



# PRIV-WAR Report – Latvia

National Reports Series 07/09

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

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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 Latvian 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

In Latvia, there are no laws specifically regulating the conduct of private military companies (hereinafter - PMCs) and private security companies (hereinafter - PSCs) abroad. However, a conclusion cannot be drawn that the PMCs and PSCs registered in Latvia are precluded from being employed by a national or a foreign employer and sent to an armed conflict zone abroad. At the outset, it must be stated that Latvian law does not regulate the provision of services of private military character, thereby formally excluding PMCs from the scope of the regulation. The overall practice shows that the law regulates only activities providing private security services, thereby allowing us to speak about the PSCs as a definite category within the national legislation. The two statements do not exclude providing services of private military character in the framework of other regulatory instances discussed in this report or by exceeding the powers under which natural or legal persons are entitled to act.

This report examines the regulatory possibilities of how natural and legal persons may become involved in providing private military and private security services that are comparable to the services provided by foreign PMCs and PSCs. The report shows that natural and legal persons may become involved in providing private military and private security services both – in the framework of State’s prerogative of investigation activities and involvement in the national armed forces, as well as within 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 the regulation applicable to the potential Latvian PMCs and PSCs providing their services abroad. It deals with the regulation of 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.

As Latvia’s legal system represents the monism approach with regard to the relationship between the national and international law that form a single legal system, the rapid developments in the fields of international human rights and international criminal law may have its implications on the 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.

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### 3. Domestic security and investigation services

#### 3.1. Private security services

In Latvia, the conduct of private security services is regulated by the Security Guard Activities Law<sup>2</sup> that serves as a legal basis for performing security guard activities in order to ensure security of persons and society. ‘**Security guard activities**’ have been described as the provision of security services performed by a security guard service-provider, as well as ensuring the guarding and the internal security of an institution, service-provider or organisation, which is performed by staff employees.<sup>3</sup> ‘**Security guard services**’ have been described as a measure or a set of measures performed in order to secure a protected object against illegal or other kinds of threat.<sup>4</sup>

Private security services can be performed either by natural persons or legal persons that have obtained a special permit (licence) issued by the Ministry of Interior of the Republic of Latvia.<sup>5</sup> The duration of a special permit (licence) is 5 years and it is valid throughout the territory of Latvia. According to the information provided by the Ministry of Interior of the Republic of Latvia, it has issued 395 special permits (licences) to legal persons performing security guard activities. In the years 2003-2009 the Ministry of Interior has issued in total 13 463 security guard certificates. The security guard service-provider merchant is entitled to provide **only those** security guard services that are specified in the special permit (licence).<sup>6</sup> The institution that exercises certain control over the security guard activities is the State Police.<sup>7</sup> Also, institutions, service-providers and organisations the security guarding of which is performed by its employees, shall register their internal security service with the State Police.<sup>8</sup> The legal basis for the activities performed by the security guard service-provider is a written contract.<sup>9</sup>

There are two categories of special permits (licences): the first category special permit allows the security guard service-provider to engage in the design, installation, maintenance and servicing of technical security guard systems, as well as provide consultations regarding these issues; the second category special permit allows the security guard service-provider to provide all the security guard services specified in the Security Guard Activities Law and utilise the technical security guard systems in security guard activities.<sup>10</sup> The security guard service-provider that has received the second category special permit (licence) is entitled to:

- acquire and store firearms with the permission of the State Police, as well as acquire and store special means;
- employ and use firearms and special means in order to ensure security guard activities according to the procedures specified in this Law;

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<sup>2</sup> Security Guard Activities Law (*Apsardzes darbības likums*) of 11 May 2006. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>3</sup> Article 1, point 1 of the Security Guard Activities Law.

<sup>4</sup> Article 1, point 4 of the Security Guard Activities Law.

<sup>5</sup> Article 5 of the Security Guard Activities Law.

<sup>6</sup> Article 5, paragraph 2 of the Security Guard Activities Law.

<sup>7</sup> Article 2, paragraph 4 of the Security Guard Activities Law.

<sup>8</sup> Article 9, paragraph 1 of the Security Guard Activities Law.

<sup>9</sup> Article 3 of the Security Guard Activities Law.

<sup>10</sup> Article 5, paragraph 3 of the Security Guard Activities Law.

- use service dogs in security guard activities.<sup>11</sup>

Subjects that are entitled to receive special permits (licences) for the performance of security guard activities are individual service-providers and commercial companies whose foreign investment (except European Union Member States and European Economic Area States) in equity capital does not exceed 50 per cent. Only **a citizen of a European Union Member State or European Economic Area State**, who has not been convicted of committing a criminal offence and for whom a mental illness, addiction to alcohol, narcotic, psychotropic or toxic substances has not been determined is entitled to be an individual service-provider or person who is entitled to represent a commercial company.<sup>12</sup>

As a citizen of a European Union Member State can only be a person having citizenship of the Republic of Latvia, it would not comprise the special category of persons, that have immigrated in the territory of the Republic of Latvia during the Soviet regime, namely, non-citizens (*nepilsoņi*),<sup>13</sup> prescribed by the Latvian Citizenship

<sup>11</sup> Article 8, paragraph 1 of the Security Guard Activities Law.

<sup>12</sup> Article 6, paragraph 1 of the Security Guard Activities Law.

<sup>13</sup> A non-citizen is a person that in accordance with the Law on the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country has a right to a non-citizen passport issued by the Republic of Latvia (The Citizenship Law). The Law on the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country establishes that the non-citizens are those citizens of the former USSR and their children who reside within the Republic of Latvia, or are absent for a fixed period, and who 1) on July 1, 1992 were registered within the territory of Latvia, regardless of the status of the residence specified in their registration record, or their last registered place of residence through July 1, 1992 was within the Republic of Latvia, or the fact has been established by a court finding that through the mentioned date they have lived permanently within the territory of Latvia for no less than 10 years; 2) are not citizens of Latvia and 3) are not and were not citizens of any other country (Article 1, paragraph 1 of the Law on the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country). The Constitutional Court of the Republic of Latvia in its judgment of 7 March 2005 in case No 2004-15-0106 elaborated on the concept of non-citizens stating that “[t]o evaluate the conformity of the challenged norms with the Constitution (Satversme) and the norms of international law binding upon Latvia, one must analyse the historical and political aspects of the determination of the status of a non-citizen, as well as the legal consequences of the determination of the status of a non-citizen. To determine what are Latvia’s international obligations towards Latvian non-nationals, one must consider the status of non-citizens and the extent to which the international community (foreign States and international organizations) have recognized them. The adoption of the Law on Non-Citizens [the law ‘On the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country’] was conditioned by the historical and political situation after the break-up of the USSR. [...] The restoration of independence after the end of the Latvian occupation gave the legislature the opportunity to determine who were Latvian nationals. Continuity of Latvia as a subject of international law provided legal grounds for not granting automatic nationality to a certain group of persons. [...] Considering the continuity of Latvia as a subject of international law, there were reasons to restore the Latvian nationality as provided in the 1919 ‘Law on Nationality’ (“*Likums par pavalstniecību*”). Consequently, Latvia did not grant the right to nationality to persons who had it before the occupation of Latvia but only restored the rights of these persons *de facto* (see: *Ziemele I. Starptautiskās tiesības un civiltiesības Latvijā: abstrakcija vai realitāte. Rīga: Tiesu namu aģentūra, 2005, 103.lpp.*). Both the 1991 decision of the Supreme Council ‘On the Restoration of the rights to nationality of the Republic of Latvia and the Nationality Law of 1994 suggest that nationality is restored and not granted anew. Consequently, the view is ill founded that Latvia had had the obligation to automatically grant nationality to those individuals and their successors who have never been Latvian nationals and have entered Latvia during the time of occupation. Additionally, these persons were given the right to obtain Latvian nationality by way of naturalization. [...] The grant of the status of non-citizen to a certain group of persons was a result of a complex political compromise. Additionally, when adopting the Law on Non-Nationals, Latvia had to comply with the international human rights standards that prohibit the increase of number of stateless persons in the cases of State continuity. [...] Latvia has clearly indicated that non-citizens are not stateless persons, because the Law on

Law<sup>14</sup> and the Law on the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or any other country<sup>15</sup> and elaborated on by the Constitutional Court of the Republic of Latvia.<sup>16</sup> Although as stated by the Constitutional Court of the Republic of Latvia the status of a non-citizen is not and cannot be considered as a type of Latvian citizenship, however, the rights and international commitments that Latvia has assumed with respect to non-citizens prove that the legal nexus between the non-citizens and Latvia has to certain extent been recognised and reciprocal rights and obligations have been established on its basis.<sup>17</sup> However, in this case issuing the special permits (licences) for the performance of security guard activities for the individual service-providers and commercial companies, the legislator has chosen to restrict the legal subjects that are entitled to represent a commercial company to the citizens of a European Union Member State or European Economic Area State.

It is prohibited to issue a special permit (licence) for performing security guard activities, if the competent state institutions have grounds to believe that an individual service-provider or person who is entitled to represent a commercial company is engaged in an anti-state or illegal organisation or is a member of it, and poses a threat to the safety of the state or society.<sup>18</sup>

According to the Security Guard Activities Law the special permit (licence) is annulled if: the activities of a security guard service-provider are directed against the legal interests of the State or society; if the security guard service-provider violates or does not fulfil the requirements of the Security Guard Activities Law or other regulatory enactments; if the security guard service-provider has knowingly provided false information in order to acquire a special permit (licence); or if the annulment is prescribed by the other law or a decision of a court.<sup>19</sup>

State interests and public order would include human rights obligations that the State has assumed, both – **in cases of possible human rights violations by the security guard service-providers and in cases of necessity to balance the State interests and**

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Stateless Persons in Article 3(2) provides that persons who are subject to the law ‘On the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country’ cannot be recognised as stateless persons. The representatives of Latvia in international human rights institutions have also consistently defended the position that the status of non-citizens cannot be equated to that of a stateless person.” See: Paporinkis M. Republic of Latvia Materials on International Law 2005. *Baltic Yearbook of International Law*, Volume 6, 2006, pp. 410-412

<sup>14</sup> Citizenship Law (*Pilsonības likums*) of 22 July 1994. The English translation can be found on the website: <www.ttc.lv>.

<sup>15</sup> Law on the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country (*likums “Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības”*) of 12 April 1995.

<sup>16</sup> Judgment of the Constitutional Court of the Republic of Latvia of 7 March 2005 in case No 2004-15-0106 “On the compliance of Article 1, paragraph 3, point 5, Article 2, paragraph 2, point 2, Article 7, paragraph 1, point 2 of the Law on the Status of Those Citizens of the Former USSR who do not have the Citizenship of Latvia or Any Other Country with Article 98 of the Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), Articles 2 and 3 of the Fourth Protocol of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Article 12 of the International Covenant on Civil and Political Rights and Article 8, point 1 of the 30 August 1961 of the Convention on the Reduction of Statelessness”, paras. 11-15.

<sup>17</sup> *Ibid.*, para. 17.

<sup>18</sup> Article 6, paragraph 2 of the Security Guard Activities Law.

<sup>19</sup> Article 7 of the Security Guard Activities Law.

**ensuring human rights of the individuals.** The Constitutional Court of the Republic of Latvia has examined a case, where an administrative court has brought a claim before the Constitutional Court, where an individual has challenged the compliance of Article 61, paragraph 6 with Article 92 of the Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*). The claimant challenged the non-appealable nature of the decision of his inclusion in an immigration black list. The reasons to take such a decision according to the Immigration Law were the following: 1) the competent State authorities have reason to believe that a third-country national participates in anti-state or criminal organisations or is a member of them; 2) the competent State authorities have reason to believe that a third-country national causes a threat to national security or public order and safety or, by entering Latvia, may hinder pre-trial investigations or the work of law enforcement institutions in discovering a criminal offence; 3) the competent State authorities have reason to believe that a third-country national has committed or is planning to commit a serious or extremely serious crime; 4) a third-country national has committed a crime against humanity, an international or war crime or has participated in mass repression if such has been determined by a court judgment; 5) the competent foreign authorities have supplied information which forbids a third-country national to enter and reside in the Republic of Latvia; or 6) the entry and residence of a third-country national into the Republic of Latvia is not desirable for other reasons on the basis of an opinion delivered by competent authorities of the Republic of Latvia (Article 61, paragraph 1 of the Immigration Law).

The Constitutional Court reasoned:

“[i]t is necessary to examine whether a balance between the protection of national security interests to which the authorities refer and the influence of the measures used on the individual right to come before the court has been preserved. [...] The Parliamentary Assembly of the Council of Europe in its recommendation No 1402 (1999) on the Control of internal (national) security services in the Council of Europe Member States has pointed out that the national security services often rank the State interests higher than the rights of individual and in case the services are not sufficiently controlled, there is a risk that they can abuse authority and fail to observe human rights. [*Recommendation 1402 (1999) Control of internal security services in Council of Europe member states, para. 2*]. The internal security services shall be empowered to enforce its legitimate objective – to protect State security, but they cannot be entitled to an unmitigated possibility to violate basic rights and freedoms. One should attain a balance between the right of democratic society to national security and individual human rights. [...] The European Court of Human Rights has pointed out that in the field of State security there are issues that can be submitted to the court for the adequate assessment. Allowing the situation that the court control is always fully excluded, if the arguments concern State security, the possibility of protection of human rights prescribed by law would substantially restricted and State institutions would be relieved from responsibility without any basis. (*see: the judgment of the European Court of Human Rights in case Tinnelly & Sons Ltd and Other and McElduff and Others v. The United Kingdom, para. 62*).”<sup>20</sup>

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<sup>20</sup> Judgment of the Constitutional Court of the Republic of Latvia of 6 December 2004 in case No 2004-14-01 “On the compliance of Article 61, paragraph 6 of the Immigration Law with Article 92 of the Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), paras. 9.3., 14.

Thereby, the Constitutional Court of the Republic of Latvia concluded that the decision on the inclusion of a person into a list, with regard to whom the prohibition to immigrate in the territory of the Republic of Latvia applies in the name of State security interests, not being subject to appeal, violates the right to fair trial prescribed by the Constitution by reasoning that the State security interests cannot deny the individual his human rights.

The Security Guard Activities Law prescribes that the decision regarding the annulment of a special permit (licence) may be challenged according to the procedure established by the Administrative Procedure Law.<sup>21</sup> Thereby, the decision is subject to a court review.

The requirements for receiving a special permit (licence) and the extension of the period of validity of licences, the procedures by which a special permit (licence) shall be issued to a service-provider, its period of validity as well as the amount of State fee to be paid for the issuing of a special permit and the procedures for the payment thereof are determined in detail by the Cabinet of Ministers (Government) regulations.<sup>22</sup>

With respect to security guard employees, any natural person is entitled to receive a security guard certificate after the relevant training and the passing of the qualification examination. The certificate is issued for five years.<sup>23</sup> The State Police annuls the security guard certificate, if the security guard violates the security guard rights prescribed by the Security Guard Activities Law; if he or she does not observe the conditions on the use of physical force, special measures and service dogs; if he or she has been criminally convicted for the intentional commission of a criminal offence, and if he or she has been fined under administrative law for malice non-compliance with the lawful order or request of police employee, border guard or civil guard, for hooliganism or for offences that have been committed under the influence of alcoholic, narcotic, psychotropic or toxic substances.<sup>24</sup>

In order to establish an internal security service the institutions, service-providers and organizations the guarding of which is planned to be performed by its employees, shall register their internal security service with the State Police.<sup>25</sup> Registration procedures are set out in specific regulations of the Cabinet of Ministers.<sup>26</sup> Employees of an internal security service may be only those natural persons that have received a security certificate and that have been employed by respective institution, service-provider or organisation according to the procedures specified in the Labour Law.<sup>27</sup>

Since the legislator authorises security guard service-providers as well as employees of an internal security service (security guard employees) to use firearms, physical force, special means and service dogs in security guard activities, it also obliges the security business to remunerate the third persons for their losses. The Security Guard Activities Law imposes an insurance requirement for third party life,

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<sup>21</sup> Article 7, paragraph 2 of the Security Guard Activities Law.

<sup>22</sup> Article 5, paragraph 6 of the Security Guard Activities Law.

<sup>23</sup> Article 11 of the Security Guard Activities Law.

<sup>24</sup> Article 11, paragraph 4 of the Security Guard Activities Law.

<sup>25</sup> Article 9, paragraph 1 of the Security Guard Activities Law.

<sup>26</sup> Cabinet of Ministers Regulations No 1072 „Internal Security Service Registration procedure” (*Iekšējās drošības dienesta reģistrācijas kārtība*) of 28 December 2006.

<sup>27</sup> Article 10 of the Security Guard Activities Law.

injury and property damage.<sup>28</sup> The procedure for civil liability insurance and the minimum amount of liability concerning civil liability insurance is determined by the Cabinet of Ministers regulations.<sup>29</sup>

With respect to the acquisition and storing of firearms the Security Guard Activities Law prescribes that it is prohibited to issue permissions for the acquisition and storing of firearms to an institution, service-provider or organisation that has established an internal security service, if the restrictions specified in the Law on the Handling of Weapons<sup>30</sup> regarding the acquisition, possession, carrying of firearms and munitions apply to the participants, managers and persons, who hold a leading position in administrative institutions, and employees for whom in accordance with their duties access to firearms and munitions is provided.<sup>31</sup>

Acquisition and storage of firearms as well as special means are regulated by the special law – the Law on the Handling of Weapons. However, the use of firearms, special means, physical force, and service dogs shall be performed in accordance with strictly defined procedures set out by the Security Guard Activities Law<sup>32</sup>, which also demands the remuneration of third persons for their losses that have been inflicted with activities or non-activities of the service-provider according to the procedures specified in regulatory enactments.<sup>33</sup>

The fact whether Latvian citizens and non-citizens are employed by a foreign employer in a conflict zone providing security guard services may officially be determined by the State Revenue Service, which is 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, the fact whether the Republic of Latvia has concluded an agreement on the double non-imposition of resident income tax with a certain state may be relevant.<sup>34</sup>

### 3.2. Investigation service

In Latvia, private investigation services is a special type of commercial activity and is regulated by the Law on Detective Activity<sup>35</sup> that establishes that this commercial activity can be provided by individual service-providers, partnerships and capital

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<sup>28</sup> Article 19, paragraph 1 of the Security Guard Activities Law.

<sup>29</sup> Article 19, paragraph 4 of the Security Guard Activities Law.

<sup>30</sup> Law on the Handling of Weapons (*Ieroču aprites likums*) of 6 June 2002. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>31</sup> Article 2 of the Security Guard Activities Law.

<sup>32</sup> Article 13 of the Security Guard Activities Law.

<sup>33</sup> Article 18 of the Security Guard Activities Law.

<sup>34</sup> Latvia has concluded agreements for the avoidance of double taxation with respect to the income tax with the following countries: Macedonia, Israel, Austria, Serbia and Montenegro, Azerbaijan, Georgia, Luxembourg, Hungary, Bulgaria, Spain, Slovenia, Greece, Estonia, Romania, Switzerland, Kazakhstan, Portugal, Croatia, Malta, Armenia, Singapore, Turkey, Belgium, Slovakia, Uzbekistan, the United States, Moldova, Ireland, France, Germany, China, the United Kingdom, Ukraine, Belarus, Canada, Czech Republic, Iceland, the Netherlands, Lithuania, Poland, Denmark, Norway, Finland and Sweden. The information can be found on the website: <<http://www.vid.gov.lv/>>.

<sup>35</sup> Law on Detective Activity (*Detektīvdarbības likums*) of 5 July 2001. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

companies (hereinafter – detective companies) and natural persons (hereinafter – detectives) certified in accordance with the procedures prescribed by this Law.<sup>36</sup>

In order to provide private investigation services, a detective company shall obtain a special permit (licence), but the detective - a certificate for the performance of detective activity.<sup>37</sup> The licence and certificate are issued for five years<sup>38</sup> by the Ministry of Interior of the Republic of Latvia in accordance with procedure defined in separate Cabinet of Ministers regulations.<sup>39</sup> The Ministry of Interior has notified that at time of writing the report it has issued 26 special permits (licences) for detective companies and 74 certificates for individual detectives.

A detective company is entitled to obtain a licence, if its head and any person in the administration is a citizen of a Member State of the European Union or a state of the European Economic Area, who has not been convicted of a commission of a criminal offence and who is not suffering from mental illness, addiction to alcohol, narcotic, psychotropic or toxic substances and where at least one certified detective is hired.<sup>40</sup> By this regulation, the legislator has chosen not to allow a non-citizen being the head or any person in the administration to qualify for the acquisition of a licence for a detective company.

The Law on Detective Activity prohibits to issue a licence to detective companies in which the positions in administrative bodies are held by persons regarding whom the State Police or State security institutions are in possession of information indicating **that such persons belong to prohibited militarised or armed units**, to political parties or public organisations, associations or movements thereof which have commenced public operation prior to the registration or continue operation after it has been suspended or terminated by a court order.<sup>41</sup>

A detective certificate is issued to a citizen of a Member State of the European Union or a citizen of a state of the European Economic Area and a Latvian non-citizen, if he or she has acquired a higher legal education or the practical legal work experience in law enforcement institutions (court, pre-trial investigation, prosecution, police and State security institutions) and not less than five years; if he or she has not been found guilty of committing an intentional criminal offence; if he or she has been determined to suffer from mental illness, addiction to alcohol, narcotic, psychotropic or toxic substances; if he or she has not been removed from the office or service in law enforcement institutions in connection with disciplinary violations or non-conformity with the service held, except in a case in which the relevant person does not conform to the position due to his or her state of health; and on whom the State Police or State security institutions are not in possession of information indicating **that such a person belong to prohibited militarised groups or armed units**, to political parties or public organisations, associations or movements of public organisations which have commenced public operation prior to the registration or continue operation after it has been suspended or terminated by a court adjudication, as well as regarding affiliation to

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<sup>36</sup> Article 2, paragraph 1 of the Law on Detective Activity.

<sup>37</sup> Article 3, paragraph 1 of the Law on Detective Activity.

<sup>38</sup> Article 3, paragraph 2 of the Law on Detective Activity.

<sup>39</sup> Cabinet of Ministers Regulations No 260 „Regulation on Licensing and Certification of Detective Activity” (*Detektīvdarbības licencēšanas un sertifikācijas noteikumi*) of 17 April 2007.

<sup>40</sup> Article 4 of the Law on Detective Activity.

<sup>41</sup> Article 5 paragraph 1 of the Law on Detective Activity.

organised criminal groups.<sup>42</sup> In this case of acquisition of a detective certificate, the legislator has opined that also the persons having a special legal status, namely, non-citizens of the Republic of Latvia are entitled to receive a detective certificate.

A licence of a detective company is annulled if its activities are directed against the lawful interests of the State, society or a person; if it intentionally does not comply with the requirements of laws and other regulatory enactments; if it has knowingly provided false information in order to obtain a licence; if it does not fulfil tax liability systematically; if it has not commenced detective activity within a period of six months from the moment of obtaining a licence; and if other laws of court adjudications have determined to annul the licence.<sup>43</sup> Similar criteria apply in cases for annulment of a detective certificate.<sup>44</sup> The lawful interests of the State would also encompass the State's human rights obligations, so that in case of possible human rights violations by detective companies or detectives the State interests will also encompass the assumed human rights commitments.

The Law on Detective Activity establishes the detective activity services allowing for the detective company and detective to be carried out, namely, gathering information in civil matters and criminal matters; searching for persons who have committed a criminal offence or persons missing without information as to whereabouts; ascertaining the facts, matters or persons related to a criminal activity; providing consultations to natural persons and legal persons concerning security matters; ascertaining the facts of unfair competition, unlawful commercial activities or other facts of unlawful economic activity; gathering information characterising a person prior to the entering into a contract of employment or other civil contract, and information regarding the insolvency of a person; examining information related to the fulfilment of obligations under insurance contracts and compensation for material losses and searching for property lost by natural persons or legal persons or property, which has been unlawfully expropriated.<sup>45</sup> The Law on Detective Activity also prescribes that a detective company and detective may provide **other services** provided they are not in conflict with the Law on Detective Activity and serve to achieve the purpose to protect the rights and lawful interests of such a person.<sup>46</sup>

A written contract for the provision of detective activity services shall be concluded with each client.<sup>47</sup> If there is a contract with the provider of detective activities regarding the gathering of information in a criminal matter, the provider of detective activities within a period of 24 hours in writing informs the performer of procedures in the records of which the criminal matter is entered and harmonises his or her activities in this matter with the performer of procedures.<sup>48</sup>

While undertaking detective activities a detective is entitled to perform disguised questioning of a person; to perform detailed questioning of a person and accept written explanations regarding the facts he or she is interested in and the circumstances of the matter or event with consent of the person; to inspect places, buildings, structures,

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<sup>42</sup> Article 6 of the Law on Detective Activity.

<sup>43</sup> Article 7 of the Law on Detective Activity.

<sup>44</sup> Article 8, paragraph 1 of the Law on Detective Activity.

<sup>45</sup> Article 2, paragraph 2 of the Law on Detective Activity.

<sup>46</sup> Article 2, paragraph 3 of the Law on Detective Activity.

<sup>47</sup> Article 9, paragraph 1 of the Law on Detective Activity.

<sup>48</sup> Article 9, paragraph 2 of the Law on Detective Activity.

premises, machinery, equipment, items and documents non-accessible to public with consent of the owner or legal possessor; to perform an open or disguised inspection of places, buildings, structures, premises and items in the premises accessible to public and to observe and shadow objects and the movements thereof.<sup>49</sup>

It is the duty of a detective to hand over to the law-enforcement institutions all information obtained during the detective activity regarding intended or committed criminal offences, as well as private persons related thereto.<sup>50</sup>

During the performance of detective activities it is prohibited to cause physical, moral or material injury to persons, threaten human life and health, as well as the surrounding environment, use or to threaten the use of physical means of coercion, or to incite people to criminal acts.<sup>51</sup>

It is prohibited for a detective company and detectives to mislead clients knowingly and utilise the information obtained contrary to interests of the State or interests of a client or other persons protected by law, to transfer the certificate to other persons, to take operative activity measures as well as to disclose the information obtained without the consent of the client.<sup>52</sup>

Detectives and detective companies do not perform their activities in an armed conflict abroad. Those services are not regulated as such.

The control over the detective activities is carried out by the State Police that is entitled to request the necessary documents and oral or written information for the exercise of control.<sup>53</sup>

### 3.3. Covert co-operation in investigatory operations

The Investigatory Operations Law<sup>54</sup> that prescribes the legal basis for investigatory operations introduces a separate Chapter 5 on the Legal and Social Protection for Covert Co-operation.

According to the Investigatory Operations Law, authorised officials of bodies performing investigatory operations have the right, on a voluntary and mutual trust basis to recruit persons, who have a legal capacity as covert helpers in investigatory operations.<sup>55</sup> They are under a duty to keep the fact of co-operation secret, to not divulge information obtained in the course of such co-operation, and to provide only true information to officials of bodies performing investigatory operations.<sup>56</sup> The Investigatory Operations Law prescribes that the covert co-operation **may be remunerated**. Covert helpers, with their consent, may also be recruited for investigatory operations **on a contractual basis**.<sup>57</sup>

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<sup>49</sup> Article 10, paragraph 1 of the Law on Detective Activity.

<sup>50</sup> Article 10, paragraph 3 of the Law on Detective Activity.

<sup>51</sup> Article 11 of the Law on Detective Activity.

<sup>52</sup> Article 12 of the Law on Detective Activity.

<sup>53</sup> Article 14 of the Law on Detective Activity.

<sup>54</sup> Investigatory Operations Law (*Operatīvās darbības likums*) of 16 December 1993. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>55</sup> Article 30, paragraph 1 of the Investigatory Operations Law.

<sup>56</sup> Article 30, paragraph 2 of the Investigatory Operations Law.

<sup>57</sup> Article 30, paragraph 3 of the Investigatory Operations Law.

The covert helpers are under the protection of the State and information with respect to their identity and covert co-operation is an official secret.<sup>58</sup> The covert helpers may be involved in criminal proceedings without revealing the fact of cover co-operation. It may be revealed if it is necessary for the attainment of the objectives of the investigation or to guarantee public security with a condition if it does not endanger the life, health or freedom of the covert helper.<sup>59</sup>

## 4. Regulation of armed force

### 4.1. Possession of arms

In Latvia, the acquisition and possession or carrying of weapons, like in the other European countries, is a monopolised and controlled process. It is strictly regulated by the Law on the Handling of Weapons<sup>60</sup> that defines the categories of weapons to be allowed for purchase, possession, carrying and usage for the purposes of self-defence<sup>61</sup>; the categories of weapons that are prohibited in the Republic of Latvia<sup>62</sup>; the categories of weapons, munitions and accessories that are prohibited to be purchased, possessed, carried and used by the natural and legal persons<sup>63</sup>. The Law on the Handling of Weapons also defines the categories of weapons to be allowed for purchase, possession and carrying by natural and legal persons (e.g., sports or hunting firearms and high-energy pneumatic weapons) in accordance with special permits (licences) issued by the State Police for the time period from one to five years.<sup>64</sup>

The licensing system is supervised by the Cabinet of Ministers that determines the procedures by which the State Police shall issue the special permits, as well as the criteria for the specification of the term of validity and the form of permits.<sup>65</sup> The Security Guard Activities Law specifically refers to the compliance with the requirements of the Law on the Handling of Weapons for the purchase, possession and carrying of weapons.<sup>66</sup>

According to the Security Guard Activities Law a security guard service-provider that has received the second category special permit (licence) with a permission of the State Police has a right to acquire and store firearms and to store special means according to the procedures specified in the Law on the Handling of Weapons. In addition, the security guard service-provider has a right to employ and use firearms and special means in order to ensure security guard activities according to the

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<sup>58</sup> Article 31, paragraph 1 of the Investigatory Operations Law.

<sup>59</sup> Article 31, paragraph 3 of the Investigatory Operations Law.

<sup>60</sup> Law on the Handling of Weapons (*Ieroču aprites likums*) of 6 June 2002. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>61</sup> Article 6 of the Law on the Handling of Weapons.

<sup>62</sup> Article 7, paragraph 1 of the Law on the Handling of Weapons.

<sup>63</sup> Article 7, paragraphs 2-4 of the Law on the Handling of Weapons.

<sup>64</sup> Article 8 of the Law on the Handling of Weapons.

<sup>65</sup> Cabinet of Ministers Regulations No 159 „Procedures for Acquisition, Registration, Recording, Possession, Transportation, Conveyance and Realization of Weapons, Munitions and Gas Pistols (revolvers) as well as for Collections” (*Ieroču, munīcijas un gāzes pistoļu (revolveru) iegādāšanās, reģistrēšanas, uzskaites, glabāšanas, pārvadāšanas, pārsūtīšanas, nēsāšanas, realizēšanas un kolekciju veidošanas noteikumi*).

<sup>66</sup> Article 4, paragraph 2, Article 15 of the Security Guard Activities Law.

procedures specified in the Security Guard Activities Law.<sup>67</sup> The Security Guard Activities Law prescribes that for the security guard activities, category B semi-automatic, non-automatic or single-shot firearms and category B, C or D long-barrelled-smooth-bore firearms that are classified as service firearms may be used.<sup>68</sup> In performing security guard activities the security guard employee may carry personal category B semi-automatic, non-automatic or single-shot firearms, if the State Police have issued a permit for carrying them according to the procedures specified in the Law on the Handling of Weapons. Service firearms are issued to security guard employees only for the period of time while he or she performs his or her duties.<sup>69</sup> For the performance of security guard activities the following special means may be used: gas pistols (revolvers), gas cylinders, electric shock devices, truncheons, handcuffs and other means of binding.<sup>70</sup> The security guard employees are under duty to notify the State Police and their direct manager of every instance of the employment of a firearm.<sup>71</sup>

The Law on the Handling of Weapons also prescribes restrictions for the natural and legal persons<sup>72</sup> and conditions for acquisition, possession and carrying of weapons and munitions.<sup>73</sup> The Law on the Handling of Weapons establishes the right of foreign citizens of acquisition, possessing, carrying, transport and usage of firearms and high-energy pneumatic weapons in the Republic of Latvia.<sup>74</sup>

If restrictions for the natural persons are not applicable, the Law on the Handling of Weapons determines an equal right for a Latvian citizen, a non-citizen of Latvia, a citizen of foreign State, a stateless person and a refugee who has received a permanent residence permit in the Republic of Latvia and who has reached the age of 18 to acquire or receive a weapon as a personal award, to possess and transport category B, D and C long-barrelled smooth-bore hunting, sport and self-defence firearms, high-energy pneumatic weapons and munitions thereof, as well as to utilise such firearms in hunting, self-defence, practice shooting and shooting sports competitions as well as to kill farm animals as prescribed by law.<sup>75</sup> Though the Law on the Handling of Weapons refers to the criteria of natural persons or persons permanently residing in Latvia to qualify for certain rights on the acquisition, possession and carrying of weapons, some restrictions with respect to certain types of weapons have identified with regard to non-citizens of Latvia. As an example, only a Latvian citizen, a citizen of a Member State of the European Union and a citizen of the European Economic Area, who has reached the age of 21, if the restrictions prescribed for the natural persons are not applicable, shall be entitled to acquire or receive a weapon as a personal award, to possess and carry category B semi-automatic, non-automatic and single shot short-barrelled firearms that calibre of which is not more than 9 millimetres and munitions thereof, and to utilise

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<sup>67</sup> Article 8 of the Security Guard Activities Law.

<sup>68</sup> Article 15, paragraph 1 of the Security Guard Activities Law.

<sup>69</sup> Article 15, paragraph 2 of the Security Guard Activities Law.

<sup>70</sup> Article 15, paragraph 3 of the Security Guard Activities Law.

<sup>71</sup> Article 17, paragraph 3 of the Security Guard Activities Law.

<sup>72</sup> Articles 20, 23 of the Law on the Handling of Weapons.

<sup>73</sup> Articles 21, 24 of the Law on the Handling of Weapons.

<sup>74</sup> Articles 32 of the Law on the Handling of Weapons.

<sup>75</sup> Articles 19, paragraph 3 of the Law on the Handling of Weapons.

such weapons in practice shooting and shooting sports competitions, as well as to use the for the purposes of self-defence.<sup>76</sup>

The restrictions regarding acquisition and possession or carrying of weapons do not apply to the Latvian National Armed Forces and Police, actions of which connected with carrying and use of weapons are to be in line with their special Law<sup>77</sup>. Foreign armed forces also are excluded from the prohibition to carry and possess arms, but their right to use, carry and possess arms during their stay in the Republic of Latvia is limited by condition, that they are performing their official tasks.<sup>78</sup> As the Republic of Latvia is a party to the various Status of Forces agreements (NATO SOFA, PFP SOFA), it may supervise the use, carrying and possessing of arms of the foreign armed forces of the respective Member States while they are stationing their troops in the territory of the Republic of Latvia.<sup>79</sup>

#### 4.2. Arms export and import

With respect to commercial handling of weapons, munitions, explosives, explosive devices, special means and pyrotechnic articles the Law on the Handling of Weapons establishes that in order to provide services in relation to commercial handling (i.e., production, repair, distribution, import, transit etc.) of weapons and other military goods, a service-provider shall have a special permit (licence).<sup>80</sup> Individual service-providers or commercial companies are entitled to receive special permits (licenses) for commercial handling of weapons and other military goods.<sup>81</sup> There is a requirement prescribed by the Law that the shareholders, managers and persons holding positions in the administrative bodies of commercial companies and its employees shall be confined to the Latvian citizens or European Union citizens or citizens of European Economic Area states.<sup>82</sup> Latvian non-citizens do not qualify to fulfil this requirement. The special permits (licences) are issued for the time period from one to five years.<sup>83</sup>

Special permits (licences) with respect to the certain categories of activities are issued by two ministries - the Ministry of Interior of the Republic of Latvia and the Ministry of Defence of the Republic of Latvia.<sup>84</sup>

The Ministry of the Interior of the Republic of Latvia shall issue the special permits (licences) that grant the right to manufacture (produce), repair, display in exhibitions, realise, export, import or repair or transport in transit weapons of various

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<sup>76</sup> Articles 19, paragraph 6 of the Law on the Handling of Weapons.

<sup>77</sup> Military Service Law (*Militārās darbības likums*) and Law on Police (*likums "Par policiju"*).

<sup>78</sup> See Article 5 of the Law on the Status of Foreign Armed Forces in the Republic of Latvia (*likums "Ārvalstu bruņoto spēku statuss Latvijas Republikā"*). The English text can be found on website: <[www.mod.gov.lv](http://www.mod.gov.lv)>.

<sup>79</sup> See Article 6 of Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (*likums "Par Ziemeļatlantijas līguma organizācijas dalībvalsts līgumu par to bruņoto spēku statusu"*. *Latvijas Vēstnesis*, 2004.gada 7.jūlijs, nr. 106(3054)) of 17 June 2004, available at: <<http://www.nato.int/docu/basicxt/b510619a.htm>>.

<sup>80</sup> Articles 36, paragraph 1 of the Law on the Handling of Weapons.

<sup>81</sup> Articles 36, paragraph 2 of the Law on the Handling of Weapons.

<sup>82</sup> Articles 36, paragraph 2 of the Law on the Handling of Weapons.

<sup>83</sup> Articles 36, paragraph 3 of the Law on the Handling of Weapons.

<sup>84</sup> Articles 37 of the Law on the Handling of Weapons.

categories (i.e., rifled sports or hunting firearms the calibre of which is not more than 12.7 millimeters (0.5 inches), pneumatic weapons etc.).

The Ministry of Defence of the Republic of Latvia issues special permits (licences):

- for the import of military weapons and other military goods (munitions, military explosives, explosive devices, military pyrotechnics etc.) - for the needs of the Latvian National Armed Forces and the institutions of the system of the Ministry of the Interior and the export and transit of such objects;
- for the manufacture (production) of military weapons and other military goods (including munitions, military explosives, explosive devices, military pyrotechnics, gas grenades etc.);
- for the performance of blasting or the provision of pyrotechnic services – for the needs of the National Armed Forces.<sup>85</sup>

The order of transportation of the weapons and munitions across the border of the Republic of Latvia by the military personnel and officials is prescribed by the relevant laws. The Law on the Handling of Weapons prescribes that for the transportation of firearms, firearm munitions or high-energy pneumatic weapons across the border of the Republic of Latvia is subject to a permit for weapon or munitions import, export or transit issued by the State Police. However, the transportation of them within the Member States of the European Union is subject to a European Firearm Pass.<sup>86</sup>

The unified records of firearms and high-energy pneumatic weapons of natural and legal persons (except the National Armed Forces) are maintained by the Informational Centre of the Ministry of Interior of the Republic of Latvia.<sup>87</sup>

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

The domestic legislation of the Republic of Latvia with regard to the dual use goods is in line with the international obligations of the Republic of Latvia, the requirements of international export control regimes – the Australia Group, the Wassenaar Arrangement, the Missile Technology Control Regime and the Nuclear Suppliers Group – that the Republic of Latvia observes according to the European Union Code of Conduct on Arms Exports of 8 June 1988 (hereinafter – the EU Code of Conduct) and Regulation No 1334/2000, as well as other regulatory enactments regulating the circulation of goods of strategic significance. The circulation of goods of strategic significance is regulated by the Law on the Circulation of Goods of Strategic Significance.<sup>88</sup>

The Law on the Circulation of Goods of Strategic Significance describes the ‘**goods of strategic significance**’ as systems, equipment, their components, materials, chemical substances, items, software, technology and services that are listed in the Annex 1 to the Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a

<sup>85</sup> See Article 37 of the Law on the Handling of Weapons.

<sup>86</sup> Article 44, paragraph 1 of the Law on the Handling of Weapons.

<sup>87</sup> Article 48, paragraph 1 of the Law on the Handling of Weapons.

<sup>88</sup> Law on the Circulation of Goods of Strategic Significance (*Stratēģiskas nozīmes preču aprites likums*) of 21 June 2007. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

Community regime for the control of exports of dual-use items and technology, the Common Military List of the European Union adopted by the Council on 25 April 2005 (2005/C127/01) and in the National List of Goods and Services of Strategic Significance of the Republic of Latvia.

The Law on the Circulation of Goods of Strategic Significance establishes that for export, import, transit consignment of all goods specified in the legal instruments above mentioned, as well as among the European Union Member States a licence for goods of strategic significance shall be issued by the competent control authority – the Committee for Control of Goods of Strategic Significance (hereinafter – the Committee), the personnel of which is determined by the Government.<sup>89</sup> The Committee is subordinate to the Minister of Foreign Affairs of the Republic of Latvia.<sup>90</sup>

The Law on the Circulation of Goods of Strategic Significance prescribes the exceptions with respect to the issuance of import and transit licences,<sup>91</sup> namely, the import licence is not necessary, if the National Armed Forces, Prison Administration or authorities under the subordination or supervision of the Ministry of Interior of the Republic of Latvia transfer goods specified in the Common Military List of the European Union from another European Union Member State or import them without the mediation of a service-provider.<sup>92</sup> However, a licence for the transit of goods of strategic significance is required, if a broker or carrier makes a transit of goods of strategic importance.<sup>93</sup> A licence for the transit of goods of strategic significance is not necessary if the transit of goods is performed by a carrier registered in a foreign country and an export licence of export permit issued by the authority of the exporting country is affixed to the freight, or a document equivalent to these and an import licence of the importing country or an international import certificate, or end-use statement thereto.<sup>94</sup>

Special provisions have been established by the Law on the Circulation of Goods of Strategic Significance with respect to the acquisition of a licence for the transfer, export, import or transit of a source of ionising radiation (including nuclear material) – they require a special permit (licence) issued by the Radiation Safety Centre.<sup>95</sup> Also for the transfer, export, import or transit of military goods specified in the Common Military List of the European Union, a special permit (licence) issued by the Ministry of Defence shall be obtained.<sup>96</sup> Individual service-providers or commercial companies entitled to receive a special permit (licence) for commercial activities with goods specified in the Common Military List of the European Union, if there is no information that the activities of the relevant service-providers are directed against the security of the State or that the service-provider violates the restrictions imposed by the international agreements or prescribed by international organisations, as well as if the participants, heads, persons, who take up office in the administrative bodies and employees fulfil certain criteria (e.g. they are citizens of the Republic of Latvia or citizens of a European Union Member State, or citizens of a European Economic Area

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<sup>89</sup> Article 3, paragraph 2, Article 12, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

<sup>90</sup> Article 12, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

<sup>91</sup> Article 4 of the Law on the Circulation of Goods of Strategic Significance.

<sup>92</sup> Article 4, paragraph 1 of the Law on the Circulation of Goods of Strategic Significance.

<sup>93</sup> Article 4, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

<sup>94</sup> Article 4, paragraph 3 of the Law on the Circulation of Goods of Strategic Significance.

<sup>95</sup> Article 5, paragraph 1 of the Law on the Circulation of Goods of Strategic Significance.

<sup>96</sup> Article 5, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

State, who have reached the age of at least 21, they have not been sentenced for the commission of a criminal offence, the State Police, the public prosecutor or State security institutions have no information that would attest to their affiliation to prohibited military or armed groups, public organisations (parties) or the unions thereof).<sup>97</sup> Non-citizens of Latvia being the participants, heads, persons who take up office in the administrative bodies of commercial companies as well as its employees do not qualify to fulfil the requirement for the acquisition of a special permit (licence).

The special permit (licence) issued by the Ministry of Defence of the Republic of Latvia for the commercial activities with the goods specified in the Common Military List of the European Union is not necessary, if the transaction concerns military weapons, their components, or accessory devices, ammunition, explosives, explosive devices, special resources or pyrotechnic articles and the entity already has a special permit (licence) acquired in accordance to the Law on the Handling of Weapons.<sup>98</sup> The Law on the Circulation of Goods of Strategic Significance also prescribes other specific occasions when the special permit (licence) is necessary in accordance with the Law on the Handling of Weapons.<sup>99</sup>

In order to receive a licence for the export or transit of goods of strategic significance, an entity is under obligation to submit to the Committee an international import certificate of the importing country or a declaration of an end-use of the goods or an equivalent document.<sup>100</sup> In case the export control authorities of an exporting country request a delivery verification certificate, the importer submits the relevant application to the Committee, presenting a customs declaration that confirms that the goods are imported in the territory of the Republic of Latvia.<sup>101</sup>

The Committee is entitled to request the technical indicators of the goods, the results of laboratory testing or experiments, equipment certificates, chemical formulae and other information or samples of goods to determine whether or not the relevant goods are the ones of strategic significance.<sup>102</sup>

The Committee may refuse to issue a licence for goods of strategic significance, if the issuance thereof is contrary to the general foreign policy guidelines of the Republic of Latvia, embargoes determined by the European Union, the United Nations and the Organisation for Security and Co-operation in Europe, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction, the criteria of the European Union Code of Conduct or the objectives of the Law on the Circulation of Goods of Strategic Significance.<sup>103</sup>

The export and import of the arms and other military goods from other EU Member States and non EU Member States is allowed by obtaining a special permit. The procedure and the authority that issue a concrete special permit differ depending on whether weapons, munitions and other goods are dual use goods or not, as well as if weapons, munitions and other military goods, which are not dual use goods, will be

<sup>97</sup> Article 5, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

<sup>98</sup> Article 5, paragraph 8 of the Law on the Circulation of Goods of Strategic Significance.

<sup>99</sup> Article 5, paragraphs 9, 10, Article 7, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

<sup>100</sup> Article 9, paragraph 1 of the Law on the Circulation of Goods of Strategic Significance.

<sup>101</sup> Article 10, paragraph 1 of the Law on the Circulation of Goods of Strategic Significance.

<sup>102</sup> Article 11, paragraph 2 of the Law on the Circulation of Goods of Strategic Significance.

<sup>103</sup> Article 12, paragraph 9 of the Law on the Circulation of Goods of Strategic Significance.

handled for needs of Latvian National Armed forces and/or institutions of the system of the Ministry of the Interior.

The Committee controls the circulation of the dual-use goods specified in Annex 1 to the Regulation No 1334/2000.<sup>104</sup>

If weapons, munitions and other military goods are dual use goods, the license for commercial handling is to be issued by the above mentioned Committee.<sup>105</sup>

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

The decision on participation of the Latvian National Forces in the international operations abroad is made by the Parliament or by the Cabinet of Ministers depending on type of operation, e.g., the Cabinet of Ministers decides on the participation of the Latvian troops in international rescue operations and international humanitarian operations.<sup>106</sup> From the perspective of national law, Latvia maintains the prerogative on the participation of the armed forces in international operations. However, the operational command and control over the Latvian National Armed Forces during the United Nations mission on the basis of the UN Security Council resolution and during the NATO missions will be determined by international law applicable to the agreements between the Latvian National Armed Forces and the Leading Nations that are classified. Also the responsibility of Latvia and the relevant international organisations shall be determined by the international law principles on the responsibility of States and international organisations.

The Latvian legislation regarding security and investigation services to be performed abroad during the armed conflict is applicable only to the members of the Latvian National Armed Forces<sup>107</sup> and the State Police.<sup>108</sup> Only Latvian citizens shall only be recruited in the National Armed Forces.<sup>109</sup> The National Armed Forces Law establishes that the Military Police is a military discipline and law enforcement unit with the rights of investigative institutions and investigatory operations subjects that *inter alia* provide assistance to commanders (superior officers) of military units in ensuring the security of military activities, military discipline, law and order.<sup>110</sup> The State Police is entitled to co-operate with the police (militia) of other states, international organisations, unions or community, as well as to participate in international missions and operations in accordance with international agreements of the Republic of Latvia.<sup>111</sup>

Should the Latvian National Armed Forces and the State Police choose to perform certain security sustainment and investigation services in a particular country,

<sup>104</sup> Article 15 of the Law on the Circulation of Goods of Strategic Significance.

<sup>105</sup> See Articles 1, 5 and 12 of the Law on the Circulation of Goods of Strategic Significance.

<sup>106</sup> See Article 5 of the Law on Participation of the National Armed Forces of Latvia in International Operations (*likums "Latvijas Nacionālo bruņoto spēku piedalīšanās starptautiskajās operācijās"*) of 16 February 1995.

<sup>107</sup> See Law on Participation of the National Armed Forces of Latvia in International Operations and Article 8 of Law on Police.

<sup>108</sup> Article 8 of the Law on Police (*likums "Par policiju"*).

<sup>109</sup> Article 5, paragraph 1 of the National Armed Forces Law (*Nacionālo bruņoto spēku likums*) of 4 December 1999. The English text can be found on website: <[www.mod.gov.lv](http://www.mod.gov.lv)>.

<sup>110</sup> Article 12 of the National Armed Forces Law.

<sup>111</sup> Article 8 of the Law on Police.

these activities are prescribed by a certain type of international operation, as defined by the international mandate and, nationally, by the Law on Participation of National Armed Forces of Latvia in International Operations and the Law on Police.

The operation of weapon systems employed by Latvia in the area of international armed conflict is in line with international agreements (operational Memoranda of Understanding, Technical Arrangements etc.) concluded among the states participating in the same international operation as part of the same contingent. For instance, when the Latvian troops participated in Multinational Brigade Centre in Kosovo Force, the Memorandum of Understanding and list of Implementation Arrangements were concluded. In all cases, the use of force by the Latvian troops participating in international operations is made in line with Rules of Engagement set out for specific international operation, however, it does not exclude that the country has its own Rules of Engagement.<sup>112</sup>

The Military Service Law<sup>113</sup> establishes the participation of civilians in military units in case it is not possible to make up the unit with a sufficient number of soldiers.<sup>114</sup> The civilians in military units are divided into two categories: military employees and civil employees.<sup>115</sup> With respect to military employees, they are civilians who on basis of an employment agreement hold the position of soldiers.<sup>116</sup> The agreement is concluded for the time period when a soldier is appointed to the position concerned.<sup>117</sup> However, with respect to civil employees, they are civilians who also on the basis of an employment agreement perform a work in a civil unit in accordance with the labour law.<sup>118</sup>

#### 4.5. PMC contracts and armed force

Although everyone has a right to obtain information from the Commercial Register of the Republic of Latvia on the kind of services provided by the commercial company or individual service-provider, it does not comprise information whether private security or private military contractors are performing their activities abroad. The way to determine, whether private security contractors and private military contractors are performing their activities abroad is to determine whether the particular contractor has paid the resident income tax to the State Revenue Service according to the Law on the Resident Income Tax (*likums "Par iedzīvotāju ienākuma nodokli"*) or whether a statement on the payment of income tax has been issued in a foreign country and therefore, the double non-imposition of resident tax income is applicable in the case concerned.

In case the Latvian PMC or PSC are sent to a conflict zone by a foreign private security or private military company, the issue of jurisdiction arises. The jurisdiction would depend on the subject-matter of the claim and in that respect the issue of 'forum-

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<sup>112</sup> As claimed by the applicants in *Behrami* case (*Agim Behrami and Bekir Behrami v. France, Saramati v. France, Germany and Norway*, application no.78166/01, decision of the ECHR), para. 77.

<sup>113</sup> Military Service Law (*Militārā dienesta likums*) of 30 May 2002. The English text can be found on website: <[www.mod.gov.lv](http://www.mod.gov.lv)>.

<sup>114</sup> Chapter XI of the Military Service Law.

<sup>115</sup> Article 60 of the Military Service Law.

<sup>116</sup> Article 61, paragraph 1 of the Military Service Law.

<sup>117</sup> Article 61, paragraph 2 of the Military Service Law.

<sup>118</sup> Article 62, paragraph 1 of the Military Service Law.

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 Latvian civil court jurisdiction cannot be precluded as the Civil Procedure Law<sup>119</sup> that establishes that all civil law disputes are subject to the court.<sup>120</sup>

For example, according to Civil Procedure Law a claim arising out of the action of a subsidiary or representative office of a legal person may be brought before a court in accordance with the location of the subsidiary or representative office.<sup>121</sup> An action arising out of private delicts, which have resulted in mutilation or other damage to health, or the death of a person, may also be made according to the place of residence of the plaintiff or the location where the delicts were inflicted.<sup>122</sup> 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.<sup>123</sup>

A civil claim for compensation of financial loss or moral injury can also be adjudicated in the framework of a criminal procedure on the basis of the Criminal Procedure Law (*Kriminālprocesa likums*), thereby, if an individual is indicted in a criminal matter, the civil claim can be brought simultaneously. However, if a civil claim has not been submitted or adjudicated in a criminal matter, an action may be brought in accordance with the Civil Procedure Law.<sup>124</sup>

With respect to the applicable law, the Latvian Civil Law establishes that the choice of law governing the settlement of disputes, execution of obligations, rights and duties, arising from a certain contract will depend on the mutual agreement between both States' companies.<sup>125</sup> However, if there is no agreement on the law governing the settlement of disputes, the law of the state where the obligation is to be performed shall apply. If the place of obligation cannot be determined, then the law of place, where the contract was made, will be applicable.<sup>126</sup> Thereby, the applicable law would depend on the agreement between the parties, and in cases, it has not been determined, the applicable law would be the law of the state where the obligation is performed or where the agreement has been concluded.

## 5. Corporate law

### 5.1. Registration and purpose

In Latvia in order to start a business either as a commercial company (partnership and Capital Company) or as an individual service-provider they have to register with the Commercial Register.<sup>127</sup> The Commercial Register is a public register maintained by the Commercial Register Office, which is a State institution. The Commercial Register Office as a holder of all data regarding service-providers and

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<sup>119</sup> Civil Procedure Law (*Civilprocesa likums*) of 14 October 1998.

<sup>120</sup> Article 23, paragraph 1 of the Civil Procedure Law.

<sup>121</sup> Article 28, paragraph 1 of the Civil Procedure Law.

<sup>122</sup> Article 28, paragraph 3 of the Civil Procedure Law.

<sup>123</sup> Article 28, paragraph 7 of the Civil Procedure Law.

<sup>124</sup> Article 7, paragraph 2 of the Civil Procedure Law.

<sup>125</sup> Article 19, paragraph 1 of the Civil Law.

<sup>126</sup> Article 19, paragraphs 2 and 3 of the Civil Law.

<sup>127</sup> See Article 1 of the Commercial Law (*Komerclikums*) of 13 April 2000. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

commercial activities is acting in accordance with the Commercial Law. All commercial activities in Latvia are regulated by the Commercial Law, the Civil Law, other national laws, and the international law binding on Latvia.

Though establishing of a commercial company or running of individual business does not require any certificate of no objection from certain State institutions (i.e., Ministry of Justice, Ministry of Interior or Ministry of Defence etc.), there may be some cases, when the performance of separate types of commercial activities shall be carried out **only after obtaining of a permit (licence)**. Restrictions on commercial activities may only be specified by law or on the basis of law.<sup>128</sup> For instance, such restrictions apply to private security services for the performance of which a special permit (licence) issued by the Ministry of Interior of the Republic of Latvia is necessary.<sup>129</sup> Similarly, the Cabinet of Ministers has adopted detailed regulations on licensing of security guard activities.<sup>130</sup>

The Commercial Law strictly defines the right of every person to choose any type of commercial activities to be performed, but it also states that some type of commercial activities may be prohibited by the law.

If the person applies for the registration with the Commercial Register the Commercial Law defines what information is to be recorded in the Commercial Register. For instance, in respect of a partnership, the service-provider shall give the information on the name of the firm, the type of partnership, the amount of contribution by each limited liability partner, the total amount of limited partner contributions, legal address etc.<sup>131</sup>

When the application for the registration is made, the decision regarding the entry of a record in the Commercial Register or a refusal to enter a record, or the postponement of the entry of a record shall be taken within a period of three days starting from the day of receipt of the application by an official of the Commercial Register Office. In case of positive decision, an official of the Commercial Register Office records the respective service-provider with the Commercial Register on the same day.<sup>132</sup>

The registration with the Commercial Register sets the legal bases for the performance of commercial activities specified in this register. Though the commercial activities performed by the specific service-provider are not prohibited the service-provider is responsible for carrying them out in conformity with public order (law).<sup>133</sup>

Activities that are contrary to public order (law) are determined by the Criminal Law, such as transfer of confidential information, or theft or collection of it pursuant to an assignment from the intelligence agency of a foreign power, conspiracy with foreign entities against the state, endangerment of the life and health of the state officials and other persons, threat to use force, financing, incitement to terrorism etc.

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<sup>128</sup> Article 4 of the Commercial Law.

<sup>129</sup> See Article 5 of the Security Guard Activities Law.

<sup>130</sup> Cabinet of Ministers Regulations No 93. „Security Guard Activities Licensing Regulations” (*“Apsardzes darbības licencēšanas noteikumi”*) of 30 January 2007.

<sup>131</sup> See Article 8, paragraph 2 of the Commercial Law.

<sup>132</sup> See Article 10, paragraph 3 of the Commercial Law.

<sup>133</sup> See Article 4, paragraph 2 of the Commercial Law.

In Latvia, Criminal Law foresees criminal responsibility for natural persons (individual service-providers) as well as coercive measures applicable to legal entities (persons), which include liquidation, limitation of rights, confiscation of property and other measures.<sup>134</sup>

For instance, in case there are grounds to believe that activities of a specific service-provider are contrary to public order, for instance, suspicion that a commercial company (legal entity) has been especially established for committing a criminal offence or if a serious or especially serious crime has been committed, the Public Prosecutor is authorised to request the court to adopt a decision on liquidation of a whole of a legal person, a branch, representation or structural unit thereof.<sup>135</sup>

By coercive measures applicable to legal entities, the legislator has created supervision of the commercial activities within the territory of the Republic of Latvia, and, in case the judgment of the court mandates the liquidation of the exact commercial company, this measure will be a tool to preclude other companies from perpetration of the similar actions.

## 5.2. Latvian PMCs/PSCs

As mentioned earlier (point 4.5.) the registration of PMC and PSC as a commercial company or individual service-provider does not comprise any information with respect to the foreign country of performance their duties. The way to determine whether the PMC or PSC has performed its duties abroad is a statement of an individual on the payment of income tax in a foreign country and the double non-imposition of resident income tax.

In 1995, the army of India shot down an airplane with a crew comprising five Latvian residents (non-citizens) working for the employer based in the United Kingdom. They were accused of transporting of weapons to one of the separatist groups in India. The investigation lasted for five years and the individuals were convicted. Latvia tried to use diplomatic protection; however, only after the intervention of the President of the Russian Federation the convicted were extradited and returned to Latvia to serve the sentence.<sup>136</sup>

Some type of private civil companies may also be used for military needs outside the territory of Latvia. For instance, the use of civil aviation companies<sup>137</sup> for military needs is foreseen by the specific Cabinet of Ministers regulations.<sup>138</sup> The provisions of the above-mentioned Cabinet of Ministers Regulations define that the use of civil aircrafts can be performed only in accordance with a contract concluded thereof.<sup>139</sup> Thus, it indicates that the use of services provided by the private companies

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<sup>134</sup> See Article 70 of the Criminal Law (*Krimināllikums*) of 17 June 1998.

<sup>135</sup> See Article 70<sup>3</sup> of the Criminal Law.

<sup>136</sup> Ziemele I. *Starptautiskās tiesības un cilvēktiesības Latvijā: abstrakcija vai realitāte (International Law and Human Rights in Latvia: Abstraction or Reality)*. Rīga, Tiesu namu aģentūra, 2005, p. 175

<sup>137</sup> Including foreign civil aviation companies.

<sup>138</sup> Cabinet of Ministers Regulations No 722 „The procedure on the use of civil aircrafts for military needs” (“*Kārtība, kādā civilās aviācijas gaisa kuģus izmanto militārajām vajadzībām*”) of 30 October 2007.

<sup>139</sup> See Article 5 of the Cabinet of Ministers Regulations No 722 „The procedure on the use of civil aircrafts for military needs” of 30 October 2007.

for the military purposes will be subject to private law. By this regulation the State facilitates the use of civil services in cases where the military capabilities are not sufficient. However, though the use of services provided by civil aircrafts for military needs will be subject to private law regulation, it would not deprive the obligation to comply with the State's human rights commitments. Article 10, paragraph 2 of the State Administration Structure Law (*Valsts pārvaldes iekārtas likums*)<sup>140</sup> determines that the state administration during performance of its functions observes human rights. It can be inferred that the delegation of certain military functions to private civil companies will not exempt the State from its obligation to comply and observe the human rights obligations that the State has assumed. However, there is no practice to confirm this assumption.

## 6. Labour Law

### 6.1. Employment

In Latvia, the Labour Law<sup>141</sup> does not provide specific provisions on PMC's/PSC's services. The Labour Law requires the conclusion of a written employment contract between an employee and an employer, by which the mutual legal relationships are to be established.<sup>142</sup> Though the Labour Law does not bring forward the requirements with respect to the employees of PMC/PSC services the specific requirements for those, who perform private security services are set out in the Security Guard Activities Law.

The Security Guard Activities Law recognises as security guard employees only those natural persons, that have received a security guard certificate in accordance with the procedures prescribed by this Law<sup>143</sup>, a citizen of a European Union Member State or European Economic Area State, who has acquired a security guard certificate or comparable document certifying the professional competence of a person in the corresponding state and who performs security guard activities.

Further, the Security Guard Activities Law indicates that employees of an internal security service may be only those natural persons that have received a security certificate and that have been employed by an institution, service-provider or organisation according to the procedures specified in the Labour Law.<sup>144</sup>

By the provision that security guard employees and employees of an internal security service prior to their employment must receive a security certificate the legislator has foreseen that there are some requirements to be followed in order to receive such a certificate. The procedure for obtaining a security certificate is specified in the separate Cabinet of Ministers Regulations, which define that the Qualification Commission established by the Ministry of Interior of the Republic of Latvia issues a

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<sup>140</sup> State Administration Structure Law (*Valsts pārvaldes iekārtas likums*) of 6 June 2002. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>141</sup> The Labour Law (*Darba likums*) of 20 June 2001. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>142</sup> See Article 40 of the Labour Law.

<sup>143</sup> See Article 11 of the Security Guard Activities Law.

<sup>144</sup> Article 10 of the Security Guard Activities Law.

security certificate to the natural person that has completed the relevant training and has successfully passed the qualification examination.<sup>145</sup>

A similar system of restrictions is applicable to the investigation service, where the Law on Detective Activity by its requirement that and natural persons (detective) may commence detective activity after the receipt of a certificate for the performance of detective activity.<sup>146</sup> The procedures for the issuance, extension of the term of operation, cancellation and suspension of a certificate are set out in the separate Cabinet of Ministers Regulations.<sup>147</sup>

As there is no official information on any PMCs/PSCs in Latvia that are employed in the conflict area abroad, there could be only theoretical assumption on this subject. In case the Latvian PMCs/PSCs are employed in the area of conflict abroad the employment is to be exercised in accordance with the relevant contract, where the parties involved have agreed on the details of employment, including pre-mission training and issues regarding legal status of the contractor in the state of armed conflict. The legal status of the contractors has to be defined prior to their deployment due to the great difference between those employees, who are subject to the local jurisdiction (including criminal) and those, who have been granted an exemption from the local jurisdiction.

As to responsibility for damages incurred by the employees in the course of their work, the Labour Law defines that the employer shall reimburse damages towards third parties. This principle is reflected in Article 79 of the Labour Law, which states that the employer has the right to deduct from work remuneration payable to an employee, the compensation for losses caused to him or her due to an illegal, culpable action of the employee.

Though the Labour Law does not state clearly that damages, incurred by the employees in course of their work towards third parties are to be paid by the employer, it gives a direction that the employer may suffer losses, including for the damages incurred by the employees in the course of their work towards third parties, for which he/she has a right to deduct compensation from work remuneration of the respective employee.

In this matter the Labour Law is complemented by the Civil Law, which anticipates the civil liability of the employer for losses caused by its employees in case he or she has failed to exercise due care in choosing servants or other employees and to previously satisfy himself or herself as to their abilities and suitability to perform the duties as may be imposed on them.<sup>148</sup>

Further, Civil Law directs clearly that the employee shall compensate for losses caused by failure to perform work undertaken, or if he or she does not exercise due care, unless the employer with his or her instructions was at fault for the loss.<sup>149</sup> This

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<sup>145</sup> Cabinet of Ministers Regulations No 1058 „Regulations on issuing of a security certificate as well as the procedures for the payment and the amount of State fee to be paid thereof” (*“Noteikumi par apsardzes sertifikātu izsniegšanu un valsts nodevas maksāšanas kārtību un apmēru”*) of 19 December 2006.

<sup>146</sup> See Article 3 of the Law on Detective Activity.

<sup>147</sup> Cabinet of Ministers Regulations No 260 „Regulation on Licensing and Certification of Detective Activity” (*“Detektīvdarbības licencēšanas un sertifikācijas noteikumi”*) of 17 April 2007.

<sup>148</sup> Article 1782 of the Civil Law.

<sup>149</sup> Article 2185 of the Civil Law.

provision provides the right to the employer to claim compensation, where losses are resulting from employee's failure to perform their tasks or lack of due care.

Irrespective of the provisions set out in the Labour Law or the Civil Law, the contract may settle different clauses for liability to be shared between employer and employee. Private law does not prohibit strengthening civil liability for one or another contracting party. Usually contracts foresee that a third party's claims are settled by the company that further decides whether to deduct compensation from its employee or not.

### 6.2. Assignment

If a private company hires an independent contractor for a job it is not employment in terms of Labour Law, but assignment subject to Civil Law. Any independent contractor, who is performing his/her duties in accordance with the contract concluded with a private company may conclude subcontracts with other independent contractors in order to honour his/her commitments as a part of the assignment towards the other party with which the prime contract has been signed. In case the prime contractor concludes subcontracts for the part of his/her prime assignment he/she remains responsible towards principal for the fulfilment of the commitments, which has been transferred to subcontractors.<sup>150</sup> This provision protects the principal of the prime contract from the losses caused by subcontractors that were chosen by the main contractor.

### 6.3. Temporary workers

The Labour Law does not stipulate any difference between temporary and permanent workers. However it defines that contracts shall be concluded for unlimited period of time with some exceptions, which are described in Article 44 of the Labour Law:

- seasonal work;
- work in activity areas where an employment contract is normally not entered into for an unspecified period, taking into account the nature of the relevant occupation or the temporary nature of the relevant work;
- replacement of an employee who is absent or suspended from work, as well as replacement of an employee whose permanent position has become vacant until the moment a new employee is hired;
- casual work which is normally not performed in the undertaking;
- specified temporary work related to short-term expansion of the scope of work of the undertaking or to an increase in the amount of production;
- emergency work in order to prevent the consequences caused by *force majeure*, an unexpected event or other exceptional circumstances, which adversely affect or may affect the normal course of activities in an undertaking; and

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<sup>150</sup> Article 2217 of the Civil Law.

- temporary paid work intended for an unemployed person or other work related to his or her participation in active employment measures, or work related to the implementation of active employment measures.

Temporary contracts shall be concluded for a time period that does not exceed three years (including extensions of the term), if another term has not been specified in another law for the employment contract.<sup>151</sup> By this provision the Labour Law indicates that the labour contract may be concluded either in accordance with domestic law or with other law applicable to current labour contract.

With respect to laws applicable to the labour contract it shall be noted that an employee and an employer may agree on law applicable to an employment contract and employment legal relationships, and this right does not abrogate or restrict the protection of an employee that is determined by prescriptive or prohibitive norms of a law of the State which law would be applicable. Thus, the Labour Law emphasizes that the labour contract could be concluded either based on the laws of Latvia or on the laws of other states that is chosen by the parties of the respective labour contract.<sup>152</sup>

## 7. Government procurement policy and PMCs

No official policy statements have been made by the Latvian government regarding the use of private military and private security services during Latvian missions in Afghanistan, Iraq and Kosovo. In case the Latvian government decides to hire a PMC/PSC and their services to be used during the mission, the provisions of the Public Procurement Law<sup>153</sup> would apply.

## 8. Criminal responsibility

### 8.1. Mercenary activity

Mercenary activities are not prohibited by Latvian law as such. Latvia is not a Party to the 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. However, the Citizenship Law<sup>154</sup> prescribes that the Latvian citizenship may be revoked by a decision of a Regional Court if a person is serving in foreign armed forces, internal military forces, security service, police (militia) or is employed in a juridical institution of a foreign state, without the permission of the Cabinet of Ministers.<sup>155</sup>

### 8.2. Individual criminal responsibility

The Criminal Law<sup>156</sup> implements the principle of universal jurisdiction in Article 4, paragraph 4 stating that aliens or stateless persons who do not have a permanent

<sup>151</sup> See Article 45 of the Labour Law.

<sup>152</sup> See Article 13 of the Labour Law.

<sup>153</sup> Public Procurement Law (*Publisko iepirkumu likums*) of 6 April 2006.

<sup>154</sup> Citizenship Law (*Pilsonības likums*) of 22 June 1994. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

<sup>155</sup> Article 24, paragraph 1 of the Citizenship Law.

<sup>156</sup> Criminal Law (*Krimināllikums*) of 17 June 1998. The English translation can be found on the website: <[www.ttc.lv](http://www.ttc.lv)>.

residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another State, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the State in which the offence has been committed, shall be held liable in accordance with Criminal Law if they have not been stood trial for that offence in the territory of another state. The Criminal Law also implements the principle of territoriality,<sup>157</sup> floating territorial principle,<sup>158</sup> active personality principle<sup>159</sup>, active personality principle with respect to the soldiers of the Republic of Latvia,<sup>160</sup> and passive personality principle.<sup>161</sup>

The Criminal Law establishes a separate Chapter IX on the Crimes against Humanity and Peace, War Crimes and Genocide. It prescribes for criminal responsibility for genocide,<sup>162</sup> incitement to genocide,<sup>163</sup> crimes against peace, including planning, preparation or instigation of, or participation in military aggression, or conducting of a war of aggression in violation of international agreements,<sup>164</sup> war crimes referring to **prohibited conduct in war, in accordance with international agreements binding upon the Republic of Latvia**,<sup>165</sup> thus, including international and non-international armed conflicts, and incitement to war of aggression.<sup>166</sup> Article 74 of the Criminal Law criminalising war crimes also refers to murder, torture, robbery, deportation or assignment to forced labour of civilians, hostages and prisoners of war of an occupied territory, or unjustifiable destruction of cities and other entities. A serious shortcoming of Latvia's Criminal Law, it has to be noted that there is no provision in the Criminal Law outlawing crimes against humanity. However, the government has assumed work on the elaboration of the provision on the crimes against humanity.

Among the provisions in the Chapter on Crimes against Humanity and Peace, War Crimes and Genocide in the Criminal Law, it also criminalises the manufacture, amassment, deployment and distribution of weapons of mass destruction,<sup>167</sup> force against residents in the area of hostilities, namely violence against residents or unlawful forcible confiscation or destruction of their property,<sup>168</sup> pillaging, namely, appropriation of the property of persons killed or wounded on a battlefield,<sup>169</sup> instigation of national, ethnic and racial hatred<sup>170</sup> and destruction of cultural and national heritage.<sup>171</sup>

The Criminal Law also prescribes criminal responsibility for the establishment of a **criminal organisation** for the purpose of committing especially serious crimes against humanity or peace, war crimes, genocide or the commission of especially

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<sup>157</sup> Article 2, paragraph 1 of the Criminal Law.

<sup>158</sup> Article 3 of the Criminal Law.

<sup>159</sup> Article 4, paragraph 1 of the Criminal Law.

<sup>160</sup> Article 4, paragraph 2 of the Criminal Law.

<sup>161</sup> Article 4, paragraph 3 of the Criminal Law.

<sup>162</sup> Article 71 of the Criminal Law.

<sup>163</sup> Article 71<sup>1</sup> of the Criminal Law.

<sup>164</sup> Article 72 of the Criminal Law.

<sup>165</sup> Article 74 of the Criminal Law.

<sup>166</sup> Article 77 of the Criminal Law.

<sup>167</sup> Article 73 of the Criminal Law.

<sup>168</sup> Article 75 of the Criminal Law.

<sup>169</sup> Article 76 of the Criminal Law.

<sup>170</sup> Article 78 of the Criminal Law.

<sup>171</sup> Article 79 of the Criminal Law.

serious crimes against the State, as well as for involvement in such an organisation or in an organised group included within such organisation or other criminal formation.<sup>172</sup>

In addition, Criminal Law establishes the responsibility for unauthorised manufacture, repair, acquisition, storage, carrying, transportation, conveyance and sale of firearms, firearm ammunition, high-powered pneumatic weapons, explosives and explosive devices without a permit, and violations of selling regulations.<sup>173</sup> The Criminal Law also prescribes criminal responsibility for the violation of use or utilisation conditions or procedures regarding firearms, gas pistols (revolvers) and high-powered pneumatic weapons as well as violation of procedures for utilisation of explosives or explosive devices.<sup>174</sup>

The Criminal Law, prescribing criminal responsibility for criminal offences committed in military service (Chapter XXV) may apply to civilians assuming certain obligations in military service, as discussed before. The Criminal Law describes ‘criminal offences during military service’ as offences committed by soldiers and persons regarding whom special provisions set out in laws apply.<sup>175</sup> Also it criminalises absence without leave,<sup>176</sup> desertion,<sup>177</sup> insubordination,<sup>178</sup> failure to carry out an order,<sup>179</sup> resistance to a superior and forcing to act outside his or her official duties of service,<sup>180</sup> violence against a subordinate,<sup>181</sup> abuse of power and exceeding official authority<sup>182</sup> and violations of provisions regarding storage, use, accounting for and transportation of weapons, ammunition, explosive substances, radioactive and other dangerous substances.<sup>183</sup>

### 8.3. *Command responsibility and PMCs/PSCs*

The Criminal Law does not establish pure command responsibility as such as a basis for a criminal conviction. The Criminal Law prescribes for criminal responsibility for military offences committed in military service. It would apply to civilians assuming certain military obligations. It would also apply to the PMCs/PSCs as mercenaries taking a direct part in the hostilities under the military command of the commander of the armed forces of the party to the conflict. In these cases the military commander will be criminally responsible for the violations committed by the PMCs/PSCs taking direct part in the hostilities and the Latvian Criminal Law would apply.

The Criminal Law establishes that the execution of a criminal command or a criminal order by the person who has executed it is justifiable only in those cases when the person did not know of the criminal nature of the command or the order and it was

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<sup>172</sup> Article 89<sup>1</sup> of the Criminal Law.

<sup>173</sup> Article 233 of the Criminal Law.

<sup>174</sup> Article 237 of the Criminal Law.

<sup>175</sup> Article 331 of the Criminal Law.

<sup>176</sup> Article 332 of the Criminal Law.

<sup>177</sup> Article 333 of the Criminal Law.

<sup>178</sup> Article 335 of the Criminal Law.

<sup>179</sup> Article 336 of the Criminal Law.

<sup>180</sup> Article 337 of the Criminal Law.

<sup>181</sup> Article 338 of the Criminal Law.

<sup>182</sup> Article 341 of the Criminal Law.

<sup>183</sup> Article 346 of the Criminal Law.

not manifest. In such cases, criminal liability shall nonetheless apply if crimes against humanity and peace, war crimes or genocide have been committed.<sup>184</sup> The rule concerned would apply to PMCs/PSCs.

The Criminal Law states that a person, who has not executed a criminal command or order shall not be held criminally liable.<sup>185</sup>

The Military Service Law<sup>186</sup> prescribes that the soldier shall perform his/her military service in accordance with the regulatory enactments and the orders of the commander and that he/she is under duty to fulfil lawful orders of the commander.<sup>187</sup>

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

The Criminal Law prescribes that if a foreign diplomatic representative or other person, who, in accordance with the laws in force or international agreements binding upon the Republic of Latvia, is not subject to the jurisdiction of the Republic of Latvia. The issue of this person being held criminally liable is decided by diplomatic procedures or in accordance with bilateral agreement of the involved States.<sup>188</sup> The practice shows that the members of the national armed forces of Latvia are immune from the criminal jurisdiction of the host State in cases the respective agreements provide so. Whether that would also apply to potential Latvian PMCs/PSCs depends on the international agreement concluded.

#### 8.5. *Criminal responsibility and companies*

The Criminal Law does not establish criminal liability of legal persons. However, it prescribes coercive measures applicable to legal persons.<sup>189</sup> It determines that the coercive measures may be applied to a legal person, if the criminal offence has been committed in the interests of the legal person by a natural person.<sup>190</sup> Thus, if the employee of a PMC/PSC while performing its services commits a criminal offence, where it is proved that it was committed in the interests of a PMC/PSC, the coercive measures shall apply to a PMC/PSC as a legal person.

The types of coercive measures that may be applied to the legal persons are the following: liquidation, limitation of rights, and confiscation of property or monetary levy.<sup>191</sup> For criminal violations<sup>192</sup> and less serious crimes<sup>193</sup> only a monetary levy may

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<sup>184</sup> Article 34, paragraph 1 of the Criminal Law.

<sup>185</sup> Article 34, paragraph 2 of the Criminal Law.

<sup>186</sup> Military Service Law (*Militārā dienesta likums*) of 30 May 2002.

<sup>187</sup> Article 7 of the Military Service Law.

<sup>188</sup> Article 2, paragraph 2 of the Criminal Law.

<sup>189</sup> Chapter VIII<sup>1</sup> of the Criminal Law.

<sup>190</sup> Article 70<sup>1</sup> of the Criminal Law.

<sup>191</sup> Article 70<sup>2</sup>, paragraph 1 of the Criminal Law.

<sup>192</sup> A criminal violation is an offence for which the Criminal Law provides for deprivation of liberty for a term not exceeding two years, or a lesser punishment (Article 7, paragraph 2 of the Criminal Law).

<sup>193</sup> A less serious crime is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding two years, but not exceeding five years, or an offence, which has been committed through negligence and for which the Criminal Law provides for deprivation of liberty for a term exceeding two years (Article 7, paragraph 3 of the Criminal Law).

be applied, except in cases where the legal person, a branch, representation or structural unit thereof has been especially established for the commission of a criminal offence.<sup>194</sup> For the serious<sup>195</sup> and especially serious crimes<sup>196</sup> by a legal person, as basic coercive measures liquidation, limitation of rights, confiscation of property or monetary levy may be applied.<sup>197</sup> The Criminal Law also prescribes additional coercive measures that may be specified, namely, the confiscation of property and the compensation for the harm caused.<sup>198</sup> The confiscation of property may also be applied to legal person as an additional coercive measure, if as a result of an offence by the legal person it has gained a material benefit and as basic coercive measures limitation of rights or monetary levy has been applied to it.<sup>199</sup> The compensation for harm caused may be applied as an additional coercive measure to a legal person, if as a result of the criminal offence by the legal person it has caused significant harm or serious consequences.<sup>200</sup>

## 9. Commercial law/civil liability

### 9.1. Choice of law and forum

The choice of law governing the settlement of disputes, execution of obligations, rights, and duties, arising from the specific contract, depends on mutual agreement of the contracting parties involved. The freedom in choice of law is defined by Article 19, paragraph 1 of the Civil Law, which states that it shall be ascertained whether the contracting parties have agreed on the applicable law. Such agreement shall be effectual, insofar as it is not in conflict with mandatory or prohibitive norms of the Latvian law.

By this provision the legislator foresees the right of contractors to choose the law applicable to their contract. It also states that the only limit in the choice of law would be in case the legal norms of the law chosen (applicable) for contract would be in conflict with mandatory norms of the Latvian law. The contradiction of foreign law norms would be decided by the Latvian courts as they are adjudicating on civil matters in accordance with laws and other regulatory enactments, binding international agreements and EU legal norms, as well as in specific cases specified in laws or contracts they also apply the laws of other states or international legal norms.<sup>201</sup>

In case the contract does not contain a clause regarding the choice of law, the law of state, where the obligation is to be performed, shall be applicable, but if the place of obligation is to be performed, is not able to be determined, then the law of the place,

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<sup>194</sup> Article 70<sup>2</sup>, paragraph 3 of the Criminal Law.

<sup>195</sup> A serious crime is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding five years, but not exceeding ten years (Article 7, paragraph 4 of the Criminal Law).

<sup>196</sup> An especially serious crime is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding ten years, life imprisonment or the death penalty (Article 7, paragraph 5 of the Criminal Law).

<sup>197</sup> Article 70<sup>2</sup>, paragraph 4 of the Criminal Law.

<sup>198</sup> Article 70<sup>2</sup>, paragraph 2 of the Criminal Law.

<sup>199</sup> Article 70<sup>2</sup>, paragraph 5 of the Criminal Law.

<sup>200</sup> Article 70<sup>2</sup>, paragraph 6 of the Criminal Law.

<sup>201</sup> Article 5, paragraphs 1 and 4 of the Civil Procedure Law (*Civilprocesa likums*) of 14 October 1998.

where the contract was concluded, is applicable.<sup>202</sup> Thus, the legislator sets up preconditions on how to choose a law in case it is not determined by the contracting parties.

Regarding contracts concluded by institutions of State and local governments (authorities) it shall be noted that there also are no limitations on the choice of law. Civil Law determines that the Latvian law is applicable to those contracts, where it is not otherwise stipulated in the contract itself.<sup>203</sup> However, this provision does not exclude the Latvian courts' competence to adjudge civil matters arising from certain contracts in accordance with Latvian law irrespective of the choice of law.<sup>204</sup>

On the choice of law, Government contracts with PMCs/PSCs would probably contain a provision that Latvian law is applicable. This provision is widespread among the contracts made by governmental institutions as proceedings in accordance with domestic law are most convenient for the settlement of disputes.

Nevertheless, the choice of forum is of the same importance as the choice of law. The contracting parties may decide which forum – Latvian court or the arbitration court – would settle their disputes. However, there are limitations set out in the Civil Procedure Law, which states that some type of disputes are not allowed to be referred for resolution to an arbitration court,<sup>205</sup> such as a dispute:

- 1) the award of which may infringe the rights or the interests protected by law of such a person as is not a party to the arbitration court agreement;
- 2) whereas a party, albeit even one, is a State or local government institution or the award of the arbitration court may affect the rights of State or local government institutions;
- 3) that is related to amendments to the Civil Records Registry;
- 4) that is related to the rights and duties of persons under guardianship or trusteeship or to their interests protected by law;
- 5) regarding establishment, alteration or termination of property rights in regard to immovable property, if among the parties to the dispute there is a person whose rights to acquire immovable property in ownership, possession or use are restricted by law;
- 6) regarding the eviction of a person from living quarters;
- 7) between employees and employers if the disputes have arisen entering into, amending, terminating or implementing an employment contract, as well as in applying or translating provisions of regulatory enactments, collective labour contract or working procedures (individual labour rights dispute); and
- 8) regarding the rights and duties of such persons as who, up to the taking of the award of the arbitration court, have been declared insolvent.

Under this Article the prohibition to use arbitration courts for the settlement of disputes, if one of contracting parties is a state or local governmental institution, has been established. Other disputes may be subject to arbitration court, if agreed so by the contracting parties. It shall be noted that this provision does not apply to the contracts,

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<sup>202</sup> See Article 19, paragraphs 2 and 3 of the Civil Law.

<sup>203</sup> See Article 19, paragraph 4 of the Civil Law.

<sup>204</sup> See Article 5, paragraphs 1 and 4 of the Civil Procedure Law.

<sup>205</sup> See Article 487 of the Civil Procedure Law.

which are concluded outside the territory of Latvia and where the choice of law is made in favour of a foreign country. The Latvian courts recognise adjudication of foreign courts and foreign arbitration courts in accordance with the Civil Procedure Law and international agreements binding on the Republic of Latvia.<sup>206</sup>

### 9.2. *Freedom of contract*

The Latvian legislation widely supports freedom of contract. There are no limitations regarding a PMC/PSC's activities, only prohibition is to conclude contract that by its nature or content is illegal, immoral or dishonest (Article 1592 of the Civil Law) or if the subject-matter of the contract (lawful transaction) is an impermissible or indecent action, the purpose of which is contrary to religion, laws or moral principles, or which is intended to circumvent the law (Article 1415 of the Civil Law).

By these restrictions the legislator defines that legal and moral norms are to be complied with by each contract, otherwise the contract is considered void.

### 9.3. *Termination of contract*

The termination of contract may be foreseen in every contract irrespective of its duration. If the contract is in force for the specified period of time (term), it shall be terminated upon specific provisions (causes) stipulated in the contract itself. However, it is 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.

### 9.4. *Civil liability*

The Latvian legislation prescribes the duty for every person to pay compensation for any loss, which is not accidental (Article 1775 of the Civil Law). By the term 'loss' the legislator defines any natural and inevitable result of an illegal act or failure to act; indirect where it is caused by an occurrence of particular circumstances or relationships.<sup>207</sup>

Civil liability is not restricted by the afore-mentioned legal norms, it is foreseen that contractors may freely choose additional provisions to pledge the contractual obligations, such as contractual penalties, a handsel and a guarantee (Article 1691 of the Civil Law).

Though Civil Law prescribes general principles of civil liability, they are complimented by additional responsibility regarding the PMCs/PSCs. For instance, in accordance with the Security Guard Activities Law, a security guard service-provider has a duty to remunerate third persons for their losses that have been inflicted with activities or non-activities of the service-provider according to the procedures specified in regulatory enactments, as well as that a security guard service-provider has a duty to insure their civil liability regarding damage inflicted on the third person's life and health and losses caused to the property belonging to the third person as a result of their act or omission.<sup>208</sup>

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<sup>206</sup> See Articles 636 and 646 of the Civil Procedure Law.

<sup>207</sup> See Article 1773 of the Civil Code.

<sup>208</sup> Article 18, paragraphs 1 and 2 and Article 19 of the Security Guard Activities Law.

However, the provisions of civil liability set out in the Security Guard Activities Law will be complemented by the Law “On Insurance Contracts”<sup>209</sup>, in accordance with which the principles of compensation will be applied for losses caused to the property belonging to a third person.

The amount of insurance compensation shall be determined by agreement between the parties.<sup>210</sup> If with the occurrence of an insurance event, losses have been inflicted on several persons and the amount exceeds the limit of liability specified in the insurance contract (policy), insurance compensation shall be calculated for each claimant proportionally for the losses inflicted on him/her in such amount so that the total compensation to be paid does not exceed the limit for one insurance event specified in the insurance contract (policy).<sup>211</sup> The procedures for civil liability insurance and the minimum amount of liability of civil liability insurance are determined by the Cabinet of Ministers.<sup>212</sup>

In addition, it shall be noted that each security guard service-provider concludes a separate contract with the potential client, where contractual clauses may foresee compilation of principles set out in different laws, as well as supplementary guarantees provided by one or another contracting party. For instance, if a security guard service-provider is hired for security guard activities to be performed in an area of foreign armed conflict it might be helpful to decrease civil liability of the service-provider on a case-by-case basis, as well as if the other contracting party is the Government, it is able to broaden guarantees for the service-provider to cover his/her risk. The Government has taken this step regarding use of civil aircrafts for military needs, where civil aircrafts, used for military needs, are to be granted the status of military aircrafts and the responsibility for the possible losses are to be taken by the Ministry of Defence upon certain amount and further by the Government (i.e., State responsibility).<sup>213</sup>

Civil liability for detective companies that are performing private investigation services is not specified by the Law on Detective Activity. It defines prohibition to cause physical, moral or material injury to persons, threaten human life and health, as well as the surrounding environment, use or threaten the use of physical means of coercion, or to incite people to criminal acts (Article 11 of the Law on Detective Activity), but civil liability is to be resolved in accordance with the Civil Law as the Law on Detective Activity requires the conclusion of a written contract with each client of a detective company, taking into consideration the requirements of the Civil Law (Article 9 of the Law on Detective Activity).

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<sup>209</sup> Law “On Insurance Contract” (*likums “Par apdrošināšanas līgumu”*) of 10 June 1998.

<sup>210</sup> Article 19, paragraph 2 of the Security Guard Activities Law.

<sup>211</sup> Article 19, paragraph 3 of the Security Guard Activities Law

<sup>212</sup> Cabinet of Ministers Regulation No 204 “Regulation on civil liability insurance within security guard activities” (*“Noteikumi par civiltiesiskās atbildības obligāto apdrošināšanu apsardzes darbībā”*) of 27 March 2007.

<sup>213</sup> See Cabinet of Ministers Regulation No 424 Regulation on compensation of damage inflicted on the third person or the property belonging to the third person, if it is caused by the military aviation aircraft of the Republic of Latvia or by the civil aviation aircraft (or the item split from it), which the Latvian National Armed Forces use for military needs (*“Kārtība, kādā atlīdzina kaitējumu trešajai personai vai tās mantai, ja to nodarījis Latvijas Republikas militārās aviācijas gaisa kuģis vai civilās aviācijas gaisa kuģis (vai no tā atdalījies priekšmets), kuru Latvijas Nacionālie bruņotie spēki izmanto militārajām vajadzībām”*) of 10 June 2008.

## 10. Conclusions

Latvian legislation does not regulate pure private military activities so the report does not refer to PMCs as such. However, the regulatory context and state practice shows the existence of private security companies being classified as PSCs. The Latvian law regulates the provision of private security services in stipulating the existence of private security services performed either by natural or legal persons, and private investigation services in the form of detective companies and private detectives. Both of these services are performed on the basis of a written contract. For the provision of private security and private investigation services natural and legal persons are required to obtain a special permit (licence) or a certificate. Both of them are issued for five years. 395 legal persons have received special permits (licences) for the performance of security guard services, 26 legal persons having received special permits (licences) are entitled to provide detective services and 74 certificates have been issued to private detectives.

The report also examines the requirements for security guard employees – there is a formal requirement for them to receive a security guard certificate after going through the relevant training and passing the qualification examination. The law imposes upon security guard service-providers an obligation to remunerate the third persons for their losses by insuring their civil liability. Though the Latvian law does not regulate private military activities as such, among the provisions regarding detective activities, the law refers to prohibited militarised units, namely, that it is prohibited to issue a licence to private detectives or detective companies in which the positions in administrative bodies are held by persons regarding whom there is an information indicating that such person belong to prohibited militarised or armed units.

In Latvia, there are no specific laws regulating the conduct of PMCs/PSCs abroad. However, it does not preclude the employment of the Latvian PMCs/PSCs by a national or foreign employer.

Apart from purely private activities, private individuals are entitled to be involved in covert co-operation in investigatory operations as covert helpers for remuneration on the basis of a contract and as civilians in military units if it is not possible to make up the unit with a sufficient number of soldiers.

Latvia maintains its prerogative on the participation of the armed forces in international operations. However, the operational command and control over the Latvian National Armed Forces will depend on the mission of an international organisation. Latvian legislation regarding security and investigation services to be performed abroad during the armed conflict is applicable to the members of the Latvian National Armed Forces and the State Police, whereby the Military Police is a military discipline and law enforcement unit with the rights of investigative institution and investigatory operations subject.

The report observes the principles that would govern the possession of arms, arms export and import, goods of strategic significance and dual use goods, corporate law, jurisdiction, applicable law, labour law, government procurement policy, criminal responsibility, commercial law and civil liability with respect to private security and private investigation companies as PSCs and PMCs.