



The American Club

USE OF ARMED GUARDS AND YOUR P&I CLUB



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Use of armed guards and your P&I club

The presence of armed guards on board the vessel does not in and of itself prejudice P&I cover. However, certain risks may fall outside the scope of cover based on the terms of the contract entered into with private maritime security companies (PMSCs). The following is a summary of issues that Members should consider, if PMSCs are to be employed.

For a detailed review of issues raised by the use of armed guards and P&I cover, please also see [“Locked and Loaded: Use of Armed Guards”](#).

The clubs also recommend shipowners take all lawful, prudent and appropriate measures to harden ships against attack as outlined in the most recent versions of:

- I. the Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea (BMP) as set forth in [Appendix 1](#); and
- II. the Best Management Practices to Deter Piracy and Enhance Maritime Security Off the Coast of West Africa Including the Gulf of Guinea as set forth in [Appendix 2](#).

The guidance for PMSCs providing privately contracted armed security personnel (PCASP) on board ships in the High Risk Area covers:

- PMSC Professional Certification, including the recommendation that PMSC should seek certification with relevant national and international private maritime security service standards when these are established;
- PMSC Company requirements, including the recommendation that PMSC should establish procedures to provide maritime security services to ship owners and ship operators and comply with all relevant legal requirements;
- Management, including recommendations on selection, vetting and training of personnel for a PCASP team;
- Deployment considerations, addressing the specific aspects of PCASP deployment and the role of the PMSC in ensuring efficient and successful deployments, including communications with the ship owner or operator, and including recommendations relating to management of firearms and ammunition from embarkation to disembarkation and use of force.
- Operational decisions to enter into such an arrangement with PMSCs should only be done after making a thorough risk assessment.

Members should ensure compliance with Baltic and International Maritime Council (BIMCO)

GUARDCON which sets the minimum standard terms of contract with PMSCs and the GUARDCON: Standard Contract for the Employment of Security Guards on Vessels as set forth in [Appendix 3](#).

Flag State

A prerequisite to P&I coverage is the Member's compliance with flag State requirements. Some flag States do not permit the use of armed guards on vessels. Members should consult with their flag State to determine the terms and conditions they therefore require for the use of armed guards. To reiterate, the International Chamber of Shipping (ICS) is maintaining a comparison of flag State laws applicable to PMSCs and PCASP as set forth in [Appendix 4](#).

When consulting with the flag State, it is important to ask the following:

- ✓ Is it legally permissible to allow armed guards on their vessels?
- ✓ Does the flag State require any licenses or permits for the carriage and/or use of weapons?
- ✓ Are there any well-defined written "Rules of Engagement" or rules on "Use of Force" guidance issued by the flag State?

Members should provide your Managers with a copy of the flag State's written response.

Compliance with the BMPs

The use of armed guards is not a substitute for following the latest version of the BMPs, proper crew training, or contingency planning. Therefore, Members should:

- ensure that PMSC is trained/familiar with the BMPs;
- coordinate training between Master, crew and PMSC team; and
- failure to comply with the BMPs can have serious consequences which can prejudice cover.

Licensing of weapons

If the PMSCs are to be armed, it is the owner's obligation to ensure that any weapons carried on board its vessel are properly licensed. The following should be taken into consideration regarding licensing of weapons:

- It is important to consider the requirements for weapons at the port of embarkation of the guards, transit in jurisdictions under local authorities (e.g. canal authorities), coastal States, anchorages and moorings, and the port of disembarkation. Any national laws relevant to

where the security company is domiciled should also be considered.

- Members should be aware that certain ports where U.S. Food Aid is provided have prohibitions on the carriage and use of firearms that will preclude the use of PMSCs.
- Members should take note that any failure in properly licensing a weapons arsenal onboard ship can subject the Master and crew to civil and/or criminal penalties that likely fall outside the scope of coverage provided by the P&I club.
- With regards to weapons licensing, it is recommended to:
 - ✓ include a clause in the contract that requires the PMSC to take the lead to obtain all required licenses for all relevant ports and jurisdictions;
 - ✓ require continuous obligation by the PMSC for such compliance for all facets of their contract period; and
 - ✓ request proof of such licensing compliance from the PMSC.

Insurance for PMSCs: Scope of coverage

TDuring its contract negotiations with a PMSC, the Member should request that the PMSC provide an insurance cover note reflecting all of its insurances in effect during the relevant period in question (e.g. period of transit and embarkation/disembarkation of PMSC personnel). IG P&I clubs require, as per Section 6, Paragraph12 of GUARDCON, the following minimum insurance requirements for a PMSC:

- comprehensive liability insurance including the vessel owner's liability to third parties for personal injury, death, property damage and other loss;
- maritime employers liability insurance covering the contracting vessel owner's liability to the security personnel;
- professional indemnity insurance; and
- personal accident insurance including medical expenses, hospitalization, emergency evacuation and repatriation insurance.

Furthermore, the PMSC's policies should have limits of no less than US\$ 5,000,000 for general liability coverage and US\$ 250,000 for personal accident insurance.

Insurance for PMSCs: Members beware!

The PMSC should not be added as an additional assured to the P&I policy. It is important to note that contractual indemnities offered by PSCs are worthless if the PSC is not adequately insured.

Contractual issues: General recommendations

Prior to the development of the GUARDCON form contract for the employment of security guards on vessels, there are a variety of contractual arrangements in use by PMSCs/PCASP and by States which may provide naval or military personnel. These arrangements may contain assumptions of responsibility to indemnify/hold harmless in respect of loss and damage. Liabilities assumed by shipowners may not be covered by their clubs if they would not have arisen but for the terms agreed and the club had not approved those terms in advance.

The Association, and IG clubs in general, strongly recommend the use of the BIMCO GUARDCON as set forth in [Appendix 5](#) and [Club Circular No. 10/12, BIMCO GUARDCON Contract for the Employment of Security Guards on Vessels](#). Its use has standardized the terms upon which providers of maritime security have been engaged and it has simplified the process of approval of contracts by shipowners and their P&I clubs. It has also ensured minimum levels of insurance cover for providers of maritime security.

As a minimum, the IG clubs' expectation is that contractual terms for the employment of security guards on vessels be no less favorable to the shipowner than knock for knock and contain reciprocal indemnities for assumed liabilities. If limitation amounts are included, there should be reciprocal limits of liability. The contractual arrangements, liabilities and indemnities outlined in BIMCO GUARDCON Part II, Section 7, Clause 15 are considered acceptable by the IG clubs and fulfill these minimum requirements provided they are unamended.

Another important contractual issue is the treatment of the master's responsibility and authority in relation to the use of arms. Contracts should recognize the master's responsibility for the overall safety of the vessel, but shipowners should not voluntarily contract on terms where decisions as to the discharge of live rounds are referred to the Master. GUARDCON Section 4 appropriately addresses these particular issues.

Notify your P&I club

When negotiating a contract for the use of armed guards on an entered vessel, and before entering any agreement for such PMSC services, the Member should notify its P&I club at least seven (7) days before any contemplated embarkation of PMSCs and should provide, at a

minimum, the following information:

1. written authorization from the Member’s flag State authority for the use for armed guards on its vessel;
2. a copy of the PMSC’s brochure and its “rules on the use of force” (RUF);
3. a copy of the PMSC’s insurance cover note and copy of any underlying policies reflecting the required coverages discussed above under “**Insurance for PMSCs: Scope of coverage**”;
4. a copy of the draft agreement between the Member and the PMSC, presumably either a GUARDCON form agreement or any other agreement whose terms have been previously reviewed and approved by the club’s managers; and
5. a listing and description of the weapons to be brought on board the vessel by the PMSC.

Special considerations for West Africa

GUARDCON in its unamended form is not a suitable contract to use for engaging PMSCs off West Africa. West African littoral states prohibit the use of armed PMSCs on vessels in their territorial waters.

In response to the different requirements and circumstances present in the Gulf of Guinea region, International Group clubs, in cooperation with BIMCO, have produced an amended wording of the contract – *GUARDCON West Africa* as set forth in [Appendix 6](#). For further information, see [Appendix 7](#) and [Club Circular No. 10/12, BIMCO GUARDCON Contract for the Employment of Security Guards on Vessels](#).

GUARDCON does not represent a recommendation or endorsement by BIMCO or the International Group of P&I Clubs for the use of security guards on board vessels. Therefore, GUARDCON contracts should be properly customized or amended to suit the current situation in West Africa through consideration of the GUARDCON – West Africa.

Furthermore, BIMCO has also issued additional Guidelines for the use of GUARDCON when engaging PMSCs as intermediaries to employ local security guards within territorial waters as set forth in [Appendix 7](#).

Further Considerations

The following considerations should also be taken into consideration if using the services of security personnel:

- Members should consult legal counsel to assist with contract negotiations and to assess any potential liabilities and exposures; relates to any provision that has been made mandatory by a flag State.
- Members should advise charterer and cargo interests to ensure that existing contractual relationships are not prejudiced in using PMSCs; and
- In addition to your P&I Club, Members should vet the contract and details with their other insurers including hull & machinery insurers and cargo insurers before agreeing to any final contract wording.





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