



PRIV-WAR Report – Estonia

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The Regulatory Context of Private Military and Security Services in Estonia

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Regulating privatisation of “war”: the role of the EU in assuring the compliance
with international humanitarian law and human rights

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1. Introduction¹

This report on Estonian domestic law with respect to private military and private security services is delivered pursuant to WP 7.1. (“The existing regulatory context for private military and private security services at the national and EU level, report on the domestic legislation in relevant countries”) in the framework of the project “Regulating Privatization of “War”: the role of the EU in assuring compliance with international humanitarian law and human rights” (Priv-war).

2. Scope of the report

The report focuses on the examination of the regulation on behalf of the Republic of Estonia of provision of private military and private security services. Thereby, there is a legal basis to speak about pure private military companies (hereinafter – PMCs) providing private military services and private security companies (hereinafter – PSCs) providing private security services. No laws specifically prescribe provision of services by PMCs/PSCs abroad. Therefore, the report focuses on issues that would be relevant for application to potential Estonian private military and private security contractors operating abroad. The report also discusses the question of how natural persons may become involved in investigation and surveillance activities that are the State’s prerogative.

The report examines the regulation of private military and private security services. Then it looks at the regulation of investigation services, surveillance and persons recruited for secret co-operation. The rest of the report is devoted to examination of issues of regulation of armed force, possession of arms, import and export of arms, goods of strategic significance and dual use goods, State policy on outsourcing the armed forces, corporate law, labour law, criminal responsibility, commercial law and civil liability with a view to their potential applicability to PMCs/PSCs operating abroad.

3. Domestic military, security and investigation services

3.1. *Private military and private security services*

In Estonia, the rules governing regulation of operation of private military and security services are stipulated in the Constitution of the Republic of Estonia.² Article 48 of the Constitution stipulates that the establishment of organisations and unions, **which possess weapons, are militarily organised or perform military exercises** requires prior permission, for which the conditions and procedure of issuance shall be provided by law. It also states that only a court may terminate or suspend the activities of, or fine, an organisation, union or political party, for a violation of the law. This provision would comprise both – private military as well as private security companies.

However, there are no special laws regulating activities of specifically private military companies. The Constitution is the main and only instrument setting out the

¹ Prepared by Riga Graduate School of Law, by Ieva Miluna (Ieva.Miluna@rgsl.edu.lv) under supervision of Dr. Ineta Ziemele, Professor, Judge at the European Court of Human Rights. The author has confined the report to the national laws in force in Estonia translated in English. The report does not pretend to be absolutely complete as to the latest amendments. The report is confined to the documents and materials publicly accessible. All mistakes are the responsibility of the author.

² The Constitution of the Republic of Estonia of 28 June 1992.

main conditions with respect to the operation of private military companies – prior permission to be received and the court as the only organ competent to terminate, suspend the activities of, or fine such an organisation for violations of law.

With respect to private security services, the Security Act³ sets out conditions and procedure for the activities of undertakings providing security services (security firms), rights and obligations of security guards, guarantees for security guards, conditions and procedure for organising in-house guarding, procedure for exercising supervision over the activities of security firms and in-house guarding units, and liability for violations of the Security Act. The law explains that by the term ‘guarding’ meaning monitoring of a guarded object and its surroundings in order to detect any threat of an attack or any attack and to eliminate any danger.⁴

The basis for provision of security services is a written contract. The security firm is entitled to provide the kind of a security service that is specified in its licence.⁵

The Security Act prescribes the following kinds of security services:

- security consulting;
- guarding and protection of movable and real property;
- personal protection (bodyguard and mobile protection);
- maintaining order at an event or a guarded object (at least half of the employees of a security firm who are to be involved in maintaining public order at an event must have the qualifications of security guards⁶);
- operation of a monitoring centre;
- planning, installation and maintenance of security equipment.⁷

The Security Act stipulates that a security firm is a person holding a licence for providing a security service.⁸ The provisions of legislation regarding enterprise apply to security firms, taking into account of the specifications arising out of this Act.⁹

There is a requirement that when providing a service, a security firm may only use staff employees.¹⁰

The law establishes the principal functions of a security firm:

- to ensure the safety and inviolability of the guarded object;
- to prevent any offence from being committed against the guarded object or from endangering the guarded object, or to hinder any such offence in order to ensure the inviolability of the guarded object;

³ The Security Act (*Turvaseadus*) of 8 October 2003. The English version is available at: <<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X70055&keel=en&pg=1&ptyyp=RT&tyyp=X&query=turvaseadus>>.

⁴ Article 2, point 2 of the Security Act.

⁵ Article 5, paragraph 1 of the Security Act.

⁶ Article 9, paragraph 3 of the Security Act.

⁷ Article 4, paragraph 1 of the Security Act.

⁸ Article 13, paragraph 1 of the Security Act.

⁹ Article 13, paragraph 2 of the Security Act.

¹⁰ Article 13, paragraph 3 of the Security Act.

- to identify any factors which reduce security and to use technical resources and know-how to lessen their effects.¹¹

There is an obligation of security firms to provide the police prefecture with information concerning objects newly placed under manned guard and objects where the service contract has been terminated. The security firm is also under an obligation to inform the police prefecture covering the location of a guarded object of any attack made against the guarded object.¹²

The prohibitions on the activities of the security firms are a prohibition to manufacture or sell explosive substances, weapons, essential components of firearms, laser sights or ammunition, prohibition to convert or repair weapons, prohibition to provide private detective services and prohibition to perform police or national defence functions, except in cases where it is permitted by other Acts.¹³

The Government of the Republic of Estonia may establish restrictions on the amount of capital belonging to citizens or legal persons of states which are not members of the European Economic Area in the composition of assets of security firms.¹⁴

The Security Act regulates operation of in-house guarding units. These are units of an undertaking, state authority or local government authority which guard property owned or possessed by the undertaking, state authority or local government authority.¹⁵ However, it is prohibited for the in-house guarding unit to provide security services.¹⁶ There is an obligation to register the in-house guarding unit with the police prefecture.¹⁷ Chapter 8 of the Security Act regulating the acquisition, ownership, possession, carrying and storage of weapons and ammunition or special equipment applies to the guards of an in-house guarding unit.¹⁸ It is prescribed that responsibility for the activities of an in-house guarding unit shall be held by the head of the in-house guarding unit, who shall have qualifications of a security officer. There is a prohibition for the head of an in-house guarding unit to be a contracted employee of a security firm and to provide security services.¹⁹

The Security Act regulates activities of **private security agents**. The law prescribes that a private security agent is:

- a sole proprietor who provides a security service;
- an employee of a security firm, who has the qualifications of security officer and who works as a security officer;
- an employee of a security firm, who guards and protects a guarded object either directly or by using technical resources.²⁰

¹¹ Article 14 of the Security Act.

¹² Article 15 of the Security Act.

¹³ Article 16, paragraph 1 of the Security Act.

¹⁴ Article 16, paragraph 2 of the Security Act.

¹⁵ Article 18, paragraph 1 of the Security Act.

¹⁶ Article 18, paragraph 2 of the Security Act.

¹⁷ Article 19, paragraph 1 of the Security Act.

¹⁸ Article 19, paragraph 4 of the Security Act.

¹⁹ Article 20, paragraph 1 of the Security Act.

²⁰ Article 21, paragraph 1 of the Security Act.

A guard is a person, who has undergone initial training and who performs the duties of a security guard on the basis of a contract of employment entered into for a specific term with a probationary period of up to four months; who is an Estonian citizen or a person holding a permanent resident permit in Estonia; at least 19 years of age and who has completed basic education; proficient in Estonian at the level established by law or by legislation; capable of performing the duties of a security guard in terms of his personal characteristics, moral standards, physical condition and health and to whom restrictions specified in the Act do not apply. If the person wishes to work as a security guard following his or her probationary period, he or she is required, either during the probationary period or within two months after it ends, to undergo basic training for security guards and he or she may then begin to perform the duties of a security guard on the basis of a contract entered into with a security firm.²¹

The requirements for the security guards are the following:

- a person must be a citizen of Estonia or a permanent resident;
- a person must be at least 19 years of age;
- a person must have completed basic education;
- a person must hold the qualification of a security guard;
- a person must be proficient in Estonian at the level established by law;
- a person must be capable of performing the duties of a security guard in terms of his or her personal characteristics, moral standards, physical condition and health.

A special requirement is set for the security guard who maintains order at an event held at a public place, provides personal protection or is engaged in the transport of cash and securities – a person must be at least 21 years of age.²²

The professional suitability of private security agents, the requirements for their physical condition and health and the procedure for verifying that the health requirements are met is established by the Minister of Internal Affairs.²³ The Act establishes that it is prohibited for a person to work as a private security agent if he or she:

- 1) has restricted active legal capacity;
- 2) is serving a sentence for a criminal offence or if information concerning a punishment for a criminal offence committed by him or her has not been expunged from the punishment register;
- 3) is a private detective;
- 4) has gone bankrupt;
- 5) does not meet the requirements of the Security Act.²⁴

There are two levels of qualifications of private security agents:

- 1) security guard;

²¹ Article 21, paragraph 2 of the Security Act.

²² Article 22, paragraph 1 of the Security Act.

²³ Article 22, paragraph 3 of the Security Act.

²⁴ Article 23, paragraph 1 of the Security Act.

2) security officer.²⁵

There is a requirement that when performing his or her official duties, a private security agent shall wear a uniform. However, a private security agent providing personal protection services needs not wear a uniform.²⁶ There is a specific requirement that the uniform of a private security agent shall not be misleadingly similar to the uniform of another security firm, a member of the Defence Forces, a member of the National Defence League, a police officer, a Border Guard official, an official of the fire service, an official of a rescue service, a customs officer or a prison officer.²⁷ There is a requirement that the uniform shall include an emblem with the business name of the security firm or its registered trade mark in the form of a logo, and a certificate of employment or a nametag containing the word “*turvatöötaja*” (security guard) or “*valvetöötaja*” (guard) and the given name and surname of the security guard or guard. The Police Board shall grant approval for the description of the uniform and emblem. However, the procedure for wearing the uniform shall be established by the security firm.²⁸

Also, there is an obligation for the private security agent to carry a certificate of employment bearing a photograph and his or her personal identification code and the business name of the security firm. A sole proprietor who is a security firm performing a security task shall carry a notarised attested copy of his or her licence or a transcript certified by the Police Board, and an identity document. When addressing the person, a private security agent shall identify him or herself and present his or her certificate of employment.²⁹

With respect to training, the law establishes the components for the security agent training comprising initial training, basic training, training for security officers, in-service training.³⁰ As to the organisation of security agent training, only persons holding a corresponding licence shall organise basic training for security guards, training for security officers and in-service training. It is prohibited for the person organising the training to engage in the activities regarding manufacture or selling explosive substances, weapons, essential components of firearms, laser sights or ammunition; converting or repairing weapons; providing private detective activities and performing police or national defence functions.³¹ Training for security agents shall be organised by a person whose registered area of activity or whose activities according to its articles of association or statutes is the training of security agents and which holds an activity licence for organising training for security agents. An education licence is issued for a specified term from one to five years.³² The education licence can be issued, suspended, revoked or annulled by the Ministry of Education and Research on the proposal of the Police Board under the conditions and procedure provided by the Security Act.³³

²⁵ Article 24, paragraph 2 of the Security Act.

²⁶ Article 25, paragraphs 1 and 2 of the Security Act.

²⁷ Article 24, paragraph 3 of the Security Act.

²⁸ Article 25, paragraph 4 and 5 of the Security Act.

²⁹ Article 26 of the Security Act.

³⁰ Article 27, paragraph 1 of the Security Act.

³¹ Article 28, paragraph 1 of the Security Act.

³² Article 30, paragraph 1 and 2 of the Security Act.

³³ Article 30, paragraph 3 of the Security Act.

The Security Act sets **rights** of security agents as follows:

- to prevent access to a guarded object by any person who attempts to enter the object without appropriate permission or without other legal grounds;
- to apprehend any person at the guarded object if that person is suspected of having committed an offence;
- to apprehend any person who enters or has entered a guarded object, stays there without appropriate permission or without other legal grounds, endangers the guarded object or other persons at the guarded object, or hinders the security guard from performing his or her duties. An apprehended person shall be handed over to the police promptly;
- when apprehending a person, to carry out a security check of the person and the objects held by him or her in order to verify that the apprehended person is not in possession of objects or substances with which he or she could endanger him or herself or others. A security agent has the right to seize dangerous objects and substances. Seized objects and substances shall be handed over to the police promptly.³⁴

The **obligations** for security agents are established as follows:

- to refuse to perform duties which are in conflict with law which would include human rights obligations;
- to main the confidentiality of information obtained from the customer;
- to inform the monitoring centre promptly of any offence which has been committed, is being committed or is planned against the guarded object;
- to perform his or her duties without interfering with the legal activities of state authorities, local government authorities, supervisory authorities, pre-trial investigation authorities, courts, bailiffs or other persons;
- to observe the constitutional rights of persons while using sound, photographic, film, video, communications and guarding equipment and information technology resources or other technical resources;
- to inform the security firm promptly if any circumstance regarding the legal capacity to work as a private security agent arise.³⁵

Regarding weapons, the Weapons Act and procedure provided for in legislation issued on the basis thereof applies to security firms and in-house guarding units in respect of acquisition, ownership, possession, storage and carrying of weapons and ammunition and in respect of granting the use thereof to employees, taking account of the specifications provided for in the Security Act.³⁶

A security firm may use only the weapons that belong to the security firm when providing security service. If an undertaking, state authority or local government authority has an in-house guarding unit, a guard of the unit may use a weapon which belongs to the undertaking or authority while he or she is on duty.³⁷

³⁴ Article 32, paragraph 1 of the Security Act.

³⁵ Article 33 of the Security Act.

³⁶ Article 37, paragraph 1 of the Security Act.

³⁷ Article 37, paragraph 2 of the Security Act.

Weapons may only be used in cases where life or health of a person is in danger or where it is not possible to eliminate the danger in any other way and the nature of the danger justifies the use of the weapon.³⁸ The person who is responsible for weapons and ammunition at a security firm or at an authority with an in-house guarding unit is under an obligation to maintain records on cases when weapons have been used.³⁹ There is a prohibition to use a weapon against a child, an elderly person, a person who is clearly disabled or a woman who is clearly pregnant. This prohibition does not apply if it is necessary to use a weapon against such a person to prevent or hinder an attack or a group attack, if the attack endangers the life or health of the security guard or another person.⁴⁰ A security guard while at work may carry a rubber truncheon. A rubber truncheon may be used in protecting a guarded object to prevent an attack against a security guard or another person or to hinder a group attack if the attack puts the life or health of a security guard or the other person in danger.⁴¹

The following special equipment may also be used by a security firm: special purpose marking and colouring equipment, handcuffs and service dogs.⁴² Special equipment is to be stored in a locked room adapted for such purposes or in a weapons storage room, but separately from weapons and ammunition.⁴³ It is prohibited to use handcuffs or service dogs in the case of a child, an elderly person, a person who is clearly disabled or a woman who is clearly pregnant. This prohibition does not apply, if it is necessary to use handcuffs or a service dog against such a person to hinder an attack if the attack puts the life or health of a security guard or another person in danger.⁴⁴

The police prefecture supervises the use of handcuffs by a security firm or an authority with an in-house guarding unit, as it issues the authorisations for the acquisition of handcuffs.⁴⁵ It is then permitted to use handcuffs when apprehending a person if there is reason to believe that he or she may escape, attack a security guard or a guard of the in-house guarding unit or put other persons or himself or herself in danger.⁴⁶

As to service dogs, a security firm or an in-house guarding unit may use a service dog to guard and protect an object, if the dog has undergone basic training and if it obeys orders. The Security Act permits accompaniment at a guarded object by a service dog, which is not wearing a muzzle if the dog is kept on a lead or if the territory is surrounded by a fence and there are signs indicating that a service dog is being used. The Law prohibits leaving a service dog unsupervised at a guarded object.⁴⁷

³⁸ Article 37, paragraph 3 of the Security Act.

³⁹ Article 37, paragraph 4 of the Security Act.

⁴⁰ Article 37, paragraph 5 of the Security Act.

⁴¹ Article 38 of the Security Act.

⁴² Article 39, paragraph 1 of the Security Act.

⁴³ Article 39, paragraph 2 of the Security Act.

⁴⁴ Article 39, paragraph 3 of the Security Act.

⁴⁵ Article 40, paragraph 1 of the Security Act.

⁴⁶ Article 40, paragraph 4 of the Security Act.

⁴⁷ Article 41, paragraph 1 of the Security Act.

There is an obligation to inform the police prefecture if the use of a weapon or special equipment in the provision of a security service or the performance of a security task or an in-house guarding task causes physical harm to or death of a person.⁴⁸

As to licences, a licence to provide a security service has been described as a right granted on the basis of the Security Act and other legislation to provide a security service during the term indicated in the licence pursuant to the established procedure and under the established conditions.⁴⁹ A licence can be issued to be valid from one year to five years. A temporary licence may be issued if less than one year is needed to perform the relevant obligation.⁵⁰

The Minister of Internal Affairs is responsible for establishment of format for licences.⁵¹ However, decisions on the issue, refusal to issue, extension, amendment, suspension and revocation of licences are taken by the National Police Commissioner. Licences are granted separately for each type of security service (security consulting, guarding and protection of movable and real property, personal protection, maintaining order at an event or a guarded object, operation of a monitoring centre, planning, installation and maintenance of security equipment).⁵²

As to the requirement for applicants for a licence, the Security Act sets the following criteria for the applicants: 1) an applicant's area of activity as indicated in the register or foundation documents is the provision of one of the kinds of security services prescribed by the Security Act; 2) an applicant does not have a holding in a company which manufactures or sells explosive substances, weapons, essential components of firearms, laser sights or ammunition or which converts or repairs weapons or provides private detective services or who according to the information held in the commercial register, is not operating in an of those fields.⁵³

An application shall be submitted to the police prefecture of the location and the latter shall forward the application to the Police Board.⁵⁴ The police prefecture gives an opinion whether to grant or refuse an issuance of a licence to the Police Board.⁵⁵ The National Police Commissioner makes the decision whether to grant or to refuse issuance of a licence.⁵⁶ Regarding the reasons, when a licence may be refused is if: 1) the applicant does not meet the requirements of the Security Act or legislation issued on the basis thereof; 2) the applicant has within the preceding two years, materially violated the requirements of the Security Act or legislation issued on the basis thereof; 3) the applicant operates in one of the prohibited fields by the Security Act (to manufacture or sell explosive substances, weapons, essential components of firearms, laser sights or ammunition, prohibition to convert or repair weapons, prohibition to provide private detective services and prohibition to perform police or national defence functions, except in cases where it is permitted by other Acts); 4) there a reason to doubt the

⁴⁸ Article 42, paragraph 1 of the Security Act.

⁴⁹ Article 43, paragraph 1 of the Security Act.

⁵⁰ Article 43, paragraph 2 of the Security Act.

⁵¹ Article 43, paragraph 3 of the Security Act.

⁵² Article 43, paragraph 4 of the Security Act.

⁵³ Article 44, paragraph 2 of the Security Act.

⁵⁴ Article 45, paragraph 1 of the Security Act.

⁵⁵ Article 46 of the Security Act.

⁵⁶ Article 47, paragraph 1 of the Security Act.

general trustworthiness of the applicant; 5) less than three years have passed since the previous licence of the applicant was revoked.⁵⁷

With respect to the suspension of a licence, the National Police Commissioner may suspend the validity of a licence: 1) if the security firm has not given notification of changes to the submitted information for the acquisition of a licence; 2) for up to two months, if the security firm has violated the Security Act.⁵⁸ In addition, the National Police Commissioner may suspend the right to provide the security service indicated in the licence for up to one year if the security firm has violated the Security Act or operated in a manner that disregards public order or poses a threat to national security.⁵⁹ This would include human rights violations by the security firm.

As to the revocation of a licence, the National Police Commissioner may revoke a licence, if the security firm: 1) has submitted a corresponding application; 2) fails to comply with the Security Act or legislation issued on the basis thereof, disregards public order or poses a threat to the national security; does not meet the requirements for a licence to be issued; 4) has not provided a security service for six consecutive months; 5) owes arrears and has not paid the arrears within two months as of the date on which the Tax Board issues a precept concerning the arrears; 6) operates in a manner which puts the health or property of persons in danger or is hazardous to the environment; 7) operates in field for which it does not hold a licence; 8) has knowingly submitted falsified documents or false information; 9) has for the second time in a year failed to submit documents or information, the submission of which is mandatory; 10) fails to comply within the specified term or to the specified extent with a precept of the Police Board or the police prefecture for the elimination of deficiencies.⁶⁰

State supervision over the activities of security firms, security guards performing security tasks, in-house guarding units and guards of in-house guarding units are exercised by the National Police Commissioner or by a police officer authorised thereby.⁶¹ The police officer exercising supervision has the right to conduct an on-site inspection of the security firm or the in-house guarding unit.⁶² A legal person that refuses to submit documents or information necessary for supervision or fails to submit such documents or information on time, submits false information or submits documents or information in a manner which does not permit supervision to be exercised is punished by a fine up to 20 000 Estonian kroons.⁶³

As to foreign security firms, an undertaking which or a person who does not hold the licence set out in the Security Act, may provide a security service covered in the Security Act to protect a citizen of a foreign state or his or her property on the basis of a one-off licence granted by the Police Board. Such a licence shall be granted at the request of the Ministry of Foreign Affairs, the Ministry of Defence or the Ministry of Internal Affairs.⁶⁴

⁵⁷ Article 47, paragraph 2 of the Security Act.

⁵⁸ Article 50, paragraph 1 of the Security Act.

⁵⁹ Article 50, paragraph 2 of the Security Act.

⁶⁰ Article 53 of the Security Act.

⁶¹ Article 56 of the Security Act.

⁶² Article 57, paragraph 1 of the Security Act.

⁶³ Article 60, paragraph 1 of the Security Act.

⁶⁴ Article 61 of the Security Act.

3.2. Investigation services, surveillance and persons recruited for secret co-operation

The Police Act⁶⁵ prescribes that the participation of non-profit organisations, persons and the associations of persons in the protection of public order and the fight against crime, and also their authority and legal protection shall be regulated by Acts and other legislation.⁶⁶

In Estonia, the Surveillance Act⁶⁷ governs the conditions and procedure for surveillance to guarantee the security of the Republic of Estonia, Estonian citizens and other states and persons.⁶⁸ Though surveillance is a State prerogative (as the Surveillance Act applies to surveillance conducted in criminal procedure⁶⁹), it prescribes instances when private individuals may be recruited for secret co-operation.

The Surveillance Act defines surveillance as a conduct of surveillance activities on the bases and pursuant to the procedure provided for in this Act and the Code of Criminal Procedure.⁷⁰ Information on the methods, tactics and technical equipment used in surveillance or adapted to surveillance is to be used within an agency and is not subject to disclosure unless the disclosure thereof is necessary to use the collected information as evidence.⁷¹ The Surveillance Act establishes that surveillance activities are permitted only if the desired purpose cannot be achieved in a manner which less violates the fundamental rights of persons.⁷²

The Surveillance Act names the following surveillance agencies: the Security Police Board, the Police Board, the Border Guard Administration, the Headquarters of the Defence Forces, the Prisons Department of the Ministry of Justice, prisons and the Tax and Customs Board.⁷³ Surveillance agencies shall engage in surveillance activities both directly and through agencies, subordinate units and employees administered by surveillance agencies and authorised to engage in surveillance activities, and through **persons recruited for secret co-operation.**⁷⁴

Among the rights of surveillance agencies is 1) to recruit persons for secret co-operation in surveillance activities under conditions and pursuant to the procedure established by the Surveillance Act; 2) to use covert measures which allow persons who have been engaged in surveillance activities, the purpose of the activities and the ownership of rooms and means of transport used to be concealed; 3) to use housing, other rooms and property of other persons on the basis of a contract; 4) to simulate

⁶⁵ The Police Act (*Politseiseadus*) of 20 September 1990. The English version is available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X60006K5&keel=en&pg=1&ptyyp=RT&tyyp=X&query=politseiseadus>.

⁶⁶ Article 6, paragraph 2 of the Police Act.

⁶⁷ The Surveillance Act (*Jälitustegevuse seadus*) of 22 February 1994. The English version is available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30011K7&keel=en&pg=1&ptyyp=RT&tyyp=X&query=J%E4litustegevuse+seadus>.

⁶⁸ Article 1, paragraph 1 of the Surveillance Act.

⁶⁹ Article 1, paragraph 3 of the Surveillance Act.

⁷⁰ Article 2 of the Surveillance Act.

⁷¹ Article 5, paragraph 2 of the Surveillance Act.

⁷² Article 5, paragraph 5 of the Surveillance Act.

⁷³ Article 6, paragraph 1 of the Surveillance Act.

⁷⁴ Article 6, paragraph 2 of the Surveillance Act.

persons and bodies under the conditions and pursuant to the procedure provided for in the Surveillance Act; 5) to plant undercover agents in criminal groups and organisations being monitored and assign undercover agents to interact with individuals being monitored in order to ascertain the nature of criminal plans and activities and influence the abandonment thereof; 6) to recruit qualified persons for surveillance activities with the consent of such persons.⁷⁵

Among the duties of surveillance agencies is 1) to protect persons who have been involved in surveillance activities, persons who have been recruited for surveillance activities and other natural or legal persons who have provided assistance in surveillance activities; 2) to protect persons who are or have been engaged in surveillance activities and who are or have been recruited therefore; 3) to ensure the secrecy of co-operation.⁷⁶

Surveillance serves the purposes of provision of private security and detective services. The reasons for the commencement of surveillance proceedings may be the need to decide on 1) the issue of an activity licence to work as a private detective; 2) the issue of an activity licence to engage in the provision of security services; 3) the issue of a firearms procurement licence or a firearms licence to a citizen of a foreign state or a stateless person; 4) the issue of a licence or a General Export Authorisation User Certificate for the import, export or transit of strategic goods or provision of services related to military goods or entry of an undertaking in the state register of brokers of military goods.⁷⁷

The surveillance agencies have the right to recruit adults for voluntary temporary or permanent secret co-operation in surveillance activities with their consent. The co-operation and persons who have been recruited therefore are classified as a secret. Surveillance agencies, other state agencies, local government agencies or local government officials may disclose information concerning a person who has been engaged in co-operation only with the written permission of the person who has been engaged in co-operation after the term of classification expires or is altered.⁷⁸ Persons who have been recruited for secret co-operation are required to refrain from knowingly disseminating false or defamatory information and to maintain the confidentiality of information, which becomes known to them in the course of co-operation, and the equipment, methods and tactics used in surveillance.⁷⁹

Secret co-operation with a surveillance agency under an employment contract shall be included in the length of employment of a person under the general conditions.⁸⁰ The Act prescribes that the remuneration for secret co-operation and for information forwarded which is paid to a person who has been recruited for secret co-operation by a surveillance agency shall be **subject to taxation with income tax and the income tax shall be paid by the surveillance agency**.⁸¹ In that respect taxation serves as a controlling mechanism.

⁷⁵ Article 7 of the Surveillance Act.

⁷⁶ Article 8, paragraph 1 of the Surveillance Act.

⁷⁷ Article 9, paragraph 2 of the Surveillance Act.

⁷⁸ Article 14, paragraph 1 and 2 of the Surveillance Act.

⁷⁹ Article 14, paragraph 3 of the Surveillance Act.

⁸⁰ Article 15, paragraph 1 of the Surveillance Act.

⁸¹ Article 20, paragraph 2 of the Surveillance Act.

The use of surveillance information as evidence in a criminal matter shall not bring about disclosure of the secret surveillance information or persons who have been engaged in surveillance activities or recruited therefore without their consent.⁸² The Surveillance Act prescribes that everyone has the right of recourse to a court pursuant to the procedure prescribed by law if his or her rights have been violated by a surveillance activity.⁸³

An employee of a surveillance agency or a person who has been recruited for surveillance activities who violates the established procedure or exceeds his or her authority shall bear liability pursuant to the procedure established by an Act or other legislation.⁸⁴ Thereby, the commitments with respect to the observation of human rights and violations of thereof would also serve as a basis of an excess of authority leading to liability and reparation.

4. Regulation of armed force

4.1. Possession of arms, import and export

The Weapons Acts⁸⁵ defines that the handling of weapons and ammunition means manufacture, sale, acquisition, owning, possession, storage, carrying, conveying, transport, import, export, transit, transfer, succession, finding and destruction of weapons and ammunition, and the repair conversion, dismantling and rental of weapons and rendering of weapons incapable of firing.⁸⁶

The Weapons Act excludes certain kind of weapons from the scope of application of the Act, namely, objects and devices which are not constructed as or adapted to be weapons but which can be used as such; firearms which were manufactured before the year 1890; weapons which have been rendered permanently incapable of firing; explosive substances and pyrotechnic articles, to the extent regulated by the Explosive Substances Act; blade devices (knives, hunting knives, axes) which have been manufactured for household or everyday use and which lack the special characteristics; weapons collections of national and municipal museums; military and service weapons and ammunition thereof, unless otherwise provided by the Weapons Act.

The Weapons Act prescribes three kinds of weapons – military weapons, service weapons and civilian weapons. Military weapons are weapons, which are intended for the Defence Forces for military action and for the Defence Forces and agencies within the area of government of the Ministry of Defence to perform their service duties. Service weapons are weapons, which are prescribed by law to government agencies exercising public authority, local government bodies and agencies and to the court in order to ensure the performance of their service duties. Civilian weapons are weapons, which in general are intended for hunting, involvement in corresponding sports, or the insurance of safety.⁸⁷

⁸² Article 16, paragraph 4 of the Surveillance Act.

⁸³ Article 18, paragraph 2 of the Surveillance Act.

⁸⁴ Article 21, paragraph 1 of the Surveillance Act.

⁸⁵ The Weapons Act (*Relvaseadus*) of 13 June 2001. The English version is available at: <<http://www.legaltext.ee/text/en/X40091K6.htm>>.

⁸⁶ Article 1, paragraph 3 of the Weapons Act.

⁸⁷ Article 3, paragraph 1 of the Weapons Act.

With respect to military weapons, the procedure for the handling of military weapons is established by a regulation of the Minister of Defence.⁸⁸ Military weapons are entered in the state register of military weapons.⁸⁹ Types and procedure for the handling of service weapons is established by a regulation of the Minister of Internal Affairs.⁹⁰ Service weapons are entered in the state register of service and civilian weapons.⁹¹

The Weapons Act prescribes the expropriation procedure of weapons and ammunition in cases prescribed by the Weapons Act. Weapons and ammunition may be expropriated for fair and immediate compensation. Expropriation is formulated by a resolution of a police prefect which indicates the basis for expropriation, the amount of compensation payable and the recipient of the compensation.⁹²

There is a requirement for the possessor of the weapon to notify the police prefecture or police station closest to the location of the use of the weapon, if the use of weapon results in the death of a person or a bodily injury or material damage.⁹³

The Weapons Act classifies the weapons as follows: firearms, gas weapons, pneumatic weapons, cut-and-thrust weapons, projectile weapons and electric shock weapons.⁹⁴ It also makes a classification of ammunition based on the parameters of the weapon for which the ammunition is prescribed.⁹⁵

The Weapons Act establishes the weapons and ammunition that are **in unrestricted commerce**, for example, gas spray, pneumatic weapons of a calibre up to 4.5 mm (inclusive), hunting knives, diving knives, fencing weapons for sport, cut-and-thrust weapons related to historical tradition in culture, martial arts or sports etc.⁹⁶ However, these kind of weapons cannot be acquired, owned, possessed, carried, stored or conveyed by persons under 18 years of age.⁹⁷

The Weapons Act prescribes weapons and ammunition that are **in restricted commerce**: 1) gas weapons, except gas sprays; 2) pneumatic weapons, except pneumatic weapons of a calibre of up to 4.5 mm (inclusive); 3) cut-and-thrust weapons, except hunting knives and diving knives, fencing weapons for sport and cut-and-thrust weapons related to historical tradition in culture, martial arts or sports and cut-and-thrust weapons that are prohibited for civilian purposes; 4) firearms, except the ones the use of which is prohibited for civilian purposes. These kinds of weapons may be acquired upon an acquisition permit.⁹⁸ **An acquisition permit** is valid for three months as of its date of issue. A permit may be extended for three months if an applicant for extension is submitted before the expiry of the permit.⁹⁹

⁸⁸ Article 3, paragraph 2 of the Weapons Act.

⁸⁹ Article 3, paragraph 3 of the Weapons Act.

⁹⁰ Article 3, paragraph 4 of the Weapons Act.

⁹¹ Article 3, paragraph 5 of the Weapons Act.

⁹² Article 6, paragraph 2 and 3 of the Weapons Act.

⁹³ Article 10 of the Weapons Act.

⁹⁴ Article 11 of the Weapons Act.

⁹⁵ Article 17 of the Weapons Act.

⁹⁶ Article 18 of the Weapons Act.

⁹⁷ Article 18, paragraph 4 of the Weapons Act.

⁹⁸ Article 19, paragraph 1 and 2 of the Weapons Act.

⁹⁹ Article 32, paragraph 7 of the Weapons Act.

The Weapons Act establishes certain kinds of firearms, cut-and-thrust weapons, electric shock weapons and ammunition that are prohibited for civilian purposes.¹⁰⁰ The Weapons Act distinguishes between accessories intended to be installed on firearms. For a laser sight or adapter an authorisation from the Police Board is required.¹⁰¹

Type approval of weapons and ammunition is an act by which it is determined whether a particular model of weapon or cartridge is included in the list of weapons and ammunition permitted to be used for civilian purposes. Models of weapons and cartridges in commerce in Estonia manufactured in Estonia and imported into Estonia and their modifications as well as models of weapons converted in Estonia and their modifications are subject to type approval. Truncheons and weapons in unrestricted commerce are not subject to type approval.¹⁰² Type approval is performed on the basis of an application by the person who manufactured the weapon or cartridge, converted the weapon or imported the weapon or cartridge to Estonia.¹⁰³ A model of weapon or cartridge or a modification thereof which has been type approved shall be entered in the register of service and civilian weapons.¹⁰⁴

All weapons the use of which is permitted for civilian purposes and all weapons in collections of weapons and cartridges are entered in the register of service and civilian weapons.¹⁰⁵ The following weapons are not entered in the register of service and civilian weapons: weapons in unrestricted commerce, truncheons, and weapons manufactured for export, weapons in transit consignments.¹⁰⁶

A natural person may acquire, own or possess a weapon for the following purposes: hunting, engaging in corresponding sports, ensuring safety, pursuing a profession, collecting.¹⁰⁷ The Weapons Act establishes that the use of a weapon shall not violate the rights of other persons or public order.¹⁰⁸

Types of weapons that are permitted for Estonian citizens to acquire, own, possess are the following: 1) a person who is at least 18 years of age may own a sporting firearm, pneumatic or gas weapon, crossbow or smoothbore gun. A person may acquire and own a hunting gun with a rifled barrel or a combination hunting gun on the condition that he or she holds the hunting certificate; 2) a person of at least 21 years of age may acquire, own and possess all weapons which are permitted to be used for civilian purposes, except for truncheons.¹⁰⁹ However, an alien, who holds a residence permit in Estonia may acquire, own and possess the same kinds of weapons, if he or she has been issued with a weapons permit by a competent authority of another State and a weapons permit has been issued to the alien in Estonia on the bases and pursuant to the procedures prescribed for natural persons.¹¹⁰

¹⁰⁰ Article 20 of the Weapons Act.

¹⁰¹ Article 21, paragraph 1 and 2 of the Weapons Act.

¹⁰² Article 23, paragraph 1 and 2 of the Weapons Act.

¹⁰³ Article 23, paragraph 5 of the Weapons Act.

¹⁰⁴ Article 23, paragraph 7 of the Weapons Act.

¹⁰⁵ Article 24, paragraph 1 of the Weapons Act.

¹⁰⁶ Article 24, paragraph 2 of the Weapons Act.

¹⁰⁷ Article 28, paragraph 1 of the Weapons Act.

¹⁰⁸ Article 28, paragraph 2 of the Weapons Act.

¹⁰⁹ Article 29, paragraph 1 of the Weapons Act.

¹¹⁰ Article 30, paragraph 1 of the Weapons Act.

An alien who is staying legally in Estonia, who is at least 18 years of age, on the basis of an acquisition of a permit issued by the Police Board, may acquire a weapon and ammunition for the purposes of taking the weapon or ammunition out of Estonia on the condition that he or she holds a permit issued by a competent authority of the state of his or her permanent residence for the acquisition of such type of weapon or ammunition and that he or she assumes the obligation to take the weapon or ammunition with him or her upon departure from Estonia.¹¹¹

A legal person may acquire, own or possess a weapon for the following purposes: internal guarding, engaging in corresponding sports or in hunting, studying subjects related to weapons, collecting, providing security services.¹¹²

The Weapons Act establishes the kinds of weapons that may be owned or possessed for the provision of security services or for internal guarding: guns with a smoothbore barrel, guns with a rifled barrel, pistols, revolvers, gas pistols, gas revolvers and truncheons.¹¹³ As to the quantities of weapons, types of weapons permitted for the provision of security services and for internal guarding, the Weapons Act prescribes that it is determined by the police prefecture of the seat of the legal person on the basis of a written application, taking into account the nature of the guarded and protected objects, the degree of threat and the storage conditions for firearms. The total number of firearms and gas weapons and the number of truncheons intended for the provision of security services shall not be greater than 10 per cent of the number of employees directly engaged in the guarding and protection of the object.¹¹⁴

A person who has acquired a weapon is required to register the weapon at the police prefecture of the residence or location of the person within seven working days as of the date on which the weapon was acquired or if the weapon was acquired in a foreign state as of the date of the weapon entering Estonia.¹¹⁵ A weapon shall be presented for registration together with an acquisition permit in which the seller of the weapon has entered information concerning the weapon being sold if the weapon has been purchased from a person who holds an activity licence for the sale of weapons.¹¹⁶ A weapon register book shall be maintained at the police prefecture of the residence or seat of the owner or possessor of the weapon.¹¹⁷ Upon registration of a weapon, the police prefecture issues a weapons permit to the owner or possessor of the weapon. The basis for the issue of a weapons permit is a decision made by the head of a police prefecture.¹¹⁸

A weapons permit held by a natural person grants the holder of the permit the right to store, carry and convey a weapon and ammunition in accordance with the Weapons Act and also the right to acquire ammunition which corresponds to the model of the weapon.¹¹⁹ Several weapons permits may be issued for a weapon belonging to a natural person. A weapons permit issued to a natural person who is not the owner of the

¹¹¹ Article 30, paragraph 3 of the Weapons Act.

¹¹² Article 31, paragraph 1 of the Weapons Act.

¹¹³ Article 31, paragraph 3 of the Weapons Act.

¹¹⁴ Article 31, paragraph 4 of the Weapons Act.

¹¹⁵ Article 33, paragraph 1 of the Weapons Act.

¹¹⁶ Article 33, paragraph 2 of the Weapons Act.

¹¹⁷ Article 33, paragraph 6 of the Weapons Act.

¹¹⁸ Article 34, paragraph 1 of the Weapons Act.

¹¹⁹ Article 34, paragraph 2 of the Weapons Act.

weapon is called a parallel weapons permit.¹²⁰ A parallel weapons permit shall be granted to one or two natural persons if the owner of the weapon has granted written authorisation for the person or persons specified to use the weapon belonging to the owner.¹²¹

A weapons permit held by a legal person grants the holder of the permit the right to acquire corresponding ammunition, to store and convey (transport) the weapon and ammunition, and to issue the weapon and ammunition to its employees in accordance with the procedures established by the Weapons Act.¹²² The duration of a weapons permit is five years. It may be issued for a shorter period of time if so requested by the applicant, to a person who is staying in Estonia for less than five years or to a legal person whose specified term of activity is less than five years.¹²³ The validity of a weapons permit that is issued to an alien holding a temporary residence permit shall not exceed the validity of his or her residence permit.¹²⁴

Any person applying for an acquisition permit or a weapons permit is under an obligation to pass an examination on the requirements of legislation regulating the acquisition, registration, storage, carrying, transfer and legal use of weapons and of the provision of first aid to a victim with a shooting injury.¹²⁵ A person may take an examination in his or her native language or in another language in which he or she is proficient. The examination shall be translated into Estonian and the costs of translation of the examination shall be borne by the person who wished to take the examination.¹²⁶

The Weapons Act establishes circumstances **precluding** grant of acquisition permit or weapons permit to natural persons if the person: 1) suffers from a mental or behavioural disorder caused by the use of narcotic or psychotropic substances; 2) suffers from a severe mental disorder; 3) suffers from a physical disability which prevents him or her from handling the weapon adequately; 4) evades service in the Defence Forces; 5) whose active legal capacity is restricted and to whom, therefore, a guardian has been appointed; 6) has been punished under criminal procedure; 7) has been punished under administrative procedure for violating requirements provided by the legislation regulating the acquisition, storage, carrying, transport or use of weapons and ammunition, of for hunting without a hunting certificate; 8) on the grounds arising from criminal proceedings, is declared to be a fugitive or suspect or is brought to justice as the accused or accused at trial; 9) upon application for an acquisition permit, has knowingly submitted incorrect information which is of material importance to the decision on whether to issue a permit; 10) lacks the conditions prescribed by the Weapons Act for the storage of weapons and ammunition.¹²⁷ In addition, the Weapons Act sets conditions in which an acquisition permit or a weapons permit **may be refused**. It includes: 1) if less than five years have passed since the revocation of a weapons permit previously issued to the person and if the revocation of the permit was due to the loss of the weapon or a violation of the requirements provided for in legislation regulating the storage, carrying or use of weapons and ammunition; 2) to a person to

¹²⁰ Article 34, paragraph 3 of the Weapons Act.

¹²¹ Article 34, paragraph 4 of the Weapons Act.

¹²² Article 34, paragraph 6 of the Weapons Act.

¹²³ Article 34, paragraphs 7 and 8 of the Weapons Act.

¹²⁴ Article 34, paragraph 8¹ of the Weapons Act.

¹²⁵ Article 35, paragraph 5 of the Weapons Act.

¹²⁶ Article 35, paragraph 5¹ of the Weapons Act.

¹²⁷ Article 36, paragraph 1 of the Weapons Act.

whom the issue of an acquisition permit has previously been refused if less than two years have passed since the refusal and if the refusal was due to the circumstances specified in the Weapons Act; 3) to a person who is not suitable to acquire or own a weapon due to his or her lifestyle or behaviour which jeopardises the security of himself or herself or other persons.¹²⁸

An alien who wishes to obtain an Estonian weapons permit on the basis of a weapons permit issued by another state shall submit an application for the weapons permit to the police prefecture of his or her residence. The police prefecture shall review an application not later than within two months.¹²⁹

Also an application submitted by a legal person for an acquisition permit or weapons permit shall be received by the police prefecture of the seat of the legal person and reviewed not later than within two months.¹³⁰ A person responsible for the weapons and ammunition of a legal person shall ensure that the weapons and ammunition of the legal person are handled according to the Weapons Act and the handling complies with the conditions set out in the corresponding permit.¹³¹

The Weapons Act sets the circumstances precluding grant of an acquisition permit or a weapons permit to the legal person. They include occasions where a legal person: 1) upon application for a permit, has knowingly submitted incorrect information which is of material importance to the decision on whether to issue a permit; 2) lacks the conditions prescribed in the Weapons Act for the storage of weapons and ammunition; 3) on at least two occasions during the last three years, has violated the procedure for storage, transport or transfer of weapons or ammunition or the procedure for the issue of weapons for carrying; 4) has not complied with a precept issued by a supervisory body concerning compliance with the requirements of the Weapons Act and legislation issued on the basis thereof.¹³²

The police prefecture may suspend an acquisition permit or a weapons permit in the following cases: 1) for one year if the holder of the permit has been punished under an administrative procedure for driving a motor vehicle or rail vehicle or flying an aircraft under the influence of alcohol or narcotic, psychotropic or psycho toxic substances; 2) if the holder of the permit is declared to be a suspect on grounds arising from criminal proceedings or is brought to justice as an accused or accused at trial; 3) if it is established in the course of inspection that the holder of the permit lacks conditions prescribed by the Weapons Act for the storage of weapons and ammunition; 4) if the legal person has failed to comply with a precept issued by a supervisory body concerning compliance with the requirements of this Act and legislation issued on the basis thereof without good reason.¹³³ The police prefecture may revoke an acquisition permit or a weapons permit if: 1) so requested by the holder of the permit; 2) the holder of the permit no longer meets the requirements established by the Weapons Act; 3) the weapon is subject to seizure; 4) the holder of the permit dies or is declared missing; 5) the weapon is lost or destroyed; 6) the weapon has become unusable to an extent which does not enable it to be restored, or if the owner or possessor of the weapon does not

¹²⁸ Article 36, paragraph 4 of the Weapons Act.

¹²⁹ Article 36¹, paragraph 1 of the Weapons Act.

¹³⁰ Article 37, paragraph 1 of the Weapons Act.

¹³¹ Article 38, paragraph 1 of the Weapons Act.

¹³² Article 40, paragraph 1 of the Weapons Act.

¹³³ Article 43, paragraph 1 of the Weapons Act.

wish the weapon to be restored; 7) the acquisition permit or weapons permit is destroyed or lost; 8) the legal person is dissolved or the agency liquidated; 9) the owner or possessor of the weapon has on at least two occasions within the last three years violated the requirements of the Weapons Act or legislation issued on the basis thereof or has failed to comply with the requirements of a precept issued to the owner or possessor.¹³⁴

After expiry, suspension or revocation of an acquisition permit or a weapons permit, the holder of the permit, the owner or possessor of the corresponding weapon or another person who is in possession of the corresponding permit, weapon or ammunition thereof is required to hand them over to a police prefecture on the last working day on which the permit is valid or on the working day following the date of communication of the decision on revocation or suspension. A weapon and ammunition of a legal person may be deposited in the weapons storage room of the legal person which has been sealed by the police prefecture.¹³⁵

As to storage of weapons and ammunition, they may be stored by a person who holds a weapons permit or an activity licence for the manufacture, sale, repair, conversion or storage of weapons and ammunition as a service.¹³⁶ Weapons and ammunition shall be stored in conditions which ensure their preservation and that they do not pose danger to the surroundings and which preclude access by unauthorised persons. Firearms may be stored only in an unloaded state.¹³⁷ A legal person is under an obligation to have a weapons storage room for the storage of firearms and ammunition. In a weapons storage room, weapons shall be stored in weapons safes, which contain a list of weapons stored in the safe on the inside of the safe door. Ammunition shall be stored in a steel cabinet located separately from the weapons or in a separate lockable compartment of a weapons safe. Gas weapons shall be stored in a weapons safe, a lockable drawer or a locker. A weapons storage room is not required for the storage of up to eight weapons (inclusive). In such case, the weapons safe shall be locked in a room equipped with an electronic security device, which is switched on when the person responsible is not in the room. The door of the room shall be made of sheet steel or covered with sheet metal and it shall have at least two locks. The windows of the room shall be fitted with bars or made of safety glass. The police prefectures are entitled to inspect the compliance of legal persons with the storage requirements for weapons and ammunition at least twice a year.¹³⁸

As to the carrying and conveyance of weapons and ammunition the Weapons Act establishes that weapons and ammunition shall be carried together with a corresponding weapons permit or permit to carry a weapon. Weapons and ammunition shall be carried in a concealed manner, which precludes their being lost, falling into the hands of other persons or causing accidental damage. The chamber of a carried firearm, except for the chamber of a revolver shall be empty of cartridges.¹³⁹ With regard to legal persons, a legal person may give a weapon registered in its name to an employee to carry if the employee holds a permit to carry a weapon.¹⁴⁰ It is prohibited for the

¹³⁴ Article 43, paragraph 3 of the Weapons Act.

¹³⁵ Article 44, paragraph 1 of the Weapons Act.

¹³⁶ Article 45, paragraph 1 of the Weapons Act.

¹³⁷ Article 45, paragraphs 2 and 3 of the Weapons Act.

¹³⁸ Article 47 of the Weapons Act.

¹³⁹ Article 50, paragraphs 1 and 2 of the Weapons Act.

¹⁴⁰ Article 51, paragraph 1 of the Weapons Act.

employee of the legal person to carry a weapon outside working time unless such authorisation is formalised by a decision of the legal person, to give a weapon or a permit to carry a weapon to an unauthorised person, to carry a weapon in the interests of another legal person or upon the conduct of the duties or functions thereof.¹⁴¹

4.2. Goods of strategic significance and dual use goods

The Strategic Goods Act¹⁴² regulates the export of strategic goods and transit thereof through Estonia, the import of military goods, the export of services related to military goods and ensuring control over the import and end-use of strategic goods.¹⁴³ The Act does not apply to the carriage, import and export of weapons and ammunition in accordance with the Weapons Act and to import and export of military weapons, ammunition, battle equipment and other special equipment used for defence purposes with the intention of returning such goods in an unaltered state on the basis of a special permit of the Ministry of Defence.¹⁴⁴

The Strategic Goods Act distinguishes between the terms of **strategic goods** meaning military goods and dual-use goods; **military goods** meaning substances, materials devices, equipment, systems and components thereof, software and technology used for military purposes, **goods used to commit human rights violations** that mean goods which cannot be used for purposes other than capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, and **dual-use goods** that mean goods within the meaning of Article 2.a of Council Regulation 1334/2000/EC setting up a Community regime for the control of exports of dual-use items and technology. The Act prescribes that the list of strategic goods is established by a regulation of the Government of the Republic and the list includes a list of military goods, list of goods used for violation of human rights and list of dual-use goods to the extent provided in Article 5.1 of Council Regulation 1334/2000/EC.¹⁴⁵

The Strategic Goods Act establishes that special authorisation is required for the import, export and carriage in transit of goods included in the list of strategic goods and for the provision of services.¹⁴⁶ Special authorisation is also required, if the Strategic Goods Commission is of the opinion and has informed the holder or owner of the goods or the declarant that the goods have the characteristics of strategic goods, although they have not been entered in the list of strategic goods.¹⁴⁷ An individual import licence, export licence, transit permission or general export authorisation constitute special authorisation.¹⁴⁸ With regard to the transfers within the European Community, upon carriage of military goods and dual-use goods listed in Annex IV to Council Regulation 1334/2000/EC from a Member State to Estonia or from Estonia to a Member State the data concerning the special permit, goods and itinerary shall be transmitted to the

¹⁴¹ Article 51, paragraph 4 of the Weapons Act.

¹⁴² The Strategic Goods Act of 17 December 2003, available at: <<http://www.legaltext.ee/text/en/X80013K1.htm>>.

¹⁴³ Article 1, paragraph 1 of the Strategic Goods Act.

¹⁴⁴ Article 1, paragraph 2 of the Strategic Goods Act.

¹⁴⁵ Article 2 of the Strategic Goods Act.

¹⁴⁶ Article 5, paragraph 1 of the Strategic Goods Act.

¹⁴⁷ Article 5, paragraph 2 of the Strategic Goods Act.

¹⁴⁸ Article 5, paragraph 3 of the Strategic Goods Act.

customs authorities at least twenty four hours before conveyance of the goods over the state border of Estonia.¹⁴⁹

Regarding import and end-use of strategic goods, control over the import and end-use of strategic goods shall be ensured by an international import certificate, end-use certificate or delivery verification certificate at the request of the appropriate authorities of the country of consignment of the goods.¹⁵⁰

The Strategic Goods Act establishes restrictions on import, export and transit. It is prohibited: 1) to export and transit of military goods, and provision of services to countries subject to relevant sanctions; 2) the diversion from their intended destination of goods subject to state supervisory control over the import and end-use of strategic goods without the written permission of the Strategic Goods Commission and re-export of such goods without special authorisation; 3) to export and transit of weapons of mass destruction, any materials, hardware, software and technology used for the manufacture of weapons of mass destruction, and the export and transit of antipersonnel mines and services related thereto regardless of their country of destination; 4) the import, export and transit of goods used to commit human rights violations and the provision of services related thereto regardless of their country of destination, unless such goods are displayed as objects of historical value in museum; 5) the export and transit of other strategic goods, the import of other military goods and services prohibited by international agreements binding on Estonia.¹⁵¹

The Strategic Goods Commission is formed at the Ministry of Foreign Affairs and includes the representatives of the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Economic Affairs and Communications, the Security Police Board, the Police Board and the Tax and Customs Board.¹⁵²

To obtain an individual import licence, export licence and transit permission an applicant who is a natural person or a legal representative of an applicant who is a legal person shall apply to the Strategic Goods Commission.¹⁵³ A licence need not be applied for in cases where Estonia has entered into an agreement with an international organisation or the country of consignment or destination of the goods for the organisation of the export or transit of strategic goods, the import of military goods or the provision of services.¹⁵⁴ In the case of services related to military goods, service providers, who operate within the framework of a military or humanitarian mission pursuant to a decision of the Ministry of Defence, the Rescue Board, the Police Board, the Security Police Board or the Border Guard Administration, are exempted from the obligation to apply for a licence.¹⁵⁵

There is an obligation for the Strategic Goods Commission to issue a licence in the following cases: 1) if the goods are subject to the restrictions set forth by the Strategic Goods Act; 2) if there is an information that the goods may be used to commit human rights violations in the country of destination; 3) if there is an information that the goods may be used to endanger national, regional or international security, including

¹⁴⁹ Article 5¹, paragraph 1 of the Strategic Goods Act.

¹⁵⁰ Article 6 of the Strategic Goods Act.

¹⁵¹ Article 7, paragraph 1 of the Strategic Goods Act.

¹⁵² Article 8 of the Strategic Goods Act.

¹⁵³ Article 13 of the Strategic Goods Act.

¹⁵⁴ Article 14, paragraph 1 of the Strategic Goods Act.

¹⁵⁵ Article 14, paragraph 2 of the Strategic Goods Act.

terrorist acts; 4) if there is an information that in the country of destination, the goods may be diverted from their original destination or re-exported under conditions endangering security; 5) if the import, export or transit of goods or services is in conflict with the international obligations of Estonia.¹⁵⁶ Among the reasons, when the Strategic Goods Commission may refuse to issue a licence are: if the import, export or transit of strategic goods or services endangers or may endanger the interests or security of Estonia or an ally to Estonia or if criminal proceedings have commenced concerning the applicant.¹⁵⁷

The term of validity of an individual import licence and export licence may be up to one year.¹⁵⁸ However, the term of validity of a transit permission may be up to one month.¹⁵⁹

The Strategic Goods Act sets criteria when a licence may be revoked, where among them is the fact that new facts become evident, which had they been known or existed at the time of reviewing the application for a licence, would have resulted in a refusal to issue a licence or the holder of the licence fails to comply with the conditions of the licence or the legislation relating to the import, export and transit of strategic goods.¹⁶⁰

As to the general export authorisation, the Strategic Goods Commission issues a general export authorisation user certificate.¹⁶¹ A certificate may be issued for natural persons with active legal capacities, who reside permanently in Estonia or legal persons registered in Estonia.¹⁶² Among the reasons to refuse to issue the certificate are if false information or documents with elements of falsification were knowingly submitted upon application for the certificate, if within five years before the decision to issue the certificate, the applicant has violated legislation relating to the import, export and transit of strategic goods or a precept issued on the basis thereof or if criminal proceedings have commenced concerning the applicant.¹⁶³ Cases when a certificate may be revoked concern the new facts that have become evident which, had they been known or existed at the time of reviewing the application for a certificate, would have resulted in a refusal to issue a certificate or the holder of the certificate fails to comply with the conditions of the general export authorisation, licence or en-use control document or a legal person is dissolved.¹⁶⁴

The Strategic Goods Commission guarantees control over import and end-use of strategic goods.¹⁶⁵ The Commission may refuse to issue an end-use control document, 1) if there is a reason to believe that the goods may be unlawfully used, diverted from their original destination or re-exported from Estonia; 2) if false information or documents were knowingly submitted; 3) if the import of strategic goods endangers or may endanger the interests or security of Estonia; 4) if within five years before the

¹⁵⁶ Article 16, paragraph 1 of the Strategic Goods Act.

¹⁵⁷ Article 16, paragraph 2 of the Strategic Goods Act.

¹⁵⁸ Article 17, paragraph 1 of the Strategic Goods Act.

¹⁵⁹ Article 17, paragraph 2 of the Strategic Goods Act.

¹⁶⁰ Article 19, paragraph 1 of the Strategic Goods Act.

¹⁶¹ Article 22 of the Strategic Goods Act.

¹⁶² Article 23, paragraph 1 of the Strategic Goods Act.

¹⁶³ Article 25 of the Strategic Goods Act.

¹⁶⁴ Article 26 of the Strategic Goods Act.

¹⁶⁵ Article 29 of the Strategic Goods Act.

decision to issue the end-use control document, the applicant has violated legislation relating to the import, export and transit of strategic goods or a precept issued on the basis thereof; 5) if within five years before the decision to issue the end-use control document, the applicant has violated an international sanction; 6) if misdemeanour or criminal proceedings have commenced concerning the applicant.¹⁶⁶ The Strategic Goods Act also prescribes the criteria, when the end-use control document may be revoked.¹⁶⁷ The term of an end-use control document shall be six months.¹⁶⁸

The Strategic Goods Act prescribes brokering, defining that a broker may engage in brokering after having been entered in the state register of brokers of military goods. For each brokering transaction, an individual licence is required.¹⁶⁹

Control over the import, export and transit of strategic goods is exercised by the Tax and Customs Board. Control over services related to military goods is exercised by the Security Police Board.¹⁷⁰ The supervisory control over the activities of the Strategic Goods Commission is exercised by the Government of the Republic.¹⁷¹

4.3. Government (State) policy on outsourcing of armed forces

The Parliament of Estonia has a monopoly over their National Armed Forces. The Riigikogu (Parliament) shall ratify and denounce treaties of the Republic of Estonia by which the Republic of Estonia assumes military or proprietary obligations.¹⁷² The Riigikogu shall on the proposal of the President of the Republic, declare a state of war, shall order mobilization and demobilization, and shall decide on the utilisation of the armed forces in the fulfilment of the international obligations of the Estonian state. It would also include the decision on the deployment of PMCs/PSCs abroad alongside with the National Armed Forces. In case of aggression against the Republic of Estonia, the President of the Republic shall declare a state of war, shall order mobilization, and shall appoint the Commander-in-Chief of the Armed Forces without waiting for a Riigikogu resolution.¹⁷³ Thereby, the regulation of armed force in Estonia is within the sole competence of the Parliament.

The Constitution of the Republic of Estonia establishes that the State President is the supreme commander of the national defence of Estonia.¹⁷⁴ The State President also makes proposals to the Riigikogu (Parliament) to declare a state of war, to order mobilization and demobilization, and declares a state of emergency,¹⁷⁵ as well as declares, in the case of aggression against Estonia, a state of war, orders mobilization and appoints Commander-in-Chief of the Armed Forces.¹⁷⁶ The Constitution of the Republic of Estonia stipulates that the State Emergency Act, the Peace-Time National

¹⁶⁶ Article 33 of the Strategic Goods Act.

¹⁶⁷ Article 34 of the Strategic Goods Act.

¹⁶⁸ Article 35 of the Strategic Goods Act.

¹⁶⁹ Article 39 of the Strategic Goods Act.

¹⁷⁰ Article 47 of the Strategic Goods Act.

¹⁷¹ Article 48, paragraph 1 of the Strategic Goods Act.

¹⁷² Article 121, point 4 of the Constitution of the Republic of Estonia.

¹⁷³ Article 128 of the Constitution of the Republic of Estonia.

¹⁷⁴ Article 78, point 16 of the Constitution of the Republic of Estonia.

¹⁷⁵ Article 78, point 17 of the Constitution of the Republic of Estonia.

¹⁷⁶ Article 78, point 18 of the Constitution of the Republic of Estonia.

Defence Act and the War-Time National Defence Act may be passed and amended only by a majority of the Riigikogu (Parliament).¹⁷⁷

The Peace-Time National Defence Act¹⁷⁸ establishes that the Government of the Republic establishes, by a regulation, the national military strategy on the proposal of the Minister of Defence.¹⁷⁹ The Government also establishes by a regulation the structure of the Defence Forces¹⁸⁰ as well as decides, by an order, on the formation, re-formation, disbanding and location of military units.¹⁸¹ The national military strategy includes the military strategy of the state for elimination of external threat of war, a description of an overall national defence model, resources allocated for national defence purposes, the peace-time and war-time membership of the Defence Forces and the priority directions in increasing of the protective ability. The national military strategy shall be established, based on a proposal of the Minister of Defence, by the Government of the Republic for a period of five years. The Government of the Republic may make amendments to the national military strategy based on a proposal of the Minister of Defence.¹⁸² Thereby, it is also within the Government's competence to decide on the possible employment of PMCs/PSCs abroad in the framework of the national military strategy where the final decision is taken by the Parliament, as established before.

The Defence Forces Service Act¹⁸³ prescribes two types of service in the Defence Forces: active service and reserve service.¹⁸⁴ However, the types of active service are compulsory military service, contractual service and participation in training exercises.¹⁸⁵ Article 8, paragraph 1 of the Defence Forces Service Act prescribes that the Members of the Defence Forces in active service shall be Estonian citizens.

The Defence Forces Service Act establishes that during preparatory service for a specialised position, a candidate for a specialised position shall be prepared for acceptance into contractual service.¹⁸⁶ The duration of preparatory service for specialised positions shall be up to six months and it shall consist of military and practical training.¹⁸⁷

The Defence Forces Service Act prescribes the engagement in alternative service. Persons in alternative service shall not against their will be required to handle weapons or other means of warfare, use them or participate in the maintenance thereof,

¹⁷⁷ Article 104, point 16 and 17 of the Constitution of the Republic of Estonia.

¹⁷⁸ The Peace-Time National Defence Act (*Rahuaja Riigikaitse seadus*) of 12 June 2002. The English version is available at: <<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X90030&keel=en&pg=1&ptyyp=RT&tyyp=X&query=rahuaja+riigikaitse+seadus>>.

¹⁷⁹ Article 5, paragraph 2, point 2 of the Peace-Time National Defence Act.

¹⁸⁰ Article 5, paragraph 2, point 5 of the Peace-Time National Defence Act.

¹⁸¹ Article 5, paragraph 2, point 6 of the Peace-Time National Defence Act.

¹⁸² Article 27, paragraph 1 and 2 of the Peace-Time National Defence Act.

¹⁸³ The Defence Forces Service Act (*Kaitseväeteenistuse seadus*) of 14 March 2000. The English version is available at: <<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40039K10&keel=en&pg=1&ptyyp=RT&tyyp=X&query=kaitsev%E4eteenistuse+seadus>>.

¹⁸⁴ Article 2, paragraph 2 of the Defence Forces Service Act.

¹⁸⁵ Article 2, paragraph 3 of the Defence Forces Service Act.

¹⁸⁶ Article 15² paragraph 1 of the Defence Forces Service Act.

¹⁸⁷ Article 15² paragraph 3 of the Defence Forces Service Act.

or handle other means and substances which are intended for the extermination or injury of persons.¹⁸⁸ The remuneration is paid to a person in alternative service from the agency in which the person is in service according to the position.¹⁸⁹ On the basis of an application of a person in alternative service, the Defence Forces service commission may transfer the person in alternative service to compulsory military service.¹⁹⁰ One of the reasons for which a person in alternative service shall be released is that he cannot continue to perform the conscript service obligation in alternative service because he is serving a sentence imposed for an intentionally committed criminal offence.¹⁹¹

The Defence Forces Service Act prescribes contractual service. A citizen of Estonia may be employed in contractual service as a regular member of the Defence Forces if: 1) he or she has attained at least 18 years of age; 2) he or she has required qualifications, education and military training; 3) he or she is proficient in Estonian to the extent required of a regular soldier, a regular non-commissioned officer or a regular officer; 4) his or her state of health enables him or her to perform his or her duties; 5) his or her physical condition enables him or her to perform his or her duties.¹⁹² A person is not accepted for a contractual service if he or she: 1) is a suspect or the accused in a criminal matter; 2) has been punished for an intentionally committed criminal offence and data concerning his or her punishment are in the punishment register; 3) has been convicted and deprived of the right to work in positions of military rank by a court judgment which has entered into force; 4) has been released from service in the Defence Forces or the police or from public service for a disciplinary offence and if less than one year has passed from the release; 5) receives a pension, remuneration or other regular benefits from a foreign state; 6) has been in the service or an agent of an intelligence or counterintelligence service of a security organisation of a state which has occupied Estonia, or if he or she has participated in persecution or repression of persons because of their political beliefs, disloyalty, social class or service in the state or defence service in the Republic of Estonia.¹⁹³

An active service contract is a written agreement entered into in the name of the Republic of Estonia with a person entering into contractual service, according to which the person entering into contractual service assumes the obligation to serve as a regular member of the Defence Forces and to comply with the conditions and procedure provided for in the Defence Forces Service Act, codes of conduct of the Defence Forces and other legislation; the commander entering into the active contract in the name of the Republic of Estonia and on the basis of the Defence Forces Service Act assumes the obligation to pay remuneration and guarantee other rights of members of the Defence Forces provided for in the Defence Forces Service Act, code of conduct of the Defence Forces and other legislation to the regular member of the Defence Forces during his or her active service.¹⁹⁴

An active service contract is concluded for an unspecified term. With the agreement of the parties, an active service contract may be entered into for a specified

¹⁸⁸ Article 76, paragraph 2 of the Defence Forces Service Act.

¹⁸⁹ Article 76, paragraph 2¹ of the Defence Forces Service Act.

¹⁹⁰ Article 76, paragraph 4 of the Defence Forces Service Act.

¹⁹¹ Article 77, paragraph 2, point 2 of the Defence Forces Service Act.

¹⁹² Article 79, paragraph 1 of the Defence Forces Service Act.

¹⁹³ Article 80 of the Defence Forces Service Act.

¹⁹⁴ Article 82, paragraph 1 of the Defence Forces Service Act.

term.¹⁹⁵ Among the basis for the release from the contractual service is if a person commits a disciplinary offence or if the person is convicted by a judgment of conviction or the person does not meet the requirements for active service.¹⁹⁶ The person can also be released from contractual service due to failure to adhere to restrictions on service. If a regular member of the Defence Forces belongs to a political party or to an organisation or union which possess weapons, or engages in business, works outside the performance of his or her duties or fails to submit a declaration of economic interests, the commander who entered into the contract with him or her shall grant him or her a term of up to ten days during which he or she is required to be adhering to the restrictions on service. A commander with disciplinary authority is required to bring disciplinary action against a regular member of the Defence Forces who fails to adhere to the restrictions on service. A regular member of the Defence Forces, who fails to begin adhering to the restrictions on service within the term granted by the commander, shall be released from contractual service due to the commission of a disciplinary offence.¹⁹⁷

In addition, a reservist, who complies with the requirements for entry into contractual service shall be assigned on the basis of hot reserve contract entered into with him or her, to the hot reserve which is formed in order to perform the functions of a unit intended for insurance of the high state of readiness of the Defence Forces and the international obligations of the Estonian state.¹⁹⁸

There is a prohibition for the member of the Defence Forces to belong to an organisation or union which possesses weapons. The prohibition does not apply to membership of the National Defence League or hunters' or sports organisations registered in Estonia.¹⁹⁹

The Defence Forces Service Act establishes that a regular member of the Defence Forces shall not perform remunerative work outside the performance of his or her duties, except in a teaching or research position with a workload agreed upon with his or her immediate superior, if such work does not hinder the performance of his or her duties.²⁰⁰

The Defence Forces Service Act stipulates that a member of the Defence Forces is required to compensate to the state for damage wrongfully caused as a result of a breach of duties.²⁰¹ Compensation paid by state for damage caused to a third party as a result of a breach of duties by a member of the Defence Forces is also damage caused by a member of the Defence Forces.²⁰²

¹⁹⁵ Article 83, paragraph 1 of the Defence Forces Service Act.

¹⁹⁶ Article 108, paragraph 1 of the Defence Forces Service Act.

¹⁹⁷ Article 118 of the Defence Forces Service Act.

¹⁹⁸ Article 129¹, paragraph 1 of the Defence Forces Service Act.

¹⁹⁹ Article 182 of the Defence Forces Service Act.

²⁰⁰ Article 184, paragraph 1 of the Defence Forces Service Act.

²⁰¹ Article 187, paragraph 1 of the Defence Forces Service Act.

²⁰² Article 187, paragraph 2 of the Defence Forces Service Act.

5. Corporate law

5.1 Registration and purpose

The Commercial Code²⁰³ makes a classification that an undertaking may be a natural person or a company. Companies are further divided into types of general partnership, limited partnership, private limited company, public limited company or commercial association.²⁰⁴ A company shall be entered into the commercial register.²⁰⁵

Any natural person may be a sole proprietor that also has to be entered in the commercial register at his or her request.²⁰⁶ Before that he or she is under an obligation to register with the Tax and Customs Board as a taxpayer pursuant to the Value Added Tax Act. In this respect, the registration of PMCs/PSCs as taxpayers may be a relevant factor to determine whether its employees are sent abroad and remunerated for the services provided that are subjected to the payment of tax by the PMCs/PSCs as taxpayers.

The Commercial Code specifically prescribes that an undertaking may operate in areas of activity in which the operation is not prohibited by law.²⁰⁷ The Commercial Code also stipulates that for certain activities a licence may be required.²⁰⁸ This would comprise the instances of provision of private military and private security services.

The Commercial Code establishes that upon entry into the commercial register an undertaking shall specify its planned principal activity and keep the register informed of any changes to the principal activity. A company required to submit annual reports to the commercial register shall specify its activities for the preceding accounting year and the activities planned for the following accounting year in its annual report and need not give the register separate notice of such changes.²⁰⁹ Upon notification the commercial register of activities and specification of activities in annual reports, the Classification of Economic Activities, EMTAK, is used.

The Minister of Justice is responsible for the establishment of the Classification of Economic Activities by a Regulation. The Minister of Justice may determine the level of classification to be used upon giving the commercial register notice of activities and upon specifying activities in annual reports.²¹⁰

Entries in the commercial register are public. Everyone has the right to examine the card register and the business files, and to obtain copies of registry cards and of documents in the business files.²¹¹

The General Principles of the Civil Code Act²¹² determines that the basis for compulsory dissolution of a legal person may be: 1) if the objective or activities of the

²⁰³ The Commercial Code (*Äriseadustik*) of 15 February 1995. The English version is available at: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0001K17&keel=en&pg=1&ptyyp=RT&tyyp=X&query=%C4riseadustik>.

²⁰⁴ Article 2, paragraph 1 of the Commercial Code.

²⁰⁵ Article 2, paragraph 2 of the Commercial Code.

²⁰⁶ Article 3 of the Commercial Code.

²⁰⁷ Article 4, paragraph 1 of the Commercial Code.

²⁰⁸ Article 4, paragraph 2 of the Commercial Code.

²⁰⁹ Article 4, paragraph 5 of the Commercial Code.

²¹⁰ Article 4, paragraph 6 of the Commercial Code.

²¹¹ Article 28, paragraph 1 of the Commercial Code.

legal person are contrary to the constitutional order, law or good morals; 2) if the law was violated upon the foundation of the legal person; 3) if the articles of association of the legal person are contrary to law to a significant extent; 4) if the legal person does not comply with the requirements established by law for the legal person; 5) on another basis provided by law.²¹³ This would also include violations of human rights and international humanitarian law among the basis when a legal person may be dissolved. Moreover, in case of compulsory dissolution of a legal person on the ground that its objective or activities are contrary to the Criminal Code, the constitutional order or good morals, the assets of the legal person remaining after satisfaction of the claims of creditors shall be transferred to the state.²¹⁴

6. Labour Law

6.1. Employment

In Estonia, the Employment Contracts Act²¹⁵ does not provide specific provisions regarding providing private military or private security services.

The Employment Contracts Act prescribes that an employment contract is an agreement between an employee and an employer under which the employee undertakes to work for the employer in subordination to the management and supervision of the employer, and the employer undertakes to remunerate the employee for such work and to provide the working conditions prescribed in the agreement between the parties, a collective agreement, law or administrative legislation.²¹⁶

The Employment Contracts Act provides specific cases when it is possible to transfer of conditions of employment contract in the event of change of employer. They include 1) the case of merger, division or transformation of employers that are legal persons; 2) cases where the functions of a body administered by an administrative agency are fully or partially transferred to another person, if after the transfer the same or similar activities are continued; 3) in case a business entity operating in commerce or for other purposes, or an organisationally independent part thereof, is transferred from one person to another on any legal basis, if after the transfer the same or similar activities are continued.²¹⁷

There is a prohibition to terminate the employment contract in case of a change of employer. However, it does not affect the right of an employer to terminate an employment contract on another basis.²¹⁸

With respect to liability the former employer is liable for the obligations arising out of the employment contracts that are in force at and fall due by the time of change of

²¹² The General Principles of the Civil Code Act of 18 November 1996. The English version is available at: <<http://www.legaltext.ee/text/en/X0015.htm>>.

²¹³ Article 49, paragraph 1 of the General Principles of the Civil Code Act.

²¹⁴ Article 49, paragraph 2 of the General Principles of the Civil Code Act.

²¹⁵ The Employment Contracts Act (*Töölepingu seadus*) of 15 April 1992. The English version is available at: <<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1056K10&keel=en&pg=1&ptyyp=RT&tyyp=X&query=t%F6%F6lepingu+seadus+>>>.

²¹⁶ Article 1 of the Employment Contracts Act.

²¹⁷ Article 6 of the Employment Contracts Act.

²¹⁸ Article 6¹ of the Employment Contracts Act.

employer. However, the former and the new employer are jointly and severally liable for the obligations arising from the employment contracts in force at the time of the change of employer that have been created prior to the change of employer and fall due during one year as of the change of employer.²¹⁹ There is an obligation for the former and the new employer to submit to the representatives of the employees all the relevant information, including the reasons for the change of employer, the legal, economic and social implications of the change of employer for the employees.²²⁰

The Employment Contracts Act is not applicable to the active service in the armed forces.²²¹ It also does not apply to the relationship of directors of bodies of legal persons or Estonian branches of foreign companies, and members of administrative boards of state enterprises with legal persons, Estonian branches of foreign companies or state enterprises.²²²

In case of a dispute over the nature of a contract, the parties are deemed to have entered into an employment contract unless the alleged employer proves otherwise or unless it is evident that the parties entered into a different kind of contract.²²³

In case the parties enter into an employment contract in order to conceal another transaction, the provisions pertaining to the transaction which the parties actually intended apply.²²⁴

The Employment Contracts Act prohibits discrimination on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political opinions or membership in a political party or religious or other beliefs.²²⁵ Further an employee or a person applying for employment against whom the employer discriminated on any of the grounds has the right to demand from the employer compensation for the proprietary and non-proprietary damage caused by the discrimination.²²⁶ The Employment Contracts Acts establishes that part-time workers shall not be treated in a less favourable manner in an employment relationship than comparable full-time workers unless different treatment is justified an objective grounds arising from the law or collective agreement.²²⁷

Citizens of foreign states and stateless persons who reside in Estonia permanently have rights pertaining to employment equal to those of Estonian citizens unless otherwise prescribed by law.²²⁸

The rights granted to employees by law or administrative legislation may be extended by collective agreements or employment contracts, or by unilateral decisions of employers.²²⁹

²¹⁹ Article 6² of the Employment Contracts Act.

²²⁰ Article 6³ of the Employment Contracts Act.

²²¹ Article 7, point 3 of the Employment Contracts Act.

²²² Article 7, point 10 of the Employment Contracts Act.

²²³ Article 8 of the Employment Contracts Act.

²²⁴ Article 9 of the Employment Contracts Act.

²²⁵ Article 10, point 3 of the Employment Contracts Act.

²²⁶ Article 10³ point 1 of the Employment Contracts Act.

²²⁷ Article 13¹ of the Employment Contracts Act.

²²⁸ Article 13, point 1 of the Employment Contracts Act.

The Employment Contracts Act prescribes that the employment contract terms, which are less favourable to employees than those prescribed by law, administrative legislation or a collective agreement are invalid.²³⁰ Also terms prescribed by unilateral decisions of employers which are less favourable to employees than those prescribed by law, administrative legislation, collective agreements or employment contracts are invalid.²³¹

The unilateral amendment, suspension, termination or cancellation of an employment contract is permitted only under the conditions and pursuant to the procedures provided by law, a collective agreement or the employment contract.²³²

The employers are under obligation to maintain an employment record book for all employees who are employed in a principal job.²³³ It is possible to determine whether the employee is employed in a second job, as at the request of an employee the information on the duration of employment in a second job or at the workplace of another employer may be recorded.²³⁴

The Employment Contracts Act also prescribes the primacy of international law over national law stating that if an Act, administrative legislation, collective agreement, employment contract or unilateral decision of an employer is contrary to an international agreement binding on Estonia, the international agreement applies.²³⁵

If the term of an employment contract is not specified, the employment contract is deemed to have been entered into for an unspecified term.²³⁶

The form of the employment contract is written. However, an oral employment contract may be entered into only for employment for a term of less than two weeks.²³⁷

Permitting an employee to commence work is equivalent to entering into an employment contract, regardless of whether the employment contract has been formalised. In such a case, the employment contract is formalised in writing with the terms, which actually applied.²³⁸ The employers bear administrative liability for failure to formalise or for unsatisfactory formalisation of employment contracts.²³⁹

There is an obligation of registration of employment contracts. If an employer is a natural person, the employer is required to register a written employment contract within one week after the date that an employee commences employment with the labour inspectorate of the employer's place of residence. Employers bear administrative liability for failure to register employment contracts.²⁴⁰

²²⁹ Article 14, point 1 of the Employment Contracts Act.

²³⁰ Article 15 of the Employment Contracts Act.

²³¹ Article 16 of the Employment Contracts Act.

²³² Article 18 of the Employment Contracts Act.

²³³ Article 20, paragraph 2 of the Employment Contracts Act.

²³⁴ Article 20, paragraph 4, point 3 and 4 of the Employment Contracts Act.

²³⁵ Article 25 of the Employment Contracts Act.

²³⁶ Article 27, paragraph 3 of the Employment Contracts Act.

²³⁷ Article 28, paragraph 1 of the Employment Contracts Act.

²³⁸ Article 28, paragraph 2 of the Employment Contracts Act.

²³⁹ Article 28, paragraph 3 of the Employment Contracts Act.

²⁴⁰ Article 31 of the Employment Contracts Act.

If an employer prohibits an employee who has entered into an employment contract from working, the employee may demand by a court proceeding performance of the employment contract and for payment of agreed wages for the period of compelled absence from work, or compensation for refusal to perform the employment contract in the amount of three months' agreed wages.²⁴¹

Among the reciprocal duties of employers and employees the Employment Contracts Act mentions the duty to refrain from activities which endanger the property of the other party and ensure that the property of third parties is not endangered by the work.²⁴²

As the duty of employer the Employment Contracts Act stipulates that it is to provide employees with the work agreed on, and give necessary instructions clearly and in a timely manner.²⁴³ Among the duties of the employee the Employment Contracts Act mentions the duty to comply with legal instructions of the employer in a timely manner and precisely, duty to refrain from actions at the workplace of the employer which hinder other employees from performing their duties or endanger the property of other employees or third parties, duty to promptly notify the employer of impediments to work or of the threat thereof and, if possible, eliminate such impediments or threat without special instruction, duty to maintain business and production secrets of the employer and not compete with the employer, including not working for a competitor of the latter without the permission of the employer, if such duties are prescribed by the employment contract.²⁴⁴

There is an obligation for the employers to perform their duties personally or through persons who have been authorised for this purpose. Also employees are under the obligation to perform their duties personally. Employees performing home work may use the assistance of third parties with the permission of the employer. Employees bear the risk for damage caused to the employer by such third parties.²⁴⁵

The Employment Contracts Act regulates the suspension of employment contract. It means a temporary relief of an employee from the duty to perform work and a temporary relief of an employer from the duty to provide an employee with work.²⁴⁶ Among the basis, when a suspension of an employment contract may take place, is during the time that the employer illegally requires the employee to perform other work and the employee refuses to perform such work, or during the time that the employee is under arrest or in custody, or for the period of a disciplinary procedure, or during the time that the employee is suspended from work by a state body or official authorised to do so by law or in other cases when the employee is temporarily released from performance of his or her duties on the bases prescribed by law.²⁴⁷

Employers enjoy the right temporarily to transfer employees to other positions for the following reasons: for the prevention of a natural disaster or industrial accident or the expeditious elimination of the consequences thereof; for the prevention of an accident, work stoppage, or destruction of or damage to the property of the employer;

²⁴¹ Article 38 of the Employment Contracts Act.

²⁴² Article 48, paragraph 1, point 3 of the Employment Contracts Act.

²⁴³ Article 49 point 1 of the Employment Contracts Act.

²⁴⁴ Article 50 of the Employment Contracts Act.

²⁴⁵ Article 52 of the Employment Contracts Act.

²⁴⁶ Article 54 of the Employment Contracts Act.

²⁴⁷ Article 55 of the Employment Contracts Act.

for the replacement of an employee who is temporarily absent or in other extraordinary cases.²⁴⁸ If the employer illegally transfers an employee to another position or amends other terms of the employment contract, the employee has the right to demand reinstatement in his or her former position, restoration of other working conditions agreed on and payment of wages which were not received until the elimination of such violations. If due to his or her own fault, an employee fails to comply with legal instructions of the employer regarding transfer to another position, he or she is required to compensate the employer for damage caused thereby, but for not more than the amount of his or her one month's average wages.²⁴⁹

The bases for the termination of an employment contract are the following: by agreement of the parties; upon expiry of the term; on the initiative of the employee; on the initiative of the employer; at the request of third parties or in circumstances which are independent of the parties.²⁵⁰ Among the bases for the termination of an employment contract on the initiative of an employer is the breach of duties of an employee and the loss of trust in an employee.²⁵¹ Apart from that an employment contract is terminated upon the entry into force of a conviction by a court which imposes a criminal punishment on an employee which makes it impossible for him or her to continue his or her current employment.²⁵²

An employment contract may be terminated prior to commencement of employment by agreement of the parties, or on the initiative of the employee or employer.²⁵³ By agreement of the parties, an employment contract may be cancelled for any reason.²⁵⁴ An employee may cancel his or her employment contract if commencement of employment is hindered due to his or her conscription or entry into active service in the armed forces or alternative service.²⁵⁵ However, an employer may cancel an employment contract if *inter alia* the employer is taken into custody or a conviction of a court has entered into force regarding the employer, by which a criminal punishment was imposed on the employer, which makes it impossible for the employer to act as an employer.²⁵⁶

6.2. Fixed-term workers

The Employment Contracts Act prescribes that fixed-term workers shall not be treated in a less favourable manner in an employment relationship than comparable permanent workers unless different treatment is justified on objective grounds arising from the law or collective agreement.²⁵⁷ The term for the fixed-term contracts is fixed by a specific date or by completion of the work, but not longer than for five years.²⁵⁸

²⁴⁸ Article 65, paragraph 2 of the Employment Contracts Act.

²⁴⁹ Article 69 of the Employment Contracts Act.

²⁵⁰ Article 71 of the Employment Contracts Act.

²⁵¹ Article 86 of the Employment Contracts Act.

²⁵² Article 112 of the Employment Contracts Act.

²⁵³ Article 120 of the Employment Contracts Act.

²⁵⁴ Article 121, paragraph 1 of the Employment Contracts Act.

²⁵⁵ Article 122, paragraph 1, point 3 of the Employment Contracts Act.

²⁵⁶ Article 123, paragraph 1 of the Employment Contracts Act.

²⁵⁷ Article 13² point 2 of the Employment Contracts Act.

²⁵⁸ Article 27, paragraph 1, point 2 of the Employment Contracts Act.

The Employment Contracts Act prescribes that an employment contract may be entered into a fixed term contract for the following reasons: 1) for completion of a specific task; 2) for replacement of an employee who is temporarily absent; 3) for a temporary increase in work volume; 4) for performance of seasonal work; 5) if the employment contract prescribes special benefits (training at the expense of the employer, waiver by the employer of termination of the employment contract due to a lay-off of the employee); 6) in cases prescribed by law or by regulations of the Government of the Republic.²⁵⁹

6.3. *Contracts of service*

The Employment Contracts Act does not apply to the work done on the basis of a contract of service. Contracts of service are regulated by a specific Act.²⁶⁰ The Law of Obligations Act²⁶¹ prescribes that by a contract for services, one person (the contractor) undertakes to manufacture or modify a thing or to achieve any other agreed result by providing service (work), and the other person (the customer) undertakes to pay the remuneration.²⁶² A customer is required to accept completed work if the delivery of the work had been agreed upon or is usual due to the nature of the work. Work is also deemed to have been accepted if the customer fails, without legal basis, to accept the completed work during a reasonable term granted by the contractor to the customer therefore.²⁶³ A budget for the work, which may be binding on the contractor or not, may be agreed in the contract of services. It is presumed that the budget is binding unless agreed otherwise. In the event of a significant overdraft of a budget which is not a binding budget, the contractor may demand that remuneration be paid in the amount exceeding the amount prescribed in the budget unless the overdraft was foreseeable. In such case, the contractor shall immediately notify the customer of the significant overdraft. In the case of failure to notify, the contractor has the right to demand that the amount exceeding that prescribed in the budget be paid only to the extent to which the customer was unjustifiably enriched as a result of the overdraft.²⁶⁴ The customer shall pay the contractor for work performed also in the case where the work was accidentally destroyed or damaged after the risk of accidental loss of or damage to the thing had passed to the customer. A contractor shall bear the risk of accidental loss or damage until the completion of the work. If acceptance of the work by a customer has been agreed upon or if this is usual, the contractor shall bear the risk of accidental loss or damage until the work has been accepted or is deemed to have been accepted.²⁶⁵

The Law of Obligations Act determines the instances, when the work is not in conformity with the contract: the work does not have the agreed qualities; in the absence of an agreement concerning the qualities of the work, the work is not fit for the specific purpose for which the customer needs it and of which the contractor was aware or ought

²⁵⁹ Article 27, paragraph 2 of the Employment Contracts Act.

²⁶⁰ Article 7, point 7 of the Employment Contracts Act.

²⁶¹ The Law of Obligations Act (*Võlaõigusseadus*) of 26 September 2001. The English version is available at:
<[http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=V%F5la%F5igusseadus+](http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=V%F5la%F5igusseadus+>)>.

²⁶² Article 635 of the Law of Obligations Act.

²⁶³ Article 638 of the Law of Obligations Act.

²⁶⁴ Article 639 of the Law of Obligations Act.

²⁶⁵ Article 640 of the Law of Obligations Act.

to have been aware at the time of entry into the contract if the customer could reasonably have expected to be able to rely on the professional skills or expertise of the contractor, and in other cases for the purpose for which work of the same description would ordinarily be used; the use of the work is hindered by provisions of legislation of which the contractor was aware or ought to have been aware at the time of entry into the contract; third parties have claims or other rights which they may submit with respect to the work; under a consumer contract for services, the work is not of the quality which is usual for such type of work and which the customer may reasonably have expected based on the nature of the work and considering the declarations made publicly by the contractor with respect to the particular qualities of the work, in particular in advertising the work or on labels, unless the contractor proves that the declarations had been modified by the time of entry into the contract or that the declarations did not affect entry into the contract. The contractor is not liable for the non-conformity of work resulting from the instructions provided by the customer, defects in the material supplied by the customer or preliminary work performed by third parties if the contractor had sufficiently checked the instructions of the customer, the materials or the preliminary work.²⁶⁶

With respect to the liability of the contractor, the contractor is liable for the lack of conformity of work at the time when the risk of accidental loss or damage passes to the customer even if the lack of conformity only becomes evident later. Under a consumer contract for services, the contractor is liable for the lack of conformity of work at the time of delivery of the work to the consumer even if the passing of the risk of accidental loss or damage was agreed at an earlier date. Under a consumer contract for services, the contractor is liable for any lack of conformity of work which becomes evident within two years as of the delivery of the work to the consumer. Under a consumer contract for services, it is presumed that any lack of conformity which becomes evident within six months as of the date of delivery of the work to the customer already existed before delivery of the work, unless such presumption is contrary to the nature of the work or lack of conformity. The contractor is also liable for the lack of conformity of work which occurs after the risk of accidental loss or damage to the thing passes to the customer if the lack of conformity of the work arises from a violation of the obligations of the contractor.²⁶⁷

7. Government procurement policy and PMCs

Should the Estonian Parliament or Government decide on hiring PMCs/PSCs abroad, the Estonian Public Procurement Act of 24 January 2007²⁶⁸ would be applicable.

8. Criminal responsibility

8.1. Mercenary activity

The mercenary activity is not prohibited by the Estonian law as such. Estonia is not a Party to the 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.

²⁶⁶ Article 641 of the Law of Obligations Act.

²⁶⁷ Article 642 of the Law of Obligations Act.

²⁶⁸ The English version is available at: <<http://www.legaltext.ee/text/en/XXX0005.htm>>.

The Law on Citizenship²⁶⁹ of Estonia prescribes the conditions on refusal to grant or restore the Estonian citizenship. The Law on Citizenship puts the following conditions among the cases when Estonian citizenship shall not be granted or resumed by a person: if the person does not observe the constitutional state system of Estonia and does not observe the Estonian laws; if the person has acted against the state of Estonia and its security; if a person has been employed or is currently **employed by the intelligence or security service of a foreign state**; if the person has served as a **professional member of the armed forces of a foreign state or who has been assigned to the reserve forces thereof or has retired therefrom**, and nor shall Estonian citizenship be granted to or resumed by his or her spouse who entered Estonia due to a member of the armed forces being sent into service, the reserve or into retirement.²⁷⁰

In addition, the Law on Citizenship states that the Estonian citizenship may be resumed by or granted to a person who has retired from the armed forces of a foreign state, who has been married to a person who has acquired Estonian citizenship by birth for no less than five years, if such marriage has not been divorced.²⁷¹

The Law on Citizenship establishes the conditions when Estonian citizenship may be deprived by an order of the Government of the Republic. Among them the Law mentions the fact that a person has entered state public service or **military service of a foreign state** as an Estonian citizen without permission from the Government of the Republic and if a person has joined the **intelligence or security service of a foreign state or foreign organisation which is armed or militarily organised or engaged in military exercises**.²⁷²

8.2. Individual criminal responsibility

The Penal Code²⁷³ specifically prescribes jurisdiction for the members of the Defence Forces stating that the penal law of Estonia applies to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and the offender is a member of the Defence Forces performing his or her duties.²⁷⁴ The Penal Code also prescribes universal jurisdiction stating that regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to an act committed outside the territory of Estonia if the illegality of the act arises from an international agreement binding on Estonia.²⁷⁵

Among the punishments the court may deprive a convicted offender of the right to work in a certain position or operate in a certain area of activity for up to three years, if the person is convicted of a criminal offence relating to abuse of professional or

²⁶⁹ The Law on Citizenship of 19 January 1995. The English version is available at: <<http://www.uta.edu/cpsees/estoncit.htm>>.

²⁷⁰ Article 21, paragraph 1 of the Law on Citizenship.

²⁷¹ Article 21, paragraph 2 of the Law on Citizenship.

²⁷² Article 28, paragraph 1 of the Law on Citizenship.

²⁷³ The Penal Code (*Karistusseadustik*) of 6 June 2001. The English version is available at: <<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30068K8&keel=en&pg=1&ptyyp=RT&tyyp=X&query=karistusseadustik>>.

²⁷⁴ Article 7, paragraph 2 of the Penal Code.

²⁷⁵ Article 8 of the Penal Code.

official status or violation of official duties.²⁷⁶ Also a court may deprive a convicted offender for up to five years of the right to acquire, store, supply or carry weapons or ammunition if the person is convicted of a criminal offence relating to holding or use of weapons or ammunition.²⁷⁷

As one of the aggravating circumstances the Penal Code mentions the commission of the offence during a state of emergency or state of war.²⁷⁸

Crimes against humanity and war crimes shall be punishable regardless of the time of commission of the offence.²⁷⁹

The Penal Code prescribes criminal responsibility for crimes against humanity,²⁸⁰ stating that the systematic or large-scale deprivation or restriction of human rights and freedoms, instigated or directed by a state, organisation or group, or killing, torture, rape, causing health damage, forced displacement, expulsion, subjection to prostitution, unfounded deprivation of liberty or other abuse of civilians is punishable.

The Penal Code also criminalizes genocide,²⁸¹ aggression,²⁸² war crimes²⁸³ and propaganda for war.²⁸⁴ The Penal Code prescribes that propaganda for war can be committed also by a legal person.²⁸⁵

Regarding war crimes the Estonian Penal Code stipulates that the offences committed in war time, which are not provided for in the division 'War Crimes' are punishable on the basis of other provisions of the Special Part of the Code. Also a person who commits an offence provided for in the division 'War Crimes' shall be punished only for the commission of a war crime even if the offence comprises the necessary elements of other offences provided for in the Special Part of the Code.

A separate crimes division 'War Crimes' of the Penal Code criminalizes acts of war against civilian population,²⁸⁶ illegal use of means of warfare against civilians,²⁸⁷ attacks against civilians,²⁸⁸ unlawful treatment of prisoners of war or interned civilians,²⁸⁹ attacks against prisoners of war or interned civilians,²⁹⁰ refusal to provide assistance to sick, wounded or shipwrecked persons,²⁹¹ attack against combatant hors de combat,²⁹² attacks against protected persons,²⁹³ use of prohibited weapons,²⁹⁴

²⁷⁶ Article 49 of the Penal Code.

²⁷⁷ Article 51 of the Penal Code.

²⁷⁸ Article 58, point 5 of the Penal Code.

²⁷⁹ Article 5, paragraph 4 of the Penal Code.

²⁸⁰ Article 89 of the Penal Code.

²⁸¹ Article 90 of the Penal Code.

²⁸² Article 91 of the Penal Code.

²⁸³ Article 94 of the Penal Code.

²⁸⁴ Article 92 of the Penal Code.

²⁸⁵ Article 92, paragraph 1 of the Penal Code.

²⁸⁶ Article 95 of the Penal Code.

²⁸⁷ Article 96 of the Penal Code.

²⁸⁸ Article 97 of the Penal Code.

²⁸⁹ Article 98 of the Penal Code.

²⁹⁰ Article 99 of the Penal Code.

²⁹¹ Article 100 of the Penal Code.

²⁹² Article 101 of the Penal Code.

environmental damage as method of warfare,²⁹⁵ exploitative abuse of emblems and marks designating international protection,²⁹⁶ attacks against non-military objects,²⁹⁷ attacks against cultural property,²⁹⁸ destruction or illegal appropriation of property in war zone or occupied territory,²⁹⁹ and pillage.³⁰⁰

The Penal Code criminalizes manufacture and distribution of prohibited weapons³⁰¹ and violation of measures necessary for application of international sanction.³⁰² The Penal Code prescribes that these acts can be committed by legal persons.

8.3. *Command responsibility and PMCs*

The Defence Forces Service Act prescribes that it is prohibited to issue a command which: 1) is in conflict with law; 2) exceeds the authority corresponding to the position of the issuer of the command; 3) requires acts which the recipient of the command does not have the right to perform; 4) would result in unjustified moral or material damage; 5) is unduly dangerous to the life and health of a person.³⁰³ It also establishes that if the recipient of a command has to violate law or his or her duties expressly in order to execute the command, he or she shall immediately notify the issuer of the command thereof. If the issuer of the command subsequently repeats the command, the recipient of the command shall refuse to execute the command. He or she shall immediately report the refusal to his or her immediate superior. If the command was issued by his or her immediate superior, the recipient shall immediately report the refusal to the superior of the superior who issued the command.³⁰⁴

The Penal Code prescribes that for an offence provided in Chapter 8 ‘Offences Against Humanity and International Security’, the representative of state powers or the military commander who issued the order to commit the offence, consented to the commission of the offence or failed to prevent the commission of the offence although it was in his or her power to do so shall also be punished in addition to the principal offender.³⁰⁵ The Penal Code also establishes that the commission of an offence provided for in Chapter 8 ‘Offences Against Humanity and International Security’ pursuant to the order of a representative of state powers or a military commander shall not preclude punishment of the principal offender.³⁰⁶

²⁹³ Article 102 of the Penal Code.

²⁹⁴ Article 103 of the Penal Code.

²⁹⁵ Article 104 of the Penal Code.

²⁹⁶ Article 105 of the Penal Code.

²⁹⁷ Article 106 of the Penal Code.

²⁹⁸ Article 107 of the Penal Code.

²⁹⁹ Article 108 of the Penal Code.

³⁰⁰ Article 109 of the Penal Code.

³⁰¹ Article 93 of the Penal Code.

³⁰² Article 93¹ of the Penal Code.

³⁰³ Article 179, paragraph 1 of the Defence Forces Service Act.

³⁰⁴ Article 179, paragraph 2 of the Defence Forces Service Act.

³⁰⁵ Article 88, paragraph 1 of the Penal Code.

³⁰⁶ Article 88, paragraph 2 of the Penal Code.

As long as the employees of PMCs/PSCs are acting under the military command and military commander of the National Armed Forces taking a direct part in the hostilities, the military commander shall be responsible for the acts of the employees of PMCs/PSCs.

8.4. Criminal responsibility and companies

Article 14 of the Penal Code prescribes liability of legal persons stating that in the cases provided by law, a legal person shall be held responsible for an act, which is committed by a body or senior official thereof in the interest of the legal person.³⁰⁷ Prosecution of a legal person does not preclude prosecution of the natural person who committed the offence.³⁰⁸ Legal persons with passive legal capacity are capable of guilt.³⁰⁹

Regarding punishment, in case of a legal person, the court may impose a pecuniary punishment of fifty thousand to two hundred and fifty million kroons on the legal person. A pecuniary punishment may be imposed on a legal person also as a supplementary punishment together with compulsory dissolution.³¹⁰

A court may impose the compulsory dissolution on a legal person who has committed a criminal offence if commission of criminal offences has become part of the activities of the legal person.³¹¹ A court or an extra-judicial body may impose a fine of five hundred kroons up to five hundred thousand kroons on a legal person who commits a misdemeanour.³¹² For legal persons the court may impose a supplementary punishment a deprivation of the right to process state secrets and classified information of foreign states.³¹³

9. Commercial law/civil liability

9.1. Choice of law and forum

As to the jurisdiction, the Estonian law does not expressly provide for jurisdiction in which the possible dispute regarding the claims of violations of law by the PMCs/PSCs shall be settled. The Private International Law Act³¹⁴ does not exclude the possibility of the parties to the contract to agree on the particular jurisdiction. The issue of ‘forum-shopping’ might arise, as the jurisdiction might depend on the subject-matter of the claim.

As to the applicable law, the General Principles of the Civil Code Act in Part V ‘Private International Law Provisions’ prescribe that the foreign law applies to a legal

³⁰⁷ Article 14, paragraph 1 of the Penal Code.

³⁰⁸ Article 14, paragraph 2 of the Penal Code.

³⁰⁹ Article 37 of the Penal Code.

³¹⁰ Article 44, paragraph 8 of the Penal Code.

³¹¹ Article 46 of the Penal Code.

³¹² Article 47, paragraph 2 of the Penal Code.

³¹³ Article 55, point 1 of the Penal Code.

³¹⁴ The Private International Law Act (*Rahvusvahelise eraõiguse seadus*) of 27 March 2002. The English version is available at: <<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30075&keel=en&pg=1&ptyyp=RT&tyyp=X&query=Rahvusvahelise+era%F5iguse+seadus>>.

relationship if so prescribed by the General Principles of the Civil Code Act, another Estonian law, an international treaty of Estonia, an international custom recognised in Estonia, or by transaction which is not contrary to law, an international treaty or custom.³¹⁵

Regarding *renvoi*, the law prescribes that if the General Principles of the Civil Code Act or other Estonian law prescribe the application of foreign law and the law of that country prescribes the application of Estonian law, the Estonian law applies.³¹⁶ The same principle is stipulated in the Private International Law Act.³¹⁷ However, if the General Principles of the Civil Code Act or another Estonian law prescribe the application of foreign law and the law of that country prescribes the application of the law of a third country, the Estonian law applies.³¹⁸

With respect to the restrictions on the application of foreign law the foreign law does not apply and the rights and obligations arising there from shall not be deemed valid in Estonia if these are contrary to Estonian law, the constitutional order or good morals. In such case the Estonian law applies.³¹⁹

As to the applicable law to legal persons

Upon the foundation of a legal person in Estonia, the Estonian law applies.³²⁰ Article 134 of the General Principles of the Civil Code Act determines that the law of Estonia, where the directing body of a foreign legal person is located applies to the passive legal capacity and active legal capacity of the foreign legal person.³²¹ However, if the main activity of a legal person is not conducted in the country where its directing body is located, the law of the country where the main activity of the legal person is conducted applies.³²² Also it is stipulated that these provisions apply to a branch of a legal person.³²³

The General Principles of the Civil Code Act stipulates that foreign legal persons shall be recognized in Estonia and have passive legal capacity and active legal capacity equal to that of Estonian legal persons unless otherwise provided by law or an agreement.³²⁴

If personal rights are violated, the law of the country in which the basis for a claim was conducted or the law of the person's country of permanent residence applies at the choice of the person whose personal rights are violated.³²⁵

³¹⁵ Article 125 of the General Principles of the Civil Code Act.

³¹⁶ Article 126, paragraph 1 of the General Principles of the Civil Code Act.

³¹⁷ Article 6 of the Private International Law Act.

³¹⁸ Article 126, paragraph 2 of the General Principles of the Civil Code Act.

³¹⁹ Article 128 of the General Principles of the Civil Code Act.

³²⁰ Article 133 of the General Principles of the Civil Code Act.

³²¹ Article 134, paragraph 1 of the General Principles of the Civil Code Act.

³²² Article 134, paragraph 2 of the General Principles of the Civil Code Act.

³²³ Article 134, paragraph 3 of the General Principles of the Civil Code Act.

³²⁴ Article 135 of the General Principles of the Civil Code Act.

³²⁵ Article 137 of the General Principles of the Civil Code Act.

The Act prescribes a specific case that a court may apply Estonian law for the protection of the rights of a person if it finds that due to the circumstances immediate measures must be taken to protect these rights.³²⁶

The Private International Law Act stipulates that a legal person shall be governed by the law of the state according to which the legal person is founded. If a legal person is actually managed in Estonia or the main activities of the person are carried out in Estonia, the legal person shall be governed by Estonian law.³²⁷

As to the applicable law to the form of transaction

The law of the country in which a transaction is entered into applies to the form of the transaction.³²⁸ However, parties to a transaction may agree that the law of the country of performance of the transaction, the law of the country of residence or location of the parties or the law of the country where the property which is the object of the transaction is situated applies to the form of the transaction.³²⁹

If the parties have not agreed on the law applicable to the form of a transaction and the transaction does not comply with the form according to the rule – the law of the country in which a transaction is entered into applies to the form of the transaction – the transaction shall not be declared invalid only on the ground of failure to comply with the form, if the transaction complies with the Estonian law or with the requirements of the law applicable to the content of the transaction.³³⁰

As to the applicable law to the claim for damages

The law of the country where an act was performed or an event occurred where the basis of a claim is for damages applies to a claim for damages in tort.³³¹ The law of the country where an act was performed or an event occurred determines whether the act or the event is the basis of a claim for damages.³³² If an act or an event which is the basis for a claim for damages is performed or occurs in one country, but the damage there from arises in another country, the law of the country where the damage arises may apply at the request of the injured party.³³³

At the request of the injured party, Estonian law may apply to a claim for compensation for damage caused abroad if the residence or location of the tortfeasor and of the injured party is in Estonia.³³⁴ If an Estonian court or court of arbitration applies foreign law to compensation for damage, the practice developed in Estonia shall be considered in the determination of the amount of damage.³³⁵

³²⁶ Article 138 of the General Principles of the Civil Code Act.

³²⁷ Article 14 of the Private International Law Act.

³²⁸ Article 142, paragraph 1 of the General Principles of the Civil Code Act.

³²⁹ Article 142, paragraph 2 of the General Principles of the Civil Code Act.

³³⁰ Article 142, paragraph 3 of the General Principles of the Civil Code Act.

³³¹ Article 164, paragraph 1 of the General Principles of the Civil Code Act.

³³² Article 164, paragraph 2 of the General Principles of the Civil Code Act.

³³³ Article 164, paragraph 3 of the General Principles of the Civil Code Act.

³³⁴ Article 165, paragraph 1 of the General Principles of the Civil Code Act.

³³⁵ Article 165, paragraph 2 of the General Principles of the Civil Code Act.

As to the applicable law to the contracts

As to contracts, the Private International Law Act establishes that contracts shall be governed by the law of the state agreed upon by the parties. The parties may choose the law applicable to the whole contract or to a part thereof if the contract is divisible in such manner. The fact that the parties have chosen a foreign law to govern the contract, whether or not accompanied by the choice of foreign jurisdiction, shall not prejudice application of such rules of the law of the state which cannot be derogated from by contract (mandatory rules).³³⁶

If the law applicable has not been chosen, the contract shall be governed by the law of the state with which the contract is most closely connected. If a contract is divisible and a part of the contract has independently a closer connection with another state, such part may be governed by the law of that other state.³³⁷ A contract is presumed to be most closely connected with the state where the residence or the seat of the directing body of the party who is to perform the obligation characteristic of the contract is situated at the time of entry into the contract. If a contract is entered into in the course of the economic or professional activity of the party who is to perform the obligation characteristic of the contract, the contract is presumed to be most closely connected with the state where the principal place of business of such party is situated. If under the terms of a contract the obligation characteristic of the contract is to be performed in a place of business other than the principal place of business, the contract is presumed to be most closely connected with the state where such other place of business is situated.³³⁸

Regarding agreements on providing private security or private military services, concluded abroad the General Principles of the Civil Code Act stipulates that a transaction performed abroad shall not be deemed valid in Estonia if it is contrary to Estonian law, the constitutional order or good morals. In such a case, the Estonian law applies.³³⁹ So, if the obligations assumed by the agreement are contrary to the Estonian law, the constitutional order or goods morals, it is deemed invalid.

As to the applicable law to the content of transaction, the General Principles of the Civil Code Act prescribes that the law of the country which the parties to a transaction agree to have applied applies to the content of the transaction.³⁴⁰ They may agree on the application of the law of a particular country either to the whole transaction or a part thereof.³⁴¹

In case of violation of agreement between the parties, the law of the place of performance of a transaction applies. The place of performance of a transaction shall be determined by the law of the country with which an obligation arising from the transaction is most closely connected. An obligation shall be deemed most closely

³³⁶ Article 32 of the Private International Law Act.

³³⁷ Article 33, paragraph 1 of the Private International Law Act.

³³⁸ Article 33, paragraph 2 of the Private International Law Act.

³³⁹ Article 140 of the General Principles of the Civil Code Act.

³⁴⁰ Article 141, paragraph 1 of the General Principles of the Civil Code Act.

³⁴¹ Article 141, paragraph 2 of the General Principles of the Civil Code Act.

connected with the law of the country of residence or location of the performer of the obligation.³⁴²

9.2. *Freedom of contract*

The Estonian law stipulates freedom of contract. The Law of Obligations Act sets the principle of party autonomy, by stating that upon agreement between the parties to an obligation or contract, the parties may derogate from the provisions of the Law of Obligations Act unless it provides or the nature of a provision indicates that derogation from the Law of Obligations Act is not permitted, or unless derogation is contrary to public order or good morals or violates the fundamental rights of a person.³⁴³ The Law of Obligations Act also stipulates the principle of good faith stating that obliges and obligors shall act in good faith in their relations and nothing arising from law a usage or a transaction shall be applied to an obligation if it is contrary to the principle of good faith.³⁴⁴

9.3. *Termination of contract*

The Law of Obligations Act establishes that a contract may be amended or terminated on the agreement of the parties or on another basis prescribed by the contract or law. If a contract is entered into in a specific format pursuant to an agreement between the parties, amendment or termination of the contract need not be in such format unless the contract provides otherwise. If a contract prescribes amendment or termination of the contract in a specific format, a party cannot rely on such condition of the contract if the other party could infer from the party's conduct that the party agreed to the amendment or termination of the contract in another format.³⁴⁵

9.4. *Civil liability*

The Law of Obligations Act stipulates the obligation to compensate value in the event of violation of a right stating that a person who violates the right of ownership, another right or the possession of an entitled person by disposal, use, consumption, accession, confusion or specification thereof without the consent of the entitled person or in any other manner (a violator) shall compensate the usual value of anything received by the violation to the entitled person.³⁴⁶

The Law of Obligations Act also determines an obligation to compensate for unlawfully caused damage stating that a person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.³⁴⁷ The Act determines that it does not preclude or restrict the right of a victim to claim compensation for damage on a legal basis other than that provided in the Law of Obligations Act or the right to make other claims, unless otherwise provided by law.

³⁴² Article 141, paragraph 3 and 4 of the General Principles of the Civil Code Act.

³⁴³ Article 5 of the Law of Obligations Act.

³⁴⁴ Article 6 of the Law of Obligations Act.

³⁴⁵ Article 13 of the Law of Obligations Act.

³⁴⁶ Article 1037 of the Law of Obligations Act.

³⁴⁷ Article 1043 of the Law of Obligations Act.

Compensation for damage arising from the violation of contractual obligations shall not be claimed on the bases provided in the Law of Obligations Act, unless otherwise provided by law. Compensation for damage arising from the violation of contractual obligations may be claimed on the bases provided in the Law of Obligations Act if the objective of the violated contractual obligation was other than to prevent the damage for which compensation is claimed. If the death, bodily injury or damage to the health of a person is caused as a result of the violation of a contractual obligation, the tortfeasor shall be liable for such damage on the basis provided in the Law of Obligations Act.³⁴⁸ The Law of Obligations Act stipulates the instances of unlawfulness of causing of damage. The causing of damage is unlawful if the damage is caused by: causing the death of the victim; causing bodily injury to or damage to the health of the victim; deprivation of the liberty of the victim; violation of a personality right of the victim; violation of the right of ownership or a similar right or right of possession of the victim; interference with the economic or professional activities of a person; behaviour which violates a duty arising from law; intentional behaviour contrary to good morals.³⁴⁹

10. Conclusions

The Estonian law prescribes the regulation of private military and private security services at the highest normative level – the Constitution of the Republic of Estonia, stating that the establishment of organisations and unions, which possess weapons, are militarily organised or perform military exercises requires prior permission. As a general law this applies to both – private military and private security companies. However, further laws do not regulate the operation of purely private military companies. The Security Act regulates the operation of private security companies. A security firm shall hold a licence for providing a security service. The basis for provision of security services is a written contract. The Security Act also regulates the activities of private security agents, who are also performing their duties on the basis of a contract.

In the framework of the State prerogative as to investigation and surveillance in criminal proceedings as well as for the purposes of fulfilment of obligations under other laws, the Police Act and the Surveillance Act prescribes the possibility of natural persons to become involved in investigation and surveillance activities for remuneration that is subject to taxation with income tax that paid by the surveillance agency.

The Constitution of the Republic of Estonia stipulates that the Parliament of Estonia has a monopoly over their National Armed Forces and it is up to the Parliament and the Government to decide on the issue of the recruitment of PMCs/PSCs to be sent to the combat areas abroad.

The report also examines the applicable law (corporate law, labour law, criminal responsibility, commercial law and civil liability) that would serve the operation of the PMCs/PSCs. As to the determination of whether the employees of PMCs/PSCs registered in Estonia are sent abroad, the Commercial Code of Estonia makes a requirement that an undertaking, whether a natural person or a company is under an obligation to register with the Tax and Customs board as a taxpayer before the

³⁴⁸ Article 1044 of the Law of Obligations Act.

³⁴⁹ Article 1045 of the Law of Obligations Act.

undertaking is officially entered in the commercial register. Thereby, the registration of PMCs/PSCs as taxpayers may be relevant to determining whether the undertakings have paid tax for sending their employees to provide services abroad for remuneration that is subject to the payment of taxes on behalf of the employer. The fact whether the PMCs/PSCs registered in Estonia are providing their services abroad can be determined upon the registration of an undertaking as the Commercial Code also requires indication of the planned activity and submission of annual reports specifying the activities in which an undertaking is involved.