

THE CARRIAGE OF FIREARMS – SOUTH AFRICA



Peter McNamee: Claims Executive
Telephone: +44 20 3320 2282
E-mail: peter.mcnamee@ctcplc.com

There has been a dramatic rise in the use of armed security personnel for ships transiting high-risk piracy areas. Many shipowners regard this as a necessary step to maintain the security of the ship. However, it does present some difficult operational questions. A practical issue that frequently arises is how a port will respond to the carriage of firearms on board ship. To date, many states have been reluctant to condone the use of armed guards, with many feeling that it may lead to an escalation of violence. Accordingly, some countries have imposed restrictions on ships carrying firearms into port. This article considers both the necessary considerations when entering port in South Africa and the impact on club cover should these not be met. South Africa has become particularly problematic for carrying firearms, given its prevalence as a bunkering destination combined with a stricter application of local regulations.

SOUTH AFRICAN FIREARMS CONTROL ACT

Under the South African Firearms Control Act (the Act), the master of a ship arriving in South Africa with firearms on board has an obligation to seek a permit 21 days prior to arrival. Previously, the South African police (SAP) and the various ports of entry into South Africa had the power to issue permits. However, this authority has now been withdrawn and permits can only be issued at the national level by the SAP.



Under the Act, failure to comply with this 21-day obligation carries stiff penalties, including large fines and criminal proceedings against the master. As such, the 21-day requirement presents a significant burden on shipowners, who may not have received their sailing orders until a few days before their estimated time of arrival in South Africa.

The South African police had previously taken a lenient approach to the enforcement of the Act and would grant the permits up to 96 hours prior to arrival. However, the 21-day notice period is now being applied more strictly.

OBTAINING A PERMIT

For a ship to enter a port in South Africa carrying firearms, it is first necessary that they complete the SAP import application form. In addition to this form, the local agents must provide the following:

- full details of the ship
- a copy of the ship's International Safety Management certificate
- contact details for the ship's local agents
- details of the previous port of call and next port of call after South Africa
- copies of the master's passport and passports for the security guards on board
- dangerous cargo declaration if any
- a letter from owners or agents detailing why the firearms are required and the reasons why a late application is sought, if appropriate
- quantity and description of ammunition and firearms on board
- a copy of the firearm licence from the country of export and the export permit for the firearms and ammunition
- a letter from owners authorising the security guards to use firearms on board

The form and the above documents must then be presented to the SAP 21 days prior to arrival at the first South African port of call.

PENALTIES FOR FAILING TO COMPLY

It is important to stress that the requirements in South Africa regarding the carriage of firearms on board are strict and the penalties for failing to comply with the Act not only include potentially large fines, but potentially a custodial sentence for the master. In some recent cases, masters have been arrested for failing to comply with the Act and fines have typically ranged from SAR50,000 (approximately \$7,000) to over SAR100,000. Therefore, it is important that before entering any South African port with firearms on board, the permit has been sought and supplied. Accordingly, we recommend that our local correspondents should be consulted if members require assistance.

CLUB COVER

Fines for failing to comply with local customs regulations are covered under rule 3.16.2. However, should the fine be the result of any personal act or default on the part of the member or his managers, P&I cover would be subject to the discretion of the board. Furthermore, the obligation to mitigate under rule 6.20 is also important, as the member must take reasonable steps to avoid or minimise any liabilities. Should a member fail to take reasonable steps to avoid a fine, it is likely that recovery for such a fine will be subject to the discretion of the board.

SUMMARY

With the increased piracy threat, it is apparent that many shipowners are turning to armed guards as a security measure when transiting high-risk piracy areas. Whilst owners may be able to easily arrange for armed guards on board and, in many instances, pass the costs on to charterers, this is by no means the end of the issue. It is essential that the owner and master are fully aware of and compliant with the requirements of any port they enter with firearms on board. Failure to appreciate these risks could result in a fine and, potentially, a custodial sentence for the master.