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Part One. Legal status of the United Nations and related intergovernmental organizations

Chapter I. Legislative texts concerning the legal status of the United Nations and related intergovernmental organizations



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Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERN- MENTAL ORGANIZATIONS

Switzerland

Directive on hiring of private servants by international civil servants¹

Preamble

International civil servants who work for intergovernmental international organizations which have entered into a Headquarters Agreement² with Switzerland, and who qualify for diplomatic status, enjoy the same privileges as diplomatic agents. The Vienna Convention on Diplomatic Relations dated 18 April 1961 (hereinafter referred to as “the Convention”) applies to this type of international official by analogy. The legal framework governing their privileges and immunities is defined by the Convention and by the Headquarters Agreement.

Certain categories of international civil servants may, under certain conditions, employ a private servant who is eligible to hold a legitimization card issued by the Federal Department of Foreign Affairs (DFAE). The terms of any employment contract are subject to the following rules and regulations drawn up by the DFAE as the authority having jurisdiction to determine the status of holders of diplomatic legitimization cards in Switzerland.

1. *Scope and definitions*

1.1. *International civil servant*

The expression “international civil servant” means a natural person, male or female, employed by an intergovernmental international organization which has entered into a Headquarters Agreement with Switzerland, and to whom such organization has given the status of international civil servant in full.

Persons affected by this Directive and covered by the expression “international civil servants” are members of the senior management team, high-ranking officials and professional category staff (see article 2 of this Directive).

1.2. *Private servant*

The expression “private servant” as defined in article 1, letter (h), of the Convention means a natural person, male or female, who is employed in the domestic service of an international civil servant.

Private servants are eligible to hold a DFAE type “F” legitimization card. This Directive applies to them.

1.3. *Service staff*

According to article 1, letter (g), of the Convention, the expression “members of the service staff” means members of the staff of the mission employed in the service of the mission. This category was attributed, by analogy, to persons holding high rank within the international organizations. With effect from the date of entry into force of this Directive, all persons in the domestic service of international officials, regardless of the rank of the latter, shall henceforth be deemed to be “private servants”, as per article 1, letter (h), of the Convention, and are thus eligible to hold a DFAE type “F” legitimization card.

1.4. *Parties*

For the purposes of this Directive, the term “parties” means the employer and the private servant.

2. *Persons entitled to hire private servants*

Under the terms of this Directive, the only persons entitled to hire private servants under the legitimization card scheme are persons residing in Switzerland as follows:

- Members of the senior management team (legitimation card, type “B”);
- High-ranking officials (legitimation card, type “C”);
- Professional category officials (legitimation card, type “D”).

Officials of the general services category and those international civil servants who are Swiss nationals do not have the right to hire a private servant under the DFAE legitimization card scheme.

3. *Conditions of entry and residence for private servants*

3.1. *General principles*

Subject to the exceptions set out below (paragraph 3.2 of this Directive), the private servant must meet all the following conditions:

- Be aged 18 or over;
- Not be a member of the employer’s family or of the family of another member of the organization;
- Hold a valid national passport;
- Not be a refugee or a person recognized as stateless by a foreign State;
- Be single, widowed or divorced;
- Enter Switzerland unaccompanied;
- Work full-time for a single employer;
- Be part of the employer’s household;
- Have been made aware that his or her residence in Switzerland is authorized only for as long as he or she is in the service of a member of a mission or an international civil servant entitled to hire a private servant.

3.2. *Exceptions*

3.2.1. *Working for two employers at the same time*

A private servant hired in accordance with the terms of paragraph 3.1 may, in exceptional circumstances, be authorized to work for two employers. The employers

must both be authorized to hire a private servant eligible under the DFAE legitimation card scheme. The first of the two employers to hire the servant shall, in the eyes of the Swiss authorities, be deemed to be the principal employer and shall be liable for all the obligations and responsibilities arising from the hiring. However, the second employer must pay his contribution of social and welfare charges pro rata.

3.22. *Separate household*

Where, in exceptional cases, the employer is not in a position to provide the private servant with board and lodging in accordance with terms of paragraph 6.5 of this Directive below, he must pay for the servant to live in outside accommodation in Switzerland.

3.23. *Married couple, with or without children*

In exceptional and justified cases, a married couple with or without children may be allowed to accompany their employer to Switzerland, provided that they were both in the service of that same employer prior to his posting to Switzerland.

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.

Married couples with children must ensure that their children are cared for outside Switzerland throughout the whole of their stay in Switzerland.

3.3. *Length of employment*

The contract of employment is for an indefinite or fixed period of time. The contract takes effect from the arrival of the private servant in Switzerland or, if he or she is already in Switzerland under another authorization (change of employer), as soon as he or she is hired.

The employment contract may be terminated in accordance with paragraph 6.9 of this Directive.

3.4. *Change of employer*

A private servant may change employer at any time provided that, within a maximum of one month from the date of termination of current employment, he or she finds work with another employer authorized to hire a private servant under the DFAE legitimation card scheme, failing which the private servant must leave Switzerland.

4. *Hiring a private servant abroad: conditions and procedure*

4.1. *Foreigners subject to visa requirements*

4.11. *Necessary documents*

The following documents are required to start the process:

- The employer must sign the *declaration of guarantee* in 3 originals;
- The private servant must sign his or her *private servant's declaration* also in 3 originals.

4.12. *Procedure*

The employer's organization forwards the three duly signed copies of the employer's declaration of guarantee and the three duly signed copies of the servant's

declaration to the Swiss Mission, together with a copy of the private servant's passport. The Swiss Mission will stamp these documents and return two copies of the employer's declaration of guarantee and two copies of the servant's declaration to the employer's organization. One copy of each document is intended for the employer, and the other for the private servant.

4.13. *Issuing the visa*

The private servant must go in person to the Swiss Representation in his or her place of residence to obtain a visa, and produce the following documents:

- His or her original copy of the employer's declaration of guarantee, signed by the employer and stamped by the Swiss Mission;
- His or her original copy of the servant's declaration, signed by him- or herself and stamped by the Swiss Mission;
- His or her national passport valid for a minimum of six months after the date of his or her entry into Switzerland.

4.2. *Foreigners not subject to visa requirements*

4.21. *Necessary documents*

The following documents are required to start the process:

- The employer must sign the *declaration of guarantee* in 3 originals;
- The private servant must sign his or her *private servant's declaration* also in 3 originals.

4.22. *Procedure*

The employer's organization will forward the three duly signed copies of the employer's declaration of guarantee and the three duly signed copies of the private servant's declaration to the Swiss Mission for stamping, together with a covering note and a copy of the private servant's passport. The Swiss Mission will return two original copies of the declaration of guarantee and two original copies of the servant's declaration to the employer's organization, together with a covering letter confirming that the private servant will be issued a legitimation card. One of the copies of each document is intended for the employer, and the other for the servant. A copy of the covering note is forwarded to the servant for presentation, together with a valid passport, to the Swiss border police on entry into Switzerland.

4.3. *Legitimation card*

Upon arrival in Switzerland of the private servant, the employer's organization will forward the following supporting documents to the Swiss Mission in order to obtain the legitimation card:

- An application form for registration, in duplicate;
- Three recent, good-quality, passport-sized photographs;
- The original passport.

5. *Hiring a private servant in Switzerland: conditions and procedure*

5.1. *The general rule*

A private servant may be locally hired subject to the following exceptions.

5.2. *Exceptions*

The following persons may not be locally hired:

- Persons who are in an irregular situation;
- Persons against whom a deportation order, or an order to return to their country of origin, is pending;
- Asylum-seekers whose application is pending, is subject to an appeal or has been rejected;
- Persons who are staying temporarily in Switzerland (tourists, visitors, students, trainees, people attending a health cure, seasonal workers, etc.);
- Former holders of type “F” legitimization cards whose former employment has been terminated over a month ago;
- Former holders of type “E” legitimization cards whose former employment has been terminated over a month ago or who do not meet the conditions of entry in paragraph 3 of this Directive.

5.3. *Legitimation card*

Before work commences, the employer’s organization will forward the following supporting documents to the Swiss Mission in order to obtain the legitimation card:

- Three original copies of the employer’s declaration of guarantee, signed by the employer;
- Three original copies of the private servant’s declaration, signed by the private servant;
- The application for registration in duplicate;
- Three recent, good-quality, passport-sized photographs;
- The original passport.

5.4. *Swiss nationals and residence or permanent residence permit-holders*

Swiss nationals and persons in possession of a residence permit type “B” or a permanent residence permit type “C” may be hired as private servants in accordance with the ordinary laws of Switzerland. These persons are not entitled to a legitimation card.

6. *Rights and obligations of the contracting parties*

In order to avoid any difficulties in the future, the Swiss authorities strongly recommend that the parties sign an employment contract along the lines of the specimen contract attached hereto.

6.1. *The private servant’s working conditions*

6.11. *Protection and respect*

The employer undertakes to protect the health of the private servant, to respect his person and to uphold his dignity by providing appropriate working conditions.

6.12. *Appropriate working conditions*

The term “appropriate working conditions” means providing the private servant with a suitable living environment. The term shall also cover the duty to protect

the servant's rights as an individual, to respect his person, to observe agreed hours of work and to pay for overtime, to honour agreed days of rest per week, to agree to periods of annual paid vacation and public holidays, to meet conditions of board and lodging, to meet obligations to pay insurance, salary and to provide any other facility offered to the private servant.

6.2. *The private servant's duty of care and loyalty*

The private servant undertakes to carry out the tasks assigned to him or her with care and diligence. He or she shall be bound by a duty of care and loyalty to his or her employer and shall treat any information which comes to his or her knowledge in the course of his or her work in a confidential manner.

6.3. *Hours of work and overtime*

6.31. *Hours of work*

The average working week must not exceed 49 hours.

6.32. *Overtime*

Depending on the circumstances, the employer may require that the private servant work overtime to the extent that the servant is able to take this on. Accumulated overtime must not exceed five hours per week.

An hour of "overtime" means an hour of work carried out in excess of the basic number of hours per day. The basic number of hours per day is obtained by dividing the working week by 5.5 (for example, 49 divided by 5.5 equals 8.9 basic working hours per day).

The employer may, with the private servant's agreement, spread compensation over a period of three months by giving time off in lieu, provided that such time off shall be equal to the overtime worked. Any hours of overtime that are not compensated for by time off in lieu shall be paid for at the rate of 125 per cent, taking the gross salary (that is, the amount of salary in cash plus the value of benefits in kind) as a basis for the calculation. All hours of overtime worked must be shown on the employee's monthly wage slip.

6.4. *Days off per week, daily rest periods, annual paid vacation and public holidays*

6.41. *Days off per week*

A private servant is entitled to one and a half days off per week. In theory, this should be a full day on Sunday, and a half day at some other time during the week not followed by a period of being on duty in the evening. If the day of rest cannot be granted on a Sunday, the employer and the private servant may agree, in writing, on another day off in lieu during the week. However, the private servant may ask to have a minimum of 26 Sundays off per year.

6.42. *Daily rest periods*

The private servant must be allowed a minimum break of half an hour for the midday and evening meals, and an additional hour's break during the course of the day; these breaks are not included in the hours of work.

6.43. *Annual paid vacation*

The private servant has the right to four weeks of paid vacation per annum. Up until his or her 20th birthday, he or she has the right to take five weeks' paid holiday per annum. A private servant who has spent 20 years or more in his or her employer's service is entitled to five weeks' paid vacation per annum. A private servant who is aged 50 years or more and who has been in his or her employer's service for 5 years or more is also entitled to five weeks' paid vacation per annum.

As a general rule, vacations must be taken during the year of service in which they are granted; they must be of at least two consecutive weeks' duration and the balance may only be broken down in exceptional cases. All periods of annual vacation must be agreed between the private servant and his or her employer so as to fit in with the interests of the employer's household.

During his or her paid vacation, the private servant is entitled to allowances for food.

Any periods of vacation which the private servant spends with the employer do not count as vacation unless there is a written agreement to that effect signed by both parties.

6.44. *Public holidays*

A private servant has the right to the day off to observe nine public holidays per year.

In the Canton of Geneva these are as follows: 1 January, Good Friday, Easter Monday, Ascension Thursday, Whitmonday, 1 August (Swiss National Day), Geneva Fast Day, Christmas Day (25 December) and 31 December.

In the Canton of Vaud, the public holidays are as follows: 1 January, 2 January, Good Friday, Easter Monday, Ascension Thursday, Whitmonday, 1 August (Swiss National Day), Federal Fast Day, Christmas Day (25 December).

These public holidays may be altered by agreement signed by both parties, to take into account religious or national factors, but on no account may their number be less than nine days per annum.

Where a private servant is called upon to work during a public bank holiday or on a holiday agreed in writing, he or she must be compensated by a day off in lieu or by being paid at overtime rate.

6.5. *Board and lodging*

The private servant is entitled to a room of his or her own which meets health and safety requirements, which can be locked with a key, is well-lit, well-heated and ventilated and equipped with the necessary furniture (bed, table, chair, locking wardrobe), and access to suitable toilet and washing facilities. He or she has the right to wholesome food in sufficient quantities.

6.6. *Salary*

6.61. *Freedom of contract*

As a general rule, Swiss law provides that workers' remuneration is subject to freedom of contract. Thus, the amount of salary paid can be freely agreed between the parties provided that this is done in a written contract signed by both parties, and provided also that there is no obvious disproportion between the amount of work

proposed and the remuneration. Any such disproportion would constitute an excessive, unfair loss under the terms of paragraph 1, article 21, of the Swiss Code of Obligations,³ and the salary clause could be declared flawed and invalid by a Swiss Court. This rule also applies to the private servants of international civil servants.

6.62. *Jurisprudence*

If either there is no written contract, or if the contract is declared flawed and invalid, the Court may order the employer to pay a different salary from that which he intended to pay or which he had paid, and which may vary from canton to canton depending on the place of residence.

In the canton of Geneva there are standard terms and conditions of contract for workers in domestic service. As at 1 January 1998, these provide for a monthly salary of SwF 2,290.–. The Industrial Tribunal of Geneva (*Tribunal des Prud'hommes*) has ruled that salary paid to a private servant of an international civil servant should be equivalent to 2/3 of the salary set under the standard terms and conditions of contract for workers in domestic service, namely SwF 1,526.– per month, because the private servant receives bed and board, and is exempt from Swiss taxes. However, this precedent does not take into account items for which the employer is liable under this Directive, for example: the obligation to take out sickness insurance, make social security payments, pay return air fare or fares, etc.

In the canton of Vaud, there is a standard contract for private household staff which does not set any minimum wage.

In the canton of Geneva, and in accordance with article 33, paragraph 1, of the Law on the Industrial Hearings Tribunal (*Tribunal des Prud'hommes*)⁴ if the employer is not present or is not represented at the court hearing, the court will rule entirely in favour of the plaintiff (private servant), since the latter's claims will not have been refuted in any way by the defendant (employer). Other cantons may apply similar practices to such matters.

6.63. *Payment of salary*

Salary and any other allowances or benefits should be paid to the private servant at the end of every month; with each payment the employer should hand his employee a salary slip. A specimen salary slip is attached.

In the event of any dispute, it is incumbent on the employer to bring proof of payment of the amount due to the employee.

The DFAE recommend that salary and allowances be paid into a bank or postal account opened in the private servant's name in Switzerland.

6.7. *Unfitness for work*

6.71. *Unfitness for work*

If the private servant is prevented from working through no fault of his or her own for reasons that are inherently personal such as, in particular, illness, accident, pregnancy or confinement, the servant is entitled to continue to receive his or her salary for a limited period of time, as follows:

- For a period of three weeks, if the unfitness for work occurs during the first year of service;
- For a period of four weeks, if the unfitness for work occurs during the second year of service;

- For a period of nine weeks, if the unfitness for work occurs during the third or fourth year of service;
- For a period of 13 weeks, if the unfitness for work occurs after the fifth and up to the ninth year of service; and after the ninth year of service, for an appropriate period in proportion.

In the event of the private servant being unfit for work, the employer shall continue to pay his employee that portion of his or her salary relating to benefits in kind (board and lodging). The employer shall be liable for this until he has been discharged of the liability by the relevant authority.

6.72. *Pregnancy, confinement and delivery*

In the event of pregnancy, confinement and delivery, the private servant is entitled to her salary and her benefits in kind even if she has been prevented from working for reasons of ill-health or accident in the course of that year's service.

6.73. *Maternity leave*

A woman on maternity leave should not be expected to resume her duties for a period of eight weeks after the birth; at her request, however, the employer may curtail this period to six weeks provided that the private servant is certified medically fit to resume her duties by a doctor. During this period, the private servant is entitled to her salary and her benefits in kind as per paragraph 6.71 of this Directive.

6.8. *Temporary prohibition on termination of employment by the employer in certain circumstances*

6.81. *Temporary prohibition on termination of employment*

Under Swiss law, there is a period during which a temporary prohibition of termination of employment is placed on the employer, as follows:

- During total or partial unfitness for work resulting from ill-health or accident for which the private servant is not responsible for a period of 30 days in the course of the first year of service, 90 days from the second to the fifth year of service and 180 days from the sixth year of service onwards;
- During pregnancy and during the 16 weeks following confinement and delivery.

6.82. *Suspensive effect*

Any notice of termination of contract notified during one of the periods set out in paragraph 6.81 of this Directive is invalid and without effect. If notice of termination was given but had not expired before one of these periods of temporary prohibition, then the notice is suspended for the duration of the said period and only starts to run again after the end of the said period.

6.9. *Termination of employment*

Any employer or private servant who terminates employment must abide by the following conditions of termination:

6.91. *During the trial period*

Either party may terminate the contract with seven days' notice at any time during the trial period. The trial period is usually considered to be the first month of

employment. Different arrangements may be agreed in writing, but the trial period may not exceed three months.

6.92. *After the trial period*

Indefinite period contract of employment. Either party may terminate the contract with one month's notice, after the trial period. This period may be altered by written agreement, but a period of less than one month may not be agreed.

Fixed period contract of employment. In theory, this type of contract may not be terminated prior to the expiry date fixed in the contract, unless there is a written, signed agreement between the parties.

6.93. *End of employer's term of office*

Where the employer's term of office or duty in Switzerland comes to an end due to posting, recall or retirement, he may terminate the employment contract in writing in compliance with the notice periods set out at paragraphs 6.91 and 6.92 of this Directive.

6.94. *Form of notice of dismissal*

The employer must notify staff of dismissal in writing and give the reasons. The private servant must also give notice in writing. The employer is bound to inform the Swiss Mission of the termination of contract.

6.95. *Salary and allowances*

During the whole of the notice period, unless agreed otherwise with his or her employer, the private servant must continue to perform his or her duties. He or she is entitled to be paid all salary and allowances, even if it has been agreed that he or she should no longer perform his or her duties. The employer must also continue to honour his commitments (payment of insurance premiums, board, lodging, etc.), even if he is not in a position to accept work performed by the private servant or where the latter is unfit for work.

6.96. *End of employment*

The private servant must leave the territory of Switzerland at the end of his employment, unless he or she secures further employment with an employer authorized to hire servants under the legitimation card scheme, within one month from the end of his or her employment.

6.97. *Seeking new employment*

The employer shall allow the employee to take the necessary time to seek new employment during his or her working hours.

6.98. *Return travel costs*

If the private servant leaves Switzerland, the employer is bound to meet the travel costs of the employee returning to his or her country of origin at the end of his or her employment, whatever the circumstances of termination of the latter. He may not deduct this cost from the employee's salary.

The employer remains liable for this obligation so long as he has not been released therefrom by the relevant authority.

6.99. *Expiry of rights*

The private servant who holds a legitimisation card may not claim any right to preferential treatment with regard to work, temporary or long-term residence, or with regard to prolonging his or her stay in Switzerland after cancellation of the legitimisation card.

6.10. *Right to a legitimisation card*

6.101. *Application for the legitimisation card*

Upon arrival of the private servant in Switzerland or as soon as he or she is hired in Switzerland, the employer undertakes to make prompt application to the Swiss Mission for a legitimisation card on behalf of the private servant (procedure: see paragraphs 4.3 and 5.3 of this Directive).

6.102. *Possession of the legitimisation card*

The legitimisation card is to be in the possession of the private servant throughout the whole of his or her stay in Switzerland.

6.103. *Surrender of the legitimisation card*

Once the employment is terminated, for whatever reason, the employer is bound to inform the Swiss Mission promptly. The private servant must surrender his/her legitimisation card to his former employer, who will forward it to the Swiss Mission. The employer may not recruit new staff until this formality has been completed.

7. *Change in civil status*

7.1. *Change in civil status*

The employer is bound to inform the Swiss Mission promptly of any change in civil status involving the private servant (marriage, birth, death, divorce). He must enclose a photocopy of the relevant certificate of entry in the civil registers with his correspondence.

7.2. *Marriage*

Where a private servant gets married in Switzerland or abroad, he or she no longer meets the conditions of entry and thus forfeits his or her right to a legitimisation card on expiry of his or her current employment. The spouse of such private servant does not qualify for a legitimisation card.

8. *Insurances*

8.1. *AVS/AI/APG/AC insurances*

8.11. *Compulsory affiliation to the Swiss State scheme*

Private servants are automatically affiliated in the Swiss social insurance schemes, namely *assurance-vieillesse et survivants*—Old-age and survivors' insurance (hereinafter called AVS), *assurance invalidité*—Disability insurance (hereinafter called AI), *allocations pour perte de gain*—Loss of earnings benefits scheme (hereinafter called APG) and *assurance-chômage*—Unemployment insurance (hereinafter called AC). These social insurances form a whole which is not divisible.

Contributions are paid half by the employer and half by the private servant. The employer is liable to pay the whole of the premiums due and deducts the servant's share from his or her salary.

The pensions and welfare benefits payment clearing house in the canton (hereinafter "payments agency") where the work is performed (employer's place of permanent residence) has jurisdiction for membership and cover.

8.12. *Exemption from affiliation*

Where the servant is affiliated in a scheme run by another State and where the employer is able to produce an original certificate of insurance for approval by the relevant payments agency, the private servant may be exempted from contributing to a Swiss scheme by the said authority.

8.13. *Contribution refund*

In the event of the private servant leaving Switzerland and where he or she is not a national of a country with which Switzerland has signed a convention on social security, the private servant will be repaid the total amounts (the employer's and the employee's share) he or she has paid in AVS contributions, after a qualifying period of one year. Where a convention has been signed, the private servant shall be entitled to a monthly pension payment on reaching retirement age, whatever his or her place of residence, provided that he or she has contributed to the AVS scheme for a minimum period of eleven (11) months.

8.2. *Professional provident fund*

Affiliation to a professional provident fund scheme is compulsory for all salary and wage earners subject to AVS/AI/APG/AC contributions, whose annual gross salary (in cash and in kind) is equal to or in excess of SwF 23,880.– or SwF 1,990.– per month (valid as at 1 January 1998). Private servants who fulfil these conditions are automatically affiliated in a Swiss provident fund scheme (hereinafter called "LPP") by their employer. The AVS payments agency in the canton where the employer has his place of permanent residence has jurisdiction for affiliation and cover. Contributions are paid, where appropriate, half by the employer and half by the employee. The employer is responsible for payment of the whole of the premiums, and deducts the servant's share from his or her salary.

In the event of the private servant leaving Switzerland for good, he or she shall be repaid the total amount of contributions paid into the old-age pension (the employer's share and the employee's share), except for those shares relating to death and disability.

8.3. *Sickness insurance*

8.31. *Compulsory affiliation*

Private servants in Switzerland are subject to compulsory affiliation under the sickness insurance scheme set in place by the Federal Law dated 18 March 1994 on sickness insurance (hereinafter "LAMal"). The employer assumes liability for this and pays the whole of the premiums.

8.32. *Exemption from affiliation*

Where the servant is affiliated in a scheme run by another State and where the employer is able to produce an original certificate of insurance for approval by the

relevant payments agency, the private servant may be exempted from Swiss compulsory sickness insurance by the said authority.

8.33. *Employer's liability*

Towards the Swiss authorities, the employer is liable for all medical expenses incurred throughout the duration of the employment in accordance with paragraph 3.3, and after the termination of employment for as long as he has not been released therefrom by the relevant authorities.

8.4. *Accident insurance*

8.41. *Compulsory insurance*

The employer must insure his private servant against accidents. Accident insurance covers work-related and personal accident and occupational diseases. Compulsory insurance premiums against work-related accidents and occupational diseases are the liability of the employer. Compulsory insurance premiums against personal accident are the liability of the private servant.

8.42. *Exemption from compulsory insurance*

The employer is not obliged to insure his or her private servant against accident if he or she is insured in another State.

8.43. *Employer's liability*

The employer is responsible for payment of the whole of the premiums for this compulsory insurance and deducts the private servant's share (the premium for personal accident insurance) from his or her salary.

Towards the Swiss authorities and in accordance with paragraph 3.3 of this Directive, the employer is liable for all medical costs incurred by the private servant throughout the whole of the duration of his or her employment, and remains liable after the contract of employment has been terminated for as long as he has not been discharged from this obligation by the relevant authorities.

8.5. *Loss of earnings insurance*

Insurance for loss of earnings (or optional sick-pay allowance insurance) in the event of the private servant being unfit for work is recommended with an insurance company or a sickness fund. In the event of unfitness for work due to ill-health, accident or confinement and delivery, the insurance pays a temporary daily allowance as stipulated in the insurance contract. It is possible to insure for part or the whole of the monthly salary or salary.

8.6. *Family allowances/child benefit*

A private servant who is subject to AVS/AI/APG/AC contributions and who has dependent infant or minor children is entitled to family allowances. These are fixed in accordance with the age(s) of any child(ren).

The law of Geneva provides that neither the employer nor the private servant has to make any contribution in order to receive family allowances. This is a free state benefit.

The law of the canton of Vaud provides that the employer should pay a contribution calculated as a percentage on payroll. This contribution is due even if the

private servant does not qualify for family allowance. It is a mutual fund. The Vaud payments agency has jurisdiction for membership and cover.

9. *Information for the private servant*

The private servant must present him- or herself in person at the offices of the Swiss Mission in order to receive his or her legitimization card and a copy of this Directive.

The employer must inform his private servant of all communications from the Swiss authorities which could affect his or her status or which could concern him or her.

10. *Employer's privileges and immunities*

Signature of an employment contract by the employer does not signify or entail any waiver by him of his privileges and immunities.

11. *Tax privileges for the private servant*

11.1. *Tax privileges*

A private servant who holds a legitimization card is exempt from paying Swiss income tax or duty on salary or salary received for work performed in the course of his or her job.

11.2. *Privileges and immunities*

The private servant is not entitled to any privilege or immunity.

12. *Non-compliance with this Directive*

In the event that the provisions of this Directive are not complied with, the Swiss authorities reserve the right to apply the pertinent legislation and in particular the provisions of the Vienna Convention on Diplomatic Relations dated 18 April 1961.

13. *Final provisions*

The amounts and figures set out in this Directive are valid and apply at the time of entry into force of the Directive. They are subject to revision from time to time by the employer in accordance with periodical information provided by the Swiss Mission.

This Directive replaces Swiss Mission Directive OI 3, OI 4 and OI 6 dated 1 April 1987 and official circulars from the Swiss Mission No. OI 5 dated 30 August 1995, and No. OI 11 dated 8 February 1996.

14. *Transitional provisions*

14.1. *Coming into force*

This Directive comes into force on 1 May 1998.

14.2. *Pre-existing employment agreements*

Private servants who were hired prior to 1 May 1998 are subject to the provisions of this Directive with effect from this date. Conditions relating to salary, work, insurance, etc., must be brought into line with this new scheme within a period of three months from entry into force, that is to say, before 1 August 1998. However, salary and employment conditions which are more advantageous than those provided under this Directive are exempt from any modification.

14.3. *Private servants who hold type "E" legitimization card*

A private servant who was hired prior to 1 May 1998 and who holds a type "E" legitimization card may retain his or her legitimization card provided he or she remains in the same employer's service. In the event of a change of employer, the private servant will be automatically entitled to a type "F" legitimization card, provided he or she meets the conditions laid down by this Directive.

If the private servant meets the conditions laid down by this Directive, he or she may exchange the type "E" legitimization card for a type "F" legitimization card.

NOTES

¹ Entered into force on 1 May 1998.

² List of international organizations concerned (as of 1 January 1998): Bank for International Settlements, European Free Trade Association, European Organization for Nuclear Research (CERN), ILO, Information Technology Review Board (ECE), Interfaculty Institute of Central and East Europe (IEO/UNESCO), International Civil Defence Organization, International Committee of the Red Cross, International Federation of Red Cross and Red Crescent Societies, International Textiles and Clothing Bureau, International University in Geneva, IOM, ITU, Organization for Security and Cooperation in Europe, South Centre, Union for the Protection of New Varieties of Plants, United Nations Office at Geneva, UPU, WHO, WMO and WTO.

³ Article 21, paragraph 1, of the Swiss Code of Obligations: "In the event of any obvious disproportion between the services promised by one party and the payment promised in consideration thereof by the other party, the injured party may, within one year, declare the contract terminated and claim restitution of what he has paid, if it is determined that the loss was due to his financial difficulties, irresponsibility or inexperience."

⁴ Article 33, paragraph 1, of the Law on the Industrial Hearings Tribunal of Geneva: "If the defendant fails to attend the hearing despite having been duly summoned to appear, and does not justify his absence, the court will rule in the defendant's absence and in the plaintiff's favour, except where the court does not have jurisdiction or if the plaintiff's claims are not based on the facts set out or the evidence produced."