



PRIV-WAR Report – Russia

National Reports Series 14/09

The Regulatory Context of Private Military and Security Services in the Russian Federation

Sandija Novicka, Riga Graduate School of Law
29 May 2009

PRIV-WAR

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

The PRIV-WAR project is supported within the 7th Framework Research Programme by the
European Commission DG Research

PRIV-WAR Report – Russia

National Reports Series 14/09

The Regulatory Context of Private Military and Security Services in the Russian Federation

Table of contents

1. Introduction	3
2. Scope of the report.....	3
3. Domestic security and investigation services	3
3.1. Private security services.....	4
3.2. Investigation service	6
4. Regulation of armed force	8
4.1. Possession of arms	8
4.2. Arms export and import	12
4.3. Government policy on outsourcing of armed forces.....	12
4.4. PMC contracts and armed force.....	14
5. Corporate law	15
5.1. Registration and purpose.....	15
5.2. The Russian Federation PSCs	16
6. Labour Law.....	17
6.1. Employment.....	17
6.2. Assignment	18
6.3. Temporary workers	18
7. Government procurement policy and PMCs/PSCs	19
8. Criminal responsibility	19
8.1. Mercenary activity	19
8.2. Individual criminal responsibility	21
8.3. Command responsibility and PMCs/PSCs.....	24
8.4. Immunity from local criminal law	25
8.5. Criminal responsibility and companies.....	26
9. Commercial law/civil liability	26
9.1. Choice of law and forum.....	26
9.2. Freedom of contract	27
9.3. Termination of contract.....	28
9.4. Civil liability	28
10. Conclusions	29

1. Introduction¹

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

2. Scope of the report

In the Russian Federation, there are no laws specifically regulating the conduct of private military companies (hereinafter – PMCs) and private security companies (hereinafter – PSCs) abroad. However, we cannot draw the conclusion that the PMCs and PSCs registered in the Russian Federation are precluded from being employed by a foreign employer and sent abroad. Taking into consideration the lack of regulation it is necessary to explore possibilities of how natural persons and merchants may become involved in providing private military and private security services that are comparable to the services provided by foreign PMCs and PSCs. This report will show that natural persons as well as merchants may become involved in providing private military and private security services both – in the framework of the State’s prerogative of investigation activities and involvement in the national armed forces, as well as in the scope of purely private activities of security guard services and detective activities, subject to acquisition of a special permit (licence).

The report focuses on the issue of regulation applicable to potential Russian Federation PMCs and PSCs providing their services abroad. It deals with the legal status of domestic security and investigatory services, regulation of armed force, including arms export and import, corporate law, labour law, criminal responsibility and commercial law that may be potentially applicable to PMCs/PSCs.

According to the Constitution of the Russian Federation, Russia is monist with regard to the relationship between national and international law. Thus, the rapid developments in the fields of international human rights and international criminal law may have implications on national regulation, especially with respect to the issues that concern the role of individual as a subject of international law – jurisdiction, human rights and individual criminal responsibility.

3. Domestic security and investigation services

In the Russian Federation, conducting of private security services and private investigations services is regulated by the Federal Law No. 2487-I “On Private Detective and Security Activity in the Federation of Russia” adopted on 11 March 1992.² As of 1 January 2010 substantial amendments to the Law “On Private Detective

¹ Prepared by Riga Graduate School of Law, by Sandija Novicka (Sandija.Novicka@rgsl.edu.lv) under supervision of Dr. Ineta Ziemele, Professor, Judge at the European Court of Human Rights. 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 solely the ones of the author.

² The Federal Law “On Private Detective and Security Activity in the Federation of Russia” (*Федеральный закон " О частной детективной и охранной деятельности в Российской Федерации " № 2487-1, от 11.03.92 г.*).

and Security Activity in the Federation of Russia” will come into force. It will specify in more details requirements for private security companies and persons willing to become private detectives, the licensing procedure for private detectives and private security companies, as well as liability for illegal activities of private detectives and private security companies.

The law sets the legal basis for three types of security agencies and their personnel: private detectives and their associations, private internal security services³, and private security companies.

3.1. *Private security services*

In order to ensure security, the following services can be provided according to the Law “On Private Detective and Security Activity in the Federation of Russia”:

- 1) protection of life and health of citizens;
- 2) protection of property, also during the transportation;
- 3) services related to planning and installation of security and fire safety systems;
- 4) consultations on security issues;
- 5) safeguarding order during public events.⁴

Only companies incorporated for this purpose can perform private security services. Articles of Association of the private security company shall indicate that the company provides these services. The company may provide private security services only once it has received licence for that.⁵ Private security companies are allowed to use firearms.⁶

Private security services do not cover providing services to objects subject to State security.⁷ Security guards of private security companies are not allowed to combine their work in a private security company with a service in the State administration or paid community work.⁸

Private security guards shall be employed by the private security company on the basis of an employment agreement concluded according to the labour law of the Russian Federation. All private security guards shall obtain a private security guard certificate.⁹

³ According to Article 14 of the Law “On Private Detective and Security Activity in the Federation of Russia” all enterprises, independently of their size and form of ownership are permitted to establish a special sub-division for security and investigation purposes. Such internal security services are entitled to act only on the basis of their by-laws to ensure security of their company and are not entitled to provide their security and investigation services to other persons.

⁴ Article 3, paragraph 3 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

⁵ Article 11, paragraphs 1 and 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

⁶ Article 11, paragraph 3 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

⁷ Article 11, paragraph 3 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

⁸ Article 11, paragraph 4 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

⁹ Article 11.1, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

The certificate of private security guard is not granted to persons who:

- 1) are not citizens of the Russian Federation;
- 2) are below the age of 18;
- 3) according to a judgment of a court lack legal capacity or have limited legal capacity;
- 4) suffer from diseases precluding performance of private security guard duties (a list of such diseases is provided by the government of the Russian Federation);
- 5) have been convicted of an intentional criminal offence;
- 6) have been accused of a criminal offence (until the case is decided according to law).¹⁰

The licence granted to the private security company lists types of the services the company is entitled to provide and the territory in which the company is entitled to operate. The licence also indicates whether the company intends to use special means and firearms.¹¹ Chiefs of the private security companies shall possess a higher education decree.¹²

The legal basis for the activities performed by private security companies is a written contract.¹³ Private security guards are not allowed to use investigation methods.¹⁴ However, private security companies and private detectives are entitled to cooperate on the basis of an agreement.¹⁵

Private security guards are entitled to use special means and firearms.¹⁶ However, the use of firearms and special means is allowed only in cases prescribed by law and in accordance with strictly defined procedures set out in the law.¹⁷ Private detectives and private security guards are subject to regular inspections in order to verify whether they comply with criteria set for the persons related to the use of special means and firearms.¹⁸

The Russian Federation legislation regarding security and investigation services to be performed abroad during the armed conflict is applicable only to members of the Armed Forces of the Russian Federation, since only these persons can legally take part as military persons during an armed conflict.¹⁹ The members of the Armed Forces of the

¹⁰ Article 11.1, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹¹ Article 12, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹² Article 12, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹³ Article 12, paragraph 3 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁴ Article 12, paragraph 4 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁵ Article 13 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁶ Article 16, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁷ Article 16, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁸ Article 16, paragraph 3 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁹ Article 10 and 16, paragraph 3 of the Federal Law “On Defence” (*Федеральный закон "Об обороне", № 61-ФЗ, от 31.05.96 г.*).

Russian Federation may be citizens of the Russian Federation, who have been drafted in the Armed Forces of the Russian Federation or who have been enlisted under the contract, as well as foreigners, who have been enlisted under a contract.²⁰ The Armed Forces of the Russian Federation are entitled to participate in international missions and operations in accordance with international agreements of the Russian Federation.”²¹

If the Armed Forces of the Russian Federation perform certain security sustainment and investigation services in a particular country, these activities depend on specific type of international operation, as defined by the international mandate and, nationally, by the Constitution of the Russian Federation, laws “On Defence”, “On Military Duty and Military Service”, “On the Status of Servicemen”²² and other Federal laws that can be adopted in case of a planned international operation.

The cases in which the Russian Federation citizens are employed by a foreign employer in the conflict zone officially can be determined with difficulties. One of the ways of establishing that is the information provided by foreign tax revenue services to the Russian Federation State Revenue Service, responsible for collection of their income tax. A statement of an individual on the payment of income tax in a foreign country and the double non-imposition of resident income tax shall be determined. Also, whether the Russian Federation has concluded an agreement on the double non-imposition of resident income tax with a certain state may be relevant.

3.2. Investigation service

According to the Law “On Private Detective and Security Activity in the Federation of Russia”, private detectives can provide the following services:

- 1) collection of data for lawsuits on the basis of an agreement with the participant of proceedings;
- 2) market research and collection of information for business negotiations, collection of information on creditworthiness of business partners and unreliable business partners;
- 3) investigation of illegal use of trademarks, unfair competition and disclosure of commercial secrets;
- 4) investigations into biographies of potential employees and contractors of client companies (with a written consent of these persons);
- 5) search for missing persons;
- 6) recovery of lost property; and
- 7) collection of data on criminal cases on the basis of an agreement with the participants in the criminal proceedings.²³

²⁰ Article 2, paragraph 2 of the Federal Law N 53-FZ “On Military Duty and Military Service” (Федеральный закон «О воинской обязанности и военной службе» № 53-ФЗ от 28.03.98 г.).

²¹ Article 10, paragraph 2, 4 of the Federal Law “On Defence”.

²² Federal Law N 76-FZ “On the Status of Servicemen” (Федеральный закон «О статусе военнослужащих» № 76-ФЗ от 27.05.98 г.).

²³ Article 3, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

If necessary, private detectives are allowed to use special means – for example, rubber truncheons, handcuffs or tear gas.

Only citizens of the Russian Federation who have received the appropriate licence for that purpose can carry out private investigation activities.²⁴ Licences are granted for performing private investigation activities within a specific territory of the Russian Federation.²⁵ In order to obtain a licence the person shall prove that he or she has obtained a higher legal education degree or has undergone special training for work as a private detective or has three or more years of professional experience in the State law enforcement or security authorities.²⁶ Individual private detectives are allowed to form an association of private detectives having the status of a legal entity.²⁷

A licence is not granted to persons under the age of 21. A licence is not granted to persons who are suffering from mental illness, addiction to alcohol or narcotic substances or have been convicted for committing an intentional criminal offence or have been accused for committing a criminal offence (until the case is decided according to law). The licence is also not granted to persons who have been discharged from the State service in courts, prosecutor's offices, or other law enforcement institutions due to compromising reasons. Employees of law enforcement institutions in charge of control of private detectives and security activities can receive the licence only after at least one year has passed since they left the respective law enforcement institution.²⁸ A refusal to grant a licence may be appealed to a higher institution or a court.²⁹

A written contract for the provision of detective service shall be concluded with each client.³⁰ If there is a contract with a detective regarding gathering of information in a criminal matter, the detective within a period of 24 hours informs the performer of procedures in the records of which the criminal matter is entered in writing and harmonises his or her activities in this matter with the performer of procedures.³¹ While working, a detective is entitled to question persons and officials with their consent; to inspect items and documents with consent of the legal possessor; to inspect buildings, structures, and other objects and to observe and shadow in order to provide services listed in law.³²

²⁴ Article 4, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

²⁵ Article 6, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”. [As of 1 January 2010 the licence will be issued for the whole territory of the Russian Federation.]

²⁶ Article 6, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

²⁷ Article 8, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

²⁸ Article 6, paragraph 4 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

²⁹ Article 6, paragraph 5 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

³⁰ Article 9, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

³¹ Article 6, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

³² Article 5, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

Private detectives are not allowed to hide from the law enforcement institutions information obtained during detective activity regarding intended or committed criminal offences. Private detectives are not allowed to allege that they are officials of the law enforcement institutions; to collect information related to private life, political or religious conviction; to carry out audio, video or photo surveillance of premises without the consent of the respective officials or private persons, undertake activities violating rights and freedoms of persons, causing threat to life, health, reputation or property of persons. Private detectives are not allowed to falsify documents, to mislead clients, to disclose the collected information, to utilise the information obtained for purposes contrary to the interests of the client or in the interests of other persons. The law also prohibits the transfer of the licence of private detective to other persons and to take operative activity measures.³³ Investigation activities of private detectives violating right to private life are subject to liability as prescribed by laws.³⁴

The Ministry of Interior, other ministries and offices according to their competence set by laws, carry out control over detective activities.³⁵

4. Regulation of armed force

4.1. Possession of arms

In the Russian Federation, acquisition, possession or carrying of weapons is a monopolised and controlled process. Circulation of civil, service and combat weapons as well as circulation of munitions and cartridges in the territory of the Russian Federation is regulated by the Federal Law “On Weapons”.³⁶ It defines the categories of weapons depending on purpose of their use, i.e., civil, service and combat weapons.³⁷

Civil weapons are aimed for purpose of self-defence, sport, or hunting.³⁸ Civil firearms are restricted to a 10-round magazine. The Law defines kinds of weapons allowed for self-defence, for example, citizens have a right to purchase either smooth-bore guns, tubeless guns produced in the Russian Federation of a specific kind or cartridges that are in line with standards set up by the Ministry of Health of the Russian Federation, gas pistols and revolvers, for sport and hunting.³⁹

Service weapons are aimed for self-defence, fulfilment of duties by civil servants of the State institutions and employees of legal persons that on the basis of law have right to possess and use weapons.⁴⁰ Companies and organisations enjoying functions connected with the use of service weapons on the basis of law are legal persons with specific statutory functions. The law defines types of service weapons.

³³ Article 7, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

³⁴ Article 7, paragraph 2 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

³⁵ Article 20, paragraph 1 of the Law “On Private Detective and Security Activity in the Federation of Russia”.

³⁶ The Federal Law N 150-FZ “On Weapons” (*Федеральный закон «Об оружии» № 150-ФЗ от 13.12.96 г.*).

³⁷ Article 2 of the Law “On Weapons”.

³⁸ Article 3 of the Law “On Weapons”.

³⁹ Article 3 of the Law “On Weapons”.

⁴⁰ Article 4, part 1 of the Law “On Weapons”.

Combat weapons have a purpose for being employed during armed operations and are provided to the institutions defined by law, for example, the Ministry of Defence of the Russian Federation, the Ministry of Interior, and the Federal Migration Office. The Government of the Russian Federation issues orders on circulation of combat weapons.⁴¹

The Law “On Weapons” defines restrictions for circulation of specific kinds of civil and service weapons in the territory of the Russian Federation, as well as restrictions on the use of these weapons. For example, the Law prohibits circulation of civil and service weapons that has a shape that imitates other subjects, the use of which causes radiation, prohibits setting of devices for still shooting, sending of weapons, and bearing weapons during public events, demonstrations, etc.

The updated information on all the civil and service weapons allowed for circulation in the territory of the Russian Federation is contained in the State Register. The government of the Russian Federation updates and approves this State Register once every three months.⁴²

All models of civil and service weapons imported, exported, and produced in the territory of the Russian Federation shall have a certificate. The State Committee on Standardisation, Metrology and Certification carries out certification. A certificate is a basis for circulation of these weapons in the territory of the Russian Federation.⁴³

According to Article 9 of the Law “On Weapons” a licence is necessary for obtaining weapons. This provision does not apply to the State militarised organisations defined in Article 5. These organisations have a right to combat weapons; for example, the Ministry of Defence of the Russian Federation, the Ministry of Interior, the Federal Migration Office, the Federal Security Service, the Federal Service of Court Bailiffs, the Federal Custom Service. Licences can be issued by internal affairs bodies on the basis of an application and other necessary documents of citizens of the Russian Federation. A licence for obtaining the weapons is valid for 6 months from the date of issue. In case of a refusal to issue a licence a person has the right to appeal before the court.⁴⁴ Production and sale of weapons is also subject to licensing.⁴⁵

The Law provides a list of persons having the right to obtain weapons. These persons are⁴⁶:

- 1) citizens of the Russian Federation (only the Russian Federation citizens who are at least 18 years old have the right to acquire weapons for purposes prescribed by law, for example, sport, self-defence, hunting etc., and only after issue of a licence for obtaining the specific kind of weapons. A weapons licence is issued for five years. This term can be prolonged. Specific licences shall be issued depending on the type and the aim of the use of civil weapons. For example, a licence for civil weapons for self-defence can be issued only for possession without a right to carry these weapons, sport and hunting smooth-bore guns can be acquired only by persons having a certificate of membership in hunting or

⁴¹ Article 5 of the Law “On Weapons”.

⁴² Article 8 of the Law “On Weapons”.

⁴³ Article 6 of the Law “On Weapons”.

⁴⁴ Article 9 of the Law “On Weapons”.

⁴⁵ Article 9.1 of the Law “On Weapons”.

⁴⁶ Article 10 of the Law “On Weapons”.

sport organisations. Acquisition of a long-barrelled fire gun, as well as hunting air guns shall be registered at the institution of interior affairs within two weeks. After registration of a smooth-bore long-barrelled fire-guns aimed for self-defence citizens of the Russian Federation receive permission for their possession, but after registration of hunting fire-guns and air guns, as well as sport and hunting smooth-bore long-barrelled weapons – they receive permission for their possession and carrying for five years. To receive a licence for acquisition of weapons, citizens of the Russian Federation have to submit to the institutions of interior affairs an application, medical statement on absence of contraindications for possession of arms, document confirming citizenship as well as other documents related to specific kind and aim of weapons provided by the Law „On Weapons”. Persons, who acquire smooth-bore long-barrelled fire-guns for self-defence, tubeless fire-guns, gas pistols and revolvers, signal arms for the first time, except persons already having a permission for possession and carrying weapons, have to pass an examination on safe handling of weapons. The same obligation applies to persons who acquire sport smooth-bore fire-guns and hunting weapons for the first time. Additionally to the age and medical statement requirements, a licence for obtaining weapons cannot be issued to persons sentenced for intentional commission of a crime, serving their sentence for committed crime, persons having committed an administrative offence against public order for the second time within one year period and persons having no permanent place of residence).⁴⁷

- 2) foreigners (foreigners have a right to acquire civil weapons on the basis of a licence issued by the institutions of interior affairs with a condition that these weapons have to be brought out of the country within five days of the day of their acquisition. Foreigners are allowed to bring into the Russian Federation only sport and hunting weapons. They must have an invitation of a legal person having a licence for hunting, contract on hunting with this legal person or invitation for participation on sport events and respective permission of the Ministry of Interior of the Russian Federation. These weapons have to be brought out of the country within a period indicated in the contract or invitation);⁴⁸
- 3) State militarised organisations (starting from 1 January 2010 these organisations will have a right not only to obtain weapons, but also to receive them for temporary use. On 15 October 1997 the Government of the Russian Federation has adopted a decree Nr. 1314,⁴⁹ by which it has implemented and approved “Rules on Circulation of Combat Hand Small Arms and Other Arms, Munitions and Cartridges, as well as Arm Blanche in State Militarised Organisations.”⁵⁰ These rules regulate producing, sale, transfer, purchase, collecting, exhibiting, control, possession, transporting, destroying, export, import of weapons by these organisations.);

⁴⁷ Article 13 of the Law “On Weapons”.

⁴⁸ Article 14 of the Law “On Weapons”.

⁴⁹ Decree of the Government of the Russian Federation Nr. 1314 “On Approval of the Rules on Turnover of Combat Hand Small Arms and Other Arms, Munitions and Cartridges, as well as Arm Blanche in State Militarized Organizations”, as of 15 October 1997 (*Постановление Правительства Российской Федерации от 15 октября 1997 г. N 1314 «Об утверждении правил оборота боевого ручного стрелкового и иного оружия, боеприпасов и патронов к нему, а также холодного оружия в государственных военизированных организациях»*).

- 4) legal persons with special statutory functions (Article 12 of the Law “On Weapons” provides a list of such legal persons with special statutory functions. They include, for example, the Central Bank of the Russian Federation, the Savings Bank of the Russian Federation, the Main Centre of Special Communication of the Ministry of Communications of the Russian Federation, the Ministry of Foreign Affairs of the Russian Federation, private security companies, security services of organisations etc. Starting from 1 January 2010 private security companies will have a right to acquire service guns and revolvers for specific cartridges, civil weapons for self-defence, as well as, in institutions of internal affairs, to receive service weapons for temporary use. Legal persons with special statutory purpose have a right to acquire civil and service weapons only from legal persons after receiving a special licence at the institutions of internal affairs. The Government of the Russian Federation sets type, models and amount of weapons these legal persons have a right to acquire. Acquired weapons have to be registered within two weeks. By registering the acquired weapons these persons receive a permit to use and possess weapons for three years. This term can be prolonged. Managers of these legal persons are allowed to issue weapons to their employees only after employee has been granted right to receive civil weapons and after training of these employees. Employees have to be periodically checked for their ability to use firearms and have a special permit from institutions of interior affairs for possession and carrying service weapons);
- 5) educational institutions;
- 6) legal persons producing and selling weapons;
- 7) legal persons collecting and exhibiting weapons;
- 8) sport and hunting organisations;
- 9) reindeer and horse breeding/raising organisations, special units of the Academy of Science and special companies carrying out hydrographical support of navigation of the Northern Sea Rout.

According to the Federal Law Nr. 272-FZ as of 22 December 2008, starting from 1 January 2010, internal affairs institutions will have a right to issue weapons to legal and natural persons prescribed by law for timely use.⁵¹

The Government of the Russian Federation has adopted a special order on bringing combat weapons into and out of the country.⁵² Combat weapons can be brought out of and into the country only by servicemen of the Russian Federation Armed forces and employees of a state militarised organisation of the Russian Federation by performing their service duties on the basis of documents certifying their right to carry weapons and travel order card. Combat weapons can also be brought out and into the country by employees of foreign militarised organisations or special

⁵¹ The Federal Law N 272-FZ “On Amendments to Normative Acts of the Russian Federation Connected with Improvement of State Control in a Sphere of Private Security and Detective Activities” (*Федеральный закон “О внесении изменений в отдельные законодательные акты Российской Федерации в связи с совершенствованием государственного контроля в сфере частной охранной и детективной деятельности” от 22.12.98 г.*).

⁵² Decree of the Government of the Russian Federation Nr. 1314 “On Approval of the Rules on the Circulation of Combat Weapons, Hand Small Arms and Other Weapons, Munitions and Cartridges, as well as Arm Blanche” (*Постановление Правительства РФ “Об утверждении Правил оборота боевого ручного стрелкового и иного оружия, боеприпасов и патронов к нему, а также холодного оружия в государственных военизированных организациях” от 15 октября 1997 г. N 1314*).

services entering in the territory of the Russian Federation, if they have received a permission from a director of the respective militarised organisation of the Russian Federation.⁵³

In order to bring into or out of the territory of the Russian Federation civil and service weapons a permission of the respective state institution is required. Only legal persons producing or selling weapons have the right to bring into the country weapons and only legal persons having a licence for producing weapons have a right to bring out of the country weapons.⁵⁴ In order to bring into or out of the territory of the Russian Federation one unit of sport or hunting weapons, a gas weapon for self-defence or air guns, permission from the institutions of interior affairs is required.⁵⁵

4.2. *Arms export and import*

Only legal persons having received a licence for the production of weapons enjoy a right to produce service and civil weapons. Production of combat weapons is monopolised by the State.⁵⁶ This also applies to import and export of weapons. Companies having a licence for the production of weapons enjoy a right to export civil and service weapons; companies having a licence on sale and production of civil and service weapons enjoy a right to import weapons.⁵⁷

Moreover, the Russian Federation has monopolised import and export of such strategic goods as military equipment and armaments on the basis of military technical cooperation with other countries. This cooperation is regulated by the Federal Law “On Military Technical Cooperation of the Russian Federation with Foreign Countries”.⁵⁸ According to Article 2 of this Law all questions concerning military-technical cooperation of the Russian Federation are also within the competence of the State.

4.3. *Government policy on outsourcing of armed forces*

According to the Law “On Defence”, the President of the Russian Federation conducts negotiations and signs international agreements in the field of defence, including agreements on common defence, collective security, participation of the Armed Forces of the Russian Federation in the operation on stabilisation of peace and international security.⁵⁹ According to the Constitution of the Russian Federation decision on issues concerning the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation is under the authority of the Federation

⁵³ Article 29 and 30 of the Decree of the Government of the Russian Federation Nr. 1314 “On Approval of the Rules on the Circulation of Combat Weapons, Hand Small Arms and Other Weapons, Munitions and Cartridges, as well as Arm Blanche”.

⁵⁴ Article 17 of the Law “On Weapons”.

⁵⁵ Article 17 of the Law “On Weapons”.

⁵⁶ Article 16 of the Federal Law “On Weapons”, Article 31 of the Decree of the Government of the Russian Federation Nr. 1314 “On Approval of the Rules on the Circulation of Combat Weapons, Hand Small Arms and Other Weapons, Munitions and Cartridges, as well as Arm Blanche in State Militarized Organizations”, as of 15 October 1997.

⁵⁷ Article 16 of the Federal Law “On Weapons”.

⁵⁸ Federal Law Nr. 114-FZ “On Military Technical Cooperation of the Russian Federation with Foreign Countries” (*Федеральный закон N 114-ФЗ «О военно-техническом сотрудничестве Российской Федерации с иностранными государствами» от 20 июля 1998 года*).

⁵⁹ Article 4, paragraph 2, point 17 of the Federal Law “On Defence”.

Council, i.e., one of the two chambers of the Federal Assembly – the parliament of the Russian Federation.⁶⁰ From the perspective of national law, the Russian Federation has the prerogative on participation of the armed forces in international operations. However, the operational command and control over the Armed Forces of the Russian Federation during the United Nations mission based on the UN Security Council resolution will be determined by applicable international law. In addition, the responsibility of the Russian Federation and the relevant international organisation will be established by the international law principles on the responsibility of States and international organisations.

Participation of civilians in Armed Forces of the Russian Federation is regulated by the following main acts:

- 1) Federal Law Nr. 53-FZ “On Military Duty and Military Service”;
- 2) Federal Law Nr. 61-FZ “On Defence”;
- 3) Federal Law Nr. 128-FZ “On the State Dactyloscopic Registration in the Russian Federation”⁶¹;
- 4) Decree of the Government of the Russian Federation Nr. 386 “On Affirmation of a List of Job Positions Taken by Citizens of the Russian Federation who are Under a Duty of the State Dactyloscopic Registration”;⁶²
- 5) Decree of the Minister of Defence of the Russian Federation Nr. 20 “On Affirmation of a List of Military Positions Taken by Chief and Junior Officers of the Armed Forces of the Russian Federation that can be Replaced by Civilian Personnel”;⁶³
- 6) Order of the Ministry of Defence of the Russian Federation Nr. 557 “On Conclusion of Employment Agreements (Contracts) with Civilian Personnel of the Armed Forces of the Russian Federation”;⁶⁴
- 7) Order of the Ministry of Defence Nr. 175 “On Provision of a List of Job Positions Taken by Civilian Personnel in the Armed Forces of the Russian Federation”⁶⁵.

⁶⁰ Article 102, paragraph 1, point g) of the Constitution of the Russian Federation, adopted by referendum on 12 December 1993, the English translation can be found on the website: <<http://therussiasite.org/legal/laws/constitution.html#Chapter4>>.

⁶¹ Federal Law Nr. 128-FZ “On the State Dactyloscopic Registration in the Russian Federation” (*Федеральный закон от 25.07.98 № 128-ФЗ “О государственной дактилоскопической регистрации в Российской Федерации”*).

⁶² Decree of the Government of the Russian Federation Nr. 386 “On Affirmation of a List of Job Positions Taken by Citizens of the Russian Federation who are Under a Duty of State Dactyloscopic Rgistration” (*Постановление Правительства Российской Федерации № 386 “Об утверждении Перечня должностей, на которых проходят службу граждане Российской Федерации, подлежащие обязательной государственной дактилоскопической регистрации”, от 06.04.99.*).

⁶³ Decree of the Minister of Defence of the Russian Federation Nr. 20 “On Affirmation of a List of Military Positions Taken by Chief and Junior Officers of the Armed Forces of the Russian Federation that can be Replaced by Civilian Personnel” (*Приказ Министра обороны Российской Федерации № 20 “Об утверждении Перечня воинских должностей, подлежащих замещению старшими и младшими офицерами в Вооруженных Силах Российской Федерации, которые разрешается замещать гражданским персоналом”, от 28.01.04.*).

⁶⁴ Order of the Ministry of Defence of the Russian Federation Nr. 557 “On Conclusion of Employment Agreements (Contracts) with Civilian Personnel of the Armed Forces of the Russian Federation” (*Приказ Минобороны России № 557 “О заключении трудовых договоров (контрактов) с гражданским персоналом Вооруженных Сил Российской Федерации”, от 11.12.93.*).

Thus, some civilians employed by the Armed Forces of the Russian Federation are under a duty to undergo the State dactyloscopic registration, for example, persons with positions in the Foreign Intelligence Service due to their access to secret information containing State secrets.⁶⁶

All employment relations between the Armed Forces of the Russian Federation and civilian personnel have to be based on an employment contract regulated by the Labour Code of the Russian Federation (hereinafter – the Labour Code)⁶⁷ and special laws of the Russian Federation.⁶⁸ If these employees are to be employed for military units placed in the territory of States – former Soviet Union States – employment contracts shall be in line with normative acts of these States.⁶⁹

Civilians can be employed only in those positions established by a special list. In military management institutions, military units and organisations of the Armed Forces of the Russian Federations these persons can be employed provided that their employment will not be detrimental to the interests of military operational readiness and mobilisation readiness. Law limits the number of civilians. Civilians can be employed for the positions established by a special list only if for these positions there are no military subordinates.⁷⁰

Civil employees cannot take positions directly connected with planning and management of operations and military actions, ensuring of mobilisation readiness and military operational readiness, use of force, use of technical support within internal military institutions, armed and special forces, as well as positions connected with combat duty, staff watch duty and duty with arms. Thus, the civilians can be only civil employees and never military employees.

4.4. PMC contracts and armed force

The way to determine, whether private security contractors and private military contractors are performing their activities abroad is from the information provided to the tax revenue service.

In case the Russian Federation PMCs or PSCs are sent to the conflict zone by the foreign private security or private military company, the issue of jurisdiction arises. The

⁶⁵ Order of the Ministry of Defence Nr. 175 “On Provision of a List of Job Positions Taken by the Civilian Personnel in the Armed Forces of the Russian Federation” (Приказ Минобороны России № 175 “Об установлении Перечня замещаемых гражданским персоналом должностей в Вооруженных Силах Российской Федерации”, от 06.05.96)

⁶⁶ Point 4 of the Decree of the Government of the Russian Federation Nr. 386 “On Affirmation of a List of Job Positions Taken by Citizens of the Russian Federation who are Under a Duty of the State Dactyloscopic Registration”.

⁶⁷ The Labour Code of the Russian Federation Nr. 197-FZ, adopted by the State Duma on 21 December 2001.

⁶⁸ Part 1 of Point 1 of Order of the Ministry of Defence of the Russian Federation Nr. 557 “On Conclusion of Employment Agreements (Contracts) with Civilian Personnel of the Armed Forces of the Russian Federation”.

⁶⁹ Part 2 of Point 1 of Order of the Ministry of Defence of the Russian Federation Nr. 557 “On Conclusion of Employment Agreements (Contracts) with Civilian Personnel of the Armed Forces of the Russian Federation”.

⁷⁰ Point 2 of the Decree of the Minister of Defence of the Russian Federation Nr. 20 “On Affirmation of a List of Military Positions Taken by Chief and Junior Officers of the Armed Forces of the Russian Federation that can be Replaced by Civilian Personnel”.

jurisdiction would depend on the subject-matter of the claim and in that respect the issue of ‘forum-shopping’ may arise, while determining which court will have jurisdiction over the claim, as several courts may have jurisdiction over the claim of the same subject matter.

The Russian Federation Civil Procedure Code⁷¹ provides that all civil law disputes are subject to the court.⁷² According to the Civil Procedure Code a claim, arising out of the action of a subsidiary or representative office of a legal person may be brought before a court where the subsidiary or representative office is located.⁷³ An action arising out of private wrongful acts, which have resulted in mutilation or other damage to health, or death of a breadwinner, may also be filed at the court according to the place where the plaintiff resides or where the delicts occurred.⁷⁴ An action against several defendants, who reside at or are located in various places, may be brought in accordance with the place of residence or location of one defendant.⁷⁵

5. Corporate law

5.1. Registration and purpose

In the Russian Federation, in order to start a business either as a commercial company or an individual entrepreneur, it has to be registered in the State Register of the Russian Federation⁷⁶. The State Register contains information on state registration of legal entities during their establishment, reorganisation, or liquidation, and in connection with the state registration of natural persons as individual entrepreneurs, including all supporting documents.⁷⁷

Article 12 of the Federal Law No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs” provides a list of documents that must be submitted to the State Register for registration of a legal entity. The list includes signed application containing basic information on legal entity, confirmation of the founders that documents and information provided is in conformity with the Russian Federation laws, and in cases provided by law, the application also must contain consent of certain State authorities or local municipality authorities on establishment of legal entity. The list also includes the founding document of the legal entity, power of attorney, and, in case the founder is a foreign company, statement from the home commercial register of the founder on the registration of the founder, and document confirming payment of the State fee.

A legal entity is registered in the State Register when the competent state institution has adopted a decision on registration⁷⁸. **The Ministry of Taxation of the**

⁷¹ The Civil Procedure Code No. 138-FZ of 14 November 2002 (*Гражданский процессуальный кодекс, от 14.11.2002*).

⁷² Article 22, paragraph 1, point 1 of the Civil Procedure Code.

⁷³ Article 29, paragraph 2 of the Civil Procedure Code.

⁷⁴ Article 29, paragraph 4 of the Civil Procedure Code.

⁷⁵ Article 31, paragraph 1 of the Civil Procedure Code.

⁷⁶ Article 4 of the Federal Law No.129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs”, adopted by the State Duma on July 13, 2001.

⁷⁷ Article 1 of the Federal Law No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs”.

⁷⁸ Article 11, paragraph 1 of the Federal Law No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs”.

Russian Federation is the authorised federal executive body to carry out the state registration of legal entities since 1 July 2002⁷⁹. The moment of registration is the time when the record on the legal entity is entered into the State Register⁸⁰. No later than one day after registration the Ministry of Taxation issues a document confirming the fact of registration of information into the State Register. The Government of Russian Federation establishes form and content of this decision⁸¹. No later than within five days after state registration the Ministry of Taxation provides necessary information to the other State authorities⁸², for example, tax collection authority, committee of statistics, and others.

5.2. *The Russian Federation PSCs*

According to “Statutes on Licensing of Private (Non-governmental) Security Services” non-governmental (private) security services and private detective services are subject to licensing.

Currently, a company having in its Articles of Association a provision that they will carry out personal security services, prior to starting activities, must obtain a licence for providing security services. The procedure for obtaining a licence is regulated by “Statutes on Licensing of Private (Non-governmental) Security Services”.⁸³

For obtaining such a licence, the following documents must be submitted to the Ministry of Interior of the Russian Federation⁸⁴:

- 1) an excerpt from the State Register on legal entity;
- 2) a copy of Article of Association, Agreement on Founding the Company, and other corporate documents certified by the Notary Public;
- 3) a copy of the decision of shareholders on appointment of a Management Board Member (Director);
- 4) a copy of the University diploma certified by the Notary Public of the Director;
- 5) a copy of the passport of Director certified by the Notary Public;
- 6) a record of work of the Director;
- 7) a copy of documents on the identity of private guards certified by the Notary Public;
- 8) a Power of Attorney.

To verify the identity of a private guard in addition to the said, the following documents must be submitted:

- 1) 2 photos 6x4 (black and white);

⁷⁹ **Decision of the Government of the Russian Federation No. 319 of May 17, 2002.**

⁸⁰ Article 11, paragraph 2 of the Federal Law “On State Registration of Legal Entities and Individual Entrepreneurs”.

⁸¹ Article 11, paragraph 3 of the Federal Law “On State Registration of Legal Entities and Individual Entrepreneurs”.

⁸² Article 11, paragraph 4 of the Federal Law “On State Registration of Legal Entities and Individual Entrepreneurs”.

⁸³ “Statutes on Licensing of Private (Non-governmental) Security Services”, adopted by the Decision of Government of Russian Federation on 14 August 2002.

⁸⁴ “List of Executory Authorities Responsible for Licensing”, Approved by Government of Russian Federation by Rules No.45 as of 26 January 2006

- 2) Medical Statement No. F-046-1 on the health condition of applicant;
- 3) a copy of the diploma on the legal education or on the graduation from special preparatory courses or a confirmation on service in internal affairs or service in security service (including the basis of retirement).

Such a licence is issued for five years.

As mentioned above (see section 4.5 of the report) the registration of PSC as a commercial company or individual merchant does not comprise any information with respect to the foreign country of performance their duties. One may try to find this information from the information on tax payments made abroad by the PSC.

6. Labour Law

6.1. Employment

The Russian Federation Labour Code does not contain any provisions specifically regulating PMCs/PSCs services. The Labour Code requires concluding of a written employment contract between an employee and an employer, by which a mutual legal relationship is to be established.⁸⁵ The Labour Code provides that the employment contract shall not contain provisions worsening the status or limiting rights of the employee under the legal acts.⁸⁶

According to Article 13 and 59 of the Labour Code it may be concluded that the Labour Code regulates also the relations between the employers and the employees employed abroad. The Labour Code regulates employment of foreigners in the Russian Federation unless otherwise provided by international agreements of the Russian Federation.⁸⁷

In case of damage to health or if the employee's death resulted from industrial accident or professional disease, the employee (his family) is to be paid the lost earnings (income) as well as extra costs for medical social and professional rehabilitation associated with health damage or the appropriate costs in view of the employee's death. Types, amounts and terms of granting guarantees and compensations in these cases are defined by the Federal Law.⁸⁸

An employment contract or agreements concluded in a written form and attached to it can specify the material responsibility of the parties to the contract. In doing so, the contractual responsibility of the employer against the employee cannot be lower and that of the employee higher than envisioned by the Labour Code or other Federal laws.

Cancellation of the employment contract after causing the damage shall not release the party to this contract from the material responsibility provided by this Code and other federal laws.

An employer has a duty to compensate damage caused by him to the property of the employee. The moral damage inflicted to an employee by illegitimate activity or omission of an employer is repaired in terms of money at the amount fixed upon agreement of the labour contract parties. In the event of any disputes, the moral damage

⁸⁵ Article 67 of the Labour Code.

⁸⁶ Article 9 of the Labour Code.

⁸⁷ Article 11(5) of the Labour Code.

⁸⁸ Article 184 of the Labour Code.

inflicted on the employee and the amount of compensation will be established by the court regardless of the type of damage.⁸⁹

The employee is obliged to repair the actual damage caused to the employer. The lost profit of the employer is not subject to restitution by the employee. The employee is responsible for both the actual damage inflicted on the employer and the damage caused by damage restitution to other parties.⁹⁰ The employee is released from responsibility in the event of *force majeure*, operation under normal business risk, emergency and in case of necessary defence. In general, the employee is responsible for the damage caused only within the scope of his average monthly wage.⁹¹

6.2. Assignment

In general, apart from employment agreements, also service or assignment agreements might be used in order to engage the persons in performance of work. However, in certain cases the law provides that the relations shall be governed by the employment contract (for instance, private security companies are not allowed to engage their staff based on service or assignment contracts). Furthermore, in case the court finds that the service agreement or any other type of civil law actually regulates employment relations, the Labour Law and any other legal acts regulating employment relations shall govern the relations.⁹²

Unless specifically prohibited by the contract, contractors are allowed to sub-contract their duties. However, in such a case the contractor bears liability for the performance of the sub-contractors engaged.

6.3. Temporary workers

According to the Labour Code, temporary employment contracts may be concluded in the following situations:

- for replacing a temporarily absent employee for whom the job is retained in accordance with law;
- for the period of performing temporary (up to two months) work as well as seasonal work when due to natural conditions the work can be performed only during a certain period (season);
- with persons being sent for a job abroad;
- for performing work out of the regular operation scope of the organisation (renovation, assembly, commissioning and other work) as well for performing work in connection with the knowingly temporary (up to one year) expansion of production or volume of the services rendered;
- with persons enrolling in the organisations formed for a knowingly pre-determined term or in performing knowingly pre-determined work;
- with persons hired for performing knowingly pre-determined work in cases when its implementation (completion) cannot be determined by a specific date;

⁸⁹ Article 235 and 237 of the Labour Code.

⁹⁰ Article 238 of the Labour Code.

⁹¹ Article 241 of the Labour Code.

⁹² Article 11(4) of the Labour Code.

- for jobs directly connected with practical training and professional training of the employee;
- in case of election for a pre-determined term to an elective body or to an elective position as paid job as well as in case of enrolling in the work directly connected with supporting activities of elective body members or officials in the State authority and local self-government bodies as well as in political parties and other public associations;
- with persons assigned to temporary jobs by official employment agencies, including public works;
- with persons undergoing alternative civil service;
- in other cases stipulated by Federal laws.

According to a mutual agreement between the parties temporary employment contracts might be concluded:

- with persons enrolling in the organisations located in the Polar North areas or in the localities equated with them, if this is occasioned by a move to the job venue;
- for performing urgent work to prevent accidents, incidents, catastrophes, epidemics, epizootics as well as for liquidating consequences of the aforementioned and other emergency situations;
- with persons enrolling in small business organisations with personnel of up to 35 persons (up to 20 persons in the trading and consumer services organisations) as well as working for individual employers;
- with old-age pensioners as well as with the persons to whom temporary work is only allowed due to their health in accordance with a medical opinion;
- with creative personnel in mass media, movie industry, theatre, theatrical and concert organisations, circuses, and with other persons participating in creation and/or performance of art works, professional sportsmen in accordance with the lists of professions approved by the Russian Federation Government taking into consideration the opinion of the Russian Federation tripartite commission for regulating socio-labour relations;
- with heads, deputy heads and chief accountants of organisations irrespective of their organisational and legal status and form of ownership;
- with persons combining their work with other work;
- in other cases stipulated by Federal laws.⁹³

7. Government procurement policy and PMCs/PSCs

No official policy statements by the Russian Federation government were found regarding the use of private military and private security services abroad.

8. Criminal responsibility

8.1. Mercenary activity

Mercenary activities are prohibited by the Russian Federation law as such. According to Article 359 of the Criminal Code of the Russian Federation, a mercenary is a person, who is acting with a purpose of obtaining a material reward, and who is not

⁹³ Article 59 of the Labour Code.

a citizen of the State in whose armed conflict or hostilities he participates, who does not reside on a permanent basis in its territory, and also who is not a person fulfilling official duties.⁹⁴

The mentioned definition of a mercenary is based on the definition established by the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries, according to which mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) is not a member of the armed forces of a party to the conflict; and
- (e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

However, volunteers are not covered by the definition of mercenaries. Thus, volunteers, who are members of the armed forces of a party to the conflict, who have decided to take part in armed activities of one of the party based on personal and not economic basis, i.e., foreign state, are not mercenaries. Moreover, military consultants sent to a foreign army based on an agreement between states and not taking direct part on armed activities are also not mercenaries. Legal status of these persons is regulated by two other conventions, i.e. 1907 Hague Convention and 1949 Fourth Geneva Convention.⁹⁵

According to the Criminal Code of the Russian Federation recruitment, training, financing, or any other material provision of a mercenary, and the use of a mercenary in an armed conflict or hostilities, shall be punishable by deprivation of liberty for a term of four to eight years. The same acts, committed by a person through his official position, or in relation to a minor, shall be punishable by deprivation of liberty for a term of seven to fifteen years, with confiscation of property or without such confiscation.⁹⁶

According to the Commentaries to the Criminal Code of the Russian Federation, recruitment of a mercenary is selection of people for participation in an armed conflict or military activities for specific remuneration, i.e., search and invitation of people for military training in order to use them in an armed conflict or military activities. Training of a mercenary is targeted training, teaching to use arms, ammunition, teaching tactics and carrying out battles. Mercenary is always followed up by financing (ensuring of financial means) or other material provision, for example, outfitting, arming, providing of ammunition, transportation of means. These criminal acts are formal, i.e., they are finished when a person starts carrying out any of the mentioned activities.

⁹⁴ The Criminal Code of the Russian Federation, adopted by the State Duma on 24 May 1996, adopted by the Federation Council on 5 June 1996.

⁹⁵ The Commentaries to the Criminal Code of the Russian Federation, editor "Norma", 5th edition, Moscow, 2007, p. 359

⁹⁶ Article 359 of the Criminal Code.

Participation of a mercenary in an armed conflict or hostilities shall be punishable by deprivation of liberty for a term of three to seven years. It means that acts of mercenary are considered a criminal act too, i.e., a person agrees to participate in armed activities and participates therein for remuneration. These persons participate in any kind of military conflicts for money. If person's intent to receive remuneration is absent, such actions are not criminal.⁹⁷

8.2. *Individual criminal responsibility*

The Russian Federation Criminal Code implements the principle of universal jurisdiction in Part 3 of Article 12. It stipulates that foreign nationals and stateless persons not permanently residing in the territory of the Russian Federation and having committed their crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this Code. It includes cases, when the crimes run counter to the interests of the Russian Federation, and provided for by international agreement of the Russian Federation, unless they have been convicted in a foreign state and are brought to criminal justice in the territory of the Russian Federation.⁹⁸ Thus, this principle works in conjunction with international agreements binding on the Russian Federation. The 1949 Geneva Conventions and 1977 Protocol I Additional to the Geneva Conventions refers only to the principle of universal jurisdiction with respect to persons committing serious violations of international humanitarian law during international armed conflicts. Thus, the principle of universal jurisdiction does not apply with respect to violations of international humanitarian law committed during non-international armed conflicts. However, ratification of the Rome Statute of the International Criminal Court by the Russian Federation will contribute to spreading the principle of universal jurisdiction also to military crimes committed during non-international armed conflicts.⁹⁹

The Criminal Code implements the principle of territoriality¹⁰⁰ and floating territorial principle.¹⁰¹ The Criminal Code also implements¹⁰² the active personality principle with respect to the soldiers of the Russian Federation¹⁰³ and the passive personality principle.¹⁰⁴

The Criminal Code establishes a separate Chapter XII on the Crimes against Peace, War Crimes and Security of Mankind. It prescribes criminal responsibility for planning, preparing, unleashing or waging of an aggressive war,¹⁰⁵ public appeals to unleash an aggressive war,¹⁰⁶ the development, manufacture, stockpiling, acquisition or sale of mass-destruction weapons,¹⁰⁷ use of banned means and methods of warfare,¹⁰⁸

⁹⁷ The Commentaries to the Criminal Code of the Russian Federation.

⁹⁸ Article 12, paragraph 3 of the Criminal Code.

⁹⁹ The Russian Federation has signed the Rome Statute of the International Criminal Court on 13 September 2000.

¹⁰⁰ Article 11, paragraph 1 of the Criminal Code.

¹⁰¹ Article 11, paragraph 3 of the Criminal Code.

¹⁰² Article 12, paragraph 1 of the Criminal Code.

¹⁰³ Article 12, paragraph 2 of the Criminal Code.

¹⁰⁴ Article 12, paragraph 3 of the Criminal Code.

¹⁰⁵ Article 353 of the Criminal Code.

¹⁰⁶ Article 354 of the Criminal Code.

¹⁰⁷ Article 355 of the Criminal Code.

genocide,¹⁰⁹ ecocide,¹¹⁰ the afore-mentioned mercenarism,¹¹¹ assaults on persons or institutions enjoying international protection.¹¹² Genocide is a material crime and is committed only if it has caused consequences mentioned in Article 357 of the Criminal Code, i.e., members of a national, ethnic, racial or religious group killed or grave injuries have been inflicted on them.

The Criminal Code prescribes criminal responsibility for establishment of an organisation of a criminal community, i.e., (criminal organisation) with a purpose of committing grave or especially grave crimes, and likewise operation of such a community (organisation) or its structural subdivisions. It also includes creation of an association of organisers, leaders, or other representatives of organised groups for formulating plans and conditions for the commission of grave or especially grave crimes.¹¹³ Moreover, the Criminal Code prescribes criminal responsibility for organisation of an illegal armed formation or participation therein, i.e., creation of an armed formation (unit, squad, or any other group) that is not envisaged by a Federal law, and likewise operating such a formation. Participation in an armed formation is illegal if a Federal law does not provide for that. However, a person who has ceased to take part in an illegal armed formation of his own free will, and has handed in his weapons, shall be released from criminal responsibility unless his actions are regarded as another crime.¹¹⁴ Both mentioned crimes are considered crimes against public security.

The Criminal Code establishes responsibility for stealing or possession of nuclear materials or radioactive substances,¹¹⁵ illegal acquisition, transfer, sale, storage, transportation, or bearing of firearms, its basic parts, ammunition, explosives, and explosive devices,¹¹⁶ illegal manufacture of weapons,¹¹⁷ careless keeping of arms,¹¹⁸ improper discharge of the duties of protecting arms, ammunition, explosives, and explosive devices,¹¹⁹ stealing or possession of arms, ammunition, explosives, and explosive devices¹²⁰ and illegal export or transfer of raw stuff, materials, equipment, technology, or of scientific and technical information, or illegal carrying out works (rendering services) which may be used in the development of weapons of mass destruction, armaments, and military hardware.¹²¹

The Criminal Law, by prescribing the criminal responsibility for crimes against military service (Chapter XI), describes ‘criminal offences against military service’ as crimes against the established order of military service, and committed by servicemen

¹⁰⁸ Article 356 of the Criminal Code.

¹⁰⁹ Article 357 of the Criminal Code.

¹¹⁰ Article 358 of the Criminal Code.

¹¹¹ Article 359 of the Criminal Code.

¹¹² Article 360 of the Criminal Code.

¹¹³ Article 210, paragraph 1 of the Criminal Code.

¹¹⁴ Article 208 of the Criminal Code.

¹¹⁵ Article 221 of the Criminal Code.

¹¹⁶ Article 222 of the Criminal Code.

¹¹⁷ Article 223 of the Criminal Code.

¹¹⁸ Article 224 of the Criminal Code.

¹¹⁹ Article 225 of the Criminal Code.

¹²⁰ Article 331, paragraph 1 of the Criminal Code.

¹²¹ Article 189 of the Criminal Code.

who have been drafted or enlisted under a contract in the Armed Forces of the Russian Federation in troops and military formations of the Russian Federation, and also by reservists during training assemblies.¹²² According to Part 1 of Article 52 of the Law “On Military Duty and Military Service” reservists are persons who were fired from the Armed Forces of the Russian Federation by enlisting them in the reserves of the Armed Forces of the Russian Federation, alumni of state universities, who finished studies at the military faculties, persons, who have been released from military service duty, persons, who have been fired from Armed Forces of the Russian Federation without enlisting in the reserves, but enlisted later in the military commissariats, persons who have served alternative civil duty and women with registered military specialisation.¹²³

Servicemen who have been enlisted under a contract can be servicemen, whose contract on military service is going to be finished, servicemen, who have been drafted in the Armed Forces of the Russian Federation and who have served their military duty for at least 6 months, military service reservists, alumni of state and municipal universities or private universities with accreditation of the respective programs, women, who are not military service reservists as well as other persons.¹²⁴ Citizens of other countries have a right to conclude a contract only if they have a legal basis to reside in the territory of the Russian Federation. The Russian Federation citizens have right to conclude their first contract from age of 18 to 40 years, citizens of other countries have right to conclude their first contract if they are from 18 to 30 years old.¹²⁵

The Criminal Code criminalises failure to execute an order,¹²⁶ resistance to a superior or compulsion of another to violate his duties of military service,¹²⁷ violent actions against a superior,¹²⁸ violation of regulations for mutual relations between servicemen, in the absence of subordinating relations among them,¹²⁹ insulting a serviceman,¹³⁰ unauthorised abandonment of a military unit or a place of military service,¹³¹ desertion,¹³² evasion of military service duties feigning illness, or by any other method,¹³³ violation of the rules for conducting oneself on combat duty in military service,¹³⁴ violation of the rules for bearing frontier service,¹³⁵ violation of regulations for guard duty,¹³⁶ violation of the rules for the service of protecting public order and safeguarding public security,¹³⁷ violation of the internal service and patrolling regulations in a garrison,¹³⁸ wilful destruction or damage of military equipment,¹³⁹

¹²² Article 226 of the Criminal Code.

¹²³ Article 52, paragraph 1 of the Law “On Military Duty and Military Service”.

¹²⁴ Article 34, paragraph 1 of the Law “On Military Duty and Military Service”.

¹²⁵ Article 34, paragraph 2 of the Law “On Military Duty and Military Service”.

¹²⁶ Article 332 of the Criminal Code.

¹²⁷ Article 333 of the Criminal Code.

¹²⁸ Article 334 of the Criminal Code.

¹²⁹ Article 335 of the Criminal Code.

¹³⁰ Article 336 of the Criminal Code.

¹³¹ Article 337 of the Criminal Code.

¹³² Article 338 of the Criminal Code.

¹³³ Article 339 of the Criminal Code.

¹³⁴ Article 340 of the Criminal Code.

¹³⁵ Article 341 of the Criminal Code.

¹³⁶ Article 342 of the Criminal Code.

¹³⁷ Article 343 of the Criminal Code.

¹³⁸ Article 344 of the Criminal Code.

destruction or damage of military equipment by negligence,¹⁴⁰ loss of military equipment,¹⁴¹ violation of the rules for handling arms and hazardous materials,¹⁴² violation of the rules for driving or operating cars or lorries,¹⁴³ violation of the rules for flights and training for them.¹⁴⁴

The Criminal Code also criminalises actions against the interests of service in profit-making and other organisation such as exceeding of authority by staff members of security or detective services, i.e., stepping outside of licensed authority by a manager or an officer of a security or detective service, in defiance of his duty, if this deed has been committed with the use of violence or with the threat of its application.¹⁴⁵

8.3. *Command responsibility and PMCs/PSCs*

There is no clear concept of command responsibility in the Russian Federation criminal law, which allows pursuing and convicting a person, under whose effective control or command there are persons who have directly committed a crime. However, an instigator of a crime, who is a person having a right to give direct instructions or orders to servicemen, and if these orders are obligatory for servicemen, shall be considered as a co-perpetrator of a crime committed by servicemen, who has fulfilled an order.¹⁴⁶

According to Article 42 of the Criminal Code infliction of harm to legally protected interests shall not be qualified as an act of crime provided it was caused by a person acting in execution of an order or instruction binding on him. Criminal responsibility for infliction of such harm shall be borne by a person who gave the illegal order or instruction. However, a person who has committed an intentional offence in execution of an order or instruction known to be illegal shall be held liable under usual terms. Failure to execute an order or instruction known to be illegal shall preclude criminal liability.

The Disciplinary Statutes of the Armed Forces of the Russian Federation¹⁴⁷ prescribes that orders of the commander must be obeyed without objections. An order or instruction is legal if it was given in a proper form, by a competent authority and within the competence of this authority. A proper authority is the direct commander, who directs the activities of the respective subordinate, as well as a higher level commander in cases prescribed by binding normative and internal acts. Subordination in the Armed Forces of the Russian Federation is laid down in the Statutes of Internal Military Service. A legal order or instruction shall not only include its goal but also the way it

¹³⁹ Article 346 of the Criminal Code.

¹⁴⁰ Article 347 of the Criminal Code.

¹⁴¹ Article 348 of the Criminal Code.

¹⁴² Article 349 of the Criminal Code.

¹⁴³ Article 350 of the Criminal Code.

¹⁴⁴ Article 351 of the Criminal Code.

¹⁴⁵ Article 203 of the Criminal Code.

¹⁴⁶ Commentaries to Articles 33 and 42 of the Criminal Code.

¹⁴⁷ The Disciplinary Statutes of the Armed Forces of the Russian Federation, approved by the Decree the President of the Russian Federation on 14 December 1993 Nr. 2140.

has to be achieved.¹⁴⁸ Order is also illegal if it is not in line with the Constitution of the Russian Federation, Federal laws, and military oath.

The Criminal Code prescribes criminal responsibility for military offences committed during military service. It would not apply to civilians and PMCs/PSCs, save in cases where they are acting under military command of the national armed forces.

However, the commander can be criminally responsible for the violations by the PMCs/PSCs. The Criminal Code has a concept of complicity in a crime,¹⁴⁹ i.e., the intentional joint participation of two or more persons in the commission of a deliberate crime shall be deemed to be complicity in a crime.¹⁵⁰ According to Part 1 of Article 33 of the Criminal Code, in addition to the perpetrator, organisers, instigators, and accessories shall be deemed accomplices.

A person who has actually committed a crime or who has directly participated in its commission together with other persons (co-perpetrators), and also a person who has committed a crime by using other persons, who are not subject to criminal responsibility by reason of age, insanity, or other circumstances provided for by this Code, shall be deemed to be a perpetrator.¹⁵¹ A person who has organised the commission of a crime or has directed its commission, and also a person who has created an organised group or a criminal community (criminal organisation) or has guided them, shall be deemed an organiser.¹⁵² A person who has abetted another person in committing a crime by persuasion, bribery, threat, or by any other method shall be deemed an instigator.¹⁵³ A person who has assisted in the commission of a crime by advice, instructions on committing the crime, or removal obstacles to it, and also a person who has promised beforehand to conceal the criminal, means and instruments of commission of the crime, traces of the crime, or objects obtained criminally, and equally a person who has promised beforehand to acquire such objects, shall be deemed to be an accessory.¹⁵⁴

The criminal responsibility of an organiser, instigator, and accessory shall ensue under the article of the Criminal Code that provides for punishment for the crime committed, with reference to Article 33 of this Code, except for in cases when they simultaneously were co-perpetrators of the crime.¹⁵⁵

8.4. *Immunity from local criminal law*

The Criminal Code prescribes that question of the criminal responsibility of diplomatic representatives of foreign States and other individuals who enjoy immunity shall be settled in conformity with the standards of international law, if these persons have committed crimes in the territory of the Russian Federation.¹⁵⁶

¹⁴⁸ The Commentaries to Article 42 of the Criminal Code.

¹⁴⁹ Chapter 7 of the Criminal Code.

¹⁵⁰ Article 32 of the Criminal Code.

¹⁵¹ Article 33, paragraph 2 of the Criminal Code.

¹⁵² Article 33, paragraph 3 of the Criminal Code.

¹⁵³ Article 33, paragraph 4 of the Criminal Code.

¹⁵⁴ Article 33, paragraph 5 of the Criminal Code.

¹⁵⁵ Article 34, paragraph 3 of the Criminal Code.

¹⁵⁶ Article 11, paragraph 4 of the Criminal Code.

8.5. Criminal responsibility and companies

The Criminal Code does not establish criminal responsibility of legal persons. No coercive measures can be applied to legal persons within criminal proceedings against a natural person. It does not mean that legal persons can avoid any responsibility. Coercive measures like financial and administrative sanctions, including liquidation of a legal person, can be applied to legal persons based on the Civil Code of the Russian Federation. These sanctions shall not be considered punishment of a legal person.¹⁵⁷

9. Commercial law/civil liability

9.1. Choice of law and forum

The Russian Federation law provides that parties by agreement between them may select the law that will govern their rights and duties under the contract both when entering into a contract or subsequently.¹⁵⁸ An agreement of parties as to the selection of law to be applicable shall be expressly stated or shall clearly derive from the terms and conditions of the contract or the circumstances of the case.¹⁵⁹ Selection of applicable law made by parties after the conclusion of a contract shall have a retroactive effect and it shall be deemed valid, without prejudice to the rights of third persons, beginning from the time when the contract was concluded.¹⁶⁰ If it ensues from the circumstances of a case that were in existence as of the time of selection of applicable law that the contract is actually connected with only one country, the parties' selection of the law of another country shall not affect the imperative norms of the country with which the contract is actually connected.¹⁶¹

Where there is no agreement of parties on applicable law, the contract shall be subject to the law of the country with which the contract has the closest relation.¹⁶² The law of the country with which a contract has the closest relation shall be deemed the law of the country where the party responsible for the performance under the contract of crucial significance for the content of the contract has its place of residence or main place of business, except as otherwise ensuing from the law, the terms or substance of the contract or the circumstances of the case in question.

Regarding contracts concluded by the State institutions, Article 1204 of the Civil Code establishes that civil legal relations complicated by a foreign factor as involving the participation of a State shall be subject to the rules of the present section on general terms, except as otherwise established by law.

Nevertheless, the choice of forum is of the same importance as the choice of law. The contracting parties may decide which forum – the Russian Federation courts or arbitral tribunal – would settle their disputes. Besides, in relation to arbitration, there is distinction as to applicable law, as non-domestic law regulates international arbitration.

¹⁵⁷ Article 56, 61 of the Civil Code of the Russian Federation, adopted by the State Duma on 21 October 1994, Nr. 51-FZ.

¹⁵⁸ Article 1210, paragraph 1 of the Civil Code.

¹⁵⁹ Article 1210, paragraph 2 of the Civil Code.

¹⁶⁰ Article 1210, paragraph 3 of the Civil Code.

¹⁶¹ Article 1210, paragraph 5 of the Civil Code.

¹⁶² Article 1211, paragraph 1 of the Civil Code.

The Russian Federation Law “On International Commercial Arbitration” is based on the UNCITRAL Model Law on International Commercial Arbitration. It provides¹⁶³ that pursuant to an agreement of the parties, the following may be referred to international commercial arbitration: (a) disputes resulting from contractual and other civil law relationships arising in the course of foreign trade and other forms of international economic relations, provided that the place of business of at least one of the parties is situated abroad; as well as (b) disputes arising between enterprises with foreign investment, international associations and organisations established in the territory of the Russian Federation; disputes between the participants of such entities; as well as disputes between such entities and other subjects of the Russian Federation law.

The Russian Federation law does not contain a single list of disputes that are not a subject matter of arbitration. Non-arbitral matters are spread between different substantive laws.

Article 9 of the Law “On Private Detective and Security Activity in the Federation of Russia”¹⁶⁴ provides that disputes related to remuneration for services and other grounds arising out of security agreement between a private detective company and a client, who uses its services, shall be submitted to the court.

9.2. *Freedom of contract*

Article 421 of the Civil Code of the Russian Federation provides that citizens and legal entities shall be free to conclude contracts. Compulsion to conclude contracts shall be inadmissible, with an exception of the cases, when the duty to conclude the contract has been stipulated by the Civil Code, by law or by a voluntarily assumed obligation.

The contract terms (provisions) shall be defined at the discretion of the parties, with an exception of cases, when the content of the corresponding term (provision) has been stipulated by law or by other legal acts (Article 422 of the Civil Code). In cases, when the contract provision has been stipulated by norm, applied so far as it has not been otherwise stipulated by agreement between parties (a dispositive norm), the parties may by their own agreement exclude its application, or may introduce a provision, distinct from that, which has been stipulated by it. In the absence of such an agreement, the contract provision shall be defined by the dispositive norm.¹⁶⁵

Article 169 of the Civil Code provides that a deal, which has been aimed at a goal flagrantly contrary to the foundations of the law and order, or of morality, shall be regarded as invalid.

If malicious intent has been found on the part of both parties to such a deal, in case of execution of the deal by both parties, everything that they have gained by the deal shall be exacted from them into the revenue of the Russian Federation. In case of the deal being executed by one party, all the gain of the other party to the deal and the gain that was due to the first party in compensation of the gain shall be exacted into the revenue of the Russian Federation.

¹⁶³ See Article 1 of the Law of the Russian Federation “On International Commercial Arbitration”, adopted on 7 July 1993.

¹⁶⁴ The Federal Law “On Private Detective and Security Activity in the Federation of Russia”.

¹⁶⁵ Article 421, paragraph 4 of the Civil Code.

If malicious intent has been found in only one party to such a deal, everything that it has gained by the deal shall be returned to the other party, while what the latter has received, or what is due to it in compensation of the executed, shall be exacted into the revenue of the Russian Federation.

Provision of private security services as described above is subject to licensing. Conditions to maintain the licence, besides requirements for employed guards and compliance with legal acts on private security services, is also the existence of written agreement between PSC and each client according to requirements of laws of the Russian Federation.

These requirements are set in Article 9 of the Law “On Private Detective and Security Activity in the Federation of Russia” that regulates the subject matter between private detectives and their clients. The law provides that a detective must enter into an agreement with its client in writing, including information on parties, including number and date when a licence of the detective was issued, subject of a task, deadlines for fulfilment, approximate amount of expenses and remuneration for services, liability of the parties, and date of the agreement. Such an agreement will be deemed entered into, if consent has been reached between parties on a confidential basis on all its articles and it contains provisions above mentioned. Agreement provides a duty of private detective companies to provide the client a written report on results of the work. The report must contain answers to the main questions posted by the client in accordance with the agreement. Detailed transcript on remuneration and expenses of private detective must be attached to the report. The copy of this report must be filed also in the archive of the company and kept for at least three years.

9.3. Termination of contract

Termination of contract may be foreseen in every contract irrespective of its duration. If the contract is in force for a specified period of time (term), it shall be terminated upon specific provisions (causes) stipulated in the contract itself. However, it is a common practice when contracting parties set the provision by which the financial issues are in force until their final settlement disregard to termination of contract. There are no special provision regarding termination of a contract between PSC and its clients.

9.4. Civil liability

The Russian Federation legislation prescribes that the injury inflicted on the personality or property of an individual, and the damage done to the property of a legal entity is subject to full compensation by the person who inflicted the damage. The obligation to redress the injury may be imposed by law on the person who is not the inflictor of injury.¹⁶⁶ A person who has caused harm shall be released from redress of injury, if he proves that the injury was not caused by his fault. The law may also provide for the redress of injury in absence of fault of the offending party.¹⁶⁷ Injury inflicted by lawful actions shall be subject to redress in cases, provided for by law. Redress of injury may be rejected, if the injury has been caused at the request or with the consent of the

¹⁶⁶ Article 1064, paragraph 1 of the Civil Code.

¹⁶⁷ Article 1064, paragraph 3 of the Civil Code.

insured person and unless the actions of the tortfeasor violate the moral principles of the society.¹⁶⁸

Civil liability is not restricted to the legal norms mentioned above, it is foreseen that contractors may freely choose additional provisions to pledge the contractual obligations, such as forfeit, the pledge, the retention of the debtor's property, the surety, the bank guarantee, the advance and also in the other ways.¹⁶⁹ The Russian Federation law does not require PCS to have compulsory insurance policy.

10. Conclusions

The Russian Federation law does not contain explicit rules regulating the employment of PMCs/PSCs abroad by foreign employers. Russian Federation legislation prescribes that private security services and private investigation services are performed on the basis of a contract. Licenses for these services are issued for activities in the Russian Federation. There is no official information whether these type of companies are performing their services abroad. However, the Russian Federation laws prescribe that under certain conditions civilians might be involved in military State organisations based on contract. Nevertheless, it is to be noted that there is a rather strict regulation and, at least, in law an important State control over the military and related activities. The involvement of civilians in this field is rather limited. This is to be distinguished from private security and detective services as described above.

¹⁶⁸ Article 1064, paragraph 4 of the Civil Code.

¹⁶⁹ Article 329, paragraph 1 of the Civil Code.