



BERMUDA MERCHANT SHIPPING NOTICE

Piracy Counter Measures

This Notice is intended for: Ship Owners, Managers, Masters, Safety, Deck and Engineering Officers and all seafarers on board Bermuda Merchant ships

Ref:

- IMO Circular MSC.1/Circ.1405/Rev.2
- IMO Circular MSC.1/Circ.1406/Rev.3
- IMO Circular MSC.1/Circ.1443
- Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea
- MCA Marine Guidance Notice MGN 444
- Department for Transport Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances
- Department for Transport Guidance to UK Flagged Shipping on Measures to Counter Piracy, Armed Robbery and Other Acts of Violence Against Merchant Shipping

Summary

Piracy continues to be a significant threat to seafarers and to maritime transport in the Gulf of Aden, the Arabian Sea, the Straits of Hormuz and large parts of the Indian Ocean. The threat originates not only from small craft with boarding equipment but also from hi-jacked large vessels operating in oceanic areas as mother ships. In response it has become increasingly common for ship operators to make use of armed private security personnel to protect their ships and crews in these areas.

This notice sets out the views and recommendations of the Bermuda Maritime Administration on this practice and includes the latest interim guidelines from the IMO for the guidance of owners, managers, and masters.

This Notice **supersedes** the requirements in Shipping Notice 2011-012.

This Notice was issued on 31st July 2018

1. General Security advice.

- 1.1.** An international joint naval force in the area offers a level of protection and support for ships of all nationalities in these areas; however this protection and assistance depends for its effectiveness on the co-ordinators of the forces being aware of the identity and location of ships in the area. The Bermuda Maritime and Shipping Authority requests that all Bermuda ships co-operate with the naval forces in the area and register with the naval co-ordinators at Maritime Security Centre Horn of Africa (MSCHOA) prior to entry into the risk area. The registry form for vessels can be found at the MSCHOA website at; www.mschoa.org
- 1.2.** Bermuda registered vessels should register with MSCHOA and also provide an initial report to the UK Maritime Trade Operations Office (UKMTO) at ukmto@eim.ae Tel (24hrs): +44 2392 222 060 Tel: +971 50 552 3215 Fax: +971 4 306 5710.
- 1.3.** The Bermuda Maritime Administration recommends that all ships follow the published “Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea” (BMP5) a copy of which is available on the MSCHOA website.
- 1.4.** It is recommended that LRIT is NOT turned off on entering the high risk area. Bermuda has granted access to the LRIT data for Bermuda ships to the naval forces in the area and this is used to track ships and allow the available forces to make the fastest possible response when required.
- 1.5.** In the event that a Bermuda vessel does come under attack and is subsequently able to do so, the Company or the ship should notify UKMTO (Tel: +44 2392 222 060 Email: watchkeepers@ukmto.org) and send a copy of the report to the Maritime Administration at: survey@bermudashipping.bm.

2. Carriage of Armed Security Teams;

- 2.1.** Along with many other Flag Administrations, the Bermuda Maritime Administration has received a number of enquiries regarding the implications of carrying Privately Contracted Armed Security Personnel (PCASP) onboard ships transiting the Gulf of Aden region. The carriage of such armed teams is not recommended in the Best Management Practices; however the Bermuda Maritime and Shipping Authority recognises that shipowner’s have an obligation to protect their crews and supports this intent when the circumstances are such that putting an armed team on board is considered to be the only effective solution.
- 2.2.** Bermuda laws and regulations do not expressly prohibit the carriage of firearms or armed teams onboard Bermuda ships and this Administration is aware both that owners are increasingly turning to this solution to protect their ships, and that the international community is recognising that this approach is inevitable.
- 2.3.** A decision to use armed security teams must lie with the owner and should be taken after consideration of all the issues and an analysis of the risks. An owner taking this course should do so in consultation with their insurance underwriters, P&I Club, charterers and legal counsel.

- 2.4. The Bermuda Maritime and Shipping Authority is not in a position to approve Private Maritime Security Companies (PMSC), however will accept PMSC's approved by the UK Administration. It is recommended that shipping companies only employ private security providers that are accredited to the current ISO 28007-1:2015 "Guidelines for Private Maritime Security Companies (PMSC) Providing Privately Contracted Armed Security Personnel (PCASP) On Board Ships".
- 2.5. Owners should also note that the carriage of firearms on board vessels is not accepted in some ports locations and that it will be necessary to plan carefully to avoid serious problems in some ports if an armed security team and its weapons cannot be disembarked in advance.
- 2.6. In any case where the carriage of an armed team places the total complement on board in excess of the vessel's life-saving appliances capacity it will be necessary to contact the Administration which will consider, on a case by case basis, the issue of a temporary exemption for the period necessary.
- 2.7. Whenever a decision is made to place an armed team on board there is no requirement to inform the Maritime Administration; however some charterers require a "Letter of no Objection" from the vessel's Flag Administration, which can be provided upon receipt of request to: survey@bermudashipping.bm

If a "Letter of no Objection" is requested the following information is to be provided:

- Number of armed security guards to be placed on board
- Location and date that the security team and weapons will be placed on board.
- Location and date that the security team and weapons will disembark the vessel
- The name of the Private Maritime Security Company employed

3. Recommendations;

- 3.1. "Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea " (BMP5) should be followed at all times in the areas of high risk. The carriage of any armed security personnel should only supplement BMP5, and should in no way replace it.
- 3.2. Owners and managers should take great care in the selection of Private Maritime Security Companies. Before the services of a PMSC are engaged the vessel owners and managers must check their credentials and licences/permits to ensure that they have been issued by an appropriate authority and are operating legally against identified threats. Employing the services of a disreputable Company could increase the risks faced by ships and their crews.
- 3.3. It is essential that "Rules of Engagement" are clear, agreed and understood by the onboard command structure and known to all onboard. The "Rules of Engagement" should clarify exactly the circumstances when a response with weapons is permitted, the steps of escalation and the Master's overall authority to call for a cease fire. **The master must retain ultimate responsibility for safety and security onboard at all**

times. Masters cannot delegate this responsibility to a "security contractor" and may well be held responsible for their actions.

3.4. Any armed security team must be briefed fully by the master on the nature and risks associated with the ship's cargo.

4. MSC.1/Circ.1405/Rev.2 – Guidance to Shipowners, Ship Operators and Shipmasters

4.1. The IMO has developed interim guidelines regarding the use of Privately Contracted Armed Security Personnel on Board Ships. The text of this guidance is reproduced here in Appendix 1.

4.2. The Bermuda Maritime Administration agrees with the content of these guidelines and recommends them to all owners and managers considering the engagement of private armed security teams to protect their ships.

**Chief Surveyor
Bermuda Shipping and Maritime Authority**

Appendix 1

MSC.1/Circ.1405/Rev. 2

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

1.1 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 ships transiting the High Risk Area (HRA). 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.

1.2 The decision on the employment of PCASP on board ships is a complex one for a shipowner. 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.

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

1.4 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 ships. Furthermore it is also important to note that port and coastal States' laws may also apply to such ships.

1.5 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 ship 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.

2 Definitions

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

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.

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.

3 Risk assessment

3.1 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.

3.2 Whether to use PCASP within the HRA 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.

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

- .1 ship 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.

4 PMSC selection criteria

4.1 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 certification.

PMSC background information

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

4.3 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, stored, carried, used, 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 competent maritime legal advice (e.g. in-house counsel/external legal advisers) on a 24/7 basis.

Selection and vetting of PMSC

4.4 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. PMSC should demonstrate that they have verifiable, written internal policies and procedures for determining suitability of their employees.

4.5 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 regular drug and alcohol testing);
- .5 verifiable systems 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.

Training of PCASP

4.6 As the quality of professional training given to PCASP is of extreme importance, the shipowner should verify that 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.

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

5 Service provision considerations

Insurance

5.1 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 shipowner's insurance cover.

Shipowner's insurance cover

5.2 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

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

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

5.4 PMSC should insure their personnel to carry and use firearms on such voyages for accident, injury and damage arising from the use of firearms and liability for any claim that might arise from the carriage and/or negligent or intentional misuse of firearms.

5.5 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.

PCASP team size, composition and equipment

5.6 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 ship transit, latest threat assessment, the agreed duties of the PCASP team (e.g. will they act as additional lookouts and assist with rigging self-protection measures?) and the size and type of ship, its speed and freeboard. 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 ship 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 ship 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 ship. Enhanced medical equipment is recommended; and
- .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.

Command and control

5.7 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.

5.8 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 HRA.

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

- .1 a clear statement recognizing that at all times the Master remains in command and retains the overriding authority on board, and an agreed procedure in the event of the Master being unavailable;
- .2 a clearly documented set of ship and voyage-specific governance procedures, inter alia, covering procedures for the conduct of exercises and real incidents;
- .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 ship's master, officers and crew throughout deployment.

5.10 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 ship's proposed routing, amending same if required, and under the ship's contractual arrangements;
- .2 monitoring the daily activities of the onboard PCASP team;
 - .3 having a 24-hour emergency response and a contingency plan in place covering all foreseeable actions; and
 - .4 providing feedback on crew training and ship hardening requirements based upon reports received from their onboard PCASP team.

Management of firearms and ammunition from embarkation to disembarkation

5.11 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.

5.12 Issues to be considered should include:

- .1 documented compliance with the applicable flag, coastal and port State legislation and relationships governing the transport, carriage, storage, provision and use of firearms, ammunition and security equipment to and from the points of embarkation and disembarkation or ports/places at which the ship 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 including compliance with any applicable export/import licences;
- .2 appropriate containers for firearms, ammunition and security equipment at the point of transfer to and from the ship, in full legal compliance with national jurisdiction and port State laws;
- .3 documented standards and procedures for a complete inventory of all firearms, ammunition and security equipment available upon arrival aboard the ship (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 natures and amount);
- .4 effective 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 and magazine off, magazine on and safety catch on and no round chambered) and what conditions will initiate a change in that state should be confirmed;
- .6 detailed and exercised orders for when firearms may 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 ship; and

- .7 the inventory should be reconciled on disembarkation of all firearms and ammunition from the ship.

Rules for the use of force

5.13 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 role in regard to the above is exclusively for the protection of life of persons on board and the ship from armed pirate attacks. PMSC should provide a detailed graduated response plan to a pirate attack as part of their teams' operational procedures.

5.14 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 reasonable in the circumstances. Care should be taken to minimize damage and injury and preserve human life.

5.15 PMSC should require that their personnel not use firearms against persons except in self-defence or defence of others.

Reporting and record-keeping

5.16 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 report of the incident, for the shipowner/operator to forward to the flag State.

5.17 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 ship's 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.

5.18 In the event that the PCASP use force, PCASP team leaders should be advised to

photograph (if appropriate), log, report and collate contemporaneous written statements from PCASP present at the incident in anticipation of legal proceedings.

PCASP reporting

5.19 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.

Category assigned to PCASP

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

Reporting within the HRA

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

Familiarization for master and the crew

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