

IMO GUIDANCE ON THE USE OF ARMED GUARDS ON BOARD SHIPS



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The increasing threat of piracy off the coast of Somalia, the Gulf of Aden and the wider Indian Ocean is continuing to hamper trade within the region now known as the 'High Risk Area'. This has led to an increase in the number of Private Maritime Security Companies (PMSC) that offer armed guards for ships. The International Maritime Organisation (IMO) does not endorse the use of Privately Contracted Armed Security Personnel (PCASP), but understands that it can be difficult to select reliable and professional private security, especially when there are a wide variety of companies with varying levels of competence, discipline and experience.

Whether to engage the services of such companies is a difficult decision and should not be adopted as an alternative to Best Management Practice (BMP). A lack of security industry self-regulation, together with complicated legal requirements for the legitimate transport, carriage and use of firearms, can lead to an array of problems if the PMSC is not properly vetted before its services are engaged. The IMO has therefore published guidance in the form of Circular 1405 in order to assist shipowners, operators and masters when selecting armed security.



SUMMARY OF THE GUIDANCE IN CIRCULAR 1405

— Laws, regulations and jurisdiction

The laws and regulations imposed by the flag state will apply to its ships, as will the applicable port and territorial law. Thorough investigation before contracting with armed security services is therefore advised, and shipowners should consult their flag state before placing PCASP on board to ensure that any statutory requirements are complied with.

Risk assessment

Shipowners should undertake a diligent risk assessment before using PCASP and should ensure that all other methods of self-protection in BMP have been explored.

Selection and vetting of PMSC

Shipowners should ensure that due diligence is conducted when researching potential contractors. Information on the PMSC's past experience, its understanding of the legal requirements and its knowledge of protecting ships from pirate threats are just some of the background checks that are recommended in the guidance. The vetting of PCASP is also advised and should encompass criminal background checks, medical assessments, drug and alcohol testing, and their ability to apply for travel documents.

Training of PCASP

It is very important that the shipowner determines whether the PCASP have had adequate training. Evidence of ship-board familiarisation, their use of firearms and awareness of the appropriate use of force following guidelines recognised by the flag state are included in the list of recommendations.

Insurance

Shipowners should check that PMSC hold insurance cover for themselves and their personnel, and third-party liability cover. Their terms of engagement must also not prejudice or potentially prejudice the shipowner's insurance cover. As any incident can have severe consequences, it is strongly advised that shipowners contact their insurers before contracting with security providers in order to assess the potential impact on their insurance cover. The guidance contains further information on this topic and it should be read carefully.

PCASP team size, composition and equipment

The size of the PCASP team and the equipment to be used will be influenced by the latest threat assessment and the type of ship. The size of the team plus the crew should not exceed the number specified in the Ship's Safety Certificate and it is important that there is a clearly defined hierarchy within the team, which should comprise of a mix of different skills.

Command and control

The command and control structure between the PCASP and the crew should be clearly defined and documented so that all parties understand their roles and responsibilities, as well as those of their colleagues. There should be a clear understanding that at all times the master remains in command and retains overriding authority. Amongst other recommendations in the guidance, there should be a transparent flow of information between all parties and a constructive mentality of co-operation.

Management of firearms

The shipowner will want to ensure that the PCASP are responsible for their use of weapons and ammunition at all times when on board. Documented compliance with the relevant flag, coastal and port state legislation is paramount. Inventories of weapons and ammunition should be recorded, and procedures and controls for their safe storage should be organised.

Rules for the use of force

The PMSC should provide an informative graduated response plan to an attack and possess a complete understanding of the rules for the use of force. The guidance states that the primary function of PCASP is the prevention of boarding using minimal force and that they are to take all reasonable steps to avoid the use of force. Any force that is applied should be consistent with applicable law and it should not exceed what is strictly necessary. Force should always be proportionate to the threat and appropriate to the situation. Firearms should not be used against persons except in self-defence or defence of others.

Reporting and record-keeping

The master should maintain a fully documented log of every circumstance in which firearms are discharged. Suggestions of what should be recorded are listed in the circular and the importance of contemporaneous written statements from all persons present at an incident is highlighted in anticipation of legal proceedings.

RECOMMENDATIONS FOR FLAG STATES: CIRCULAR 1406

The interim recommendations provide considerations on the use of PCASP if and when a flag state determines that such a measure would be appropriate and lawful. They are not intended to endorse or institutionalise the use of armed personnel and do not address all the legal issues that may be associated with the use of PCASP on board ships.

The carriage of PCASP is subject to flag state legislation and it is for flag states to establish if and under which conditions it will be permitted. Flag states should take into consideration the possible escalation in violence when deciding on their policy and may need to clarify their national policy on the carriage of PCASP.

Both circulars were approved in the 89th session of the Maritime Safety Committee and will be reviewed in September 2011. The full IMO Circulars can be viewed using the following links:

http://www.igpandi.org/downloadables/piracy/imo_circulars/MS.C.1-Circ.1405.pdf

http://www.igpandi.org/downloadables/piracy/imo_circulars/MS.C.1-Circ.1406.pdf

