of commencement of his/her new job. The working relations must be terminated in accordance with the applicable provisions of Swiss labour law (cf. section 8.4 of the Directive).

3.4 Change of employer

The private servant may change employer at any time, but he/she has a limited period of one month only from the date of expiry of the existing working relations in order to find another employer who is authorised to hire a private servant who holds a legitimisation card in accordance with the Directive. Failure to do so within the stated period means that the private servant must leave Switzerland.

4 Hiring of a private servant abroad: conditions and procedure

4.1 Persons subject to a visa requirement

4.11 Required documents

The following documents are required here:

- the declaration of guarantee by the employer that must be signed by the latter and presented in the form of three originals;
- the declaration by the private servant that has to be signed by the latter and presented in the form of three originals;
- a copy of the private servant's personal passport.

4.12 Procedure

The diplomatic mission, permanent mission, consular post or international organisation of the employer must submit the documents cited in section 4.11 of the Directive to the Protocol DFA or the Swiss Mission, accompanied by a verbal note. The Protocol or the Swiss Mission stamps the submitted declarations and returns two originals to the diplomatic mission, permanent mission, consular post or international organisation of the employer. One original of each declaration is intended for the employer and one of each for the private servant.

4.13 Delivery of visa

The private servant must present himself/herself to the relevant Swiss representation ⁶ for his/her place of residence in order to obtain a visa to work in Switzerland and has to hand over the following documents:

- his/her original of the declaration of guarantee by the employer signed by the latter and bearing the stamp of the Protocol or the Swiss Mission;
- his/her original of the declaration of the private servant signed by himself/herself and bearing the stamp of the Protocol or the Swiss Mission;
- his/her passport, which must be valid for at least six months after his/her entry into Switzerland.

4.2 Persons not subject to a visa requirement

4.21 Required documents

The following documents are required here:

- the declaration of guarantee by the employer that must be signed by the latter and presented in the form of three originals;
- the declaration by the private servant that has to be signed by the latter and presented in the form of three originals;
- a copy of the private servant's personal passport.

4.22 Procedure

The diplomatic mission, permanent mission, consular post or international organisation of the employer must submit the documents cited in section 4.21 of the Directive to the Protocol or the Swiss Mission, accompanied by a verbal note. The Protocol or the Swiss Mission stamps the submitted declarations and returns two originals to the diplomatic mission, permanent mission, consular post or international organisation of the employer, accompanied by a verbal note confirming that the private servant's stay in Switzerland will be regulated by a legitimisation card. One original of each declaration is intended for the employer and one of each for the private servant.

The employer sends the private servant a copy of the verbal note by the Protocol or the Swiss Mission. The private servant is then required to present the latter verbal note together with his/her valid passport to the customs officials upon his/her entry into Switzerland.

4.3 Application for a legitimisation card for the private servant

Immediately after the arrival of the private servant in Switzerland, the diplomatic mission, permanent mission, consular post or international organisation of the employer sends an application for a legitimisation card to the Protocol or the Swiss Mission, together with a verbal note and the following documents:

- two copies of the application for registration;
- three recent photos in passport format and of good quality;
- original passport of the private servant.

5 Employment of a private servant in Switzerland: conditions and procedure

5.1 General principle

The private servant may be hired on location in Switzerland, subject to the exceptions cited below.

⁶ Addresses of Swiss representations: www.eda.admin.ch/eda/en/home/reps.html

5.2 Exceptions

The following persons may not be hired on location in Switzerland:

- persons in breach of regulations;
- persons who are the subject of pending proceedings relating to repatriation or expulsion;
- applicants for asylum whose request is pending or the subject of an appeal, or has been denied;
- persons who are in Switzerland on a temporary basis (tourists, visitors, students, trainees, people undergoing treatment, seasonal workers, etc.);
- holders of a legitimisation card type "F" whose employment terminated more than a month ago;
- holders of legitimisation card types "E" and "K – violet" whose employment terminated more than a month ago or who do not meet the admission conditions stipulated in section 3 of the Directive.

5.3 Application for legitimisation card for the private servant

Before the private servant may start work, the diplomatic mission, permanent mission, consular post or international organisation of the employer sends an application for a legitimisation card to the Protocol or the Swiss Mission, together with a verbal note and the following documents:

- three originals of the declaration of guarantee by the employer, signed by the latter
- three originals of the declaration by the private servant, signed by the latter;
- two copies of the application for registration;
- three recent photos in passport format and of good quality;
- the original passport of the private servant.

5.4 Swiss nationals and holders of a B or C permit

Swiss nationals and holders of a working (B permit) or residence (C permit) authorisation may be hired as private servants in accordance with the provisions of Swiss ordinary law. They do not require a legitimisation card.

6 Delivery and return of legitimisation card of the private servant

6.1 Application for legitimisation card

Upon the private servant's arrival in Switzerland or upon his/her hiring in Switzerland, the employer undertakes, via his/her diplomatic mission, permanent mission, consular post or international organisation, to apply to the Protocol or the Swiss Mission for a legitimisation card for the private servant, without delay (procedure: cf. sections 4.3 and 5.3 of the Directive).

6.2 Possession of legitimisation card

The private servant must retain his/her legitimisation card throughout his/her entire stay in Switzerland. A legitimisation card effectively serves as a authorisation to stay in Switzerland.

6.3 Return of legitimisation card

As soon as the working relations are terminated, whatever the reason may be, the diplomatic mission, permanent mission, consular post or international organisation of the employer is required to notify the Protocol or the Swiss Mission without delay about the termination of the working relations. The private servant is obliged to hand back his/her legitimisation card to his/her former employer, who in turn returns it to the Protocol or the Swiss Mission via his/her diplomatic mission, permanent mission, consular post or international organisation. The employer may not hire another private servant until these obligations have not been fulfilled.

7 Change of civil status of the private servant

7.1 Change of civil status

The employer, via his/her diplomatic mission, permanent mission, consular post or international organisation, is obliged to notify the Protocol or the Swiss Mission without delay about any change of civil status of the private servant (e.g. marriage, childbirth, death), enclosing a photocopy of the civil status document.

7.2 Marriage and childbirth

If the private servant should marry, in Switzerland or abroad, while his/her contract is still valid, he/she no longer meets the admission conditions and thus loses his/her entitlement to a legitimisation card upon expiry of the existing working relations. The spouse is not entitled to receive a legitimisation card.

If a private servant should give birth to a child in Switzerland while her contract is still valid, she no longer meets the admission conditions and thus loses her entitlement to a legitimisation card upon expiry of the existing working relations. The mother is responsible for all costs associated with her child. If the child lives in Switzerland, the mother is legally obliged to take out health insurance cover for the child with a Swiss insurance provider at her own cost. If the mother is covered by Swiss social insurance scheme and her policy meets the applicable conditions, she may collect maternity benefits (cf. enclosed Information Sheet No. 6).

8 Rights and obligations of the employer and private servant

8.1 Protection of, and respect for, private domestic staff

The employer undertakes to protect the health of the private servant, to respect his/her personality and preserve his/her dignity by creating suitable working conditions.

8.2 Accommodation and nourishment conditions of the private servant

The private servant is entitled to a room of his/her own at the residence of his/her employer that meets the requirements of hygiene, can be locked, is well lit, adequately heated and ventilated, and contains the necessary furniture (bed, table, chair, lockable wardrobe). He/she is also entitled to suitable toilet and bathroom facilities.

The private servant is entitled to receive healthy and adequate nourishment and three meals a day (morning, midday and evening).

The AVS value for accommodation and nourishment furnished by the employer is CHF 990 per month (valid amount as of 1 January 2007), which comprises CHF 345 for accommodation and CHF 645 for nourishment. This amount represents salary in kind that is subject to social insurance contributions.

The private servant is required to live in the same household as his/her employer (cf. section 3.1 of the Directive). However, if by way of exception an employer is unable to provide suitable accommodation in his/her own residence, he/she is required to cover the costs of external accommodation (including expenses) in Switzerland for the private servant.

If the employer is unable to provide the private servant with meals, he/she must pay the private servant the amount reserved for nourishment, namely CHF 645 per month (gross), which forms an integral part of the private servant's salary and is subject to social insurance contributions.

8.3 Due care and attention, loyalty of the private servant

The private servant undertakes to perform the duties entrusted to him/her with due care and attention. He/she has a duty of loyalty and is obliged to treat all information that may come to his/her attention in the course of his/her work as strictly confidential.

8.4 Working conditions of the private servant

The working conditions must ensure that the private servant is able to live in reasonable comfort. These conditions encompass the protection of his/her personality and respect for his/her person, fair working hours and remuneration for overtime, adequate time off each week, allowance for vacation and public holidays, provision of accommodation and nourishment, payment of social insurance contributions and accident insurance, payment of salary and all other benefits to which a private servant is entitled.

The working conditions of the private servant (salary, working hours, overtime, holidays, termination of the working relations, payment of salary in the event of incapacity to work, etc.) are governed by Swiss labour law. Each canton has its own standard working contract which defines the working conditions for the private servants⁷. Cantonal working contracts are based on the relevant provisions of the Swiss Code of Obligations⁸. The provisions of cantonal working contracts and the Swiss Code of Obligations are applicable to working relations between the employer and the private servant, and specify the minimum requirements concerning salary, working hours, overtime, termination of the working relations, payment of salary in the event of incapacity to work, etc.

For the purpose of specifying the working conditions for his/her private servant, the employer must refer to the standard working contract in effect in his/her canton of residence. Employer and private servants may depart from certain provisions of the standard working contract by defining specific alternatives in writing, though some provisions are compelling and may not be substituted by either party in favour of less beneficial conditions.

The DFA wishes to recall to mind the fact that the standard working contract in effect in the Canton of Geneva stipulates a minimum salary that is legally binding, i.e. it is not possible to deviate from this salary to the detriment of the private servant, even in writing. In the other Swiss cantons, the minimum salary stipulated in standard working contracts is not legally binding, and the contractual parties may, by mutual agreement, depart from the stated minimum salary as long as there is no apparent disproportion between the work concerned and the remuneration of the private servant. A disproportion of this kind would

⁷ Standard working contracts currently in effect in Swiss cantons:

Canton of Basel City:

Standard working contract for household personnel, 20 November 1990, Systematic Collection of Cantonal Law, Basel-City, SGBS 215.700: www.gesetzsammlung.bs.ch/sgmain/default.html (in German).

Directives relating to household personnel dated 1 January 2011: www.awa.bs.ch/hauspersonal-richtlinien.pdf (in German).

Canton of Bern:

Standard working contract for private domestic staff, 25 April 2007, Systematic Collection of Cantonal Law, Bern, RSB – 222.153.22: www.sta.be.ch/belex/f/2/222_153_22.html (in French and German).

Canton of Geneva:

Standard working contract for private domestic staff, 30 March 2004, amended on 1 January 2010, Systematic Collection of Cantonal Law, Geneva, RSG - J 1 50.03: www.ge.ch/relation-travail/ctt.asp (in French).

Canton of St Gall:

Standard working contract for private domestic staff, 25 February 1986, Systematic Collection of Cantonal Law, St. Gall, GALLEX 513.1: www.gallex.ch/gallex/5/fs513.1.html (in German).

Canton of Ticino:

Standard working contract for private domestic staff, 14 December 1989 amended on 29 December 2009, www4.ti.ch/fileadmin/DFE/DE-SPE-USML/contratti/CONTRATTO_personale_domestico.pdf (in Italian).

Canton of Vaud:

Standard working contract for private domestic staff, 18 January 2006, Systematic Collection of Cantonal Law, Vaud, RSV 222.105.1: www.rsv.vd.ch/dire-cocoon/rsv_site/index.html (in French).

Canton of Zurich:

Standard working contract for private domestic staff, 29 May 1991, Systematic Collection of Cantonal Law, Zurich, ZH-Lex 821.12:

[www2.zhlex.zh.ch/appl/zhlex_r.nsf/WebView/863D741B02481BE7C125725A003B4B3A/\\$File/821.12_29.5.91_55.pdf](http://www2.zhlex.zh.ch/appl/zhlex_r.nsf/WebView/863D741B02481BE7C125725A003B4B3A/$File/821.12_29.5.91_55.pdf) (in German).

⁸ Swiss Code of Obligations (working contract, see Articles 319 to 343): www.admin.ch/ch/f/rs/220/index2.html (in French, German, Italian).

constitute an infringement in accordance with Article 21, paragraph 1, of the Swiss Code of Obligations⁹, and the salary clause in the working contract could be declared invalid by a court of law. If there is no written working contract, or if a working contract has been declared invalid by a court of law as the result of an infringement, the employer is subject to a ruling by a court of law to the effect that the salary to be paid to the private servant is different to that originally envisaged or paid.

In order to avoid any difficulties, the DFA strongly recommends that the employer and private servant conclude a written working contract (cf. enclosed specimen). Under Swiss law, the conclusion of a working contract in writing is not a requirement. However, if no written working contract exists, in the case of a dispute the relevant court of law will only be able to base its decision on the applicable legal provisions and the clauses of the relevant standard working contract, since no evidence exists relating to any modifications of the applicable provisions and clauses that may have been made verbally between employer and private servant.

9 Swiss social security and compulsory insurance

The private servants who are nationals of a Member State of the European Union (hereinafter referred to as "EU") or the European Free Trade Association (hereinafter referred to as "EFTA") and whose employer is a member of a diplomatic mission, permanent mission or consular post of a Member State of the EU or EFTA, are subject to other regulations relating to Swiss social insurance scheme and Swiss compulsory insurances in accordance with the provisions of the Agreement concluded between Switzerland and the EU on Freedom of Movement, and the clauses of the EFTA Convention. Sections 9.1 to 9.4 of the Directive do not apply to the above, whose situation is described separately in section 9.5 of the Directive.

9.1 Swiss social insurance scheme AVS/AI/APG/AC

9.11 Obligation of registration

The private servants are subject to mandatory coverage in Switzerland by the old age and survivors' insurance (AVS), disability insurance (AI), allowances to compensate for loss of salary (APG) and unemployment insurance (AC). These four social insurances form a scheme that cannot be divided. The private servants registered for the Swiss social insurances and living in the Canton of Geneva are also registered for the maternity insurance of the Canton of Geneva.

Half of the required contributions are paid by the employer, and half by the private servant. The employer is responsible for effecting payment of the full amount due, and deducts the private servant's portion from the latter's salary.

For more detailed information about Swiss social insurance scheme and Geneva maternity insurance, please refer to the enclosed Information Sheet No. 1.

9.12 Exemptions of registration

If the private servant is allowed, according of the applicable international law, to be registered for the social security system of another country and his/her employer presents an original insurance certificate that is accepted by the relevant Cantonal Compensation Fund Office, the private servant may be exempted by the latter office from the obligation to be registered for the Swiss social insurance scheme AVS/AI/APG/AC.

In order for a private servant to be exempted from the obligation to be registered for the Swiss social insurance scheme AVS/AI/APG/AC, he/she must be registered for an official old age and survivors' insurance institution abroad that is governed by

⁹ Article 21, paragraph 1, Swiss Code of Obligations states that if an apparent discrepancy between service and remuneration should be substantiated by the provisions of a contract that has been concluded by one party in exploitation of an urgent need, inexperience or carelessness on the part of the other party, the injured party may within a period of 12 months declare that he/she will not honour the contract and demand a refund of payments that have already been made.

public law in the country concerned. Insurance cover by a private-law company is deemed equivalent to cover by an official old age and survivors' insurance institution abroad if the insurance relationship takes the place of compulsory social insurance in accordance with the provisions of the internal legislation of the country concerned.

9.13 Private servants who are Philippine nationals

In accordance with the Social Security Agreement concluded between Switzerland and the Philippines, and other agreements concluded between Switzerland and other countries, private servants who are Philippine nationals and are employed by a member of a diplomatic mission, permanent mission or consular post of one of the following countries: Cyprus, Czech Republic, Denmark, Hungary, Ireland, Liechtenstein, Macedonia, Portugal, Slovakia, Slovenia, are subject to mandatory coverage by the Swiss social insurance scheme AVS/AI/APG/AC, unless they exercise an optional right to the social security system of the country of their employer. They may not join social security system in any other country.

Half of the required contributions are paid by the employer, and half by the private servant. The employer is responsible for effecting payment of the full amount due, and deducts the private servant's portion from the latter's salary.

For more detailed information on this topic, please refer to the Information Note on the Website of the Protocol or the Swiss Mission ¹⁰.

9.14 Private servants employed by a member of diplomatic mission, permanent mission or consular post of the Philippines

Regardless of their nationality, private servants who are employed by a member of a diplomatic mission, permanent mission or consular post of the Philippines are subject to mandatory coverage by the Swiss social insurance scheme AVS/AI/APG/AC, unless they exercise an optional right to the social security system of the Philippines. They may not join social security system in any other country.

Half of the required contributions are paid by the employer, and half by the employee. The employer is responsible for effecting payment of the full amount due, and deducts the private servant's portion from the latter's salary.

For more detailed information on this topic, please refer to the Information Note on the Website of the Protocol or the Swiss Mission ¹⁰.

9.15 Reimbursement of contributions

Upon his/her definitive departure from Switzerland and providing he/she has paid AVS insurance contributions for a period of at least 12 months and is not a citizen of a country with which Switzerland has concluded a social security agreement, the private servant will receive, upon his/her request, the full amount paid into AVS insurance (i.e. employer's and employee's contributions). If a social security agreement has been concluded with the country concerned, the private servant is entitled, upon request, to receive a monthly pension after reaching retirement age, regardless of his/her place of residence.

For more detailed information about reimbursement of AVS contributions, please refer to the enclosed Information Sheet No. 1.

¹⁰ Information sheet of the Protocol:
www.eda.admin.ch/etc/medialib/downloads/edazen/topics/dipl/privim.Par.0013.File.tmp/Sozialversicherungen%20bei%20philippinschen%20Bediensteten_fr.pdf (in French).
Information sheet of the Swiss Mission: www.dfae.admin.ch/eda/en/home/topics/intorg/un/unge/gepri/manins/slphdo.html

9.2 Occupational pension insurance (LPP)

Occupational pension insurance (old age, survivors' and disability insurance - LPP) is compulsory in Switzerland for all employees registered for the Swiss social insurance scheme AVS/AI/APG/AC and whose total salary (cash salary and salary in kind) exceeds CHF 20,880.— per annum or CHF 1,740.— per month (applicable amounts as of 1 January 2011). The Cantonal Compensation Fund Office has jurisdiction for LPP affiliation and cover.

Half of the required contributions are paid by the employer, and half by the employee. The employer is responsible for effecting payment of the full amount due, and deducts the private servant's portion from the latter's salary.

Upon his/her definitive departure from Switzerland, the private servant will receive, upon request, the full amount of contributions for old age insurance (i.e. employer's and employee's contributions), except the portion of contributions paid for disability and death.

For more detailed information about occupational pension insurance, please refer to the enclosed Information Sheet No. 2.

9.3 Health insurance (LAMal)

9.31 Obligation or exemption of registration

The private servants are subject to mandatory coverage by the health insurance in Switzerland unless they are covered by a health insurance abroad.

If a private servant is covered by a health insurance abroad and presents an original insurance certificate that is accepted by the relevant Cantonal Health Insurance Office, he/she may be exempted by the latter from the obligation to register for the health insurance in Switzerland.

For more detailed information about health insurance, please refer to the enclosed Information Sheet No. 3.

9.32 Responsibility of the private servant

The private servant is responsible for register himself/herself for the health insurance in Switzerland or abroad. He/she also has to bear the premiums and the related costs (quota and "franchise") and all expenses that are not covered by the insurance.

The employer is required to ensure that the private servant takes the necessary steps to obtain health insurance cover in Switzerland or abroad.

9.4 Accident insurance (LAA)

9.41 Compulsory insurance

The employer is obliged to insure the private servant against accidents. Swiss accident insurance covers occupational and non-occupational accidents, plus occupational diseases.

Premiums for compulsory insurance against occupational accidents and occupational diseases are paid by the employer, while premiums for compulsory insurance against non-occupational accidents are paid by the private servant.

For more detailed information about accident insurance, please refer to the enclosed Information Sheet No. 4.

9.42 Insurance abroad

The private servant may be insured against accidents (occupational and non-occupational accidents and occupational diseases) abroad if the insurance cover abroad is identical to that provided by Swiss accident insurance, otherwise the private servant must be insured in Switzerland.

9.43 Responsibility of employer

The employer is responsible for registering his/her private servant for an accident insurance in Switzerland or abroad according to the Swiss accident insurance. He/she is also responsible for paying the full premium and deducting the portion to be paid by the private servant (premium for insurance against non-occupational accidents) from the latter's salary.

The employer is responsible towards the Swiss authorities for all medical costs resulting from an occupational or a non-occupational accident, or an occupational disease, for the full duration of the working relations in accordance with section 3.2 of the Directive and after the termination of the working relations until such time as he/she has been released from this obligation by the Protocol or the Swiss Mission.

9.5 Private servants, who are nationals of a Member State of the EU or EFTA, of members of diplomatic missions, permanent missions and consular posts of Member States of the EU or EFTA

9.51 Private servants, who are nationals of the country of their employer, if the employer's country is a Member State of the EU or EFTA

The private servant who is national of the same country as his/her employer, is subject to mandatory coverage by the Swiss social insurance scheme (AVS/AI/APG/AC and LPP) and Swiss compulsory insurances (LAA and LAMal). His/she can, however, choose to be registered for the social security system of the country of which he/she is a citizen (optional right). If the private servant does not exercise his/her optional right, his/her employer must mandatory register him/her for the Swiss social insurance scheme AVS/AI/APG/AC, LPP and LAA.

Half of the AVS/AI/APG/AC and LPP contributions are paid by the employer, half by the employee. Premiums for compulsory insurance against occupational accidents and diseases are paid by the employer. Premiums for compulsory insurance against non-occupational accidents are paid by the private servant.

The private servant must register himself/herself for the Swiss health insurance according to the LAMal. The premiums and costs (quota and "franchise") of the health insurance and all expenses that are not covered by the insurance are borne by the private servant.

If the private servant exercises his/her optional right, he/she is exempted from Swiss social insurance scheme (AVS/AI/APG/AC and LPP) and Swiss compulsory insurances (LAA and LAMal) and is subject to mandatory coverage by the social security system of the country of which he/she is a citizen. The optional right must be exercised after commencing employment by completing form E 103 which must be submitted to the Swiss cantonal authorities responsible for social insurance scheme AVS/AI/APG/AC and health insurance.

For more detailed information on this topic, please refer to the Information Note available on the Website of the Protocol or the Swiss Mission ¹¹.

¹¹ Information sheet of the Protocol:
www.eda.admin.ch/etc/medialib/downloads/edazen/topics/dipl/privim.Par.0010.File.tmp/Sozialgesetzgebung%20betreffend%20Bediensteten_fr.pdf (in French).
Information sheet of the Swiss Mission:
<http://www.dfae.admin.ch/eda/fr/home/topics/intorg/un/unge/gepri/manins/sleudo.html> (in French).

9.52 Private servants who are nationals of a Member State of the EU or EFTA other than the sending state/receiving State, Member State of the EU or EFTA of their employer

The private servant, who is national of a Member State of the EU or EFTA other than the sending State/receiving State, Member State of the EU or EFTA of his/her employer, is subject to mandatory coverage by the Swiss social insurance scheme (AVS/AI/APG/AC and LPP) and Swiss compulsory insurances (LAA and LAMal). He/she does not have an optional right and may not be registered for the social security system of another country. His/her employer is obliged to register him/her for the Swiss social insurances AVS/AI/APG/AC, LPP and LAA.

Half of the AVS/AI/APG/AC and LPP contributions are paid by the employer and half by the employee. Premiums for compulsory insurance against occupational accidents and occupational diseases are paid by the employer. Premiums for compulsory insurance against non-occupational accidents are paid by the private servant.

For more detailed information on this topic, please refer to the Information Note available on the Website of the Protocol or the Swiss Mission ¹¹.

9.6 Family allowance (AF)

The private servant who is registered for the Swiss social insurance scheme AVS/AI/APG/AC and has dependent and minor children is entitled to family allowance, even if the children are living abroad (subject to the relevant cantonal legal provisions). The amount of which depends on the age of the children. Family allowance and contributions rate also varie from canton to canton. The Cantonal Compensation Fund Offices are competent to decide if the private servant must be registered for the family allowance and if the private servant is entitled to receive a family allowance.

For more detailed information about family allowance, please refer to the enclosed Information Sheet No. 5.

9.61 Responsibility of the employer

The employer is bound by the legislation of the canton concerned relating to family allowance and is obliged to pay all contributions.

9.7 Health insurance to cover loss of income

It is advisable to take out insurance with an insurance company or health insurance fund to cover loss of income (optional daily wage insurance) in the event of the private servant's incapacity to work. In the event of incapacity to work due to non-occupational sickness, Swiss insurance pays the daily wage that is covered in the insurance contract.

For more detailed information on health insurance to cover loss of income, please refer to the enclosed Information Sheet No. 6.

10 Information for private servant

The private servant is required to present himself/herself in person to the Protocol or the Swiss Mission to collect his/her legitimation card and a copy of the Directive.

The employer must pass on all information from the Protocol or the Swiss Mission to the private servant that may concern the latter or affect the latter's status.

11 Privileges and immunities of the employer

Signing working contract does not result in the renunciation of any of the employer's privileges and immunities.

12 Labour disputes

In the case of a labour dispute, the employer and/or the private servant may request the assistance of the *Office of the Amiable compositeur* (Bureau de l'Amiable compositeur)¹², which will endeavour to find a solution acceptable to both parties.

The private servant may also lodge claims for payment with the labour court of the canton of residence of the employer. If the employer has diplomatic status, the claimant (private servant or his/her legal representative) has to request the Protocol or the Swiss Mission to take the necessary steps to lift the employer's immunity.

13 Privileges and immunities of the private servant

13.1 Fiscal privileges

The private servant who holds a legitimation card is exempted from paying income tax in Switzerland on the salary he/she receives in return for his/her services. He/she is not entitled to any other privileges.

13.2 Immunities

The private servant does not benefit from any immunities.

14 Failure to observe the provisions of the Directive

In the event of any infringements of the provisions of the Directive, the DFA reserves the right to take measures in accordance with the relevant legal provisions, in particular those of the Vienna Convention on Diplomatic Relations of 18 April 1961, the Vienna Convention on Consular Relations of 24 April 1963 and the headquarters agreements concluded between Switzerland and the international organisations.

15 Concluding clauses

The provisions of the Directive are applicable as soon as it enters into effect. The Protocol and the Swiss Mission will provide diplomatic missions, permanent missions, consular posts and international organisations with information - to be passed on to their personnel who are authorised to hire a private servant in accordance with the Directive - concerning any amendments that may be made to the provisions of the Directive. The employer is obliged to apply these amendments in the working relations with his/her private servant in accordance with information provided periodically by the Protocol or the Swiss Mission.

The provision of the cantonal standard working contracts are amended on a regular basis by the cantonal authorities. The Protocol and the Swiss Mission will provide diplomatic missions, permanent missions, consular posts and international organisations with information - to be passed on to their personnel who are authorised to hire a private servant in accordance with the Directive - concerning any amendments that may be made to the provisions of the cantonal standard working contracts. The employer is obliged to apply these amendments in the working relations with his/her private servant in accordance with information provided periodically by the Protocol or the Swiss Mission.

¹² The "Bureau de l'Amiable compositeur" was created in 1995 by the State Council of the Republic and Canton of Geneva. Its services are free of charge. For further information, please refer to the Website of the Republic and Canton of Geneva (www.geneve.ch/di/le-departement/nos-services/?rubrique=amiable-compositeur) (in French).

Upon its entry into effect, the Directive replaces and cancels:

- Directive dated 1 March 1998 on the hiring of private servants by members of permanent missions located in Geneva;
- Directive dated 1 May 1998 on the hiring of private servants by international civil servants;
- Directive dated 1 October 1999 on the hiring of private servants by members of diplomatic missions and consular posts in Switzerland.

16 Transitory clauses

16.1 Entry into effect

The Directive enters into effect on 1 May 2006.

16.2 Private servant who holds a type “E” legitimization card

The private servant who was hired before the Directives of the DFA dated 1 March 1998, 1 May 1998 and 1 October 1999 (cf. section 15 of the Directive) entered into effect, and who holds of type “E” or type “K – violet” legitimization card, may retain his/her of type “E” or type “K – violet” legitimization card as long as he/she remains in the service of the same employer. Should he/she change employer, he/she will automatically be issued a type “F” legitimization card providing he/she meets the conditions laid down by the Directive.

Enclosures:

- Specimen of working contract
- Specimen of salary form
- 8 Information Sheets concerning Swiss social insurance scheme and compulsory insurances
- Declaration of guarantee by the employer
- Declaration by the private servant