



# PRIV-WAR Report – Lithuania

National Reports Series 12/09

## The Regulatory Context of Private Military and Security Services in Lithuania

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### **PRIV-WAR**

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. Introduction<sup>1</sup>

This report on the Lithuanian 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 Privatisation 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 examines the regulation of provision for private security and private military services in Lithuania. Though there is a regulation for providing private security services, thereby, contributing to the basis for discussing private security companies (hereinafter – PSCs), Lithuanian legislation does not contain any reference for provision of private military services. Therefore, there is no direct reference to private military companies (hereinafter – PMCs). The legal regulation of Lithuania does not specifically address the issue of operation of private security companies abroad. However, it contributes to the regulation of private security services by establishing general principles for licensing of commercial-economic activities that would include the regulation applicable to PSCs/PMCs. The report also focuses on the issue of regulation of armed force and issues of operational command with a view to examine the potential status of PSCs/PMCs operating abroad together with the National Armed Forces. The report also looks at the possibility of private individuals to become involved in the covert co-operation in operational activities in the framework of State prerogative.

This report examines the issues that would be relevant for the establishment and operation of PSCs/PMCs abroad. Namely, the report focuses on the issues of possession of arms, import and export of arms, goods of strategic significance and dual use goods, corporate law, labour law, criminal responsibility, commercial law and civil liability.

## 3. Domestic security and detective services

### 3.1. Private security services

In Lithuania, private security and detective services are regulated by the Law on the Security of the Person and Property,<sup>2</sup> not translated in English. According to a short report on the Law, it regulates the functions of private security companies. Detective activities are not expressly mentioned in this Law, but according to the *travaux preparatoires* there has been a proposal to include ‘activities of intellectual security/investigation (i.e., detective activities)’, however the legislature came to a conclusion that the Law already encompasses and applies to detective activities as well,

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<sup>1</sup> 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 Lithuania 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.

<sup>2</sup> The Law on the Security of the Person and Property (*Asmens ir turto saugos*) of 2004. The Lithuanian version is available at: <[http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=238254](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=238254)>.

as there is no exhaustive list of the activities that fall under the definition of ‘security services’.

The Law on Security of the Person and Property also regulates the operation of foreign private security companies in Lithuania. In case they have a licence in a country of the European Union, they are entitled to operate without a licence for up to 3 months. Otherwise, providing security services without a licence is prohibited.

The Government of Lithuania has issued a Regulation on the licensing of activities of private security companies. They prescribe two types of licences – licence for armed security services (i.e., companies employing arms/weapons, using force) and licence for unarmed security services. The police department of the Ministry of Interior of the Republic of Lithuania is the competent authority for the issuance of such licences.

### *3.2. Covert co-operation in operational activities*

The Law on Operational Activities<sup>3</sup> prescribes covert co-operation as part of operational activities. Covert participants in operational activities are the employees of entities of operational activities whose affiliation with an entity of operational activities is classified and the adult persons who covertly co-operate with entities of operational activities and with whom the employees of the entities of operational activities have entered into an agreement (verbally or in writing) on covert co-operation.<sup>4</sup>

## **4. Regulation of armed force**

### *4.1. Possession of arms*

The Law on the Control of Arms and Ammunition<sup>5</sup> regulates the circulation of arms and ammunition with a view to ensuring the safety of an individual, the public and the State. The Law does not apply to:

- 1) nuclear, chemical, biological weapons and other weapons of mass destruction;
- 2) things and devices the construction or mechanism whereof is not designed for their use as arms, however they may be used as arms;
- 3) firearms developed and made before the year 1870;
- 4) arms that are absolutely unsuitable for use for their proper purpose; start devices; bows and arrows intended for sporting purposes;
- 5) military equipment and its accessories;
- 6) pyrotechnic equipment and launching devices thereof;
- 7) explosives (except ammunition) and blasting agents.<sup>6</sup>

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<sup>3</sup> The Law on Operational Activities of 20 June 2002.

<sup>4</sup> Article 15, paragraph 1 of the Law on Operational Activities.

<sup>5</sup> The Law on the Control of Arms and Ammunition of 15 January 2002. The English version is available at:  
<[http://www.brad.ac.uk/acad/sbtwc/btwc/nat\\_imp/leg\\_reg/lithuania/Arms\\_Ammunition.pdf](http://www.brad.ac.uk/acad/sbtwc/btwc/nat_imp/leg_reg/lithuania/Arms_Ammunition.pdf)>.

<sup>6</sup> Article 1, paragraph 3 of the Law on the Control of Arms and Ammunition.

The Law on the Control of Arms and Ammunition classifies arms into categories A, B, C and D. Article 7 of the Law on the Control of Arms and Ammunition stipulates that arms and ammunition not possessing identification numbers are prohibited. Such arms may only be possessed by institutions carrying out criminal expert examination.<sup>7</sup> The Law defines arms that are prohibited in civil circulation.<sup>8</sup>

The Law on the Control of Arms and Ammunition prescribes the establishment of the State Arms Register that is an official set of data on arms registered in the Republic of Lithuania, their owners and managers. It also comprises data on imported and exported arms as well as destroyed arms. The State Arms Register is kept by an institution authorised by the Government.<sup>9</sup>

A departmental arms register is a set of data on arms possessed by an entity having a special status. Entities having a special status must keep their departmental arms registers. Such entities must in a manner prescribed by the Government, furnish the data of departmental arms registers to the manager of the State Arms Register.<sup>10</sup>

Arms in civil circulation shall be registered; accounting of such arms, their owners and managers shall be kept by police institutions. Data on arms which are in the civil circulation, their owners and managers shall in a manner prescribed by the Government be furnished to the manager of the State Arms Register by an institution authorised by the Minister of the Interior.<sup>11</sup> The holder of the right of ownership of arms and ammunition may be the State, permanent residents of the Republic of Lithuania, foreigners and legal persons registered in the Republic of Lithuania.<sup>12</sup>

Permanent residents of the Republic of Lithuania and legal persons registered in the Republic of Lithuania may acquire and keep arms and ammunition for the following purposes: hunting, sports, self-defence, professional activities; collecting; training; scientific research; other purposes if they are in conformity with laws and international agreements and treaties. They are entitled to have the right to acquire ammunition for arms, which they are entitled to possess.<sup>13</sup>

Police institutions are the competent authorities to issue permits for acquisition of firearms of Categories A, B and C to natural and legal persons. **Permits for the acquisition of firearms in Categories A, B and C** may be issued to natural persons, who have the right to acquire arms in such Categories, provided that the restrictions established by the Law on the Control of Arms and Ammunition do not apply to them; legal persons who have obtained licences and who have the right to acquire arms in such Categories; legal persons who carry out professional activities and enjoy the right to acquire arms in such Categories provided that the restrictions specified in the Law on the Control of Arms and Ammunition do not apply to the persons exercising control of the said legal persons.<sup>14</sup> PSCs/PMCs would qualify in the category of legal persons who carry out professional activities.

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<sup>7</sup> Article 7, paragraph 1 of the Law on the Control of Arms and Ammunition.

<sup>8</sup> Article 7, paragraphs 2, 3 and 4 of the Law on the Control of Arms and Ammunition.

<sup>9</sup> Article 8 of the Law on the Control of Arms and Ammunition.

<sup>10</sup> Article 9, paragraph 1 of the Law on the Control of Arms and Ammunition.

<sup>11</sup> Article 9, paragraph 2 of the Law on the Control of Arms and Ammunition.

<sup>12</sup> Article 10 of the Law on the Control of Arms and Ammunition.

<sup>13</sup> Article 11 of the Law on the Control of Arms and Ammunition.

<sup>14</sup> Article 12, paragraphs 1 and 2 of the Law on the Control of Arms and Ammunition.

A permit for the acquisition of an arm is valid for a period of six months from the day of its issuance.<sup>15</sup> Permits for the acquisition of arms shall allow a permit holder to acquire ammunition.<sup>16</sup> The amount of ammunition, which is permitted to be acquired and kept by legal persons, shall be established by the Government.<sup>17</sup> As to permits for the acquisition of arms in Categories A, B and C, their ammunition shall be issued to permanent residents of the Republic of Lithuania and legal persons registered in the Republic of Lithuania.<sup>18</sup> The acquired arms must be registered at police institutions not later than within 10 days of their acquisition. Upon the registration of the arms, **a permit for carrying arms or a permit for keeping them** shall be issued.<sup>19</sup> Permits for the acquisition of arms in Categories A, B and C shall not be issued during the time of martial law and the state of emergency, in other cases provided for by law.<sup>20</sup>

With respect to the right of foreigners to acquire and possess arms and ammunition, foreigners over the age of 18, who legally entered the Republic of Lithuania and who oblige themselves that the acquired arms will be brought out of the Republic of Lithuania not later than within 10 days of their acquisition, shall have the right to acquire in the Republic of Lithuania arms classified in Categories B and C and their ammunition. In addition, they must present prior consent issued by the competent authorities of the state whose citizens they are or in which they permanently reside or another document confirming the right to bring arms and ammunition into a foreign state and obtain a permit in accordance with the procedure established by legal acts of the Republic of Lithuania.<sup>21</sup>

A legal person may give for permanent use arms in Categories B and C, their ammunition which he possesses to a natural person, an employee of a legal person who has the right to possess and carry an arm of the same Category. A legal person possessing arms in Categories B and C and their ammunition may give them for a temporary use to a natural person during sporting event, practice, training under the supervision of a coach or another person responsible for safe shooting.<sup>22</sup>

A permanent resident of the Republic of Lithuania who has arms and wishes to take them to a Member State of the European Union may be issued a European Firearms Pass by the Police Department of the Ministry of Interior. The Pass shall be valid for a maximum period of five years. The European Firearms Pass may not be transferred to other persons.<sup>23</sup>

Permanent residents of the Republic of Lithuania, legal persons, and foreigners have the right to carry to, from and through the Republic of Lithuania legally acquired arms classified in Categories B and C, ammunition for them, as well as individual collection items of all categories after having received a permit from the Police Department of the Ministry of Interior. Permanent residents of the Republic of Lithuania and Member States of the European Union may bring individual arms and

<sup>15</sup> Article 12, paragraph 6 of the Law on the Control of Arms and Ammunition.

<sup>16</sup> Article 12, paragraph 7 of the Law on the Control of Arms and Ammunition.

<sup>17</sup> Article 12, paragraph 9 of the Law on the Control of Arms and Ammunition.

<sup>18</sup> Article 12, paragraph 10 of the Law on the Control of Arms and Ammunition.

<sup>19</sup> Article 12, paragraph 10 of the Law on the Control of Arms and Ammunition.

<sup>20</sup> Article 12, paragraph 12 of the Law on the Control of Arms and Ammunition.

<sup>21</sup> Article 14 of the Law on the Control of Arms and Ammunition.

<sup>22</sup> Article 16 of the Law on the Control of Arms and Ammunition.

<sup>23</sup> Article 36 of the Law on the Control of Arms and Ammunition.

ammunition into the Republic of Lithuania or carry out from it having in their possession a European Firearms Pass and a copy of the document certifying the reason of entry. Moreover, permanent residents of the Republic of Lithuania and Member States of the European Union have the right to carry out from the Member State of the European Union into the Republic of Lithuania arms classified in Categories B, C and D, ammunition for them, as well as individual collection items of all Categories having in their possession a preliminary consent of the Police Department regarding their bringing into the territory of the Republic of Lithuania and their carrying out from the Republic of Lithuania into a Member State of the European Union having a permit issued by the Police Department of the Ministry of Interior. The Police Department of the Ministry of Interior issues a permit for carrying upon having received a preliminary consent of a Member State of the European Union. Permits to transport to, from or in transit through the Republic of Lithuania of individual arms classified in Category A and ammunition for them shall be issued by the Ministry of National Defence. Legal persons having in possession a permit issued by the Police Department of the Ministry of Interior may for a temporary period of time, bring arms, ammunition into the Republic of Lithuania and to carry out from it only for sporting purposes.<sup>24</sup>

With respect to the cancellation of permits to carry and keep arms and ammunition, permits to carry and keep arms, ammunition classified in Categories B and C are cancelled:

- 1) by request of a person possessing arms;
- 2) when a natural person who had a permit dies;
- 3) upon the liquidation of a legal person which had a permit;
- 4) upon the revocation of a licence to engage in the activities related to circulation of arms, or upon the expiry of the term of its validity;
- 5) upon the occurrence of the circumstance regarding the general restrictions of the right to acquire and possess arms and ammunition;
- 6) when a person uses arms in violation of requirements of law, other legal acts and such violation carries a threat to human life, health, public security or public order;
- 7) when a natural person loses his arms due to the violation of rules of arms and ammunition circulation;
- 8) if a permit to carry or keep arms has been obtained because of consciously mislead information or forged documents were submitted;
- 9) when the holder of a permit to carry or keep arms did not manifestly allow or made obstructions to the employees of controlling institutions to carry out inspection.<sup>25</sup>

The Law adopting the Statute on the Use of Combat Weapons in the National Defence System and accordingly the Ministerial order implementing this Law is in force. It does not apply to international military operations.

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<sup>24</sup> Article 37 of the Law on the Control of Arms and Ammunition.

<sup>25</sup> Article 40 of the Law on the Control of Arms and Ammunition.

Rules on the Acquisition of Arms, Ammunition, Explosives and other Goods of Military Purpose have been adopted by the Governmental Regulation. They apply for acquisitions related to national defence, designated for the Lithuanian armed forces.

The relevant laws recently adopted that regulate possession of weapons also comprise the Order on the Civil Circulation and Control of Arms and Ammunition belonging to Natural Persons of the Commissar-General (Police Department) regulating the issues relating to self-defence, hunting, sports. They are adopted on the basis of the Law on the Control of Arms and Ammunition. Also Governmental Regulations On Licensing of Certain Type of Activities concerning the Circulation of Arms and Ammunition and Governmental Regulations on Licensing of the Repair of Arms, the Transformation of Arms and Ammunition have recently been adopted.

#### 4.2. Arms export and import

The Law on the Control of Arms and Ammunition stipulates economic activities that are subject to licensing: manufacture of arms, ammunition, their parts; **import and export of arms, ammunition, their parts**; trade in arms, ammunition, their parts; repair of arms, modification of arms and ammunition; operation of shooting ranges and indoor ranges; hire of arms. A licence to engage these activities may be issued to legal persons registered in accordance with the procedure established by laws and other legal acts. A decision on the issuance of a licence shall be adopted not later than within 60 calendar days of the submitting of necessary documents.<sup>26</sup>

The Law on the Control of Arms and Ammunition sets the responsibilities of a licensee. He or she:

1. must ensure accounting, storing and protection of arms, ammunition, their parts;
2. every six months submit to the licence-issuing institution a report of an established form on economic commercial activities related to arms, ammunition; their parts;
3. upon the change in the type of activities of the undertaking or other conditions indicated in the documents submitted for the issuance of a licence inform the licence-issuing institution about this not later than within 10 working days;
4. appoint an armourer;
5. upon request of supervising institutions furnish information about the employees carrying out work related with arms and ammunition as well as their personal data;
6. create conditions for employees of supervising state institutions to check the activities of the undertaking, related to the activities subject to licensing;
7. manufacture, store, keep, sell, repair, modify, use arms and ammunition only in the premises which meet the requirements established by the Government or an institution authorised by it;
8. prior to hiring a new employee whose work is directly related to the activities subject to licensing submit to a territorial institution the personal data of such persons and the conclusions of a medical check-up confirming that he is not ill with disease or does not have physical disabilities interfering with the proper use

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<sup>26</sup> Article 19 of the Law on the Control of Arms and Ammunition.

of arms, his/her name is not entered into records of a health care institution because of alcoholism, drug addiction, is not under the supervision of a health care institution because of his/her mental disease or mental disorder;

9. preserve journals and other documents concerning arms, ammunition, their parts at least 10 years of the last inscription therein, regardless of the fact whether an undertaking is engaged in the activities subject licensing or not.<sup>27</sup>

A licensee is prohibited from instruction, authorising or otherwise transferring to another person the right to engage in the activities specified in the licence, except the conclusion of transactions through mediators who have a licence, issued in a manner prescribed by the Law on the Control of Arms and Ammunition, to engage in the activities of a trade mediator; and engaging in the activities subject to licensing in the facilities for which territorial police institutions have not issued a permit.<sup>28</sup>

With respect to export, import and transit of arms and ammunition, the Weaponry Fund has the right to import, export arms of all categories, ammunition for them, parts of arms and ammunition. The Ministry of National Defence has a right to import arms of all categories designated for the army, as well as their ammunition.<sup>29</sup>

An undertaking, which wishes to import, export arms in Categories B, C and D, ammunition, their parts must possess a licence issued by the Police Department of the Ministry of Interior. The importer, exporter, economic entity of a foreign country who wishes to import, export or transit arms in Categories B, C and D, ammunition, their parts in transit through the territory of the Republic of Lithuania, must obtain a onetime permit for each consignment of arms, ammunition, their parts, issued by the Police Department of the Ministry of Interior after consultation with the Weaponry Fund. An undertaking, which wishes to send arms, ammunition from the Republic of Lithuania to a Member State of the European Union, must obtain a onetime permit to transport for each consignment of arms, ammunition, and their parts from the Police Department of the Ministry of Interior upon prior consent of the Member State of the European Union. An undertaking, which wishes to import arms, ammunition from a Member State of the European Union into the Republic of Lithuania, must obtain prior consent of the Police Department regarding the importing of a consignment of arms, ammunition into the territory of Lithuania.<sup>30</sup>

The laws regulating arms export and import are the Governmental Regulations on the Carriage of Arms and Ammunition based on the Law on the Control of Arms and Ammunition, Common Position on the Control of Arms Brokering 2003/468/CFSP and Council Directive 91/477/EEC on Control of the Acquisition and Possession of Weapons. It regulates import, export and transit if arms of B, C and D categories.

#### 4.3. *Goods of strategic significance and dual use goods*

The Law on the Control of Strategic Goods<sup>31</sup> establishes conditions on control of export, import and transit of military equipment and of brokering related thereto as well

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<sup>27</sup> Article 21, paragraph 2 of the Law on the Control of Arms and Ammunition.

<sup>28</sup> Article 21, paragraph 3 of the Law on the Control of Arms and Ammunition.

<sup>29</sup> Article 23, paragraph 1 of the Law on the Control of Arms and Ammunition.

<sup>30</sup> Article 23 of the Law on the Control of Arms and Ammunition.

<sup>31</sup> The Law on the Control of Strategic Goods of 5 April 1995, as amended on 6 April 2006. The English version is available at: [http://www.brad.ac.uk/acad/sbtwc/btwc/nat\\_imp/leg\\_reg/lithuania/1022\\_1995.pdf](http://www.brad.ac.uk/acad/sbtwc/btwc/nat_imp/leg_reg/lithuania/1022_1995.pdf).

as on the activities that may contribute to the proliferation of weapons of mass destruction and conventional arms.

The Government or an institution authorised by it shall compile and approve the Common List of Military Equipment on the basis of the European Union Common List of Military Equipment, lists of international non-proliferation regimes and taking into consideration foreign policy and national security interests of Lithuania.<sup>32</sup> The Ministry of Economics is in charge of the control of export of dual-use items and technology and of export, import and transit of military equipment and brokering related thereto and exercises control in conjunction with other State institutions and agencies in accordance with the procedure laid down by the Law and other legal acts.<sup>33</sup>

Licences for export of dual-use items and technology are issued by the Ministry of Economics. Export, import and transit of goods included in the Common List of Military Equipment or brokering related thereto are subject to a licence for export, import, transit or brokering. They are issued by the Ministry of Economics. If the goods stipulated in the Common List of Military Equipment are imported by the Ministry of National Defence or the Weaponry Fund, they are not subject to a licence of the Ministry of Economics. Export of goods not included in the Common List of Military Equipment shall be subject to a licence for export where a natural or legal person or a subsidiary of foreign legal persons or other organisations has been notified by the Ministry of Economics that the goods in question are or may be intended for the use in connection with development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons or the above-mentioned goods are or may be intended for use in connection with the development or production of the goods included in the Common List of Military Equipment. Export of the goods not included in the Common List of Military Equipment shall be subject to licence for export where the importing country or the country of end-use is under an arms embargo to enforce international sanctions provided for in the Republic of Lithuania Law on the Enforcement of Economic and Other International Sanctions and provided that the relevant institutions have notified a natural or legal person or a subsidiary of foreign legal persons and other organisations in writing that the goods in question are or may be intended for use in the production of goods included in the Common List of Military Equipment or the production of test or analytical equipment used for the development, production and maintenance of the goods in question or as unfinished product in a plant for the production of goods included in the Common List of Military Equipment. Export licences are issued by the Ministry of Economics.<sup>34</sup>

The Law on the Control of Strategic Goods stipulates the instances when the issuance of a licence shall be refused and may be refused. The cases when a licence **shall be refused** include when:

- 1) the issuance is in contravention of international treaties of the Republic of Lithuania, sanctions implemented, criteria of the European Union Code of Conduct for Arms Exports, provisions of international non-proliferation regimes and foreign policy and state security interests of Lithuania;

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<sup>32</sup> Article 4 of the Law on the Control of Strategic Goods.

<sup>33</sup> Article 5 of the Law on the Control of Strategic Goods.

<sup>34</sup> Article 6 of the Law on the Control of Strategic Goods.

- 2) there is an effective court judgment, court ruling, decision of conviction and unspent or unexpunged conviction in respect of the war crimes, crimes against humanity, independence, territorial integrity and constitutional order of the State of Lithuania as committed by an exporter, importer, carrier or broker;
- 3) the circumstances related to the risk of the end-use of military equipment or possible use thereof for the production of weapons of mass destruction transpire.

Cases where a licence **may be refused** include instances where:

- 1) there is an effective court judgment, court ruling, decision of conviction and unspent or unexpunged conviction in respect of the criminal acts against public security, property, property rights and property interests, the economy and business practice, the financial system and government order as committed by an exporter, importer, carrier or broker;
- 2) a pre-trial investigation is being conducted in respect of an exporter, importer, carrier or broker suspected of war crimes, crimes against humanity, independence, territorial integrity and constitutional order of the State of Lithuania, public security, property, property rights and property interests, the economy and business practice, the financial system and government order or a case related to these criminal acts has been referred to court;
- 3) an exporter, importer, carrier or broker has submitted misleading information, erroneous data to obtain a licence.<sup>35</sup>

Legal and natural persons as well as subsidiaries of foreign legal persons and other organisations engaged in export, import and transit of strategic goods and brokering or being the end-users of the goods must supply according to the procedure determined by the Government or the institution authorised by it, all data required for exercising control over strategic goods to State institutions and agencies exercising control over the strategic goods.<sup>36</sup> The Ministry of Economics is responsible for the accumulation of data on strategic goods and legal and natural persons engaged in exporting, importing or carrying in transit strategic goods and acting as brokers in transactions, as well as on the end-users of strategic goods.<sup>37</sup> Legal and natural persons are under obligation to keep detailed records on the operation with strategic goods.<sup>38</sup>

#### 4.4. *Government (State) policy on outsourcing of armed forces*

Article 67 of the Constitution of the Republic of Lithuania<sup>39</sup> establishes that the Parliament (the Seimas) is the competent authority to impose martial law, state of emergency as well as declare mobilisation and adopt a decision to use the armed forces.

According to the Constitution of the Republic of Lithuania, the President of the Republic is entitled to appoint and dismiss upon the assent of the Seimas, the Commander of the Armed Forces and the Head of the Security Service; confer the highest military ranks; adopt in the event of an armed attack which threatens State

<sup>35</sup> Article 7 of the Law on the Control of Strategic Goods.

<sup>36</sup> Article 8 of the Law on the Control of Strategic Goods.

<sup>37</sup> Article 9 of the Law on the Control of Strategic Goods.

<sup>38</sup> Article 10 of the Law on the Control of Strategic Goods.

<sup>39</sup> The Constitution of the Republic of Lithuania of 25 October 1992. The English version is available at: <[http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=21892](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=21892)>.

sovereignty or territorial integrity, decisions concerning defence against such armed aggression, the imposition of martial law as well as mobilisation, and submit these decisions to the next sitting of the Seimas for approval.<sup>40</sup> Thereby, the Parliament has sole competence to decide on the use of armed forces in the zone of armed conflict and prospective use of PSCs/PMCs abroad.

Article 135 of the Constitution of the Republic of Lithuania stipulates that in implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of the citizens and their basic rights and freedoms and shall contribute to the creation of the international order based on law and justice. The Constitution of the Republic of Lithuania also stipulates that there may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania.<sup>41</sup> The Seimas is the competent institution to ratify or denounce the international treaties of the Republic of Lithuania on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states.<sup>42</sup>

Article 140 of the Constitution of the Republic of Lithuania stipulates that the main issues of State defence shall be considered and co-ordinated by the State Defence Council that consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence and the Commander of the Armed Forces.

The Constitution of the Republic of Lithuania establishes that the President of the Republic shall be the Commander-in-Chief of the Armed Forces of the State.<sup>43</sup> The Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and commander of the armed forces of the State.<sup>44</sup>

The Constitution of the Republic of Lithuania establishes that persons performing actual military service or alternative service, as well as officers of the national defence system, the police and the interior, non-commissioned officers, reenlistees, or other paid officials of paramilitary and security services who have not retired to the reserve may not be Members of the Seimas or of municipal councils. They may not hold elected or appointed office in the State civil service, nor may they take part in the activities of political parties and organisations.<sup>45</sup>

The Seimas imposes martial law, announces mobilisation or demobilisation, adopts a decision to use the armed forces when a need arises to defend the homeland or to fulfil the international obligations of the State of Lithuania.<sup>46</sup>

The Law on the Organisation of the National Defence System and Military Service<sup>47</sup> determines that the National Defence System of Lithuania shall be developed

<sup>40</sup> Article 84 of the Constitution of the Republic of Lithuania.

<sup>41</sup> Article 137 of the Constitution of the Republic of Lithuania.

<sup>42</sup> Article 138 of the Constitution of the Republic of Lithuania.

<sup>43</sup> Article 140 of the Constitution of the Republic of Lithuania.

<sup>44</sup> Article 140 of the Constitution of the Republic of Lithuania.

<sup>45</sup> Article 141 of the Constitution of the Republic of Lithuania.

<sup>46</sup> Article 142 of the Constitution of the Republic of Lithuania.

<sup>47</sup> The Law on the Organisation of the National Defence System and Military Service of 5 May 1998.

as part of the transatlantic collective defence system. In this regard the Armed Forces and other institutions within the National Defence System shall be developed in line with the NATO standards and shall be interoperable with the NATO structures. The Lithuanian military and civilian air space surveillance systems shall be developed and integrated into the NATO regional air space control system and the NATO security principles and standards shall be applied in performing security clearances for personnel whose duties involve working with classified material as well as to ensure physical protection of information, premises, facilities and other objects and communication systems.<sup>48</sup> The Law stipulates that the National Defence System shall be developed in accordance with the Constitution of the Republic of Lithuania and the Law on Fundamentals of National Security.<sup>49</sup> The Law establishes that the principle of democratic civilian control shall be applied to all institutions within the National Defence System.<sup>50</sup> Article 7 of the Law on the Organisation of the National Defence System and Military Service regulating democratic civilian control of the Armed Forces states that the Seimas (Parliament) determines the amount of funds to be allocated for the development of the Armed Forces, the acquisition of weapons and other support requirements. Parliamentary control of the National Defence System is exercised in accordance with established procedures.<sup>51</sup> The President of the Republic and the Seimas, in accordance with procedures established by the Constitution and the Law on the Fundamentals of National Security, shall issue resolutions declaring mobilization, a state of war, deployment of the Armed Forces, and defence in the event of armed aggression.<sup>52</sup> The Government or its authorised institutions shall issue resolutions on supplying the Armed Forces, on procurement of weapons, and the development of a logistical base of support within the National Defence System. The Government, the Minister of National Defence and the Commander of Armed Forces shall be accountable to the Seimas for the leadership and management of the Armed Forces.<sup>53</sup> Thereby, the decision on the employment of PMCs/PSCs to support the National Defence System also rests on the Government.

Among the main tasks of the Ministry of National Defence the Law mentions the obligation to organise co-operation between the Armed Forces and civilian institutions, the “Dauliai” (Riflemen) Union, and other public organisations that directly contribute to the strengthening of the National Defence System and to prepare the public for the defence of Lithuania.<sup>54</sup> The Law does not specifically mention co-operation with private military or private security companies for the fulfilment of their tasks.

However, the Minister of National Defence, upon the recommendation of the Commander of the Armed Forces shall establish **the framework for Armed Forces to**

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<sup>48</sup> Article 3 of the Law on the Organisation of the National Defence System and Military Service.

<sup>49</sup> Article 6, paragraph 1 of the Law on the Organisation of the National Defence System and Military Service.

<sup>50</sup> Article 6, paragraph 2 of the Law on the Organisation of the National Defence System and Military Service.

<sup>51</sup> Article 7, paragraph 1 of the Law on the Organisation of the National Defence System and Military Service.

<sup>52</sup> Article 7, paragraph 3 of the Law on the Organisation of the National Defence System and Military Service.

<sup>53</sup> Article 7, paragraphs 4 and 5 of the Law on the Organisation of the National Defence System and Military Service.

<sup>54</sup> Article 9, paragraph 3 of the Law on the Organisation of the National Defence System and Military Service.

**enter into transactions and other legal civilian relationships.**<sup>55</sup> It would include a decision to employ PMCs/PSCs in the form of civil relationship between the armed forces and PMCs/PSCs.

The Lithuanian Armed Forces consist of Regular Forces, Volunteer Forces, and Active Reserve.<sup>56</sup> The Regular Forces consists of Ground Forces, Military Air Forces and Naval Forces.<sup>57</sup> Field Forces shall be formed to conduct military operations. The Field Forces shall consist of elements from the Ground Forces and other forces assigned by the Commander of the Armed Forces to the operational command of the Commander of the Field Forces.<sup>58</sup>

Regarding the chain of operational command, according to the national laws of Lithuania, in accordance with the principle of democratic civilian control, the chain of operational command for operations and other defence activities begins with the President of the Republic, through the Minister of National Defence, and normally goes to the Commander of the Armed Forces, or under extraordinary circumstances, directly to the Commander of Field Forces, commanders of other branches of regular forces, or the Commander of the Volunteer Forces.<sup>59</sup> The Law stipulates that the Commander of the Field Forces is responsible for the operational command of subordinate forces and for the efficient conduct of military operations. The Commander of Field Forces determines the operational missions and issues orders to units (a battalion or military element of equal size (consisting of at least two companies) with an approved permanent structure) and combined units (several units or military elements with a joint operational purpose or mission, commanded by one designated commander) under his operational command.<sup>60</sup> National Defence Volunteer Forces are a component part of the Armed Forces. They are formed from volunteer servicemen and professional military servicemen. They are trained for joint military action with elements of the Regular Forces.<sup>61</sup> The Military Police is a component part of the Armed Forces.<sup>62</sup>

A serviceman shall do his military service in the National Defence System within the territory of the Republic of Lithuania. In certain cases established by law or otherwise agreed to by the Seimas, servicemen may be sent to do their military service in foreign countries.

Regarding volunteer servicemen, a citizen of the Republic of Lithuania who is fit for military duty with line units and has signed a volunteer contract, shall acquire volunteer serviceman's status for the period of service in the Volunteer Forces. This

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<sup>55</sup> Article 11, paragraph 3 of the Law on the Organisation of the National Defence System and Military Service.

<sup>56</sup> Article 11, paragraph 4 of the Law on the Organisation of the National Defence System and Military Service.

<sup>57</sup> Article 11, paragraph 5 of the Law on the Organisation of the National Defence System and Military Service.

<sup>58</sup> Article 11, paragraph 8 of the Law on the Organisation of the National Defence System and Military Service.

<sup>59</sup> Article 14, paragraph 6 of the Law on the Organisation of the National Defence System and Military Service.

<sup>60</sup> Article 14, paragraphs 8 and 9 of the Law on the Organisation of the National Defence System and Military Service.

<sup>61</sup> Article 17 of the Law on the Organisation of the National Defence System and Military Service.

<sup>62</sup> Article 19, paragraph 1 of the Law on the Organisation of the National Defence System and Military Service.

status shall be the same as the status of an active reserve serviceman. When a volunteer serviceman in carrying out his orders, arrives to the place of duty, carries out assigned tasks, or participates in exercises or training, his status shall be the same as the status of serviceman fulfilling mandatory military service.<sup>63</sup> A citizen of the Republic of Lithuania, who is not fit for the military duty with line units and has been accepted as non-line units volunteer, shall acquire reserve volunteer status for the period of service in the Volunteer Forces. When the reserve volunteer is carrying out the assigned tasks, participating in exercises and training, he has the same status as a volunteer serviceman, however he wears a reserve volunteer serviceman's uniform.<sup>64</sup> A citizen of the Republic of Lithuania, who is a full time civilian employee in the Volunteer Forces and has signed a labour contract, or in accordance with the procedures of the Law on the Organisation of the National Defence System and Military Service has been accepted into Ministry of Defence civil service, does not have volunteer status. He may gain volunteer or reserve volunteer status by complying with the existing procedures.<sup>65</sup> Statutes that establish the disciplinary responsibility of servicemen and the use of weapons shall be approved by the Seimas.<sup>66</sup> A volunteer serviceman cannot be an individual who has been convicted of international crimes; an individual whose activities are limited by court.<sup>67</sup>

A serviceman may participate in the activities of public organisations, associations, clubs and any other non-political association, as well as in any other non-political activity that develops moral, national, patriotic and civic democratic values, provided that such participation does not interfere with military duties.<sup>68</sup> However, reserve, retired and volunteer servicemen, participating in the political activity shall not have any right whatsoever to link said activity with his serviceman status, to make any references to his military rank or to wear the military uniform.<sup>69</sup> A professional military serviceman does not have the right either personally or through other individuals to get involved in any commercial activity that is related to his service or give rise to private or service related conflicts of interest.<sup>70</sup>

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<sup>63</sup> Article 22 of the Law on the Organisation of the National Defence System and Military Service.

<sup>64</sup> Article 22, paragraph 4 of the Law on the Organisation of the National Defence System and Military Service.

<sup>65</sup> Article 22, paragraph 5 of the Law on the Organisation of the National Defence System and Military Service.

<sup>66</sup> Article 25, paragraph 2 of the Law on the Organisation of the National Defence System and Military Service.

<sup>67</sup> Article 29, paragraph 4 of the Law on the Organisation of the National Defence System and Military Service.

<sup>68</sup> Article 36, paragraph 3 of the Law on the Organisation of the National Defence System and Military Service.

<sup>69</sup> Article 36, paragraph 4 of the Law on the Organisation of the National Defence System and Military Service.

<sup>70</sup> Article 36, paragraph 9 of the Law on the Organisation of the National Defence System and Military Service.

## 5. Corporate law

### 5.1. Registration and purpose

The Lithuanian Law on Companies of 13 July 2000, as amended by 11 December 2003,<sup>71</sup> defines that a company is an enterprise whose statutory capital is divided into shares.<sup>72</sup> The Law stipulates that a company is a legal person with limited liability. It also differentiates between public limited liability companies (acronym “AB”) and private limited liability companies (acronym “UAB”).<sup>73</sup> There is a legal requirement that the registered office of the company must be situated in the Republic of Lithuania.<sup>74</sup> The company shall be deemed incorporated from the date of its registration in the Register of Legal Persons.<sup>75</sup>

An enterprise shall be considered as having been established from the date of its registration in the Register of Enterprises of the Republic of Lithuania.<sup>76</sup> The Law on Enterprises<sup>77</sup> prescribes that an enterprise may be refused registration or re-registration in the event of failure to file the documents specified in the Law on Enterprises or if the documents are not in conformity with the requirements specified by law. Refusal to register the enterprise on any other grounds is considered to be unlawful.<sup>78</sup>

The Cooperative Law<sup>79</sup> establishes that a cooperative society is an economic entity with changeable composition and capital established on a voluntary basis by a group of natural persons or natural and legal persons for the purposes of satisfying business, economic and social needs of its members and functioning on their initiative and at their risk.<sup>80</sup> A cooperative society is a legal person and may engage in activities, which are not prohibited by the laws of the Republic of Lithuania. A cooperative society is an economic entity of limited liability liable for its obligations to the extent of its property and not liable for the obligations of its members, which are not related to the activities of the cooperative society.<sup>81</sup> A cooperative society must be registered with the higher level local government in accordance with the Law on the Register of Enterprises.<sup>82</sup>

The Law on Enterprises regulating the enterprise liquidation or reorganisation issues stipulates that among the conditions when the enterprise may be liquidated is the decision of state bodies to revoke registration of the enterprise for the violation of law as specified in the laws of the Republic of Lithuania.<sup>83</sup>

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<sup>71</sup> The Law on Companies of 13 July 2000. The English version is available at: <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_e?p\\_id=149256](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=149256)>.

<sup>72</sup> Article 2, paragraph 1 of the Law on Companies.

<sup>73</sup> Article 2, paragraphs 2-4 of the Law on Companies.

<sup>74</sup> Article 2, paragraph 7 of the Law on Companies.

<sup>75</sup> Article 11, paragraph 1 of the Law on Companies.

<sup>76</sup> Article 21, paragraph 1 of the Law on Enterprises.

<sup>77</sup> The Law on Enterprises 8 May 1990. The English version is available at: <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_e?p\\_id=117414](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=117414)>.

<sup>78</sup> Article 22, paragraph 1 of the Law on Enterprises.

<sup>79</sup> The Cooperative Law of 1 June 1993. The English version is available at: <<http://www.litlex.lt/Litlex/Eng/Frames/Laws/Documents/204.HTM>>.

<sup>80</sup> Article 2 of the Cooperative Law.

<sup>81</sup> Article 3 of the Cooperative Law.

<sup>82</sup> Article 6 of the Cooperative Law.

<sup>83</sup> Article 23, paragraph 1 of the Law on Enterprises.

The Law on Enterprises stipulates that an enterprise registered in the Register of Enterprises of the Republic of Lithuania may establish its branches and representative offices. It defines a branch as a division of an enterprise having its office, which may engage in commercial-economic activities, conclude transactions and assume obligations only within the scope of powers granted to it by the founding enterprise. The enterprise is liable for the obligations of the branch by way of all its property. A branch is not a legal person. The activities of the branch are organised and carried out by the branch manager who shall acquire the right to represent the branch in relations with third persons only upon the registration of the branch. If, when concluding transactions, the branch manager exceeds the powers granted to him, the enterprise shall not be exempt from liability for the transactions. A branch and a representative office shall be registered in the Register of Enterprises of the Republic of Lithuania.<sup>84</sup>

The Law on Enterprises regulates the establishment of branches and representative offices of the foreign state enterprise in Lithuania. A foreign state enterprise may set up branches and representative offices in the Republic of Lithuania, provided this is not prohibited by the law under which the enterprise has been set up and is operating. The number of branches and representative offices of the foreign state enterprise shall not be limited.<sup>85</sup> The Law defines a branch of the foreign state enterprise as a division of the foreign state enterprise having its office in Lithuania, which may engage in commercial-economic activities, conclude transactions and assume obligations only within the scope of powers granted by the founding enterprise. The foreign state enterprise is liable by way of all its property for the obligations of its branch. The branch of the foreign state enterprise is not a legal person. The activities of the branch of the foreign state enterprise shall be organised and carried out by the manager of the branch of the foreign state enterprise who shall acquire the right to represent the branch in relations with third persons only upon the registration of the branch. If, when concluding transactions, the manager of the branch of the foreign state enterprise exceeds the powers granted to him, the foreign state enterprise shall not be exempted from liability for the transactions.<sup>86</sup> However, a representative office of the foreign state enterprise is a division of the foreign state enterprise, domiciled in Lithuania, which may not engage in commercial-economic activities.<sup>87</sup>

The branch and the representative office of the foreign state enterprise shall be guided by the laws and other legal acts of the Republic of Lithuania. The powers of the manager of the branch or representative office of the foreign state enterprise may not be contrary to the laws of the Republic of Lithuania.<sup>88</sup> A branch and a representative office of the foreign state enterprise:

- 1) shall be registered in the Register of Enterprises of the Republic of Lithuania;
- 2) may commence economic-commercial activities only after its registration;<sup>89</sup>
- 3) must keep accounts and provide state institutions with information according to the procedure laid down in the laws and other legal acts of the Republic of Lithuania.<sup>90</sup>

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<sup>84</sup> Article 24 of the Law on Enterprises.

<sup>85</sup> Article 25, paragraph 1 of the Law on Enterprises.

<sup>86</sup> Article 25, paragraph 2 of the Law on Enterprises.

<sup>87</sup> Article 25, paragraph 3 of the Law on Enterprises.

<sup>88</sup> Article 25, paragraph 4 of the Law on Enterprises.

<sup>89</sup> Article 25, paragraph 7 of the Law on Enterprises.

The Law on Enterprises of 8 May 1990, as amended by 16 March 2000, identifies the entities which have the right to engage in continuous commercial-economic activities in the Republic of Lithuania on behalf of their firm and the legal basis of their setting up and activities. This Law also applies to foreign state enterprises operating in Lithuania, their branches and representative offices.<sup>91</sup> The Law on Enterprises stipulates that setting up of separate types of enterprises (individual (persona) enterprise, general partnership, limited partnership, public company, private company and investment company, state-owned enterprises, municipal enterprises, agricultural company, co-operative society), their legal status, activities, liquidation and reorganisation is regulated by the respective laws.

The procedure for the establishment of enterprise shall be specified in the Law on Enterprises and other regulatory enactments, which regulate the establishment of different types of enterprises.<sup>92</sup> The Law on Enterprises does not apply to natural and legal persons engaged in non-commercial (non-profit) activities, also to natural persons who acquire a licence in a manner prescribed by the Government of the Republic of Lithuania and engage in commercial-economic activities in conformity with the licence.<sup>93</sup>

The Law on Enterprises defines an enterprise as an economic unit having the name of the firm and set up in accordance with the procedure laid down by laws for the purpose of carrying out certain commercial-economic activities.<sup>94</sup> It defines a foreign state enterprise as an enterprise either having the rights of a legal person or having no such rights, an association or any other profit-seeking organisation, domiciled in a foreign state and set up under the foreign state laws.<sup>95</sup>

Labour relations at the enterprise may be based on an employment contract or on the membership in the partnership.<sup>96</sup>

The Law on Enterprises establishes that an enterprise has a right to engage in any commercial-economic or other activities, which are **not restricted by the Law on Enterprises or other laws, or the enterprise foundation documents, or are not otherwise prohibited in the manner prescribed by laws.**<sup>97</sup>

Article 14 of the Law on Enterprises sets the principles of relations between the enterprises and state bodies. It stipulates that enterprises shall operate independently. State bodies have no right to manage the affairs of the enterprises or regulate their economic activities by administrative methods, except in cases provided for by the Law on State-owned and Municipal Enterprises, and the Company Law of the Republic of Lithuania, when the above bodies are founders of state-owned enterprises or special purpose public company or private company shareholders as well as when in accordance with the procedure established by law, a special supervision procedure is applied to the enterprise for the violations of law, or when the enterprise liquidator is

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<sup>90</sup> Article 25, paragraph 9 of the Law on Enterprises.

<sup>91</sup> Article 1, paragraph 1 of the Law on Enterprises.

<sup>92</sup> Article 18 of the Law on Enterprises.

<sup>93</sup> Article 1, paragraph 3 of the Law on Enterprises.

<sup>94</sup> Article 2, paragraph 1 of the Law on Enterprises.

<sup>95</sup> Article 2, paragraph 3 of the Law on Enterprises.

<sup>96</sup> Article 5, paragraph 1 of the Law on Enterprises.

<sup>97</sup> Article 12, paragraph 1 of the Law on Enterprises.

appointed in the case of bankruptcy or in other cases specified by law.<sup>98</sup> When upon the resolution of the Seimas (the Parliament) of the Republic of Lithuania, a state of emergency is declared or a certain territory is declared a disaster area, enterprises must comply with the orders of the Government of the Republic of Lithuania or local authorities.<sup>99</sup>

## 5.2. *Licensing of economic-commercial activities*

The Lithuanian Law on Enterprises extensively elaborated on the issue of licensing of economic-commercial activities. The Law on Enterprises establishes that the sphere of commercial-economic activities for the performance of which a licence is required, the licence issuing procedure is established by the Law on Enterprises and other laws.<sup>100</sup>

Article 13 of the Law on Enterprises specifically regulates the issue of licensing of commercial-economic activities. It stipulates that an enterprise may engage in licensed commercial-economic activities possessing a licence, defining a licence as a document granting the enterprise the right to engage in the commercial-economic activities specified in the licence.<sup>101</sup> The Law establishes specific spheres of commercial-economic activities that are subject to licensing: those connected with increased danger to human life, health, environment, manufacturing and acquisition of armament, also goods and services for which a special procedure of product sale or service provision may be established by law.<sup>102</sup>

The Law on Enterprises defines the requirements necessary to be included in the licensing regulations: 1) sphere of commercial-economic activities which is subject to licensing; 2) types of licences; 3) institution issuing licence and its powers; 4) documents required to issue a licence; 5) procedure and time limits of document consideration; 6) requisites of a licence; 7) procedure for registering the licences being issued and the changed information specified therein; 8) conditions of commercial-economic activities subject to licensing; 9) rights and duties of licence holders; 10) procedure for notification of the changed information given in the licence; 11) procedure for monitoring compliance with the conditions of commercial-economic activities subject to licensing; 12) cases of and procedure for suspending and revoking a licence; 13) cases and procedure for changing a licence; 14) grounds for refusing to issue a licence.<sup>103</sup>

The Government of the Republic of Lithuania shall authorise an institution that would be competent to issue licences, monitor compliance with the conditions on the sphere of commercial-economic activities subject to licensing, also suspend and revoke the licences.<sup>104</sup> The Law on Enterprises specifically stipulates that unless other laws

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<sup>98</sup> Article 14, paragraph 1 of the Law on Enterprises.

<sup>99</sup> Article 14, paragraph 4 of the Law on Enterprises.

<sup>100</sup> Article 12, paragraph 1 of the Law on Enterprises.

<sup>101</sup> Article 13, paragraphs 1 and 2 of the Law on Enterprises.

<sup>102</sup> Article 13, paragraph 3 of the Law on Enterprises.

<sup>103</sup> Article 13, paragraph 5 of the Law on Enterprises.

<sup>104</sup> Article 13, paragraph 6 of the Law on Enterprises.

establish otherwise, the conditions for the issuance of a licence must not be determined by the type of the enterprise, which acquires the licence.<sup>105</sup>

A licence shall be issued for an unlimited period of time, with a provision for its re-registration in accordance with the procedure established by the Government of the Republic of Lithuania, unless other laws provide otherwise.<sup>106</sup> The form of the licence is determined by the institution issuing the licence.<sup>107</sup> An applicant must be either issued a licence to engage in economic-commercial activity or presented with a motivated written refusal of a licence within 30 days from the day of filing of the documents required for the granting of a licence, unless other laws provide otherwise. Refusal of a licence may not be based on the inexpediency of the economic-commercial activity.<sup>108</sup> The notice of the issuance of a licence, its suspension or revocation shall be published in the “*Official Gazette*” by the issuing institution.<sup>109</sup>

The Law on Enterprises specifically stipulates that the enterprise must have authorisation, licences and other documents issued by state institutions, if such authorisation, licences and other documents are required under the Law on Enterprises or other laws (a licence (authorisation) to engage in certain commercial-economic activity, authorisation for the utilisation of mineral resources, authorisation-hygiene certificate, authorisation to operate an enterprise, real estate title documents, etc.).<sup>110</sup>

There is a requirement that the enterprises keep accounts in an obligatory manner, and, pursuant to the laws of the Republic of Lithuania, shall submit relevant information about its accounts to state bodies for the purposes of taxation and financial accounting of the enterprise. The enterprises have a right to keep documents concerning its commercial activities confidential.<sup>111</sup> The inspection and auditing of the enterprise’s activities shall only be permitted in the cases specified by the laws of the Republic of Lithuania.<sup>112</sup>

Upon issuing the enterprise with a licence (authorisation) granting the right to engage in certain economic-commercial activities, or any other authorisation provided for by law, the state institution shall be entitled to request from the enterprise the information necessary for the monitoring and supervision of said activities. The enterprise may not hinder the monitoring and supervising state institutions (their authorised representatives) from performing the functions of monitoring and supervision assigned to their competence.<sup>113</sup>

The licence of the local government institution to engage in economic activities is required only in cases, where the enterprise is registered with the Ministry of Economy of the Republic of Lithuania. In other cases, the registration of the enterprise shall be equivalent to the licence to engage in economic activities.<sup>114</sup> The municipal body is entitled to deny a licence to engage in economic activities, if the setting up of

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<sup>105</sup> Article 13, paragraph 7 of the Law on Enterprises.

<sup>106</sup> Article 13, paragraph 8 of the Law on Enterprises.

<sup>107</sup> Article 13, paragraph 9 of the Law on Enterprises.

<sup>108</sup> Article 13, paragraph 10 of the Law on Enterprises.

<sup>109</sup> Article 13, paragraph 11 of the Law on Enterprises.

<sup>110</sup> Article 14, paragraph 6 of the Law on Enterprises.

<sup>111</sup> Article 15, paragraph 1 of the Law on Enterprises.

<sup>112</sup> Article 15, paragraph 2 of the Law on Enterprises.

<sup>113</sup> Article 15, paragraph 3 of the Law on Enterprises.

<sup>114</sup> Article 20, paragraph 1 of the Law on Enterprises.

the enterprise would pose a serious threat or be detrimental to the health of the population or the environment; if the bylaws of the enterprise or other documents relating to its establishment are not in compliance with the law; and in other cases specified by law.<sup>115</sup> If upon the receipt of the licence to engage in economic activities the enterprise manager fails to register the enterprise within a year's period, the licence shall become invalid.<sup>116</sup>

## 6. Labour Law

### 6.1. Employment

The Labour Code<sup>117</sup> does not specifically refer to the provision of private security or private military services. The Labour Code establishes a State obligation to ensure the exercise of labour rights. However, in exceptional cases labour rights may be restricted by law or a court judgment, if such restrictions are necessary in order to protect public order, public morals, public health, property rights and legal interests.<sup>118</sup> That would include human rights commitments by the Republic of Lithuania.

Should it be relevant for the private security and private security companies, the Labour Code stipulates that the enterprises, agencies, organisations according to their respective competence and in a manner prescribed by laws may adopt local (internal) regulatory acts establishing working conditions that are not regulated by labour laws specified in the Labour Code and the regulations arising there from granting work, social and everyday-life privileges to employees or their groups in addition to those established by laws and other regulatory acts.<sup>119</sup>

The Labour Code stipulates that the labour laws and other regulatory acts are applicable to labour relations in the territory of the Republic of Lithuania regardless of whether the person is employed in Lithuania **or has been posted by his employer abroad**.<sup>120</sup> So, in case the employer decides to send his employee abroad, the Lithuanian Labour Code would apply. However, the labour laws and other regulatory acts of the Republic of Lithuania do not apply to the labour relations, which occur between foreign employers and employees, when the employees are posted by the employer in the territory of the Republic of Lithuania.<sup>121</sup>

The Labour Code also stipulates the applicable law to the labour relations. Foreign law may be applied to labour relations where it is established by the international agreements of the Republic of Lithuania, the laws of the Republic of Lithuania or agreements between the parties to the employment contract. However, foreign law cannot be applied where the application would be contrary to public order established by the Constitution and other laws of the Republic of Lithuania.<sup>122</sup> The

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<sup>115</sup> Article 20, paragraph 4 of the Law on Enterprises.

<sup>116</sup> Article 20, paragraph 7 of the Law on Enterprises.

<sup>117</sup> The Labour Code of 4 June 2002. The English version is available at: <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_e?p\\_id=191770](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=191770)>. See also: Kavaliauskaite V. The New Lithuanian Labor Code. *International Journal of Baltic Law*, Volume 1, No. 3 (June, 2004)

<sup>118</sup> Article 2, paragraph 2 of the Labour Code.

<sup>119</sup> Article 4, paragraph 3 of the Labour Code.

<sup>120</sup> Article 5, paragraph 1 of the Labour Code.

<sup>121</sup> Article 5, paragraph 4 of the Labour Code.

<sup>122</sup> Article 6, paragraph 1 and 2 of the Labour Code.

Labour Code makes it clear that the mandatory provisions of the labour law of the Republic of Lithuania are applicable regardless of the fact that the parties have chosen to apply foreign law.<sup>123</sup> In addition, the Labour Code stipulates that parties to the employment contract may choose the law applicable either to the entire employment contract or to a part thereof. The choice of applicable law does not invalidate in the sphere of employee protection the mandatory legal provisions of the state the laws of which would apply in the absence of an agreement on the applicable law concluded between the parties.<sup>124</sup> In case the parties have not chosen the applicable law, the Labour Code establishes principles according to which the law should be chosen, namely, in case of permanent employment in one state, the labour law of the state is applicable irrespective of the employee's temporary employment in another state; if the employee has no permanent employment in any state, the labour law of the state where the employer has his principal place of business is applicable; if the existing circumstances allow to conclude that labour relations are connected to a greater extent with the state other than the one whose law is applicable according to the first two principles, the labour law of that other state with the law of which the labour relations are connected to the greatest extent is applicable.<sup>125</sup>

The Labour Code stipulates the primacy of international law over national law in Article 8, by establishing that where international agreements of the Republic of Lithuania establish rules other than those laid down by the Labour Code and other labour laws of the Republic of Lithuania, the rules of international agreements apply. The Labour Code envisages that the international agreements of the Republic of Lithuania apply directly to the labour relations, except in cases where international agreements establish that the application thereof requires a special regulatory act of the Republic of Lithuania.<sup>126</sup>

As to the capacity for natural persons to enter into labour relations in Lithuania, the Labour Code stipulates that all citizens of the Republic of Lithuania are recognised to have legal ability to exercise labour rights and undertake labour obligations. Foreign nationals and stateless persons, permanently residing in Lithuania, have the same legal capacity in labour relations as its citizens.<sup>127</sup> The age of 16 years is the limit, when a person is capable to acquire full legal capacity to enter into labour relations.<sup>128</sup> As to employers, they acquire legal capacity in labour relations from the moment of their establishment.<sup>129</sup> The Labour Code defines an employer as an enterprise, agency, organisation or any other organisational structure irrespective of the form of ownership, legal form, type and nature of activities.<sup>130</sup> Also any natural person may be an employer, the legal capacity of whom is regulated by the Civil Code.<sup>131</sup>

The Labour Code expressly stipulates that exercise of labour rights and fulfilment of labour duties may not violate other persons' rights and interests protected

<sup>123</sup> Article 6, paragraph 3 of the Labour Code.

<sup>124</sup> Article 7, paragraph 1 of the Labour Code.

<sup>125</sup> Article 7, paragraph 2 of the Labour Code.

<sup>126</sup> Article 8, paragraph 2 of the Labour Code.

<sup>127</sup> Article 13, paragraph 1 of the Labour Code.

<sup>128</sup> Article 13, paragraph 2 of the Labour Code.

<sup>129</sup> Article 14, paragraph 1 of the Labour Code.

<sup>130</sup> Article 16, paragraph 1 of the Labour Code.

<sup>131</sup> Article 16, paragraph 2 of the Labour Code.

by law.<sup>132</sup> It also establishes that labour rights are protected by laws except in cases, when the rights are exercised in violation of their purpose, public interests, peaceful work, good customs or principles of public morals.<sup>133</sup>

The basis of employment relations is an employment contract.<sup>134</sup> The Labour Code establishes that in every employment contract the parties must agree on the essential conditions of the contract: the employer's place of work and job functions, i.e., on work of a certain profession, speciality, qualification or specific duties as well as conditions of remuneration for work.<sup>135</sup> An employment contract must be concluded in writing.<sup>136</sup>

The Labour Code differentiates between collective agreements and individual employment relations. A collective agreement of an enterprise is a written covenant between the employer and the staff of the enterprise about the work, remuneration for work and other social and economic conditions. A collective agreement of an enterprise shall be concluded in all types of enterprises, agencies and organisations.<sup>137</sup> Collective agreements are also a source of labour law.<sup>138</sup>

The Labour Code defines that illegal work means: 1) work that is performed without the conclusion of an employment contract or 2) work that is performed by foreign citizens and stateless persons failing to comply with the procedure of their employment established by regulatory acts. Illegal work does not include assistance (help) and voluntary works. Employers or their authorised persons who have permitted the performance of illegal work are liable in accordance with the procedure prescribed by laws.<sup>139</sup> The Labour Code stipulates that persons applying to hold a post or to perform work, which requires special knowledge, may be required to pass qualification examinations.<sup>140</sup>

The Labour Code differentiates between several types of employment contracts: contracts for an indefinite period of time, fixed-term, temporary, seasonal contracts, contracts on additional work, secondary job, contracts with home workers, contracts on the supply of services and other.<sup>141</sup>

An employer is entitled to terminate the labour contract without giving an employee prior notice, when the employee performs his duties negligently or commits other violations of labour discipline or when the employee commits one gross breach of duties.<sup>142</sup>

The Labour Code defines that a gross breach of work duties is an infraction of labour discipline involving gross violation of the provisions of laws and other legal acts which directly regulate the employee's work, or any gross violation of work duties or

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<sup>132</sup> Article 35, paragraph 2 of the Labour Code.

<sup>133</sup> Article 36, paragraph 1 of the Labour Code.

<sup>134</sup> Article 15 and 93 of the Labour Code.

<sup>135</sup> Article 95 of the Labour Code.

<sup>136</sup> Article 99, paragraph 2 of the Labour Code.

<sup>137</sup> Article 59, paragraph 1 of the Labour Code.

<sup>138</sup> Article 3, paragraph 1 of the Labour Code.

<sup>139</sup> Article 98 of the Labour Code.

<sup>140</sup> Article 103, paragraph 1 of the Labour Code.

<sup>141</sup> Article 108 of the Labour Code.

<sup>142</sup> Article 136, paragraph 3 of the Labour Code.

the prescribed work regulations. It is further stipulated that a gross breach of work duties includes:

- 1) improper conduct with visitors or customers or any other acts which directly or indirectly violate person's constitutional rights;
- 2) disclosure of state, professional, commercial or technological secrets or communicating them to a rival enterprise;
- 3) participation in activities, which under provisions of laws, regulatory acts, work regulations, collective agreements or contracts of law, are incompatible with the functions of work;
- 4) taking advantage of one's position for unlawful gain for oneself or other persons or for some other personal purposes, or arbitrary behaviour;
- 5) violation of equal opportunities or sexual harassment of colleagues, subordinates or customers;
- 6) refusal to provide information where laws, other regulatory acts or work regulations oblige one to provide it, or provision of knowingly false information in those cases;
- 7) acts with elements of theft, fraud, appropriation or embezzlement of property, unlawful taking of a reward even though these activities did not involve the employee in criminal or administrative liability;
- 8) where during the working time the employee is under the influence of alcohol, narcotic or toxic substances with the exception of cases where intoxication was caused by the industrial processes at the enterprise;
- 9) absence from work throughout the day/shift without any substantial cause;
- 10) refusal to undergo a medical check where such checks are obligatory;
- 11) other offences which are in gross breach of work procedure.<sup>143</sup>

With respect to liability, the Labour Code stipulates that liability shall be incurred due to a violation of law during which one party to a labour relationship causes damage to another party through non-performance of work duties or by performing them unsatisfactorily.<sup>144</sup> The Labour Code also sets conditions of incurring liability: 1) damage has been caused; 2) damage has been caused through illegal activity; 3) there is a causal relationship between an illegal activity and damage; 4) the guilt of an offender; 5) the offender and the victim are in a labour relationship during the violation of law; 6) the resulting damage relates to work activities.<sup>145</sup>

The parties to an employment contract shall compensate damage other than property damage caused to each other. The amount of damage in each case shall be determined by a court in accordance with the Civil Code.<sup>146</sup>

The Labour Code stipulates the cases of employees' liability: 1) loss of property or reduction of its value, its damage; 2) misuse of materials; 3) fines and compensation benefits, which the employer had to pay through the employee's fault; 4) expenses resulting from damaged articles; 5) improper storage of fixed assets; 6) improper accounting of material and pecuniary assets; 7) failure to prevent production of defective products and theft of fixed or pecuniary assets; 8) any other violations of work rules, job or any other instructions.<sup>147</sup> An employee must compensate all damage caused

<sup>143</sup> Article 235 of the Labour Code.

<sup>144</sup> Article 245 of the Labour Code.

<sup>145</sup> Article 246 of the Labour Code.

<sup>146</sup> Article 250 of the Labour Code.

<sup>147</sup> Article 253 of the Labour Code.

but not in excess of the amount of his three average monthly wages,<sup>148</sup> with the further exceptions: 1) where the damage was caused deliberately; 2) damage resulting from a criminal act of the employee determined according to the procedure laid down in the Criminal Code; 3) damage caused by an employee with whom a contract of full liability has been concluded; 4) damage resulting from the loss of instruments, clothes, protective equipment issued to the employee for use at work, also from the loss of materials, sub-products or products in the course of the production; 5) damage caused in any other way or to any other property full liability for which is provided in special laws; 6) damage caused by an employee under the influence of alcohol or narcotic or toxic substances; or 7) where it is provided for in a collective agreement.<sup>149</sup>

Contracts prescribing full liability of an employee may be concluded with the employees whose work is directly related the safe-keeping, acceptance, release, sale, purchase and transportation of material assets and in respect of the personal protective equipment issued to the employee for use at work.<sup>150</sup> Where, owing to the character of work which is performed together, delimitation of liability of individual employees is not possible, a contract of full liability may be conducted with a group of workers. In this case damage shall be compensated by all employees who have signed the contract. The share of each employee's liability shall be determined in proportion to the working time during which they caused damage, unless the contract provides otherwise.<sup>151</sup>

In cases where the damage is caused by an employee and is not compensated for of his own free will in kind or cash and which is not in excess of his average monthly wage may be deducted from the employee's wage by a written order of the employer.<sup>152</sup>

## 6.2. *Assignment*

The Labour Code establishes that a contract on the supply of services is an employment contract, whereby an employee undertakes to supply personal household services to his employer. The characteristics of this type of employment contracts are established by the Government.<sup>153</sup>

## 6.3. *Temporary workers*

The Labour Code stipulates that a fixed-term employment contract may be concluded for a certain period of time or for the period of performance of certain work, but not exceeding five years. Conclusion of a fixed-term employment contract is prohibited if work is of a permanent nature, except for the cases when it is provided by laws or collective agreements.<sup>154</sup>

A fixed-term employment contract becomes a non-term contract when the circumstances in respect whereof the term of the contract has been defined cease to exist during the period of employment relations (an employee does not return to work after

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<sup>148</sup> Article 254 of the Labour Code.

<sup>149</sup> Article 255 of the Labour Code.

<sup>150</sup> Article 256, paragraph 1 of the Labour Code.

<sup>151</sup> Article 256, paragraph 2 of the Labour Code.

<sup>152</sup> Article 258, paragraph 1 of the Labour Code.

<sup>153</sup> Article 116 of the Labour Code.

<sup>154</sup> Article 109 of the Labour Code.

his leave, etc.). If an employment contract, upon the expiry of its term, is not extended or is terminated, but within one month from the day of its termination another fixed-term employment contract is concluded with the dismissed employee for the same work, then at the request of the employee, such a contract is recognised as concluded for an indefinite period of time.<sup>155</sup>

A seasonal employment contract is concluded for the performance of seasonal work. Seasonal is such work, which due to natural or climatic conditions is performed not all year round, but in certain period (seasons) not exceeding eight months (in a period of twelve successive months), and is entered on the list of types of seasonal work.<sup>156</sup> A temporary employment contract is an employment contract for a period not exceeding two months.<sup>157</sup>

Unless it is prohibited by laws, an employee may make an arrangement to perform certain additional duties or certain additional work at the same workplace that has not been agreed in the employment contract. An employee may also perform secondary duties or do a second job at another workplace unless it is prohibited by laws or other regulatory acts.<sup>158</sup>

## 7. Government procurement policy and PMCs

Should the Government of the Republic of Lithuania decide to employ private military or private security contractors, the Law on Public Procurement of 3 December 2002<sup>159</sup> would apply.

## 8. Criminal responsibility

### 8.1. Mercenary activity

The Criminal Code of Lithuania does not criminalise mercenary activity as such. Lithuania is not a Party to the 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.

The Law on Citizenship<sup>160</sup> prescribes that citizenship of the Republic of Lithuania shall not be granted to persons that have committed crimes against humanity or acts of genocide; to the persons who took part in criminal activities against the Republic of Lithuania.<sup>161</sup> One of the reasons, whereby the citizenship of the Republic of Lithuania may be lost is if the person severs the actual links with the State of Lithuania by joining the military service of another state or taking employment as a state official in another state without the permission of the competent bodies of the Republic of Lithuania.<sup>162</sup>

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<sup>155</sup> Article 111 of the Labour Code.

<sup>156</sup> Article 112 of the Labour Code.

<sup>157</sup> Article 113 of the Labour Code.

<sup>158</sup> Article 114 of the Labour Code.

<sup>159</sup> The Law on Public Procurement of 3 December 2002. The English version is available at: <<http://www.vpt.lt/admin/uploaded/lawonPP.pdf>>.

<sup>160</sup> The Law on Citizenship. The English version is available at: <<http://www.litlex.lt/Litlex/Eng/Frames/Laws/Documents/55.HTM>>.

<sup>161</sup> Article 13 of the Law on Citizenship.

<sup>162</sup> Article 21 of the Law on Citizenship.

## 8.2. *Individual criminal responsibility*

Article 7 of the Criminal Code of the Republic of Lithuania stipulates universal jurisdiction over certain crimes specified in the article. It determines that persons who commit the following crimes (crimes against humanity, war crimes, counterfeiting of money or securities or keeping in possession or transmitting the same, money laundering, act of terrorism, hijacking of an aircraft, taking of hostages, unlawful handling of radioactive materials and crimes related to narcotic or drugs or controlled substances) specified in international agreements abroad are criminally liable under the Criminal Code of Lithuania, regardless of their citizenship, their place of residence, the place of commission of the crime or the punishability of the committed act under the laws of the place where the crime was committed.

The Criminal Code prescribes criminal responsibility for genocide,<sup>163</sup> crimes against humanity,<sup>164</sup> aggression,<sup>165</sup> killing of persons protected under international humanitarian law,<sup>166</sup> exiling of civilians of an occupied territory,<sup>167</sup> injury, torture or other inhuman treatment of persons protected under international humanitarian law,<sup>168</sup> violation of norms of international humanitarian law regarding protection of civilians and their property in time of war,<sup>169</sup> prohibited military attack,<sup>170</sup> forced engagement of civilians or prisoners of war in enemy armed forces,<sup>171</sup> destruction of protected objects or plunder of national treasures,<sup>172</sup> marauding,<sup>173</sup> delay in repatriation of prisoners of war,<sup>174</sup> delay in releasing interned civilians or impeding repatriation of other civilians,<sup>175</sup> illegal use of the Red Cross, the Red Crescent Sign or the United Nations emblem<sup>176</sup> and criminal association.<sup>177</sup>

The Criminal Code also criminalises the use of prohibited warfare stating that any person who, in violation of international agreements of the Republic of Lithuania or generally accepted international practices regarding the conduct and waging of war, orders the use or himself uses the prohibited warfare or means of waging a war shall be punished.<sup>178</sup>

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<sup>163</sup> Article 93 of the Criminal Code.

<sup>164</sup> Article 93<sup>1</sup> of the Criminal Code.

<sup>165</sup> Article 94 of the Criminal Code.

<sup>166</sup> Article 95 of the Criminal Code.

<sup>167</sup> Article 96 of the Criminal Code.

<sup>168</sup> Article 97 of the Criminal Code.

<sup>169</sup> Article 98 of the Criminal Code.

<sup>170</sup> Article 99 of the Criminal Code.

<sup>171</sup> Article 100 of the Criminal Code.

<sup>172</sup> Article 101 of the Criminal Code.

<sup>173</sup> Article 103 of the Criminal Code.

<sup>174</sup> Article 104 of the Criminal Code.

<sup>175</sup> Article 105 of the Criminal Code.

<sup>176</sup> Article 106 of the Criminal Code.

<sup>177</sup> Article 232 of the Criminal Code.

<sup>178</sup> Article 102 of the Criminal Code.

### 8.3. *Command responsibility and PMCs*

A serviceman shall conscientiously and properly perform his/her duties and obey the orders of his/her military superiors, abide by the laws and statutes, not exceed the rights provided by law, and safeguard classified information.<sup>179</sup>

A serviceman must obey the orders of his/her leaders. Nobody can issue a serviceman or **any other element** of the Armed Forces an order which forces the serviceman to break his/her oath, which is clearly unlawful (that bears disciplinary responsibility) or which violates all generally accepted principles and standards of international law. A commander (military superior) who issues such an order shall be prosecuted under the law. If a clearly unlawful order is issued, a serviceman shall not obey the order and shall report it to the superior officer of the individual who issued the unlawful order.<sup>180</sup> As long as employees of PSCs/PMCs are operating under the military command of the military commander of the national armed forces and takes a direct part in the hostilities, the military commander shall be responsible for their violations if the elements necessary for command responsibility are established.

The Criminal Code stipulates that a person executing a lawful order or ordinance shall not be held liable under criminal statutes for the damage caused. However, a person, who carries out an order or instruction, which he/she knows is unlawful shall be held criminally liable. A person who refuses to carry out an order or instruction which he/she knows is unlawful shall not be criminally liable. Such a person may be held criminally liable only if the act he commits contains elements of any other criminal act provided for by a criminal statute.<sup>181</sup>

The Criminal Code establishes criminal responsibility for unlawful order or its execution, determining that a serviceman who gives a distinctly unlawful order or coerces another serviceman into carrying out such an order, where the serviceman carries out the distinctly unlawful order and thereby causes grave consequences shall be punished.<sup>182</sup>

### 8.4. *Immunity from local criminal law*

The Criminal Code of the Republic of Lithuania establishes that when persons under international law enjoy immunity from criminal jurisdiction commit a criminal act in the territory of the Republic of Lithuania, the issue of their criminal liability shall be decided in accordance with both international agreements to which Lithuania is a Party and the Criminal Code.<sup>183</sup>

### 8.5. *Criminal responsibility and companies*

The Criminal Code of Lithuania stipulates criminal liability of enterprises. The criminal enterprise may be found guilty of the commission of a criminal act if any of the

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<sup>179</sup> Article 26, paragraph 1 of the Law on the Organisation of the National Defence System and Military Service.

<sup>180</sup> Article 27 of the Law on the Organisation of the National Defence System and Military Service.

<sup>181</sup> Article 35 of the Criminal Code.

<sup>182</sup> Article 314 of the Criminal Code.

<sup>183</sup> Article 4, paragraph 5 of the Criminal Code.

grave consequences in the crimes specified in particular articles of the Criminal Code occur and if the following conditions are satisfied: the natural person who commits the criminal act is an employee of an enterprise; the natural person commits the criminal act on the decision or approval of the manager of the enterprise or the collective management body of the enterprise; the conduct constituting a criminal act is engaged in by a natural person and consists of an omission to discharge or the proper discharge of specific duties imposed on the enterprise or an abuse or infringement of the rights granted to enterprise.<sup>184</sup> The Law determines that institution of criminal prosecution against the enterprise relieves the person who acted in the interests of the enterprise from criminal liability, except where the criminal act committed by the person contains elements of another crime or misdemeanour.<sup>185</sup>

Penalties that may be imposed upon enterprises for committing a criminal act encompass a fine or restriction on the activities of the enterprise. Only one penalty may be imposed on the enterprise for one crime.<sup>186</sup> The amount of a fine imposed for an enterprise shall be set between 100 and 1000 minimum monthly wages.<sup>187</sup> When imposing restrictions on the activities of the enterprise, the court shall prohibit the enterprise from engaging in a certain type of activity provided for in the founding documents or pass an order compelling the enterprise to close a certain branch. Restrictions on the activities of an enterprise shall be imposed for a period from 1 to 5 years.<sup>188</sup>

## 9. Commercial law/civil liability

### 9.1. Choice of law and forum

The Civil Code<sup>189</sup> of the Republic of Lithuania, in force since 1 July 2001 is based on the Dutch civil law.<sup>190</sup>

As to the general provisions regulating application of foreign law, the Civil Code determines that foreign law shall apply to civil relationships where it is so provided by the international treaties of the Republic of Lithuania, agreements between the parties or the laws of the Republic of Lithuania.<sup>191</sup> The Code states that the application of a provision of foreign law may not be precluded solely because of the provision being attributed to public law.<sup>192</sup> Where a legal system of the state to which the *renvoi* is made by the provisions of this Code comprises different legal systems based on the criteria of division into several territorial units, a reference to an applicable foreign law shall mean a reference to the legal system of the relevant territory determined in accordance with the criteria established by that foreign state.<sup>193</sup> Where the legal system of the state to

<sup>184</sup> Article 22, paragraph 1 of the Criminal Code.

<sup>185</sup> Article 22, paragraph 2 of the Criminal Code.

<sup>186</sup> Article 40 of the Criminal Code.

<sup>187</sup> Article 43, paragraph 4 of the Criminal Code.

<sup>188</sup> Article 48 of the Criminal Code.

<sup>189</sup> The Civil Code. The English version is available at: <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_e?p\\_id=245495](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=245495)>.

<sup>190</sup> Law of Lithuania. Best Businessman Time System and Lithuanian Development Agency, available at: <<http://businessmantime.com/en/wp-content/uploads/2008/02/law-of-lithuania.pdf>>.

<sup>191</sup> Article 1.10, paragraph 1 of the Civil Code.

<sup>192</sup> Article 1.10, paragraph 2 of the Civil Code.

<sup>193</sup> Article 1.10, paragraph 4 of the Civil Code.

which *renvoi* is made by the provisions of the Civil Code of Lithuania comprises several legal systems applied to different categories of persons, the applicable legal systems shall be determined in accordance with the criteria established in the law of that foreign state.<sup>194</sup> Where the criteria above mentioned may not be identified within the scope of the applicable foreign law, the law of the legal system to which the relevant case is most closely connected shall apply.<sup>195</sup>

The Civil Code establishes that the provisions of foreign law shall not be applied where the application thereof might be inconsistent with the public order established by the Constitution of the Republic of Lithuania and other laws. In such instances, the civil laws of the Republic of Lithuania shall apply.<sup>196</sup> Mandatory provisions of the laws of the Republic of Lithuania or those of any other state most closely related to the dispute shall be applicable regardless of the fact that another foreign laws has been agreed upon by the parties. In deciding on these issues the court shall take into consideration the nature of these provisions, their purpose and the consequences of application or non-application thereof.<sup>197</sup>

Article 1.13 of the Civil Code stipulates the primacy of international law over national law stating that where the provisions established in the international treaties of the Republic of Lithuania are different from those determined by the Civil Code and other laws of the Republic of Lithuania, the provisions of the international treaties of the Republic of Lithuania shall apply. The latter shall apply to civil relationships directly, except in cases where an international treaty establishes that a special national legal act is necessary for its application.<sup>198</sup>

The Civil Code stipulates that if the applicable foreign law refers back to the Lithuanian law, that reference shall be observed only in instances provided for by the Civil Code or the foreign law. If the applicable foreign law refers to the law of a third state, that reference shall be observed only in the instances provided for by the Civil Code, or the law of the third state. If in the matters of determining the civil legal status of a person, the applicable foreign law refers back to the law of the Republic of Lithuania, such reference shall be observed. The above-mentioned shall not apply in cases where the applicable law has been chosen by the parties to a transaction, likewise in determining the applicable law to the form of a transaction and to non-contractual obligations. Where the provisions of the Civil Code provide for the application if an international treaty (convention), the matters of *renvoi*, i.e., referring back and referring to the law of a third state shall be decided in accordance with the provisions of the applicable international treaty (convention).<sup>199</sup>

### 9.1.1. As to the law applicable to legal persons

With regard to law applicable to legal persons or any other organisations, the Civil Code of Lithuania determines that civil capacity of foreign legal persons or any other organisations shall be governed by the laws of the state where these persons or

<sup>194</sup> Article 1.10, paragraph 5 of the Civil Code.

<sup>195</sup> Article 1.10, paragraph 6 of the Civil Code.

<sup>196</sup> Article 1.11, paragraph 1 of the Civil Code.

<sup>197</sup> Article 1.11, paragraph 2 of the Civil Code.

<sup>198</sup> Article 1.13, paragraph 1 and 2 of the Civil Code.

<sup>199</sup> Article 1.14 of the Civil Code.

organisations are founded.<sup>200</sup> Irrespective of the state of foundation of a legal person or any other organisation the civil capacity of its subdivisions shall be determined in accordance with the law of the Republic of Lithuania if the head office, principal place of business or other activity of the subdivision is located in the Republic of Lithuania. However, merger, association or transfer of the head office of legal persons or any other organisations, one of which is located in the Republic of Lithuania and the other in a foreign state, shall have effect on their civil capacity in the Republic of Lithuania only if implemented in conformity with the laws of both states concerned.<sup>201</sup>

Article 1.20 of the Civil Code determines the issues regulated in accordance with the applicable law determined in the previous Article 1.19 of the Civil Code, namely: 1) the legal nature (legal form and status) of a legal person or any other organisation; 2) foundation, reorganisation and liquidation of a legal person or any other organisation; 3) the name of a legal person or any other organisation; 4) the system and competence of the bodies of a legal person or any other organisation; 5) civil liability of a legal person or any other organisation; 6) the power to represent a legal person or any other organisation; and 7) legal effects of the violations of laws or founding documents. In addition, the Civil Code stipulates that protection against infringement of the business name of a legal person or any other organisation registered in the Republic of Lithuania shall be governed by the law of the Republic of Lithuania.<sup>202</sup>

The representative offices and branches of foreign legal persons or any other organisations registered in the Republic of Lithuania shall be governed by the law of the Republic of Lithuania. In addition, at least one of the persons acting on behalf of a representative office or a branch shall be bound to reside in the Republic of Lithuania. The rights and obligations of the persons acting on behalf of a representative office or a branch registered in the Republic of Lithuania shall be determined by the law of the Republic of Lithuania.<sup>203</sup>

With regard to civil liability, if the business of a legal person or any other organisation founded under foreign law is conducted in the Republic of Lithuania, the civil liability of the persons acting on behalf and in the interests of those legal persons or any other organisations shall be governed by the law of the Republic of Lithuania. A legal person or any other organisation may not claim for annulment or invalidity of a transaction formed by its body or any other representatives in excess of their competence (powers) if the law of the state where the domicile or the head office if the other party to the transaction is located does not provide for any restrictions on their representative powers, unless the other party know or, taking into account its position and the relationship with the other party, should have known of such restrictions.<sup>204</sup>

### *9.1.2. As to the law applicable to contractual obligations*

With respect to the law applicable to contractual relations, as a basic rule the Civil Code establishes that contractual obligations shall be governed by the law agreed by the parties. Such agreement of the parties may be expressed in the form of separate

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<sup>200</sup> Article 1.19, paragraph 1 of the Civil Code.

<sup>201</sup> Article 1.19, paragraph 3 and 4 of the Civil Code.

<sup>202</sup> Article 1.20 of the Civil Code.

<sup>203</sup> Article 1.21 of the Civil Code.

<sup>204</sup> Article 1.22 of the Civil Code.

terms of the concluded contract or it may be determined in accordance with the factual circumstances of the case. The law of the state designated by the agreement of the contracting parties may be applied to the whole contract or only to a part or parts thereof.<sup>205</sup> The initially chosen law applicable to contractual obligation may be changed by the agreement of the parties at any time.<sup>206</sup> The choice of law applicable to a contract as made by the agreement of the parties may not be the grounds for refusing to apply the mandatory legal norms of the Republic of Lithuania or those of any other state that cannot be changed or declined by the agreement of the parties.<sup>207</sup> However, if no law applicable to a contractual obligation is designated by the agreement of the contracting parties, the law of the state with which the contractual obligation is most closely connected shall apply. The Civil Code determines the conditions to determine the state with which the contractual obligation is most closely connected.<sup>208</sup>

With regard to the applicable law to the form of transaction, the Civil Code refers to the applicable law established by Article 1.37 of the Civil Code. If no applicable law is designated by the agreement of the parties, the form of transaction shall be governed by the laws of the place where the parties entered into that transaction.<sup>209</sup>

## 9.2. *Freedom of contract*

The Civil Code of the Republic of Lithuania stipulates the principles of legal regulation of civil relationships. It determined that civil relationships shall be regulated in accordance with the principles of equality of their subjects' rights, inviolability of property, freedom of contract, non-interference in private relations, legal certainty, proportionality and legitimate expectations, prohibition to abuse a right, as well as the principles of comprehensive judicial protection of civil rights. No civil rights may be limited, except in cases established by laws, or on the basis of a court judgment made in accordance with laws, where such limitation is necessary to protect public order, the principles of good morals, likewise the health and life of people, property of persons, their rights and lawful interests.<sup>210</sup> The Civil Code establishes that in exercise of their rights and performance of their duties, the subjects of civil relationships shall act according to the principles of justice, reasonableness and good faith.<sup>211</sup>

The Civil Code establishes the principle of freedom of contract. The parties are free to enter into contracts and determine their mutual rights and duties at their own discretion; the parties may also conclude other contracts that are not established by the Civil Code if this does not contradict laws. It is to be prohibited to compel another person to conclude a contract, except in cases when the duty to enter into a contract is established by laws or a free-will engagement. The conditions of a contract shall be established by the parties at their own discretion, except in the cases where certain conditions of a contract are determined by the mandatory rules of law.<sup>212</sup>

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<sup>205</sup> Article 1.37, paragraph 1 of the Civil Code.

<sup>206</sup> Article 1.37, paragraph 2 of the Civil Code.

<sup>207</sup> Article 1.37, paragraph 3 of the Civil Code.

<sup>208</sup> Article 1.37, paragraph 4 of the Civil Code.

<sup>209</sup> Article 1.38, paragraphs 1 and 2 of the Civil Code.

<sup>210</sup> Article 1.2 of the Civil Code.

<sup>211</sup> Article 1.5 of the Civil Code.

<sup>212</sup> Article 6.156 of the Civil Code.

The Civil Code prescribes the instances where a written form of transaction is required:

- 1) transactions made by natural person in the event where at the moment of their formation the value of the property upon which the transaction is made exceeds five thousand Litas, except such transactions which are performed at the time of their formation;
- 2) transactions on the foundation of legal persons;
- 3) contracts of purchase and sale of goods by instalments;
- 4) insurance contracts; arbitration agreements;
- 5) contracts of lease of a movable thing for a term of over one year; preliminary contracts;
- 6) contracts of life annuity (contracts of rent);
- 7) compromise agreements;
- 8) other transactions whose mandatory ordinary written form is provided for by the Civil Code or other laws.<sup>213</sup>

The law may establish mandatory legal registration of certain transactions. A transaction shall produce its effects between the parties even if it is not registered in the mandatory order. In such instances, the rights and duties of the parties produce their effects between them not from the moment of registration of the transaction but from the moment established by the law or agreement of the parties, except in cases where it is expressly determined by the Civil Code that the rights and duties of the parties shall arise only from the moment of registration of the transaction concerned. The parties to an unregistered transaction may not invoke the fact of transaction against third persons and argue their rights against third persons by relying on other means of proof.<sup>214</sup> The Civil Code stipulates that transactions which are permitted by laws to be formed verbally may also be made in the written or notarial form. Transaction, the ordinary written form for which is mandatory, may also be formed in a notarised form.<sup>215</sup>

### 9.3. *Termination of contract*

If the nature of nullity is clearly indicated in the law, a transaction shall be presumed to be null, irrespective of the fact of existence of a court judgment upon its nullity. The parties may not ratify a transaction, which is null and void.<sup>216</sup> Regarding nullity of a transaction that does not correspond to the requirements of mandatory statutory provisions, any transaction that fails to meet the requirements of mandatory statutory provisions shall be null and void. When a transaction is null and void, each party shall be bound to restore to the other party everything he has received according to that transaction (restitution), and where it is impossible to restore in kind the received, the parties are bound to compensate the received to each other in money, unless the laws provide for other consequences of non-existence of the transaction.<sup>217</sup> A transaction that is contrary to public order or norms of good morals shall be null and void.<sup>218</sup>

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<sup>213</sup> Article 1.73, paragraph 1 of the Civil Code.

<sup>214</sup> Article 1.75, paragraphs 1 and 2 of the Civil Code.

<sup>215</sup> Article 1.77 of the Civil Code.

<sup>216</sup> Article 1.78, paragraph 1 of the Civil Code.

<sup>217</sup> Article 1.80, paragraphs 1 and 2 of the Civil Code.

<sup>218</sup> Article 1.81, paragraph 1 of the Civil Code.

Transactions made by the governing bodies of a private legal person in breach of a competence conferred on them by their founding documents or contradicting the goals of that legal person may be declared void only in the cases where it is proved that the other party acted in bad faith, i.e., he knew or should have known that the transaction was contrary to the goals of the legal person concerned. In such cases, the fact of announcement of the founding documents of the legal person shall not be a sufficient proof of the other party's bad faith; therefore the legal person shall be bound to prove that the other party deliberately acted in bad faith.<sup>219</sup>

#### 9.4. Civil liability

The Civil Code establishes that civil liability is a pecuniary obligation one party of which shall have the right to claim for compensation of damages (damage) or demand payment of the penalty (fine, interest), and the other party shall be bound to make compensation for damages (damage) arising there from, or pay the penalty (fine, interest). Civil liability is of two kinds: **contractual liability** and **non-contractual (delictual) liability**. Contractual liability is a pecuniary obligation resulting from a failure to perform a contract or from its defective performance where one party of the obligation has the right to claim for compensation of damages or demand payment of penalty (fine, interest), and the other party is bound to make compensation for damages, or to pay penalty (fine, interest) caused by the failure to perform the contract, or by a defective performance thereof. Non-contractual (delictual) liability is a pecuniary obligation which is not related to contractual relations, except in cases where it is established by laws that delictual liability shall also result from damage related with contractual relations. A creditor, before bringing claims for compensation of damages against a person who in accordance with laws or the contract is additionally liable together with another person (subsidiary liability), must claim towards the principal debtor for compensation of damages. If the principal debtor refuses to compensate damages or if the creditor does not receive any answer from the debtor to his claim within a reasonable time, the creditor may claim for compensation of damages towards the debtor who is subsidiarily liable. A creditor may not claim for compensation of damages from the subsidiarily liable debtor where the creditor can satisfy his claim by the set-off of a counterclaim of the principal debtor. Before compensating damages to the creditor, the subsidiarily liable debtor must accordingly notify the principle debtor. If the action for compensation of damages is brought against the subsidiarily liable debtor, he must involve the principal debtor in the judicial proceedings as well. Otherwise, the principal debtor may invoke against the counterclaim of the subsidiary debtor all defences which he could have invoked against the creditor.<sup>220</sup>

Damage includes the amount of the loss or damage of property sustained by a person and the expenses incurred (direct damages) as well as the income of which he has been deprived, i.e., the income he would have received if unlawful actions had not been committed. Damage expressed in monetary terms shall constitute damages. Where the amount of damages cannot be proved by the party with precision, it shall be assessed by a court. If the person who is liable towards another has derived profit from his unlawful actions, upon the demand of the creditor the profit received may be attributed to damages. In addition to the direct damages and the incomes of which a creditor has

<sup>219</sup> Article 1.82, paragraph 1 of the Civil Code.

<sup>220</sup> Article 6.245 of the Civil Code.

been deprived, damages shall comprise: reasonable costs to prevent or mitigate damage; reasonable costs incurred in assessing civil liability and damage; reasonable costs incurred in the process of recovering damages within extrajudicial procedure.<sup>221</sup>

Non-pecuniary damage is deemed to be a person's suffering, emotional experiences, inconveniences, mental shock, emotional depression, humiliation, deterioration of reputation, diminution of possibilities to associate with others, etc., evaluated by a court in terms of money. Non-pecuniary damage shall be compensated only in cases provided for by laws. Non-pecuniary damage shall be compensated in all cases where it is incurred due to crime, health impairment or deprivation of life, as well as in other cases provided for by laws. The court in assessing the amount of non-pecuniary damage shall take into consideration the consequences of such damage sustained, the gravity of the fault of the person by whom the damage is caused, his financial status, the amount of pecuniary damage sustained by the aggrieved person, also any other circumstances of importance for the case, likewise to the criteria of good faith, justice and reasonableness.<sup>222</sup>

The damages incurred must be compensated in full, except in cases when limited liability is established by laws or a contract. The court, having considered the nature of liability, the financial status of the parties and their interrelation, may reduce the amount of repairable damages if awarding full compensation would lead to unacceptable and grave consequences. However, the reduction may not exceed the amount for which the debtor has or ought to have covered his civil liability by compulsory insurance.<sup>223</sup>

An agreement of the parties upon exclusion of civil liability for damages (damage) sustained by the reason of the debtor's intentional fault or gross negligence, as well as any agreement concerning the limitation of the amount of civil liability for damages sustained by the reasons indicated above shall be null and void. It shall be prohibited to exclude or limit civil liability for impairment of health, deprivation of life or non-pecuniary damage caused to another. The mandatory legal norms establishing civil liability, as well as the form or amount thereof, cannot be modified by an agreement of the parties.<sup>224</sup>

In the instances provided for by laws or a contract, civil liability may be insured by concluding a contract of insurance. Relationships connected with the insurance of civil liability are regulated by the Civil Code and other laws. Where the insurance benefit due to the insured person is not sufficient for the compensation of damage in whole, the difference between the insurance benefit and actual amount of damage shall be redressed by the insured person himself liable for the damage caused.<sup>225</sup>

In addition, with respect to non-contractual liability, an employer shall be liable for damages resulting from the fault of his employees in the performance of their service (official) duties. Employees are considered to be persons exercising their functions on the grounds of a labour or civil contract and acting under the supervision or in accordance with the orders of the corresponding legal or natural person. Where in cases established by laws the employer and the employee are jointly and severally liable

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<sup>221</sup> Article 6.249 of the Civil Code.

<sup>222</sup> Article 6.250 of the Civil Code.

<sup>223</sup> Article 6.251 of the Civil Code.

<sup>224</sup> Article 6.252 of the Civil Code.

<sup>225</sup> Article 6.254 of the Civil Code.

for compensation of damage, the employee shall be liable towards the employer exclusively in the event of his intention or negligence.<sup>226</sup>

Article 16 of the Law on Enterprises regulating liability for violations of laws on enterprises stipulates that legal action may be brought in the manner prescribed by law against the enterprises (enterprise managers) and administrative officials for the violation of the Law on Enterprises or other laws, which regulate the establishment of enterprises and their activities.

## 10. Conclusions

The Lithuanian law prescribes provision of private security services on the basis of a licence. The Law also regulates the operation of foreign private security companies in Lithuania. However, there is a lack of regulation of private military services as such. Natural persons may get involved in covert co-operation as part of operational activities. With respect to acquisition of arms and ammunition, a permit for the acquisition of firearms and a permit for carrying arms or a permit for keeping them upon registration of an arm would be necessary for the PSCs/PMCs and their employees. Arms import and export is subject to licensing.

The Law on Enterprises extensively elaborates on the issue of licensing of commercial-economic activities. The Law establishes specific spheres of commercial-economic activities that are subject to licensing: those connected with increased danger to human life, health, environment, manufacturing and acquisition of armament, also goods and services for which a special procedure of product sale or service provision may be established under laws. That would apply to the operation of PMCs/PSCs. As a general rule, a licence shall be issued for an unlimited period of time, with a provision for its re-registration in accordance with the procedure established by the Government of the Republic of Lithuania, unless other laws provide otherwise. There is a requirement that the enterprises keep accounts in an obligatory manner, and submit relevant information about its accounts to state bodies for the purposes of taxation and financial accounting of the enterprise. However, the enterprises have a right to keep documents concerning its commercial activities confidential.

The Labour Code of Lithuania gives a significant contribution to the prospective regulation of PMCs/PSCs operating abroad, firstly, stipulating that the labour rights may be restricted, if such restrictions are necessary in order to protect public order, public morals, public health, property rights and legal interests. That would include human rights commitments by the Republic of Lithuania. Second, the Labour Code stipulates that the labour laws and other regulatory acts are applicable to labour relations in the territory of the Republic of Lithuania regardless of whether the person is employed in Lithuania or has been posted by his employer abroad. Thirdly, the Labour Code regulates the law applicable to the labour relations. It determines that foreign law cannot be applied where its application would be contrary to public order established by the Constitution and other laws of the Republic of Lithuania, including human rights obligations. Fourthly, the Labour Code also stipulates that exercise of labour rights and fulfilment of labour duties may not violate other persons' rights and interests. Finally, the Labour Code contributes to the termination of contract issues, employee's liability and issues of compensation.

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<sup>226</sup> Article 6.264 of the Civil Code.

The Parliament of the Republic of Lithuania has exclusive competence to decide on the use of armed forces abroad, namely, the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states. Thereby, it contributes to the argument that in cases of involvement of PSCs/PMCs abroad the Parliament of the Republic of Lithuania would be sole authority to decide on outsourcing of the armed forces. The Lithuanian law also contributes to the issue of chain of operational command, where the chain of operational command for operations and other defence activities begins with the President of the Republic of Lithuania.

The Criminal Code of Lithuania does not criminalise mercenary activity as such. Lithuania is not a Party to the 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.