

**Brief Legal Commentary:****The Law and regulations in Israel related to Private Military and Security Companies (PMSCs)****I. General**

As Israel is situated in nearly permanent armed conflict and threatened by a great variety of security threats, many private security companies are operating in Israel in order to insure the public security both in the public and private sectors.

Whereas security companies are a common phenomenon, private armed military companies or any other kinds of armed groups with the aim of using force for other purposes than insuring the public security are prohibited under Israeli law.

**II. The authority to use force under the Israeli law**

The authorization to use of force in order to enforce the law is given exclusively to the state and is exercised only by state officials who operate under the regulation of Israeli law.

Israeli law defines the police as the principal state organ in charge of the law enforcement inside Israel and in settlement areas existing within the occupied territories.

The Israel Defence Force is the armed force of Israel. As such, it is the state organ operating in situations of international use of force, securing the borders of Israel and operating in the occupied territories to ensure public security and order and the security of Israel.

In addition, the law defines two additional organs: the Israel Security Agency, which is a state agency operating to secure the citizens of Israel from hostile acts; and the Institute for Intelligence and Special Operations, which is a state agency appointed to collect information, analyze intelligence, and perform special covert operations beyond its borders.

The use of force by employees of private security companies constitutes an exception to the general rule mentioned above. As will be elaborated below, they are given this authority only under limited conditions relating to protecting public security and public order.

### **III. Obligations to ensure public security in the public and private sectors**

Israeli law provides obligations to ensure public security both in the public and the private domains.

The "Law Regulating Security in Public Institutions – 1998" defines detailed regulations regarding the security requirements in public institutions, while the police guide and supervise the fulfillment of the regulations. Each public institution must appoint a security officer who will ensure the public security in the organization and will report directly the executive of the organization or to the deputy executive.

The "Law of Licensing Businesses – 1968" provides regulations and operational conditions related to the public health, safety, order and security of private businesses. According to this law, also in relation to private businesses, the police is the guiding and supervising authority for all issues related to public security. The responsibility to ensure the public security and fulfill the related regulations rests upon the executive of the private business.

### **IV. The applicable law related to PMSCs**

The private security companies are subject to the "Law of Private Investigators and Guard Services – 1972", which defines the conditions and requirements of establishing and operating private security companies. Among other regulations in this law, the following should be emphasized: establishing and operating a private security company requires a license, which must be considered and issued by a special committee appointed by the Israeli minister of justice (hereinafter: "the committee"); each guard working for such a company, as well as executives and managers who organize the security activities, must possess a license from the committee; the committee may refuse to give the license for a private security company and/or a guard and/or executive due to reasons related to public security, the personal history and/or behavior of the applicant.

The "Law of Authorizations for Ensuring Public Security – 2005" provides a guard working for a private security company with different authorizations in order to ensure security within a well-defined area or a site. It should be mentioned that this law also regulates the authorizations given to policemen and soldiers conducting "missions to ensure public security", but it does not limit the authority given to policeman and soldiers when conducting other duties under different laws.

This law provides a guard who ensures the security in a defined area with the authority to conduct the search on a person's body who wishes to enter the defined area; to request the person's identification; and to temporarily retain any object that may endanger the public security. If the person wishing to enter the area refuses to cooperate with the guard according to the guard's authorities, the guard may – while using reasonable force - prevent the entrance of the person into the area or bring the person out of the area. In addition, if a guard suspects that a person is about to endanger the public security and/or commit a crime, the guard may detain the person until the police arrives. The law clearly states that all procedures allowed by law that are used by a guard in order to ensure the public security and to prevent violence must be exercised in such a way as to ensure the person's dignity, privacy and rights.

#### **V. Israel's citizens that work in foreign PMSCs**

The "Israeli Penal Code – 1977" applies to any act defined by the code as a crime and was committed on the territory of Israel by any individual (even if the individual is not a citizen or resident of Israel).

The code also defines a few situations where it applies to acts which are committed outside the territory of Israel (such as acts against the state of Israel, its rule of law and sovereignty, its secrets, etc.). In these defined situations, the Israeli Penal Code will be fully applicable only to Israeli citizens or residents.

The penal code will be applicable to acts which are committed outside the territory of Israel by an individual who is not an Israeli citizen/resident, when Israel is part of a treaty which obligates such application of the Penal Code for defined situation.

In the occupied territories the Israeli penal code will be personally applicable only to Israel citizens and residents. Different laws will be applicable for individuals in the occupied territories who are not citizens or residents of Israel.

Israelis citizens working for PMSCs are not under any official capacity whether they work in or outside Israel. Therefore, the Israeli Penal Code will be applicable to them the same way it is applicable to any other citizen or resident - as elaborated above.

There is no explicit prohibition on Israeli citizens or residents to work for PMSCs outside of Israel. However, if an act conducted by an Israeli citizen or resident while working for the PMSC would fall under in application of the Israel Penal code, it will be naturally considered a punishable crime.

## **VI. Defence Export Control Regulations under the Israeli Laws**

Israeli Citizens, Israeli residents or Israeli corporations engaging in 'defence export transactions' (i.e., marketing military knowledge and/or military equipment and/or providing defence services - whether the transaction is taking place within or outside Israel), must be registered in the defense export registry; overseen by the Defense Export Control Division in the Israeli Ministry of Defence, newly created under the 'Defense Export Control Law 5766 - 2007'; and possess a special license from the Export Control Division.

Performing defence export transaction without the required registration and license, or not according to the given authorization, is a criminal offence.

When examining an application to provide defence export transactions the authorizing authority may consider, among other considerations, reasons of state security, matters pertaining to foreign relations, and international obligations.

PMSCs which are engaged in defence export transactions are fully obliged under the mentioned regulations.