

Next Steps for Industry

Overview

1. The Montreux Conference in February 2013 developed Articles of Association which will serve as the founding Charter of the independent governance and oversight mechanism for the International Code of Conduct for Private Security Service Providers (ICoC).
2. This Association will be based in Geneva and constituted as a non-profit association under Swiss law. It is expected to start operations in the summer of 2013 following a formal adoption Conference in Geneva, Switzerland. The overarching purpose of the Association is to promote the responsible provision of private security services and respect for human rights and national and international law and govern and oversee implementation of the ICoC. It will do this through 3 core functions (a) certification of companies, (b) human-rights-oriented monitoring of company performance and of the impact of security operations, and (c) support and oversight of a Company's complaints procedure.
3. The Articles of Association for the ICoCA are available at www.icoc-ppsp.org. The articles setting out the 3 core functions are 11, 12 and 13. Article 8 is also key as it sets out the powers of the Board.
4. The Articles were agreed amongst the three pillars (Industry, Government, and Civil Society) at the drafting conference in Montreux in February. Although sent out for review by DCAF, they are only open for changes required by Swiss law. Instead, the DCAF letter asks stakeholders – which include all the signatories of the ICoC – to confirm their readiness to endorse the document, by 17th May 2013, and to indicate whether they will commit to join the Association.
5. It will be for each individual potential industry member to decide whether they can accept and endorse the Articles as part of deciding whether to become a member. In making that judgement, companies should bear in mind that there are a number of areas in the Articles that will need to be clarified and firmed up by the first Board of Directors. Potential industry members will also want to have regard to the draft budget and proposed membership dues, still under development.
6. Now that we have reached this stage we, as industry, need to start work on the next steps to ensure the efficient and effective establishment of the Association in a manner with which we are comfortable. This means there are some critical issues that need to be actioned and resolved satisfactorily. **These are set out below, with some proposals for consideration and a number of questions on which feedback is sought by 7th May 2013, the date of the next TSC outreach session in London. There is also an outreach session in Washington DC scheduled for 14th May 2013 at which feedback can be discussed. If required, there could be an industry-only session arranged around either of these events.**

Critical Aspects to be resolved

7. There are three critical considerations and actions that the private security industry now has to take:

- a. Development of a budget for the Association that is fair for companies of all sizes.
- b. Agreement on industry's key requirements for the development of procedures governing the functions of the Association, as the basis for the draft of these procedures. This would be reinforced if individual industry members were to feed comments and caveats to one of the TSC representatives before 14 May 2013, to ensure these are fully considered by the TSC and the Board in due course.
- c. Development and implementation of a procedure by which industry Board Directors can be voted, taking account of the skills and capacity requirements during the initial phase of the Association.

Development of a budget for the Association

8. The budget discussions are on-going and Andy Nicholson of Drum Cussac, one of the industry members of the TSC, is leading the working group as part of the agreed next steps. The nub of the discussion is to ensure that the Association is financially viable without industry bearing a disproportionate amount of the cost. The concept of fee bands for industry members linked to turnover/revenue has been accepted by all pillars, but the expenditure and hence income required is still under development. Hopefully it will be possible on at the outreach sessions on the 7th and 14th May 2013 to advise on the fee bands and the contributions from other pillars.

Issues for resolution in the drafting of the procedures for the operation of the Association's Director and Secretariat

9. The key areas where procedures need to be written for the operation of the Association are as follows:
 - a. Procedures set out in Article 8 – this is about how industry, both on the Board and in the General Assembly, maintains authority and influence over decision making. As an example, we need to ensure that the Board's oversight on staffing and budgets does not allow unintended mission creep, and we need to set out guidelines for the procedures referenced at 8.2 as these will drive decision-making on the value-add and cost-effectiveness of the Association's operations.
 - b. Procedures to underpin the articles covering certification, monitoring and complaints. We need to ensure that:
 - On 'certification' of companies, that the Procedures clarify this is not certification as carried out by Certification Bodies (and preferably start to use a different word for what the Association will do itself), and that the Procedures formally embed the agreement at Montreux that the Association will not duplicate the certification that companies will undergo through PSC.1¹ or any other identified and accepted standard and seek only minimum essential information in

¹ While this document refers specifically to PSC1 only, discussions in the margins of Montreux suggested that the Board of Directors should invite the Association General Assembly to agree to formally recognise both PSC1 and the ISO PAS 28007 for maritime companies, so as to pave the way for maritime companies to join the Association should they so wish.

addition (if any is necessary). Ideally, a 'Register of Standards' (listing PSC1) should be published as an Annex to the Articles at or shortly after the formal adoption conference.

- On 'in-field monitoring' of company performance and the human rights impacts of PSC activities, it will be important that the procedures identify what information the Secretariat will routinely gather, to avoid this becoming a burdensome process for both the Association and industry, and that the methodology of in-field monitoring is carefully scoped to avoid duplication with an external standard's certification process (e.g., PSC.1), or any other unintended mission creep. There remains significant ambiguity in the text of Article 12 which needs careful clarification in the procedures.
- On 'complaints', the procedures should formalise the position in the Articles that the role of the Association will be as facilitator to ensure that a complainant has access to a fair and accessible grievance procedure. This might include, for example, assisting complainants to understand what other procedures exist should the internal company process be shown not to comply with the Code, or assisting both parties to a complaint in reaching a satisfactory resolution. The procedures will need to articulate how to ensure that the Association remains impartial and neutral and does not act in a representative capacity or be drawn into second guessing the adequacy of the remedy offered by the company.

10. If Industry representatives can write these procedures in short order to produce semi-official drafts, we should be in a better position to ensure that the potential for duplication and cost is written out, as others will be obliged to make the case for changes to pre-presented drafts. Otherwise, Industry risks being on the back foot and it may not be easy to make up ground.

11. **We propose that Companies**

a. **Should record key points for the Board to take into account in the development of procedures via their TSC representatives. These might include points in paragraph 9 and/or additional points. Should companies wish to discuss the detail of the points they might wish to make, they should contact industry TSC representatives Sylvia White/Andy Nicholson /Mark DeWitt/ Brent Wagner.**

b. **Should send their responses to the 8th March 2013 letter after the respective TSC outreach sessions on 7th & 14th May 2013.**

Four Industry Board members – roles, skills and capacity required

12. As indicated above, it is critical to ensure the correct detail is in the procedures that the Board will develop and submit to the General Assembly to set out the operations of the Association. If Industry is to be comfortable with the results, it is critical Industry is proactive and puts forward suitably qualified directors, as soon as possible, who are capable of leading and holding the pen on much of that work. A winning combination of skills will be a combination of (i) operational expertise able to speak authoritatively to correct continuing misconceptions about the industry and how monitoring and auditing is already done, and (ii) policy drafting skills around governance type issues. Finally, it is vital that these people have the capacity to commit the requisite amount of time to this or there is risk of the procedures being led by the

other pillars and taking a direction with which we would not be comfortable. This first iteration of the Board will be an active working body, tasked with drafting procedures, standing up the Association, and other time-intensive tasks. Candidates will need to be prepared to commit significant time to the Board, at a level commensurate with the time proffered over the last two years by industry members of the TSC. For this reason, it is critical that all companies understand that a Board seat will not be an honorary position. It will be a Board engaged in a wide scope of start-up activities with considerable direct effort attached.

13. There have been some discussions across industry about the importance of identifying potential directors for the Board either from within our own organisations or externally (where industry would have to club together to cover any remuneration). The Association will not remunerate board directors (and may not reimburse travel/accommodation).

14. Three ways have been identified to date by which we can achieve this. We are open to other suggestions:

- a. Agree the selection of 4 directors from suitable people currently employed by companies in the industry and commit that they will have sufficient time to deliver the necessary work product. Easy to say yes to, but perhaps difficult to deliver in practice given competing business priorities.
- b. Agree the selection of 4 directors from company / past company members accepting that the individuals are paid for by the company but in addition hire some writing support paid for across all member companies – the disadvantage is a lack of transparency and accountability in that the work will not be done at Director level.
- c. Select 3 directors as per 1 above, but with the fourth director recruited and paid for (shared cost) across a number of companies with a clear remit to do the drafting of procedures. This paid fourth director could be replaced once the procedures have been developed.

15. We would like to ascertain whether Option 14a is realistic, or whether it will be necessary to seek financial contributions for Options 14b or 14c, and if so which Option companies would prefer – or indeed if there is some other way of achieving the objectives set out above.

16. **Could we therefore please ask each company, by 7th May 2013 / 14th May 2013, to comment on which of these options they would support, if necessary financially, or provide an alternative Option.**

17. Finally, it is proposed that the selection process for industry Board Directors should be by ballot. Such a ballot will need to be concluded quickly if Directors are to be in place to carry out early drafting work on the procedures. We propose:

- a. In order to appear on a ballot, each candidate must be nominated by 3 signatory companies to ensure he/she is fully representative of a range of signatory companies; If Nominees work for a Signatory Company that company must have submitted their letter of endorsement to the Swiss Government by the stated deadline.
- b. In order to ensure diversity, no more than 2 representatives would be allowed from a single country.



18. **Companies are asked to agree this approach by 14th May 2013** and to indicate whether they will be putting forward a volunteer for Director. Candidates will be asked to provide **a short bio setting out the skills and experience, as well as** a summary of the organization they work for, including geographical regions, size and service offerings (where relevant), experience of the individual/organization in the industry, experience and involvement (of the organization and the individual) in the development of regulation and standards (including ICOC and PSC 1), **plus an indication of the amount of time that the individual will be able to commit, and confirmation that the organisation they work for can meet the costs of providing that level of commitment.**

*Articles of Association***When will the Association be established?**

The Association will be created through the adoption of the Articles of Association and Founding Instrument at a meeting in Switzerland in the middle of June. (More details will be available from James and Meg soon.) After that point, the selection of Members of the civil society pillar, and the election of Directors, will occur through procedures to be developed by the civil society Membership and Board, and approved by the General Assembly.

What will happen after I apply for membership?

The initial membership shall be constituted from those private security companies, states and intergovernmental organizations, and civil society organizations that are listed in the Instrument of Adoption that will, under Swiss law, bring the Articles of Association into legal effect. Assuming that a sufficient number of stakeholders have signaled their readiness to endorse the new association, an adoption conference is anticipated in the early summer 2013 in order to establish the Association in accordance with these articles and to select the first Board of Directors. Once the Association is operational, the Board of Directors will determine the exact requirements of membership within the first six months of operations.

Your application to become a member is the first step to be included on the list of initial members. Details below set-out how this application will be confirmed for each of the three categories of membership:

If you are a company:

Companies will be eligible for membership upon certification by the ICoC Association and under such procedures as will be established by the Association once it is formed. The Articles of Association do, however, recognize a ***transitional arrangement*** whereby any private security company that has signed the ICoC, has formally endorsed these articles, and meets the obligations of membership, shall enjoy on a provisional basis the rights of membership prior to such certification. Once those certification requirements are established, companies will be required to obtain ICoC certification within one year to maintain membership. As long as the letter indicating your intention to join is received before 17 May 2013 your company will be included as an initial endorser and you need take no further action.