



SEPTEMBER 29, 2011

CIRCULAR NO. 26/11

TO MEMBERS OF THE ASSOCIATION

Dear Member:

IMO ISSUES REVISED GUIDELINES ON USE OF PRIVATELY CONTRACTED ARMED GUARDS

In the wake of continued piracy attacks on international shipping and the rapid growth of private marine security companies, the International Maritime Organization (IMO), on September 16, 2011, issued a Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel (PCASP) on board vessels transiting high risk areas.

These revised guidelines replace the IMO circular No. MSC 1405, which was attached to Club Circular No. 18/11 of June 3, 2011. A full copy of the IMO's revised circular, designated as MSC. 1/Circ.1405/Rev. 1, is attached hereto for Members' convenience.

Your Managers strongly recommend that Members carefully review these comprehensive guidelines to ensure that, when making the difficult decision of whether to employ any PCASPs, all of the necessary steps and precautions are considered and assessed well in advance of engaging such services.

As noted in its prior circulars on this subject, the IMO continues to stress that it is not endorsing the use of PCASPs, but merely recognizing the reality of the circumstances facing shipowners when contemplating fixtures that transit areas with a high risk for piracy. The revised IMO circular also stresses the need for owners to comply with the laws and regulations of the vessel's flag state, as well as the laws and regulations of all port and coastal states where the vessel is expected to call, or through whose waters it may pass, during its contemplated voyage. Finally, the IMO notes that the latest version of Best Management Practices (BMP) – the latest version being BMP4 as set forth in Club Circular No. 22/11 of August 16, 2011 – should be followed, and the use of PCASPs should not be considered as a substitute for the implementation of BMP.

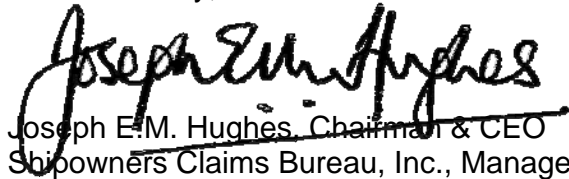
Of particular note from a P&I perspective is the IMO's recommendation that owners consult with their property and liability insurers prior to contracting with a PCASP provider, and before embarking any PCASPs, to assess whether such service agreements prejudice or otherwise impact on an owner's existing insurance cover. Your Managers strongly endorse this recommendation. It is further suggested that the Club be consulted at least seven (7) days in advance of the expected embarkation of a PCASP. Such advance notice is needed in case any negotiations are required to revise the draft agreement with the PCASP provider.

In this regard, it should also be emphasized that, in addition to the IMO's revised guidelines for the use of PCASPs, Members can access related American Club material on this subject. In this regard, Members are referred to the following sources:

- (1) the PowerPoint presentation entitled ***Locked and Loaded: What A Shipowner Needs to Know When Considering The Use of Armed Security Guards***, which can be found in the "Publications" section of the American Club's website under "Seminars" or through the following link: <http://www.american-club.com/seminars/Locked%20and%20Loaded.pdf>;
- (2) Club Circular No. 22/11 of August 16, 2011, which attaches a full copy of the latest version of Best Management Practices for protection against Somalia-based piracy (BMP4); and
- (3) Club Member Alert of March 31, 2011 regarding South African firearm regulations and their bearing on vessels calling at ports within that jurisdiction.

Should Members have any questions regarding the IMO's revised circular or any issues concerning the use of PCASPs and, in particular, the review of any draft agreements from such PCASP service providers, they are advised to contact George J. Tsimis, Senior Vice President and Head of Claims, at +1 212 847 4501, or by e-mail at george.tsimis@american-club.com.

Yours faithfully,



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MSC.1/Circ.1405/Rev.1
16 September 2011

**REVISED INTERIM GUIDANCE TO SHIPOWNERS, SHIP OPERATORS, AND
SHIPMASTERS ON THE USE OF PRIVATELY CONTRACTED ARMED SECURITY
PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA¹**

1 The Maritime Safety Committee, at its eighty-ninth session (11 to 20 May 2011), approved the interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area.

2 Given the importance and urgent nature of the issue, and the need to further develop and promulgate detailed guidance and recommendations as soon as possible, the Committee approved and the Council authorized the convening of an intersessional meeting of the Maritime Security and Piracy Working Group (13 to 15 September 2011) to update the guidance.

3 The Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area is set out in the annex.

4 The attached revised interim guidance should be read in conjunction with the interim recommendations set out in MSC.1/Circ.1406/Rev.1 on Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area, and MSC.1/Circ.1408 on Interim recommendations for port and coastal States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area, and the information provided in MSC-FAL.1/Circ.2 on the Questionnaire on information on port and coastal State requirements related to privately contracted armed security personnel on board ships, as well as the other recommendations and guidance developed by the Organization for preventing and suppressing piracy and armed robbery against ships.

5 Member Governments are urged to bring this circular to the attention of all national agencies concerned with anti-piracy activities, shipowners, ship operators, shipping companies, shipmasters and crews.

6 Member Governments are also urged to take any necessary action to implement, as appropriate, the revised interim guidance given in the annex.

7 Member Governments, international organizations and non-governmental organizations with consultative status are invited to bring to the attention of the Committee, at

¹ High Risk Area: an area as defined in the Best Management Practices for Protection against Somalia Based Piracy (MSC.1/Circ.1339) unless otherwise defined by the flag State.

the earliest opportunity, the results of the experience gained from the use of the revised interim guidance so as to assist the Committee in deciding on any action to be taken.

8 MSC.1/Circ.1405 is hereby revoked.

ANNEX

REVISED INTERIM GUIDANCE TO SHIPOWNERS, SHIP OPERATORS, AND SHIPMASTERS ON THE USE OF PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA¹

1. Introduction

The increased threat to commercial shipping by Somalia-based pirates has led to extended use of armed guards and a marked expansion in the number of firms offering armed maritime security services for vessels transiting the High Risk Area. The Organization, whilst not endorsing the use of privately contracted armed security personnel (PCASP), understands that shipping companies may find it difficult to identify reliable, professional private providers of armed security.

The decision on the employment of PCASP on board ships is a complex one for a ship owner. The absence of applicable regulation and industry self-regulation coupled with complex legal requirements governing the legitimate transport, carriage and use of firearms² gives cause for concern. This situation is further complicated by the rapid growth in the number of private maritime security companies (PMSC) and doubts about the capabilities and maturity of some of these companies. Significant competence and quality variations are present across the spectrum of contractors offering services.

The purpose of this guidance is to assist shipowners, ship operators and ship masters considering the use of PCASP on board ships to provide additional protection against piracy.

It is important to note that flag State jurisdiction and thus any laws and regulations imposed by the flag State concerning the use of PMSC and PCASP apply to their vessels. Furthermore it is also important to note that port and coastal States' laws may also apply to such vessels.

The use of PCASP should not be considered as an alternative to Best Management Practices (BMP) and other protective measures. Placing armed guards on board as a means to secure and protect the vessel and its crew should only be considered after a risk assessment has been carried out. It is also important to involve the Master in the decision making process.

1.1 Definitions

High Risk Area: an area as defined in the BMP unless otherwise defined by the flag State.

Private maritime security companies (PMSC): Private contractors employed to provide security personnel, both armed and unarmed, on board for protection against piracy.

Privately contracted armed security personnel (PCASP): armed employees of PMSC.

¹ High Risk Area: an area as defined in the Best Management Practices for Protection against Somalia Based Piracy (MSC.1/Circ.1339) unless otherwise defined by the flag State.

² In the present guidance, all references to firearms include the associated ammunition, consumables, spare parts and maintenance equipment for use by PCASP, and all references to security-related equipment include protective and communication equipment for use by PCASP.

1.2 Risk Assessment

Shipowners should ensure that the flag State is consulted at an early stage in their consideration of the decision to place PCASP on board to ensure that any statutory requirements are met.

Whether to use PCASP within the High Risk Area is a decision for the individual shipowner after a thorough risk assessment and after ensuring all other practical means of self protection have been employed.

The risk assessment should include and document the following factors and considerations, prior to making the determination to take such actions:

- .1 vessel and crew security, safety and protection;
- .2 whether all practical means of self protection have been effectively implemented in advance;
- .3 the potential misuse of firearms resulting in bodily injury or death;
- .4 the potential for unforeseen accidents;
- .5 liability issues;
- .6 the potential for escalation of the situation at hand; and
- .7 compliance with international and national law.

2. PMSC Selection Criteria

2.1 General

As with any other type of contractor it is important to undertake the usual due diligence, which normally includes investigation and enquiries in relation to:

- .1 Company structure and place of registration;
- .2 Company ownership;
- .3 financial position (e.g. annual accounts/bank references);
- .4 extent of insurance cover (in particular covering third-party risks);
- .5 senior management experience; and
- .6 quality management indicators – e.g. ISO accreditation.

2.2 PMSC Background Information

To assess the capability of the PMSC to carry out a proposed task, a thorough enquiry regarding the prospective PMSC should be undertaken, particularly in the absence of a robust accreditation scheme for PMSC.

The PMSC should be able to provide documentary evidence which may include:

- .1 maritime (as opposed to land-based) experience;
- .2 written procedures on management including team-leading skills, chain of authority, change in command, responsibilities in life saving;
- .3 understanding of flag State, port State and coastal State requirements with respect to carriage and usage of firearms;
- .4 availability of written testimonials/references from previous clients in the maritime industry;
- .5 availability of documentary evidence that firearms are procured, transported, embarked and disembarked legally;
- .6 understanding of the Somalia-based piracy threat including the military operations in the area, and the means to maintain current knowledge;
- .7 understanding of BMP and, in particular, ship protection measures; and
- .8 access to legal advice (e.g. in-house counsel / external legal advisers) on a 24/7 basis.

2.3 Selection and Vetting of PMSC

As the quality of the service delivery depends to a very great extent on the quality and experience of the individuals that make up the onboard PCASP team, the quality of the selection and vetting of that team is essential. The PMSC should demonstrate that they have verifiable, written internal policies and procedures for determining suitability of their employees.

The PMSC should be able to provide documentary evidence which may include:

- .1 criminal background checks;
- .2 history of employment checks;
- .3 military and law enforcement background checks, where applicable;
- .4 records of medical, physical, and mental fitness of personnel (including drug and alcohol testing);
- .5 verifiable system in place to ensure continued suitability for employment of their personnel;

- .6 documentary evidence of relevant experience and certification in the use and carriage of firearms to be deployed; and
- .7 systems for provision of security identity documentation, travel documents and visas.

2.4 Training of PCASP

As the quality of professional training given to PCASP is of extreme importance, the shipowner should verify that the PMSC have adequate training procedures in place. The records of that training should give confidence that the PCASP have been provided with appropriate knowledge and skills.

The PMSC should be able to provide documentary evidence which may include:

- .1 comprehensive and detailed records of training, both initial and refresher training, available for inspection;
- .2 subject to any additional requirements of the flag State, PCASP have received, as a minimum, ship-board familiarization training, including communication protocols;
- .3 personnel trained and qualified to documented company standards in the appropriate use of force following recognized principles/guidelines recognized by the flag State;
- .4 personnel trained to operate the specific firearms and other security equipment that will be used on the vessels on which they will be deployed;
- .5 personnel given medical training to a recognized international standard; and
- .6 personnel given appropriate training and/or briefing with specific reference to the vessel type, where that vessel will be trading, and the provisions of the International Ship and Port Facility Security (ISPS) Code, International Safety Management (ISM) Code and the BMP.

3. Service Provision Considerations

3.1 Insurance

Owners should verify that PMSC maintain insurance cover for themselves, their personnel and third-party liability cover and that the PMSC terms of engagement do not prejudice or potentially prejudice the shipowners' insurance cover.

Shipowners insurance cover

Liabilities, losses and expenses arising out of the deployment of PCASP may impact on the shipowner's property and liability insurance cover. Shipowners are strongly recommended to consult with their insurers prior to contracting with and embarking PCASP to assess the potential impact on their insurance cover, particularly as it relates to armed engagements and liability insurance held by the PMSC.

PMSC insurance cover

PMSC should provide evidence that they hold and will maintain for the duration of the contract:

- .1 public and employers liability insurance cover to an appropriate level and as required by the shipowner; and
- .2 personal accident, medical expenses, hospitalization and repatriation insurance.

The PMSC should insure its personnel to carry and use firearms on the high seas and territorial sea(s), for accident, injury and damage arising from the use of firearms and liability for any claim that might arise from the carriage and the use of firearms.

It is vital that shipowners, charterers and underwriters review all provisions in their charters and policies and ensure adequate attention is paid to the questions raised.

3.2 PCASP Team Size, Composition and Equipment

The size, composition and equipment of the proposed PCASP team should be carefully discussed and agreed as necessary by the shipowner contracting with the PMSC. Factors for consideration may include:

- .1 **Size of the PCASP Team** – this will be influenced by factors including: length of the estimated time of the vessel transit, latest threat assessment, the agreed duties of the PCASP team (will they act as additional lookouts, assist with rigging self protection measures?) and the size and type of vessel. The analysis should indicate the minimum number of persons that should form the security team, taking into account the need for continuity of protection in the event of injury or illness.
- .2 **Ship safety certificate** – the size of the PCASP team plus the crew should not exceed that specified in the Ship's Safety Certificate. If the ship safety certificate requirements cannot be met due to added security personnel, then the flag Administration should be consulted.
- .3 **Composition** – it is important that there is an appropriate hierarchy, experience and skill mix within the onboard PCASP team. The team leader should be competent in vessel vulnerability and risk assessments and be able to advise on ship protection measures. It is recommended that one of the PCASP personnel be qualified as the team medic.
- .4 **Equipment requirements** – this will be influenced by factors including: length of the estimated time of the vessel transit, latest threat assessment, the agreed duties of the PCASP team, (will they act as additional lookouts, utilize day and night vision equipment, assist with rigging self protection measures?) and the size and type of vessel. Enhanced medical equipment is recommended.

- .5 **Firearms** – the appropriate firearms package to be employed in accordance with the applicable flag State national legislation pertaining to the type, carriage and use of firearms by PCASP, in order to provide an accurate and graduated level of deterrence, at a distance.

3.3 Command and Control of Onboard Security Team – including relationship with the Master

A shipowner / operator when entering into a contract with a PMSC should ensure that the command and control structure linking the ship operator, the Master, the ship's officers and the PCASP team leader has been clearly defined and documented.

Further, prior to boarding the PCASP, the shipowner should ensure that the Master and crew are briefed and exercises are planned and conducted so that all the roles and responsibilities are understood by all personnel on board prior to entering the High Risk Area.

In order to provide the required clarity, the documented command and control structure should provide:

- .1 a clear statement that at all times the Master remains in command and retains the overriding authority on board;
- .2 a clearly documented set of vessel and voyage-specific governance procedures, *inter alia*, covering procedures in 3.4, 3.5 and 3.6 which include procedures for conducting exercises based on these procedures;
- .3 a documented list of duties, expected conduct, behaviour and documentation of PCASP actions on board; and
- .4 transparent two-way information flow and recognizable coordination and cooperation between the shipowner, charterer, PCASP, PMSC and the vessel's Master, officers and crew.

Factors to determine such success may include:

- .1 providing regular updated intelligence-based threat assessments throughout the contracted period on board, and utilizing this information to offer suggestions as to the vessel's proposed routeing, amending same if required, and under the ship's contractual arrangements;
- .2 monitoring the daily activities of the onboard PCASP;
- .3 having a 24-hour Emergency Response and a Contingency Plan in place covering all potential actions; and
- .4 providing feedback on crew training and ship hardening requirements based upon reports received from the PCASP.

3.4 Management of Firearms and Ammunition from Embarkation to Disembarkation

An essential requirement of the PCASP team will be to demonstrate responsible management and use of weapons and ammunition at all times when on board.

Issues to be considered should include:

- .1 documented compliance with the relevant flag, coastal and port State legislation and relationships governing the transport and provision of firearms, ammunition and security equipment to the point of embarkation and disembarkation or ports/places at which the vessel may call as part of its intended voyage whilst the PCASP team is on board. PCASP should be able to prove that actual inventory carried matches all documented declarations;
- .2 appropriate containers for firearms, ammunition and security equipment at the point of transfer to the ship;
- .3 documented standards and procedures for a complete inventory of all firearms, ammunition and security equipment available upon arrival aboard the vessel (inventory should detail make, model, calibre, serial number and company end user certificate and proof of purchase of all firearms and accessories; and details of ammunition and amount);
- .4 control procedures for separate and secure onboard stowage and deployment of firearms, ammunition and security equipment;
- .5 areas where firearms may or may not be carried, together with the weapon state (e.g. unloaded & magazine off, magazine on and safety catch on and no round chambered) and what will initiate a change in that state should be confirmed;
- .6 detailed and exercised orders for when firearms can be loaded and "made ready" for use should be confirmed, trained and documented during certain periods as listed in the PCASP contract, to ensure the highest of safety and operational capabilities for use of firearms aboard the vessel; and
- .7 the inventory should be reconciled on disembarkation of all firearms and ammunition from the vessel.

3.5 Rules for the Use of Force

It is essential that all PCASP have a complete understanding of the rules for the use of force as agreed between shipowner, PMSC and Master and fully comply with them. PCASP should be fully aware that their primary function is the prevention of boarding using the minimal force necessary to do so. The PMSC should provide a detailed graduated response plan to a pirate attack as part of its teams' operational procedures.

PMSC should require their personnel to take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. In no case should the use of force exceed what is strictly necessary, and in all cases should be proportionate to the threat and appropriate to the situation.

PMSC should require that their personnel not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.

3.6 Reporting and Record Keeping

The Master should maintain a log of every circumstance in which firearms are discharged, whether accidental or deliberate. Such actions should be fully documented in sufficient detail in order to produce a formal written record of the incident.

The requirements of a formal written report may be considered to include the following:

- .1 time and location of the incident;
- .2 details of events leading up to the incident;
- .3 written statements by all witnesses and those involved from the vessel crew and security team in the incident;
- .4 the identity and details of personnel involved in the incident;
- .5 details of the incident;
- .6 injuries and/or material damage sustained during the incident; and
- .7 lessons learned from the incident and, where applicable, recommended procedures to prevent a recurrence of the incident.

In the event that the PCASP uses force, PCASP team leaders should be advised to photograph (if appropriate), log, report and collate contemporaneous written statements from all persons present at the incident in anticipation of legal proceedings.

In addition to incident reporting it is suggested that following a tour of duty the PCASP team should submit a full report to the shipowner / ship operator, via their employers if required, giving full details of the deployment, operational matters, any training and/or ship hardening conducted, and offering advice as to any further enhancements to security that may be considered.

3.7 Categorization of PCASP

Ship owners/operators should refer to any applicable national legislation of the flag State in relation to the categorization of PCASP on board their ships.

3.8 Reporting within the High Risk Area

The Master should report to the appropriate military authorities when a ship intending to transit, or transiting the High Risk Area is carrying PCASP, firearms and security-related equipment on board.

3.9 Familiarization for Master and the crew

Shipowners and ship operators should ensure that the Master and the crew receive familiarization in relation to this guidance.
