



# The Route to Security Regulation for the Carriage of Armed Guards on Seagoing Vessels

## Welcome

*In this Seacurus Monthly report we examine the latest security guidelines to emerge from the International Maritime Organization (IMO), Maritime Safety Committee (MSC89) in May.*

*Amongst a whole range of issues covered the MSC developed guidance on the use of Privately Contracted Armed Security Personnel (PCASP) onboard ships. They actually approved two sets of guidance: one for shipowners and one for Flag States.*

*Which means companies have to get into a formal due diligence process, so they are satisfied that they know who they are going to employ if they decide to, "go armed". Companies will then also be looking for support from the Flag States, and so the guidelines really will change the security market completely. The new system will allow owners/operators to not simply employ PCASPs, but to ensure they know how to check they are fit for purpose.*

*The IMO was quick to stress that the guidance does not mean they endorse armed guards they are not "pro-arms, just pro-standards". The authorities still believe that proper and full adherence to Best Management Practices (BMP) is the best bet, and that armed guards should only be considered after a risk assessment has been carried out.*



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# The Route to Regulation

The use of armed security guards has increased dramatically over the past year. With ever more ship owners/operators taking the difficult decision to “go armed”, it was inevitable that Flag States and the wider shipping industry would require guidance and advice.

The IMO circular does not address all the legal issues involved in the armed debate, but it is a baseline to enable Flag States to establish policy on whether they authorise the use of private armed guards and, if so, under what conditions. The guidance also includes sections on risk assessment, selection criteria, insurance cover, command and control, management and use of weapons and ammunition at all times when on board and rules for the use of force as agreed between the shipowner, the private maritime security company and the Master.

In essence, Flag States can now regulate the use of armed security service providers and hold them accountable for their actions. The approval of such security companies and their personnel, including any licensing or certification should be a Flag State responsibility after appropriate vetting and background checks. Indeed Flag States must decide not only whether their employment is appropriate and lawful on their vessels, but whether each PCASP meets the minimum criteria as laid down in the guidelines.

This will likely pose a challenge, and some Flag States may struggle with the new responsibilities. Key to the guidelines has been the need for clear standards and a means of vetting Private Maritime Security Companies (PMSCs) against them. Until now there has not been a defined, demonstrable means of proving that a security provider is of the quality required. Indeed no-one has been entirely sure of what that quality was, or of what should be required AND HOW.

In a commercial marketplace, the desire and need to differentiate has been strong. This has meant it has been almost impossible to paint a full and frank picture of the abilities, capabilities, resources and foundations of PMSCs on a large scale. Many boast of providing a “Rolls-Royce” service, but if only Rollers were allowed on the road, not many people would have cars. This illustrates that while standards are important, they can't be too draconian or owners will be denied the supply they need to secure ships.

The Flag States will be left to determine how they vet and assess standards, however, some issues such as staff training, the appropriateness of security company standards and the medical and mental fitness of PCASPs are going to be very hard to standardise and ultimately police. It will be very interesting to see how this evolves.

Another area of interest and concern is the status of PCASPs while onboard. Are they, for instance, part of the ships' crew or are they supernumeraries? This is very complex and the ramifications, especially in light of the soon to be ratified Maritime Labour Convention (MLC) are significant. After much discussion it was agreed that this was a matter for each individual Flag State to decide.

The twin issues of legal implications and potential liability have naturally been a concern. Discussions on the issue of the Master's responsibility and liability were extensive, and there are natural concerns where the actions of a PCASP may cause injury or death to any person, including the PCASP themselves, or any other damage caused to the ship or her cargo.

Perhaps understandably there were different opinions voiced as to what extent the Master could be held liable in such cases. There was concern over the possible legal consequences a ship's Master could face and that the fact that Masters are deemed to have “overriding authority” could be construed in such a way that they can be held ultimately responsible for any actions taken by the PCASP which were beyond the Master's control.

This is a very real and live issue as such the guidelines take a view from the command and control structure perspective. It is important that any contracts contain a clear statement that at all times the Master remains in command and retains the overriding authority on board. They noted the distinction between the uses of the terms “authority” versus “responsibility”, something it is hoped will protect all parties when there is any future apportionment of liability.

Work on the guidance is not complete, and as such an additional intersession meeting will be held the week commencing 12 September 2011. However the interim guidance will bring about change and the use of armed security is now set to rise further. It is estimated that around 20% of ships in the Gulf of Aden and the Indian Ocean, will carry armed guards by 2013. This would see an increase from approximately 12% at present, and it is therefore important that guidance is put into immediate effect.

## What Do the Guidelines say?

At their most basic level the IMO guidelines require that a risk assessment should be carried out. Owners/operators cannot just decide you want armed guards, there has to be a formal assessment underpinning the decision. The 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.

## PMSC Selection Criteria

As with any other type of contractor it is important to undertake the usual due diligence, this 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.

## PMSC Background Information

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

1. Maritime (as opposed to land-based) experience;
2. 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,
6. Transported, embarked and disembarked legally;
7. Understanding of the Somalia-based piracy threat including the military operations in the area, and the means to maintain current knowledge;
8. Understanding of BMP and, in particular, ship protection measures; and
9. Access to legal advice (e.g. in-house counsel / external legal advisers) on a 24/7 basis.

## 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, 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.

## 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 guidelines do not specify what level "adequate" training is, and this could be a potential stumbling block for any companies looking to circumvent the guidance.

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
3. Received, as a minimum, ship-board familiarization training;
4. Personnel trained and qualified to documented company standards in the appropriate use of force following recognised principles/guidelines recognized by the Flag State;
5. Personnel trained to operate the specific firearms and other security equipment that will be used on the vessels on which they will be deployed;
6. Personnel given medical training to a recognised international standard; and
7. 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 ISPS Code, ISM Code and BMP.

## Service Provision Considerations

### Insurance

An important point is that owners/operators should verify that the PMSC maintains 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' 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. The IMO reminds owners/operators 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:

- Public and employers liability insurance cover to an appropriate level and as required by the shipowner; and
- Personal accident, medical expenses, hospitalisation and repatriation insurance for personnel.

The PMSC should insure its personnel to carry and use firearms on the High Seas and Territorial Waters, 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 owners/operators, 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

“Minimum secure manning” is an interesting point, just how many PCASPs are needed onboard? Some at the IMO felt a risk assessment could define a quantitative level, but this argument has its flaws. Especially given the evolving swarming tactics which could see a team swamped with pirates, especially if the risk assessment is not conducted correctly.

BIMCO stated that a minimum of four armed guards should be placed on each vessel. This quantifiable recommendation should prevent understaffing of PCASPs.

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;
2. The agreed duties of the PCASP team (will they act as additional lookouts, assist with rigging self protection measures?) and size and type of vessel;
3. The analysis should indicate the number of persons that should form the security team;
4. 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 the flag Administration should be consulted;
5. Composition - it is important that there is an appropriate hierarchy;
6. 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;
7. Equipment requirements – this will be influenced by factors including, length of the estimated time of the vessel transit, latest threat assessment, and the agreed duties of the PCASP team, (Will they act as additional Lookouts - day & night vision equipment - assist with rigging self protection measures?) and the size and type of vessel. Enhanced medical equipment is recommended.

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

An owner/operator 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 HRA. 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, 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 recognisable 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 utilising this information to offer suggestions as to the vessels proposed routeing, amending same if required, and under the ships 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.

## 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:

- 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;
- Appropriate containers for firearms, ammunition and security equipment at the point of transfer to the ship;
- 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 and serial number of all firearms; and details of ammunition and amount);
- Control procedures for separate and secure onboard stowage and deployment of firearms, ammunition and security equipment;
- Areas where firearms may or may not be carried, together with the weapon state (e.g. unloaded & magazine off, magazine on & safety catch on & no round chambered) and what will initiate a change in that state should be confirmed;
- 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 arms aboard the vessel;
- The inventory should be reconciled on disembarkation of all arms and ammunition from the vessel.

## 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. The primary function of the armed team is the prevention of boarding using the minimal force necessary to do so. Some companies do suffer from a reputation for “trigger happy” responses, but this has no place in this regard. The PMSC should provide a detailed graduated response plan to a pirate attack as part of its team’s 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 should be proportionate to the threat and appropriate to the situation.

PMSCs 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. This is a key tenet of not simply the guidelines, but of the entire (reluctant) acceptance of armed guards on commercial vessels.

## Reporting and Record Keeping

Record keeping is a very important aspect of the use of armed guards. 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 of 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.



## Familiarisation for Master and the crew

Shipowners and ship operators should ensure that the Master and the crew receive familiarisation in relation to the guidelines. A key to ensuring the safe use of armed teams onboard is through the engagement with the Master and crew. Where Masters are engaged and involved in the risk assessment, and can see the reasons why a team should be used, or perhaps not used, then this eases the relationships onboard and enhances security.

## Recommendations for Flag States

As stated the IMO produced a set of "twin" guidelines, aimed at all stakeholders.

While the more in-depth guidance was placed in the circular aimed at shipowners, ship operators and shipMasters, Flag States received their own recommendations to apply.

Naturally Flag States have very different pressures to contend with and ultimately they have to determine that using armed guards is appropriate and lawful.

Flag States will have to determine, if and under which conditions this will be authorised, and should take into account the possible escalation of violence which could result from the use of firearms and carriage of armed personnel on board ships.

As a first step, consider whether the use of PCASP:

- Would be permitted under its domestic law;
- Would be an appropriate measure under some circumstances to augment the security arrangements.

As a second step, if the use of PCASP is determined to be an appropriate and lawful measure, establish a policy which may include, amongst others:

- The minimum criteria or minimum requirements with which PCASP should comply, taking into account the relevant aspects of the guidance set out in the interim guidance to shipowners, ship operators, and shipmasters;
- A process for authorising the use of PCASP which have been found to meet minimum requirements;
- A process by which shipowners, ship operators or shipping companies may be authorised to use PCASP;
- The terms and conditions under which the authorization is granted and the accountability for compliance associated with that authorization;
- References to any directly applicable domestic laws pertaining to the carriage and use of firearms by PCASP, and the relationship of PCASP with the Master while on-board; and
- Reporting and record-keeping requirements.

In addition Flag States will also have to provide information to the IMO on the levels of usage of PCASP onboard their vessels for circulation to Member States. This will hopefully provide very important feedback to the shipping industry on the true levels of armed security. Given previous efforts to get Flag State feedback, this may not paint the whole picture.

## What Now?

With these guidelines providing (ultimately) a well policed and functioning private security force, the call to ensure that protection can be given to the vessels that need it will get louder. It would be something of an embarrassment to tidy the provisions on one side of the equation, only to neglect the other and make it difficult for armed security teams to access weapons. The controls need to be applied across the board, and once PMSCs can demonstrate their worthiness, then the route to free movement of their tools of the trade will be even more vital and significant.

