

**Ordinance on Conditions for Entry, Stay and Work
for Private Household Employees of Individual Beneficiaries of Privileges, Immunities and Facilities
(Private Household Employees Ordinance, PHEO)**

of 6 June 2011

The Swiss Federal Council,

on the basis of Article 98, paragraph 2, of the Federal Foreign Nationals Act of 16 December 2005 (FNA)¹, and

on the basis of Article 27, paragraph 2, of the Federal Host State Act of 22 June 2007 (HSA)²,

decrees:

1. Chapter 1 Subject Matter and Definitions

Art. 1 *Subject matter*

¹ This Ordinance supplements the provisions laid down in the Host State Ordinance of 7 December 2007 (HSO)³, and governs the conditions for entry, residence and work for private household employees as defined in Article 2, paragraph 2 (c) of the HSA.

² Cantonal or federal standards [contrats-types/Normalarbeitsverträge] concerning the employment of workers in the domestic services industry and any other cantonal provisions regulating the working conditions or salaries of workers in the domestic services industry do not apply to persons who fall within the scope of this Ordinance.

³ This Ordinance does not apply to:

- a. members of service staff (Article 3) or members of local staff of diplomatic missions, permanent missions or other representations to intergovernmental organisations or consular posts as defined in Article 5 of the HSO;
- b. private household employees of Swiss nationality or foreign nationals with authorisation to stay or reside or who have been granted temporary admission;

¹ SR 142.20

² SR 192.12

³ SR 192.121

- c. private household employees who accompany, for temporary stays, members of special missions within the meaning of Article 2, paragraph 1 (g) of the HSA or delegates at international conferences, provided that such members of special missions or delegates do not have their usual residence in Switzerland.

⁴ This Ordinance applies to private household employees who are nationals of a member state of the European Union or EFTA and whose permanent place of residence, at the time of their being engaged for employment, was not Switzerland, only to the extent that the Agreement of 21 June 1999 between the Swiss Confederation and the European Union and its member states on the free movement of persons⁴ does not provide otherwise or where the provisions of this Ordinance should prove more favourable.

Art. 2 *Definition of “private household employee”*

¹ A “private household employee” is, in accordance with Article 1 (h) of the Vienna Convention on Diplomatic Relations of 18 April 1961⁵ and Article 1(i) of the Vienna Convention on Consular Relations of 24 April, 1963⁶, a person who is in the domestic service of an individual beneficiary as defined by Article 2, paragraph 2 (a) and (b) of the HSA, authorised to employ private household staff and who holds a legitimisation card F issued by the Federal Department of Foreign Affairs (FDFA). The legitimisation card attests the qualification as private household employee.

² Private household employees are not employed by the institutional beneficiary of the employer. They are directly engaged by their employer on the basis of an employment contract under civil law.

³ Domestic service is understood to mean any task carried out by the private household employee in the home of the employer, such as household chores, cooking, waiting on table, laundry, child care or gardening tasks.

Art. 3 *Definition of “member of service staff”*

¹ In accordance with Article 1 (g) of the Vienna Convention on Diplomatic Relations of 18 April 1961⁷ and Article 1 (f) of the Vienna Convention on Consular Relations of 24 April 1963⁸, a “member of service staff” is defined as an employee of the sending State in the domestic service of a diplomatic mission, permanent mission or other representation to an intergovernmental organisation, or of a consular post, who is a member of such mission, representation or consular post.

⁴ SR 0.142.112.681

⁵ SR 0.191.01

⁶ SR 0.191.02

⁷ SR 0.191.01

⁸ SR 0.191.02

² Such a person is an employee of the sending State and is subject to the laws of such sending State. Such a person is generally employed as a chauffeur, usher, caretaker, or as cleaning or maintenance personnel for the chancery or the residence of the head of mission or head of post.

2. Chapter 2 Persons Authorised to Employ a Private Household Employee

Art. 4 Diplomatic missions and permanent missions or other representations to intergovernmental organisations

¹ On condition that they reside in Switzerland and hold the appropriate legitimisation card issued by the FDFA, the following members of diplomatic missions and permanent missions or other representations to intergovernmental organisations may be authorised to employ a private household employee:

- a. heads of missions (legitimation card B);
- b. members of diplomatic staff (legitimation card C);
- c. members of administrative and technical staff (legitimation card D).

² Persons falling within the scope of paragraph 1 who are Swiss nationals or hold an authorisation to stay or reside pursuant to the FNA do not have the right to engage a private household employee entitled to a legitimisation card.

Art. 5 Consular posts

¹ On condition that they reside in Switzerland and hold the appropriate legitimisation card issued by the FDFA, the following members of consular posts may be authorised to employ a private household employee:

- a. career heads of consular posts (legitimation card K with pink band);
- b. career consular officers (legitimation card K with pink band);
- c. career consular employees (legitimation card K with blue band).

² Persons falling within the scope of paragraph 1 who are Swiss nationals or who hold an authorisation to stay or reside pursuant to the FNA do not have the right to engage a private household employee entitled to a legitimisation card.

Art. 6 *Other institutional beneficiaries*

¹ On condition that they reside in Switzerland and hold the appropriate legitimisation card issued by the FDFA, the following individuals who are staff members of an intergovernmental organisation, international institution, secretariat or other body created under international treaty, of an independent commission or international court or arbitration tribunal as specified in Article 2 paragraph 1 of the HSA may be authorised to engage a private household employee:

- a. members of senior management (legitimation card B);
- b. high-ranking officials (legitimation card C);
- c. other officials with professional status (legitimation card D).

² Persons falling within the scope of paragraph 1 who are Swiss nationals do not have the right to engage a private household employee entitled to a legitimisation card.

Art. 7 *Number of private household employees per household*

¹ One private household employee only per household is allowed.

² The following persons may be authorised to engage several private household employees:

- a. heads of diplomatic missions;
- b. heads of permanent missions or other representations to intergovernmental organisations;
- c. career heads of consular posts;
- d. members of senior management of the institutional beneficiaries specified in Article 6, paragraph 1 hereof.

³ Persons authorised to engage one private household employee may, in exceptional circumstances, be authorised to engage more if their particular situation so warrants.

⁴ Protocol or the Swiss mission will make decisions on a case-by-case basis. When considering individual cases they will take particular account of:

- a. previous employment disputes involving the employer or the institutional beneficiary concerned;
- b. the existence of any debts owed to creditors in Switzerland by the employer or the institutional beneficiary concerned.

Art. 8 *Priority for private household employees already in Switzerland*

¹ Prior to requesting authorisation to engage a private household employee from abroad, employers must look in Switzerland for a private household employee as defined within this Ordinance who is in search of employment and who is able and willing to fill the position. Protocol or the Swiss mission will take all the particular circumstances into account when determining which documents they require to demonstrate that a search in Switzerland has been unsuccessful.

² Employers who arrive in Switzerland accompanied by a private household employee who was in their service prior to being posted to Switzerland may be granted dispensation from looking for a private household employee in Switzerland.

3. Chapter 3 Conditions for Admission and Stay of Private Household Employees

Art. 9 *General conditions*

¹ Subject to any derogation granted elsewhere in the provisions of this Ordinance, private household employees must satisfy all of the following conditions:

- a. be 18 years of age or over;
- b. not be a member of the family of the employer;
- c. hold a valid national passport;
- d. undertake to come to Switzerland alone; the entry, admission, stay and work of any persons wishing to accompany them are regulated by the FNA, except as provided by Article 16, paragraph 2 hereof;
- e. work fulltime;
- f. work for one employer only who must be authorised to engage a private household employee pursuant to this Ordinance; except as provided by Article 11 hereof;
- g. be part of the household of the employer and work at the home of the employer; except as provided by Article 30, paragraphs 4 and 5 hereof;
- h. be aware that their stay in Switzerland is only authorised for as long as they remain in the service of a person authorised to engage a private household employee under the provisions of this Ordinance; and

- i. have sufficient knowledge of one of the official languages of Switzerland, English, Spanish or Portuguese to enable them to communicate with the FDFA whilst residing in Switzerland without the need for the services of an interpreter.

² Private household employees are not authorised to exercise any secondary gainful activity in Switzerland or work for another employer, within the meaning of this Ordinance, even if their employer doesn't give them enough work to keep them fully occupied, except as provided by Article 11 hereof.

Art. 10 *Employment contract*

¹ A written employment contract, drawn up in one of the languages specified in Article 9, paragraph 1 (i) hereof must be signed between the employer and the private household employee. The objective of this provision is to ensure clear and transparent conditions of employment.

² The employment contract must be drawn up based on the standard form contract drafted by the FDFA. It includes, in particular, the standard form pay slip, which is an integral part thereof. Only derogations from the standard form contract in favour of the private household employee will be permitted.

³ Granting of authorisation to enter and a legitimisation card are dependent upon the signature of an employment contract.

⁴ In accordance with Article 320 of the Code of Obligations (CO)⁹, neither an employer nor a private household employee may claim the absence of a written employment contract as a reason for not respecting their obligations under the relevant legal provisions, either as employer or employee.

Art. 11 *Working for two employers at the same time*

¹ In exceptional circumstances, a private household employee may be authorised to work for a maximum of two employers at the same time.

² A request must be made by the first employer (paragraph 4 below) to Protocol or the Swiss mission through the institutional beneficiary concerned.

³ Both employers must be authorised under the provisions of this Ordinance to employ a private household employee.

⁴ The first employer to have taken the private household employee into his service shall be considered as the primary employer and must assume all obligations and responsibilities relating to this engagement in respect of the Swiss authorities.

⁵ The accumulated working hours of the private household employee must equate to and not exceed full-time employment (Article 46).

⁹ SR 220

⁶ The employment contract entered into between the second employer and the private household employee must provide for its automatic termination no later than the date of termination of the contact between the first employer and the private household employee. The private household employee then loses entitlement to a legitimisation card, unless the second employer is prepared, and has been so authorised by Protocol or the Swiss mission, to re-engage the employee on a full-time basis.

Art. 12 *Couples of private household employees*

¹ In exceptional circumstances and upon legitimate request, a married couple may be authorised to accompany an employer to Switzerland, subject to all of the following conditions:

- a. the employer is a person who, under Article 7, paragraph 2 hereof, may be authorised to engage several private household employees;
- b. the couple of private household employees were already in the service of the same employer prior to their employer being posted to Switzerland;
- c. the employer adapts their employment contracts to conform to the requirements of this Ordinance;
- d. both private household employees work on a full-time basis solely for this same employer and are not authorised to take on any secondary employment on the Swiss labour market or work for any other employer pursuant to this Ordinance;
- e. the length of stay in Switzerland of each of these private household employees is strictly limited to the duration of the employer's official functions;
- f. entry, admission, residence and work in Switzerland of persons wishing to accompany the couple of private household employees are governed by the FNA; and
- g. each of the private household employees individually meets all the other conditions applicable to private household employees, in particular those set out in Article 9 hereof.

² The couple of private household employees are not permitted to change employer in Switzerland, neither individually nor as a couple.

Art. 13 *Change of employer and stay in Switzerland upon the termination of employment*

¹ Private household employees are authorised to change employer at any time, except as provided in Article 12, paragraph 2 hereof.

² Upon the termination of employment, private household employees have a maximum period of two months commencing from the employment termination date in which to find another employer pursuant to this Ordinance. The new employment relationship must have entered into effect no later than the expiry of this two-month period.

³ In the event that private household employees do not find new employment within the period specified in paragraph 2, or if their legitimation card is cancelled for any other reason, then they must leave Switzerland.

⁴ Private household employees who enter Switzerland pursuant to this Ordinance may not count the number of years spent in Switzerland whilst holding a legitimation card issued by the FDFA towards claiming a right to reside as contemplated by the FNA. If they wish to remain in Switzerland without being engaged by an employer pursuant to this Ordinance then they must comply with the conditions prescribed by the FNA.

Art. 14 Change in civil status during the course of employment

¹ Employers, through their institutional beneficiary, are bound to inform Protocol or the Swiss mission without delay of any change in the civil status of a private household employee, such as marriage, birth of a child or death.

² A photocopy of the document evidencing such change in civil status must be included with the information provided to Protocol or the Swiss mission.

Art. 15 Marriage or registered partnership during period of employment

The marriage or registered partnership of a private household employee during the course of his/her employment, whether in Switzerland or abroad, does not confer upon his/her spouse or partner the right to stay nor to receive a legitimation card.

Art. 16 Birth of a child

¹ A private household employee who becomes a parent during his/her period of employment may remain in Switzerland until the completion of his/her current employment contract. If the child is born in Switzerland and the private household employee has parental authority and custody of such child then he/she may keep the child with him/her. The employee may not change employer upon termination of employment except if one of the following conditions has been complied with:

- a. the private household employee elects for the child to be looked after abroad for the duration of his/her stay in Switzerland;

- b. the private household employee obtains an authorisation to stay in accordance with the provisions of the FNA for him/herself and the child, in which case this Ordinance no longer applies (Article 1, paragraph 3 (b)); or
- c. custody of the child is accorded to the other parent who resides legally in Switzerland and who can exercise the right to family reunification, provided that the child is either granted by the competent authority authorisation to stay which is directly linked to that of the parent with custody or that it has Swiss nationality.

² In exceptional and justifiable circumstances paragraph 1 hereof may be applied when the child has been born abroad. Such a situation may arise in particular when a female private household employee has returned to her own country to give birth. Protocol or the Swiss mission will make decisions on a case-by-case basis.

³ The private household employee is responsible for all costs related to his/her child. Employers' obligations with respect to accommodation and food (Article 30) do not extend to the child. If the child resides in Switzerland the private household employee must, at his/her own expense, take out compulsory healthcare insurance for the child in accordance with the Federal Health Insurance Act of March 18 1994 (HIA)¹⁰. This obligation applies to both parents if they both reside in Switzerland.

⁴ The institutional beneficiary of the employer concerned must inform Protocol or the Swiss mission immediately that the private household employee has become a parent and has parental authority and custody of the child, requesting that a legitimation card be issued in the name of the child.

4. Chapter 4 Engagement of Private Household Employees Abroad

4.1. Section 1 Persons Subject to Visa Requirements

Art. 17 Required documents

¹ Visa requests must be accompanied by a copy of the employment contract signed by the private household employee and the employer (Article 10).

² The FDFA will determine what other documents it requires.

¹⁰ SR 832.10

Art. 18 Procedure

¹ The institutional beneficiary of the employer must submit the required documents to Protocol or the Swiss mission. Protocol or the Swiss mission will stamp the documents and return them to the institutional beneficiary for further transmission to the employer.

² It is the responsibility of employers to ensure that private household employees receive the required documents stamped by Protocol or the Swiss mission to enable private household employees to present their visa request to the competent Swiss representation.

³ Private household employees must appear in person before the competent Swiss representation for their place of residence to lodge their visa request and collect their visa.

⁴ When a private household employee has delivered all the documents required to support his/her visa request, the competent Swiss authority:

- a. will verify the linguistic capabilities of the private household employee as specified in Article 9, paragraph 1 (i);
- b. will verify that the private household employee has understood the conditions of his/her employment contract, in particular the provisions relating to working hours, holiday leave, remuneration and social insurances;
- c. will supply the private household employee with guidance on the cost of living in Switzerland.

⁵ Once the competent Swiss representation is satisfied that the private household employee has understood the conditions of his/her employment contract, the private household employee will be required to sign a declaration confirming to that effect; this declaration will be incorporated into the visa request files kept by the Swiss representation and a copy provided to the private household employee.

⁶ All other procedural details will be determined by the FDFA.

4.2. Section 2 Persons Not Subject to Visa Requirements**Art. 19 Required documents**

¹ Requests to engage a private household employee must be accompanied by a copy of the employment contract duly signed by the private household employee and the employer (Article 10).

² The FDFA will determine what other documents it requires.

³ Requests must be submitted to Protocol or the Swiss mission by the institutional beneficiary of the employer. Protocol or the Swiss mission will stamp the required documents and return them to the institutional beneficiary for further transmission to the employer.

⁴ It is the responsibility of employers to ensure that private household employees receive the required documents stamped by Protocol or the Swiss mission to enable private household employees to present them to the competent authority upon arrival in Switzerland.

5. Chapter 5 Engagement of Private Household Employees in Switzerland

Art. 20 Principle

Private household employees may be engaged *in situ* in Switzerland provided the conditions of this Ordinance are complied with.

Art. 21 Exceptions

The following persons may not be engaged *in situ* in Switzerland:

- a. persons who are not legally authorised to be in Switzerland;
- b. persons who are the object of ongoing proceedings relating to admission, deportation, or expulsion;
- c. asylum seekers;
- d. persons who are in Switzerland temporarily, notably as tourists, visitors, students, trainees, health patients;
- e. former private household employees who were issued with a FDFA legitimisation card but whose prior employment has ceased and the delay period provided for under Article 13, paragraph 2 has expired;
- f. former members of service staff or local staff whose prior employment ceased more than one month before, as well as members of their family;
- g. former members of service staff or local staff or family members thereof who do not meet the admission conditions stipulated in this Ordinance.

Art. 22 Procedure

¹ The institutional beneficiary of the employer must submit to Protocol or the Swiss Mission all documents required for the legitimisation card request procedure (Article 25).

² Employers must ensure that private household employees engaged in Switzerland have at their disposal a copy of the required documents.

³ All other procedural details will be determined by the FDFA.

6. Chapter 6 Legitimation Cards

Art. 23 Resident's Certificate

The legitimation card issued by the FDFA serves as certification of residence for private household employees. The legitimation card does not confer upon private household employees or any person wishing to accompany them any right to obtain a residence permit pursuant to the FNA.

Art. 24 Requests for legitimation cards for private household employees engaged abroad

¹ Immediately upon the arrival of a private household employee in Switzerland, the institutional beneficiary of the employer must send a request for a legitimation card to Protocol or the Swiss mission by verbal note.

² Private household employees must appear in person before Protocol or the Swiss mission to receive their legitimation card.

³ Protocol or the Swiss mission may require employers to appear in person so that they may satisfy themselves that the employer has fully understood his/her obligations as an employer.

⁴ All other procedural details, including which documents are required, will be determined by the FDFA.

Art. 25 Request for legitimation cards for private household employees engaged in Switzerland

¹ Prior to the commencement of employment the institutional beneficiary of the employer must send to Protocol or the Swiss mission a request for a legitimation card by verbal note with a copy of the employment contract signed by the private household employee and the employer (Article 10).

² Protocol or the Swiss mission may require the private household employee to appear in person to receive his/her legitimation card.

³ Protocol or the Swiss mission may require the employer to appear in person so that they may satisfy themselves that the employer has fully understood his/her obligations as an employer.

⁴ All other procedural details, including which documents are required, will be determined by the FDFA.

Art. 26 *Renewing a legitimization card*

¹ When the legitimization card of a private household employee expires, the institutional beneficiary of the employer must send a request to Protocol or the Swiss mission to renew the legitimization card. Requests must be accompanied by proof of compulsory social insurance cover (i.e. insurance certificate or policy). Protocol or the Swiss mission may require to see additional documents, such as a copy of the employment contract signed between the private household employee and the employer, or evidence that all compulsory social insurance and medical insurance contributions have been paid.

² Protocol or the Swiss mission may require private household employees to appear in person to receive their new legitimization card without their employer or a representative thereof being present.

Art. 27 *Returning a legitimization card*

¹ Upon termination of employment, for whatever reason, the institutional beneficiary of the employer must inform Protocol or the Swiss mission immediately.

² Private household employees must return their legitimization card to their former employer whose institutional beneficiary must forward it to Protocol or the Swiss mission.

7. Chapter 7 Working Conditions and Salary**7.1. Section 1 General Conditions****Art. 28** *Principles*

¹ Working relations between employers and private household employees are governed by Swiss law and in particular by this Ordinance and the CO¹¹.

² An employment contract may not derogate from any of the provisions of this Ordinance in a way that disadvantages the private household employee.

¹¹ SR 220

Art. 29 *Protection and respect for private household employees*

¹ In accordance with Article 328 of the CO¹², employers are obliged to protect and respect the individuality of private household employees. They must show appropriate consideration for their health and ensure that moral standards are upheld. Employers must, in particular, ensure that private household employees do not experience any sexual harassment. To this end, employers must ensure appropriate working conditions. Where the private household employee lives in the employer's household (Article 30) these obligations remain in force both during and outside working hours.

² Employers must give work to employees which suits their abilities and training.

³ Employers must ensure that private household employees have suitable working conditions which provide them with a decent living environment. These conditions include the protection of individuality and respect for the person, adherence to the provisions of the employment contract, in particular those concerning working hours and overtime compensation, daily and weekly rest periods, private and public holidays, food and accommodation, as well as payment of their salary and compulsory insurance contributions.

⁴ Private household employees must have freedom of movement outside working hours. In particular they must be free to leave the home of their employer and to participate in leisure activities away from their employer and employer's family.

⁵ Private household employees must have free access to their personal documents such as passport, FDFA legitimization card and banking card.

Art. 30 *Conditions of accommodation and food of private household employees*

¹ Private household employees have the right to their own individual room within the home of their employer. The room must:

- a. conform to a good standard of hygiene;
- b. be able to be locked;
- c. have good light, from natural and artificial light sources;
- d. be well-heated and ventilated;
- e. contain the necessary furniture, such as a bed, a lockable wardrobe, a table and a chair.

² Private household employees must have access to decent bathroom and toilet facilities.

¹² SR 220

³ Private household employees have the right to healthy and adequate food and three daily meals (morning, midday and evening).

⁴ Employers may provide private household employees with alternative accommodation subject to the following minimum requirements:

- a. the employer must be able to demonstrate that the private household employee has adequate means of transport between the accommodation provided and the employer's home, taking into account the appointed work schedule and any overtime required to be provided outside such work schedule;
- b. the provided accommodation must conform to the minimum conditions prescribed by paragraph 1;
- c. the provided accommodation must be equipped to enable the private household employee to prepare proper meals;
- d. all costs of the accommodation, including service charges, must be paid for in their entirety by the employer without any deduction from the private household employee's salary.

⁵ A private household employee may choose alternative accommodation if he/she does not wish to reside in the employer's home in accordance with paragraph 1 or if the alternative accommodation provided by the employer in accordance with paragraph 4 does not suit him/her. If such is the case the employer must pay the private household employee a fair accommodation allowance, which may not be lower than the amount prescribed by Article 11 of the Regulations of 31 October 1947 on Old-age and Survivors (RAVS)¹³ for fixing the determinant salary in respect of old-age and survivors insurance. The employer must, where necessary, provide accommodation for the private household employee in accordance with the conditions of paragraph 1 or paragraph 4 until the private household employee has found his/her accommodation.

⁶ Employers must, through their institutional beneficiary, inform Protocol or the Swiss mission without delay of any change of address of a private household employee.

Art. 31 Diligence and loyalty of private household employees

¹ In accordance with Article 321a of the CO¹⁴, private household employees are bound to execute with care and diligence the work entrusted to them. They must faithfully protect the legitimate interests of their employer and abide by house rules, which must fairly take into account the interests of each.

¹³ SR 831.101

¹⁴ SR 220

² Private household employees have a duty of loyalty towards their employer and must treat with the utmost confidentiality all information of which they have knowledge as a result of their functions.

7.2. Section 2 Commencement and Termination of Working Relations

Art. 32 Duration of employment

¹ The working relationship becomes effective upon the arrival of the private household employee in Switzerland or, if the private household employee already holds a Swiss FDFA legitimization card (change of employer), upon the date specified in the employment contract.

² Working relations may be entered into for an indefinite (open-ended) or fixed term according to the conditions specified on the employment contract.

Art. 33 Trial period

¹ The employment contract may provide for a trial period, which may not exceed one month.

² During the trial period, either party may cancel the employment contract by written notice giving a seven-day notice period. When work is interrupted during the trial period due to illness, accident or pregnancy the trial period is extended for the same period as such interruption. Where the employment contract is for a fixed term the employer's obligations cease at the latest upon the expiry date thereof.

³ Each of the parties is obliged to respect all of their obligations until the end of the termination notice period. The private household employee in particular must continue to perform his/her functions. The employer, in particular, must continue to pay the salary, provide accommodation and food and pay compulsory social insurance contributions. If the parties agree that the private household employee may cease working immediately, the employer must continue to fulfil all of his/her obligations until the end of the notice period.

Art. 34 Fixed term employment contract

¹ A fixed term employment contract automatically terminates upon its expiry date. If the fixed term employment contract is extended by tacit understanding it is deemed to continue for an indefinite term.

² Following a trial period pursuant to Article 33, a fixed term employment contract may not be cancelled, except where there is cause for immediate cancellation pursuant to Article 38 hereof.

³ Subject to an immediate cancellation in conformity with Article 38, each party is bound to respect their obligation in their entirety up to the date of expiration of the fixed term employment contract. Article 33, paragraph 3 applies by analogy.

⁴ Even if the parties agree that the private domestic employee may cease work prematurely, the employer must continue to abide by his/her obligations up to the expiry date of the fixed term employment contract. The parties may, when they agree upon a date upon which work will cease, agree in writing an earlier date for the employer's obligations to cease.

Art. 35 *Cancellation of an indefinite term employment contract*

¹ Neither party may cancel an indefinite term employment contract except in accordance with the applicable provisions of Swiss law. Employers and private household employees must, in particular, abide by the notice period provisions.

² Following a trial period, either party may, in writing, cancel the indefinite term employment contract for a month-end giving one month's notice in the first year of employment and giving two month's notice from the second year of employment onwards.

³ Each party must continue to respect their obligations until the notice period has expired. Article 33, paragraph 3 applies by analogy.

⁴ The party giving notice must provide in writing their reasons for doing so if the other party so requests.

Art. 36 *Protection from dismissal*

¹ In accordance with Article 336c CO¹⁵, once the trial period has ended, an employer may not cancel an employment contract:

- a. during partial or total incapacity due to illness or an accident for which the private household employee was not to blame:
 1. for 30 days during the first year of employment,
 2. for 90 days from the second to fifth year of employment,
 3. for 180 days from the sixth year of employment and thereafter;
- b. during pregnancy and for 16 weeks following the birth.

² Dismissal during one of the periods specified by paragraph 1 shall be invalid; if notice of dismissal was given prior to the commencement of one of these periods and the dismissal notice period has not expired, then the dismissal notice period is suspended and will recommence only once the period specified in paragraph 1 has ended.

¹⁵ SR 220

³ The provisions of the Code of Obligations relating to resignation by an employee at an inappropriate moment (Article. 336d CO) apply equally.

Art. 37 Wrongful termination

¹ A party who terminates an employment contract wrongfully within the meaning of Article 336, paragraphs 1 and 2, of the CO¹⁶, must pay an amount in compensation to the other party which shall be determined by a judge but which cannot exceed an amount which corresponds to six months' salary.

² The party who considers themselves injured must oppose the termination in writing before the end of the notice period. If the opposition is valid and the parties can no longer maintain working relations, the party who has received notice of termination can enforce his/her compensation claim. Legal action must be initiated within 180 days from the termination of the contract, or the right to claim compensation will expire.

Art. 38 Termination with immediate effect

¹ An employer or a private household employee may terminate an employment contract at any time with just cause: the party terminating the employment contract must give their reasons in writing if the other party so requests.

² Any circumstance, the effect of which means that the party giving notice of termination cannot in good faith be expected to continue working relations, will be considered just cause.

³ If the just cause consists of the non-performance by one of the parties of clauses contained within the employment contract then that party must fully compensate the other for all resulting damages.

Art. 39 Instant unfair dismissal

¹ When an employer terminates an employment contract with immediate effect without just cause, the private household employee is entitled to all earnings to which he/she would have been entitled had the working relationship terminated at the end of the correct notice period or upon the expiry of the fixed-term employment contract.

² Amounts saved by a private household employee as a result of the termination of the employment contract, such as travel costs or clothing, as well as revenue earned from other employment or deliberately-relinquished revenue will be taken into consideration when calculating this amount.

¹⁶ SR 220

³ A judge has the discretion, taking into consideration all the circumstances, to fix an amount which an employer must compensate a private household employee; such amount cannot exceed six months' salary of the private household employee.

Art. 40 *Abandonment or non-commencement of work*

¹ When a private household employee does not commence work or abruptly abandons work without just cause, the employer is entitled to compensation equal to one quarter of the employee's monthly salary. The employer is also entitled to damages in respect of any resulting loss.

² A judge has the discretion to reduce the compensation amount if, in his/her free assessment the employer has suffered no loss or if the loss suffered is inferior to the amount stipulated in paragraph 1.

Art. 41 *Settlement of disputes*

¹ In accordance with international law, the signature by an employer of an employment contract does not in any way mean the release of privileges and immunities. It is, if required, for the institutional beneficiary of the employer to decide whether the employer's immunity from jurisdiction and execution of judgement is to be waived.

² If a dispute arises relating to an employment contract, the parties must try to reach an amiable solution. For this purpose the parties may resort to any existing dispute settlement entity or put into place dispute settlement measures themselves.

³ If the dispute cannot be resolved amicably the party who so wishes can bring the dispute before the competent judiciary authority. It is for the plaintiff to present, where necessary, a request for the employer's immunity from jurisdiction and execution of judgement to be waived through the usual diplomatic channels.

7.3. Section 3 Salary conditions

Art. 42 *Principles*

¹ The employer must pay the private household employee each month. Weekly payments are allowed.

² The minimum net salary in cash in accordance with Article 43 hereof, or the higher net salary specified in the employment contract, as well as all payments in kind and other charges payable by the employer as specified in Article 44 hereof are payable regardless of whether or not the employer has given the private household employee enough work to keep him/her fully occupied.

Art. 43 *Net salary in money*

¹ Private household employees must receive a minimum net salary in cash of 1,200 Swiss francs (net salary) every month. No deductions may be made from this minimum net amount. The employment contract may provide for a higher net salary.

² The salary must be paid in Swiss francs into a Swiss bank or postal account, which has been opened in the sole name of the private household employee.

³ Employers must present private household employees with a pay slip every month.

Art. 44 *Salary in kind and other items payable by employers*

¹ Employers are responsible for and must ensure that the following payments are made to the Swiss authorities and to the competent insurance institutions:

- a. all compulsory social insurance contributions (for both employee and employer) and all administrative costs payable by the insured parties;
- b. all health insurance and accident insurance premiums (for both employee and employer) and any incidental costs.

² In addition, employers are responsible for the payment of the following items:

- a. the accommodation costs of private household employees, including service charges, in accordance with Article 30, paragraphs 1 and 4 hereof, or the accommodation allowance in accordance with Article 30, paragraph 5 hereof;
- b. the food costs of private household employees, including those meals which private household employees are not able to take at the home of the employer;
- c. the travel costs incurred by private household employees when travelling between their accommodation and the employer's home when private household employees do not reside in the home of the employer;
- d. the costs of any special clothing required by the employer to be worn by private household employees;
- e. in the event that a private household employee was engaged abroad, the travel costs associated with the private household employee's initial journey to Switzerland at the commencement of working relations, including any applicable visa costs;

- f. the travel costs associated with a private household employee's return to his/her home country upon termination of working relations. The employer may, through his/her institutional beneficiary, request Protocol or the Swiss mission to be released from this obligation in the event that a private household employee does not return to his/her home country upon termination of working relations, in particular because the private domestic employer has found a new employer authorised to engage a private household employee under the provisions of this Ordinance or because he/she has not complied with his/her obligation to leave Switzerland;
- g. the participation costs of the insured party for services envisaged by the HIA¹⁷.

Art. 45 *Tax exemption*

Private household employees holding a legitimization card issued by the FDFA are, according to the principles of domestic Swiss law, exempt from direct Federal, cantonal and municipal taxes on the salary they receive in return for their services.

7.4. Section 4 Working Hours, Leave and Holidays

Art. 46 *Working hours for full-time employment*

¹ The weekly number of working hours is 45.

² Private household employees must benefit from a minimum rest period of half an hour for both their midday and evening meal and an additional rest period of one hour during the course of the day. These rest periods do not count as working time.

Art. 47 *Weekly leave*

¹ Private household employees must benefit from one entire day of leave per week. This day is usually Sunday. Private household employees and their employers may expressly agree upon another day in the employment contract.

² Private household employees must further benefit from half a working day of leave per week. If this half-day of leave is in the morning, private household employees shall resume work at 1pm. If the half-day of leave begins after 1pm then private household employees do not need to resume work in the evening.

¹⁷ SR 0.832.10

³ Private household employees continue to be entitled to food in kind on their days of leave. If they do not take their meals at the employer's home then the employer must replace this facility with a food allowance which may not be lower than the amount prescribed by Article 11 of the RAVS¹⁸ for calculating the determinant salary in respect of old-age and survivors' insurance.

⁴ Employers must imperatively grant the weekly leave every week. This cannot be carried forward to the following week, even with the agreement of private household employees.

⁵ Employers must, furthermore, grant private household employees paid leave for the usual reasons, for example, visits to the doctor or the dentist.

Art. 48 Record of working hours and overtime

¹ The employer and the private household employee must keep a weekly record of hours worked which must be signed by the employer and the private household employee. They must each keep a copy thereof.

² If necessary, private household employees may be required to work overtime to the extent they are able to do so and where such a request may be made in good faith. In any event, private household employees must benefit daily from 11 consecutive hours of rest. This period of rest may, once a week, be reduced to eight hours provided that the average over two weeks amounts to eleven hours.

³ In principle, overtime is compensated for by a minimum of an equivalent period of leave. This leave must be accorded within a reasonable timescale. If the overtime is not compensated for by leave then the hours worked must be paid for financially at an increased rate of at least 25% above the net salary.

⁴ Hours worked overtime on Sunday and public holidays must be compensated for with leave plus 50 %. This leave must be accorded within a reasonable timescale. If this overtime is not compensated for with leave then the hours worked overtime must be compensated for financially at an increased rate of at least 50% above the net salary.

⁵ Overtime worked between 11pm and 6am must be compensated for by leave plus 100%. This leave must be accorded within a reasonable timescale. If this overtime is not compensated for by leave then the hours worked overtime must be compensated for financially at an increased rate of at least 100% above the net salary.

Art. 49 Public holidays

¹ Private household employees are entitled to leave on the following public holidays:

¹⁸ SR 831.101

- a. 1 January;
- b. Good Friday;
- c. Easter Monday;
- d. Ascension;
- e. Whit Monday (Pentecost Monday);
- f. 1 August;
- g. 25 December;
- h. 31 December.

² If a public holiday falls on a Sunday or coincides with the weekly day of leave expressly agreed upon by the employer and the private household employee in the employment contract it does not have to be compensated for by a replacement day of leave.

³ Employers and private employees may expressly agree in the employment contract upon days of public holiday leave other than those provided for in paragraph 1. Private household employees are entitled to at least eight days of public holiday leave per year.

⁴ Private household employees are not required to work on public holidays. No reduction of salary may be made in consequence.

⁵ In the event that private household employees are compelled to work on a public holiday then they must receive a day's holiday in lieu the following week.

Art. 50 Holidays

¹ The compulsory length of annual paid holidays is as follows:

- a. on or over 20 years of age: four weeks;
- b. under 20 years of age: five weeks;
- c. after 20 years of service with the same employer: five weeks;
- d. on or over 50 years of age and after five years of service with the same employer: five weeks.

² As a general rule, holidays are allocated during the corresponding year of service; they must include at least two consecutive weeks.

³ Time spent accompanying the employer, or family members thereof, on trips or their holidays does not count as part of the private household employee's holiday allocation.

⁴ Employers must fix holiday dates taking into consideration the wishes of private household employees to the extent they are compatible with the interests of the household.

⁵ During their holidays, private household employees are entitled to receive their salary in money plus an amount which fairly compensates for their salary in kind (accommodation and food), which may not be lower than the amount prescribed by Article 11 of the RAVS¹⁹ for fixing the determinant salary in respect of old-age and survivors' insurance; the employer must continue to pay all other salary items required by Article 44 hereof.

Art. 51 Employer's absence

If the employer is absent, the private household employee is still entitled to his/her salary. The employer also remains bound by all obligations stipulated by Article 44. The employer must, in particular, make sure that private household employees are paid a fair allowance for food costs, which can be no lower than the amount prescribed by Article 11 of the RAVS²⁰ for fixing the determinant salary in respect of old-age and survivors' insurance.

Art. 52 Private household employee's incapacity to work

¹ If a private household employee, through no fault of his/her own, is unable to work for inherent personal reasons, such as illness, accident or fulfilment of a legal or public obligation, the employer must continue to pay his/her salary for a limited period, provided that the working relationship has lasted for more than three months or has been entered into for a period of more than three months.

² The amount payable in this situation by the employer during the first year of service is three weeks' salary. The amount payable thereafter is two months' salary or the salary for the period not worked, whichever is the shorter.

³ Employers may at their own expense take out insurance to cover them for their financial obligations arising under this Article 52.

Art. 53 Employment Certificate

¹ Private household employees may any time require their employer to provide them with an employment certificate setting forth the nature and length of their working relationship, as well as performance and conduct.

² At the express request of the private household employee, the employment certificate should be limited to the nature and length of the working relationship only.

¹⁹ SR 831.101

²⁰ SR 831.101

8. Chapter 8 Insurance

Art. 54 General

Employers must ensure that private household employees are registered for social security insurance and any other compulsory insurance from the moment the private household employee enters service.

Art. 55 AVS/AI/APG/AC/AFam

¹ Private household employees must be insured in accordance with the Federal Act of 20 December 1946 on Old Age and Survivors' Insurance (LAVS)²¹, the Federal Act of 19 June 1959 on Disability Insurance (LAI)²², the Federal Act of 25 September 1952 on Compensation for Loss of Income due to Military Service or Pregnancy (LAPG)²³, the Federal Act of 25 June 1982 on Compulsory Unemployment Insurance and Insolvency Compensation (LACI)²⁴ and the Federal Act of 24 March 2006 on Family Allowances (LAFam)²⁵.

² It is the responsibility of employers to take all steps necessary to register private household employees with the competent cantonal AVS compensation fund office and family allowance office for the employer's place of residence, or, if applicable, to lodge the request for exemption from the provisions of Swiss social security, pursuant to Article 59 hereof with the competent cantonal AVS compensation fund office.

Art. 56 Occupational Pension Scheme

Private household employees must be insured in accordance the Federal Act of 25 June 1982 on Occupational Pensions for Old Age, Survivors and Invalidity²⁶.

Art. 57 Health Insurance

¹ It is the obligation of employers to ensure that private household employees are insured in accordance with the HIA²⁷. Employers should select the insurance in agreement with their private household employee.

²¹ SR 831.10

²² SR 831.20

²³ SR 834.1

²⁴ SR 837

²⁵ SR 836.2

²⁶ SR 831.40

²⁷ SR 832.10

² In accordance with Article 6, paragraph 2, of the Ordinance of 27 June 1995 on Health Insurance²⁸, private household employees may be exempted from the insurance obligations of the HIA when insured in the employer's State or another State. The insurance cover provided by the foreign insurer must be equivalent to that provided by Swiss insurers in order to meet the legal requirements for compulsory health insurance. It is the responsibility of private household employees to provide evidence, through their employer, that the conditions required to benefit from this exemption have been complied with.

³ The employer must pay all premiums and incidental insurance costs relating thereto, in accordance with Article 44, paragraph 1 (b) hereof.

Art. 58 Accident Insurance

¹ It is the obligation of employers to take out accident insurance for private household employees in accordance with the Federal Act of 20 March 1981 on Accident Insurance²⁹.

² Employers must pay all premiums (compulsory insurance against occupational accidents and diseases and compulsory insurance against non-occupational accidents) in accordance with Article 44, paragraph 1 (b) hereof.

³ Employers may take out insurance for private household employees against occupational accident and diseases, as well as non-occupational accidents in another State provided that the insurance cover provided by the foreign insurer is equivalent to that provided by Swiss accident insurers. Otherwise private household employees must be insured in Switzerland.

Art. 59 Exemption from Swiss Social Insurance

¹ A private household employee may be granted an exemption from taking out Swiss social insurance cover (AVS/AI/APG/AC/AFam and other insurance schemes which rely upon AVS registration) provided the relevant conditions established for this purpose under international law have been complied with, in particular, the Vienna Convention on Diplomatic Relations of 18 April 1961³⁰, the Vienna Convention on Consular Relations of 24 April 1963³¹ and any social security conventions entered into by Switzerland.

² Registration with a social security scheme in another State in application of the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963 must in particular:

²⁸ SR 832.102

²⁹ SR 832.20

³⁰ SR 0.191.01

³¹ SR 0.191.02

- a. be taken out with an official social security institution of the State of the private household employee or the State for which the employer works or which the employer represents; registration with a private insurance company is considered to be official when, according to the internal laws of the State concerned, this registration takes the place of the official insurance scheme;
- b. provide at the very least, cover for the eventualities of death, old age and invalidity;
- c. be compulsory or voluntary in accordance with the national law of the relevant State. If the cover is voluntary, Protocol or the Swiss mission will require, upon renewal of the legitimation card (Article 26), proof that such cover has not been cancelled subsequent to exemption from the provisions of Swiss social security having been granted. Protocol or the Swiss mission will determine on a case-by-case basis what proof they require.

³ It is the responsibility of private household employees, through their employer, to prove that the conditions required to benefit from exemption from Swiss social security have been met.

⁴ Employers are responsible for all payments and incidental costs relating to taking out insurance with an official social security institution of another State in accordance with Article 44, paragraph 1 (a).

Art. 60 Failure to take out insurance

Employers who fail to comply with the obligations of Articles 57 and 58 hereof will be liable for all medical, pharmaceutical, hospital and all other costs for services to which the private household employee would have been entitled had the correct insurances been in place. Employers are also liable for such costs should insurance cover be suspended due to failure to pay premiums.

Art. 61 Social insurance required by cantonal law

¹ If private household employees are insured in Switzerland under AVS/AI/APG/AC/AFam, then it is compulsory for them to be registered with the compulsory insurance scheme which is imposed by the social laws of the residential canton of their employer.

² The employer must pay all premiums and incidental costs required by cantonal legislation.

9. Chapter 9 Powers of the FDFA

Art. 62

¹ In addition to the specific powers conferred upon the FDFA pursuant to this Ordinance, the FDFA shall:

- a. decree the enactment provisions necessary for the implementation of this Ordinance;
- b. establish the standard form employment contract and payslip.

² Protocol or the Swiss mission, within the context of their specific functions, makes decisions which, pursuant to the provisions of this Ordinance, are the responsibility of the FDFA, on its behalf.

10. Chapter 10 Final Provisions

Art. 63 Amendments to current legislation

Amendments to current legislation are governed by the annex hereto.

Art. 64 Transitional Provisions

¹ Employment contracts entered into prior to the coming into force of this Ordinance remain subject to the former laws until, at the latest, the expiry date of the legitimization card of the private household employee. Employers and private household employees may at any time enter into a new employment contract which conforms to this Ordinance.

² Legitimation cards issued prior to the entering into force of this Ordinance will be renewed pursuant to Article 26 hereof. Upon the renewal date of the legitimization card, all the relevant provisions of this Ordinance must be complied with and, where necessary, a new employment contract complying with the FDFA standard form must be entered into.

Art. 65 Commencement

This Ordinance comes into force on 1 July 2011.

18 May 2011

On behalf of the Swiss Federal Council:

President of the Confederation: Micheline Calmy-Rey
Federal Chancellor, Corina Casanova

11. Amendments to Current Legislation

The Host State Ordinance of 7 December 2007³² is modified as follows:

Article 1, paragraph 2

² The conditions for entry into Swiss territory, residence and work for private household employees are governed by the Private Household Employees Ordinance of 18 May 2011³³.

Article 15, paragraph 3

³ Privileges, immunities and facilities accorded to private household employees come to an end upon the expiry of the time period allowed for seeking a new employer as stipulated by Article 13 of the Private Household Employees Ordinance of 18 May 2011³⁴.

Article 18, paragraph 3

³ Members of local staff of diplomatic missions, of consular posts, of permanent missions or other representations to intergovernmental organisations and of special missions are subject to Swiss employment law regardless of where recruited. It is possible, within the strict perimeters laid down by Swiss law, to elect to be governed by a foreign governing law. In particular, where a member of local staff is a national of the sending State and was recruited in such sending State, employment relations may be governed by the laws of said State.

Article 20, paragraph 3

³ Private household employees may be authorised by the FDFA to accompany the principal individual beneficiary provided they comply with the conditions provided for in the Private Household Employees Ordinance of 18 May 2011³⁵.

³² SR 192.121

³³ SR 192.126

³⁴ SR 192.126

³⁵ SR 192.126