

Explanatory Note on the Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers

Introduction

The International Code of Conduct for Private Security Service Providers (ICoC) is the product of an initiative of industry, governments and civil society convened by the Swiss Government that aims to set private security industry principles and standards for the private security industry based on international human rights and humanitarian law, as well as to improve accountability of the industry by establishing an independent governance and oversight mechanism (referred to as the "Mechanism"). Section 11 of the ICoC authorised the creation of a multi-stakeholder steering committee to serve as a "temporary board" for the ICoC. Its primary function has been the development of a charter and/or bylaws for an "independent governance and oversight mechanism" for the ICoC.

This Draft Charter presents the effort of the multi-stakeholder Temporary Steering Committee (TSC) to set forth the responsibilities and powers of the Mechanism. The Draft Charter is being presented to stakeholders for review and comment.

Development Process

This Draft Charter proposes the overall structure and scope of responsibilities for the Mechanism. The content of the Draft Charter was developed by the TSC over the course of twelve months of work, during which the TSC held 18 meetings, 10 of which were conducted in-person in Washington DC, London, or Geneva, with the remainder conducted via videoconference or teleconference. In addition, during the summer of 2011, the TSC established three Working Groups, which met to discuss specific questions and topic areas established by the TSC. The three Working Groups held 26 meetings over the course of the summer, and produced three final reports totaling nearly 100 pages of review and analysis. The TSC utilised these final reports in working towards this Draft Charter. The text of the Draft Charter was created through negotiated consensus among the various TSC representatives.

Minutes of the TSC meetings, as well as the Working Group meetings, may be viewed on the ICoC website at www.icoc-psp.org.

Process and Timeline for Comments on Draft Charter



This release of the Draft Charter commences the public comment period. Comments to the Draft Charter may be submitted through the online form available on the www.icoc-psp.org website until 16 March 2012. These comments will then be considered by the TSC and the TSC intends to propose by 16 May 2012 the Charter for adoption.

During the public comment period, the TSC will also seek to facilitate dialogue and consultations on the draft, including through outreach events, in order to maximise the participation of different stakeholders in the discussions about the Charter.

Timeline for Finalization of the Mechanism's Charter

Following the release of the revised Charter, the TSC plans to organise a multi-stakeholder conference in order to provide for the adoption of the Charter, selection of the first Board of the Mechanism, selection of the location of the Mechanism, and authorization of the Board to take the necessary steps to launch the actual oversight institution and begin operations. The conference is expected to be held in mid to late June 2012.

Overview and Discussion of the Draft Charter

Governance Structure and Voting

The Draft Charter provides for three organs of the Mechanism: the Plenary, the Board, and the Secretariat.

Plenary	Board	Secretariat
<ul style="list-style-type: none"> • <u>Voting</u> • industry • <u>Attending</u> • civil society • governments • other interested parties 	<ul style="list-style-type: none"> • 4 representatives of industry • 4 representatives of civil society • 4 representatives of governments 	<ul style="list-style-type: none"> • one full-time Executive Director • Chief of Performance Assessment • other staff

The Plenary provides a venue for multi-stakeholder discussion of the oversight of private security providers, including the implementation of the ICoC; and a forum for collective decision-making by the Member Companies. Representatives from industry, civil society, and governments, as well as private sector clients and other interested parties, may attend the Plenary, which will meet on an annual basis and such other times as may be deemed necessary by the Board. Eligible industry participants in the Plenary will be responsible, upon recommendation of the Board, for ratifying amendments to the ICoC or the Charter and taking certain other decisions by vote.

The second organ is the Board, which will serve as the primary decision-making body of the ICoC and will be composed of 12 representatives selected by industry, civil society and government participants. The Board will be responsible for overseeing the operations of the Secretariat, including the oversight process.

The Draft Charter provides that particularly important decisions of the Board would require a vote of no less than eight of the twelve Board members, including at least two members from each of the three stakeholder groups. The list of decisions subject to this requirement includes approval or proposing amendments to the ICoC or the Charter, approval of the annual budget, and approval of sanctions.

The third organ of the Mechanism is the Secretariat, which will administer implementation of the ICoC and will execute the decisions of the Board. It will be composed of one full-time Executive Director, a Chief of Performance Assessment, and such other staff as approved by the Board.

Stakeholder Participation Criteria/Termination of Status

The Draft Charter sets out criteria for the membership of the various stakeholder groups charged with selecting members of the Board and otherwise participating in governance of the Mechanism. Private security companies that sign the ICoC may become members of the Mechanism if they obtain and maintain certification and comply with performance assessment and reporting requirements in the Charter.

Signatory Companies	Member Companies
<ul style="list-style-type: none"> • Provide a written statement indicating its intent to abide by the requirements of the Code and the Charter • Provide a written commitment stating its intent diligently to pursue status as a Member Company • Pay all applicable dues and assessments • Provide, and periodically update, information regarding the organization and operations of the company • Provide other reporting as may be required by the Mechanism 	<ul style="list-style-type: none"> • The same requirements as for Signatory Companies, PLUS: • Obtain and maintain certification • Consent to performance assessments

Civil society organizations will be approved for affiliation based upon their independence and their record working on human rights and/or humanitarian law, among other criteria. Participating states of the Montreux Document will be eligible to participate in the governance of the Mechanism if they state their intention to support and promote compliance with the ICoC and participate in the governance process.

Certification

The Draft Charter provides for a process to certify that a company's systems and policies meet the ICoC's principles and the standards derived from the ICoC. The Mechanism's Board will be responsible for determining certification requirements. In particular, the Mechanism's Board shall determine to what extent existing standards are relevant to meet its certification requirements. The Mechanism will promote the development of harmonised international standards based on the ICoC. The Draft Charter also provides that the Board contribute to the development of additional principles and standards related to maritime security.

Performance Assessments

While certification focuses on a company's systems and policies, performance assessment focuses on how those systems and policies translate to actual performance. The Draft Charter provides for two primary elements under the heading of performance assessment. The first is ongoing monitoring of company activities. The purpose of monitoring is to promote compliance with the ICoC by providing an independent review of company performance. Monitoring missions will be conducted both remotely and in the field. Field-based monitoring will be triggered by the Secretariat in accordance with a risk assessment process that focuses field-based monitoring on companies or locations that present the most risk. Where in-field monitoring missions identify the need for corrective steps, the Secretariat will work with relevant companies to develop a plan for taking corrective action. The Board is authorised to suspend or terminate the membership of a company if it fails to implement the corrective action.

The second element is a special review of a specific company's performance ("specific compliance review") in circumstances that require a more thorough analysis. This special review will seek to determine whether a serious violation of the ICoC has occurred or is likely to occur, and upon such a finding, what remediation is needed. The Board is authorised to suspend or terminate the membership status of a company in the event it fails to implement the remediation plan.

Third Party Complaint

The Draft Charter provides for a process to receive complaints alleging a violation of the ICoC, and sets up several tracks for facilitating resolution of those

complaints. The complaint mechanism may refer complaints to a company's internal grievance mechanism, refer the complainant to appropriate external forums, or provide for mediation of the complaint by Mechanism-approved professional mediators. Depending on the nature of the complaint, the Mechanism also may refer complaints for a specific compliance review referred to above. Where a complainant has asserted that a company has failed to provide an effective internal grievance procedure in accordance with the ICoC, the Mechanism may conduct an expedited review of the internal grievance process and provide for the development of a remediation plan to address any failures that have been identified. The scope of this section of the Charter will be reviewed on an ongoing basis.

The Mechanism's Status, Location and Funding

Three of the most frequently asked questions in connection with the work of the TSC have been what kind of entity will the Mechanism be, where will the Mechanism be located, and how much the Mechanism will require in funding. These three questions have been discussed at length by the TSC.

With regard to status, the TSC is proposing that the Mechanism be legally constituted as a non-profit organization. This will permit a legal structure and liability protections that will assist the Mechanism in carrying out its intended purpose. The Draft Charter proposes a governance structure that would be utilised by the Mechanism under a non-profit organization status.

With regard to location, the TSC has received an offer from the Swiss Government to host the Mechanism, which includes an offer for in-kind financial assistance for an initial two-year period that may be renewable. The TSC is collecting information regarding other possible venues and has solicited expressions of interest from other governments. The proposed Charter for adoption will identify the Mechanism's location.

With regard to funding, the TSC is working to identify potential funding sources, including from industry, government and other actors. The TSC is preparing a draft budget for the Mechanism to better estimate the required funding. This effort is ongoing, and the TSC intends to provide more information regarding budget in a supplemental communication in February 2012.