



Virgin Islands Shipping Registry

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Marine Information Notice No.: 003

Use of Privately Contracted Armed Security Personnel (PCASP)

To: Ship owners; Managers; Operators; Masters; & Private Maritime Security Companies

Summary

This MIN is to advise clients of the Virgin Islands Shipping Registry of the Policy regarding the use of Privately Contracted Armed Security Personnel (PCASP) on board Virgin Islands registered vessels.

Documents referred to in this notice are the latest versions of:

- Best Management Practices (BMP) for Somali Based Piracy, Suggested Planning and Operational Practices for Ship Operators, and Masters of Ships Transiting the High Risk Area;
- IMO MSC.1/Circ.1339;
- IMO 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 Area;
- IMO MSC.1/Circ.1406: Interim Recommendations for Flag States Regarding the Use of Privately Contracted Armed Security Personnel on board Ships in the High Risk Area;
- IMO MSC.1/Circ.1408: Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on board Ships in the High Risk Area;
- IMO MSC.1/Circ.1443: Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on board Ships in the High Risk Area;
- IMO MSC-FAL.1/Circ.2: Questionnaire on Information on Port and Coastal State Requirements Related to Privately Contracted Armed Security Personnel on board Ships.

The increased threat to commercial shipping transiting East African coastal waters by Somali based pirates has led to extensive use of armed guards and a corresponding expansion in the number of companies offering specialist armed maritime security services. This extensive use of armed guards has led to the position that any vessel not employing some form of armed security response may be making itself a target.

The Virgin Islands Shipping Registry, while neither endorsing nor prohibiting the use of privately contracted armed security personnel (PCASP) recognises that vessel owners, operators or managers would not wish to make their vessels identified targets, but also recognises that it may be difficult to identify reliable, professional private providers of armed security services.

The decision to employ PCASP on board ships is a complex one for the vessel owner, operator or manager, with the primary goal being the protection of the vessel, its crew and cargo. In the absence of any specific current international regulation, guidance or standards in this area, the self-regulation of the maritime security industry, coupled with the complex legal requirements governing the legitimate transport, carriage and use of firearms gives both the ship operator and the flag State significant cause for concern.

This situation is further exacerbated by the rapid growth in the maritime security industry and the significant variation in competence and quality present across the wide spectrum of contractors offering these services. Therefore, the purpose of this Marine Information Notice (MIN) is to provide the Virgin Islands Shipping Registry policy to ship owners, operators, managers and Masters when considering the use of PCASP. This MIN replaces any previous guidance issued by the Virgin Islands Shipping Registry.

Definitions

Exceptional Circumstances: When the ship is transiting the high seas through the High Risk Area (HRA); the latest Best Management Practice (BMP) is being followed fully but, on its own, is not deemed by the shipping company and the ship's master as sufficient to protect against acts of piracy; and the use of armed guards is assessed to reduce the risk to the lives and well-being of those on board the ship.

High Risk Areas (HRA): Areas of the ocean where acts of terrorism, piracy or armed robbery have taken place. An area defined as High Risk may change periodically or over time due to changes in weather, tactics and areas of operation of the perpetrators. For the sake of this policy, the only HRA accepted for the use of PCASP is defined as: Somalia, the North West Indian Ocean and Gulf of Aden:

The HRA contained in the BMP Guidelines is defined as an area bounded by Latitude 15°N in the Red Sea, 65°E, 5°S and 22°N in the Gulf of Oman. (Note: the UK Maritime Trade Operations (UKMTO) voluntary Reporting Area is larger as it includes the entire Red Sea and the Arabian Gulf).

(Attacks have taken place at most extremities of the HRA, including at 78°E. The possibility remains that they could take place further out. It should be noted that attacks have extended as far south as into the Mozambique Channel and below 10°S; it is therefore recommended that a high state of vigilance should be maintained even south of the southerly limit of the HRA.

It is imperative that owners, operators, managers and Masters assess areas of risk based in the latest available information from the Maritime Security Centre Horn of Africa (MSCHOA), the NATO Shipping Centre (NSC) and the International Maritime Bureau (IMB). Vessels also must be prepared to alter course at short notice to avoid pirate activity when information is provided by NAV Warnings and/or naval/military forces.

Private Maritime Security Companies (PMSC): Private security companies contracted to provide security personnel both armed and unarmed.

Privately Contracted Armed Security Personnel (PCASP): armed employees of PMSC.

Policy

The policy of the Virgin Islands Shipping Registry is that it has no objection to vessel owners, operators, managers and/or Masters taking appropriate measures to ensure the safety and security of their vessels and crew in *exceptional circumstances*.

The optional use of an armed security detail and how this detail may be facilitated is a decision for the vessel owner, operator or manager to make after thoroughly assessing the piracy related risks in the defined HRA where the vessel will be operating, as well as the potential risks and benefits of available anti-piracy related countermeasures. The Virgin Islands Shipping Registry will not accept a situation where PCASP are used as an excuse to ignore the highly effective self-protection measures of BMP.

Whilst it should be noted that the Virgin Islands currently has no legislation to prohibit or to permit the use of PCASP, it does have the legal authority and ability to remove vessels from the register if it is found that vessel owners, managers or operators are not complying with the requirements of this policy which must be enforced at all times. Inspections for compliance with this policy will be undertaken at each vessel audit under the ISPS Code and at company audits undertaken under the ISM Code.

One consequence of carrying armed guards may be that an excess of persons on board, above the limits for lifesaving appliances and accommodation, are carried. Whereas the Virgin Islands Shipping Registry would not normally countenance excess numbers, in recognition of the extraordinary and escalating risk of piracy in the HRA, we will consider on a case by case basis, where there is no reasonable alternative, allowing the carriage of excess persons for voyages through the HRA, subject to additional safeguards which would provide adequate, although not full compliance. Formal applications should be made in writing to: vishipping@gov.vg.

Relevant Legislation

In terms of the Merchant Shipping Act 2001 (the Act) a PCASP on board a Virgin Islands registered vessel is a seaman (*seaman* includes every person (except masters and pilots) employed or engaged in any capacity on board any ship) and as such Section 437 of that Act will apply.

Section 437 of the Act makes any act in relation to property or person done in or at any place (ashore or afloat) outside the Virgin Islands by any Master or seaman who at the time of the act is employed in a Virgin Islands ship, which if the act had been committed in the Virgin Islands would be an offence under the law of the Virgin Islands will be treated as an offence and be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the appropriate Court in the Virgin Islands.

For example, if a PCASP were to shoot, whether accidentally or not, another person whilst being on board a Virgin Islands registered vessel then the incident would be treated as a shooting on the Virgin Islands and as such a criminal investigation and potentially a trial, may be the outcome.

Other Merchant Shipping legislation applicable to Virgin Islands registered vessels may also apportion liability in such cases to the vessel owner, manager, operator and Master and should all be taken into account in the risk assessment.

It should be noted that the Virgin Islands firearms legislation with regard to the certification of firearms does not apply on Virgin Islands registered vessels and as such there is no legal requirement to be certificated. However, local, Port or Coastal State legislation may require some form of certification and this should be complied with.

Risk Assessment for use of PMSCs and PCASP

A risk assessment for the use of PMSCs and their PCASP is to be made for each instance of use, a generic risk assessment may be acceptable, but should be reviewed on each occasion, documented

and retained for inspection. This risk assessment must be made in accordance with MSC.1/Circ.1405, Rev.2; the revised interim guidance regarding the use of PCASP in the HRA.

Risk assessments should include and document at least the following factors and considerations:

- a) vessel and crew security, safety and protection;
- b) whether all practical means of self-protection have been effectively implemented in advance;
- c) the potential misuse of firearms resulting in bodily injury or death;
- d) the potential for unforeseen accidents;
- e) liability issues, including those related to use of force;
- f) the potential for escalation of the situation at hand;
- g) compliance with international requirements, applicable Virgin Islands regulations and this policy; and
- h) careful consideration of any supplemental guidance on PMSC selection promulgated by the Virgin Islands Shipping Registry.

The risk assessment may require the inclusion of consultation with labour representatives, port officials, charterers, legal counsel and insurance underwriters as appropriate. It is also important that the Master of the ship be included in the decision making process.

Vetting and Selection of PMSC

Vessel owners, operators and managers should employ the same amount of due diligence as they would in employing any other form of maritime contractor, and must also expect the PMSC to demonstrate its professional capability to carry out the proposed task. The PMSC should, as a minimum show compliance with the requirements of the latest version of MSC.1/Circ 1443, the interim guidance to PMSC and also be looking towards compliance with the requirements of ISO PAS 28007, or similar. The PMSC should, as a minimum, provide documentary evidence including:

- a) maritime (as opposed to land-based) experience;
- b) having written procedures on management including team-leading skills, chain of authority, change in command (in the event, for example, of incapacity of the team leader), responsibilities in life saving, Code of Conduct, Rules for the Use of Force;
- c) understanding of applicable laws (Flag State, Port State, Coastal State) with respect to carriage and use of firearms;
- d) written testimonials/references from previous clients in the maritime industry;
- e) documentary evidence that firearms are procured, transported, embarked and disembarked legally;
- f) understanding of the local piracy threat, military operations in the area, and the means to maintain current knowledge;
- g) understanding of BMP and, in particular, ship protection measures;
- h) having access to competent maritime legal advice on a 24/7 basis given the complexity of applicable laws concerning the carriage and use of firearms; and
- i) documented processes for post incident actions to support any investigations or prosecutions should a formal investigation be required.

As with all contractors, the quality of the service provided depends to a great extent on the quality and experience of the individuals that make up the on board 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 (PCASP).

The guidelines provided in the latest revision to IMO MSC.1/Circ.1405 must be closely followed. An agreement entered into for the use of PCASP should as an absolute minimum contain provisions for the use of force in compliance with established Rules of the Use of Force (RUF) and within applicable laws.

Reporting the Use of PMSC/PCASP

Should a vessel owner, manager or operator decide to use PCASP, this decision **must** be reported to the Virgin Islands Shipping Registry with details on the chosen PMSC to be engaged to supply PCASPs for the vessel's transit through the designated HRA. This information is to be sent to: vishipping@gov.vg in the form of an e-mail, itemising the following information:

- the vessel's name;
- the PMSC used;
- nationality of the PCASPs on board; and
- the pick-up and drop-off points of the PCASPs.

The Virgin Islands Shipping Registry will then provide this information to the Secretariat of the IMO.

Letters of Authorisation or Non-Objection

Some Port State Competent Authorities are requiring that the vessel's Master is in possession of a Letter of Non-Objection or Authorisation from the flag State to have firearms, ammunition and related support equipment on board. The Virgin Islands Shipping Registry will only issue a letter of Non-Objection on receipt of the appropriate application from the vessel owner, manager or operator.

Vessel owners, managers and operators when in need of such a letter **must** make the request sufficiently in advance of need to allow the Virgin Islands Shipping Registry to issue the letter in a timely manner. All such requests **must** be addressed to: vishipping@gov.vg using the form in **Annex B**, requests to other addresses or in other formats will not be accepted.

Reporting of Incidents within the HRA

All piracy incidents within the HRA must be reported to the Virgin Islands Shipping Registry whether PCASP are on board a vessel or not using the format provided in **Annex A**. These incident reports will be forwarded to the IMO and will be used to collate information on current activity within the HRA.

It should be noted that a failure to notify incidents to the Virgin Islands Shipping Registry and therefore the IMO, may result in reported downward trend in incidents. Whilst the reporting trend may be incorrect, the potential outcome of a downward trend is that naval force support may be withdrawn from the area. As such the importance of reporting all piracy incidents cannot be overstressed.

Where the PCASP may have taken action during an incident this should be reported immediately to vishipping@gov.vg using the form in **Annex A**.

Ship Security Plan (SSP)

Vessel owners, operators, managers and Masters must, when carrying out a risk assessment of their vessel(s) to determine the likelihood and consequences of a piracy attack, an armed attack, hijacking or act of terrorism, identify and incorporate prevention, mitigation and recovery measures, including any consideration being given to the use of PCASP, in their SSPs, taking into consideration the guidance contained in the latest revisions of MSC.1/Circ.1339, MCS.1/Circ.1405 and MSC-FAL.1/Circ.2 along with the BMP Guidelines.

The SSP should reiterate in the strongest terms that the Master is in command of the vessel and as such retains the overriding authority on board. Clearly defined vessel specific governance procedures be used when PCASP are on board, including the conduct of exercises, list of duties, conduct, behaviour of PCASP and documentation requirements.

In addition to this, any voyage specific governance procedures should be documented. All documentation is to be made available for audit by the Virgin Islands Shipping Registry as required. Inclusions, specifically in regard to the use of PCSAPs, in SSPs are not required to be approved by the Virgin Islands Shipping Registry, however, SSPs must contain information as required above. If not found during an ISPS audit, the omission will be taken as a failure to comply with this policy.

Use of Best Management Practices

The Virgin Islands Shipping Registry advises that the use of PCASP is not to be considered as a substitute for the active implementation of the most current recommended BMP and will not be acceptable as such.

Registering with the MSCHOA (<http://www.mschoa.org/>+44 (0) 1923 958545) and reporting to the UKMTO ([watchkeepers@ukmto.org/](mailto:watchkeepers@ukmto.org) +44 2392 222060 or +971 505 523 215) is most important before entering the Somali HRAs. Each vessel must be registered with the MSCHOA for every intended transit of the HRA and continue to provide daily reports of the vessel position/course/speed to UKMTO while in the HRA.

When registering with the MSCHOA and initially reporting to the UKMTO, they must also be advised when PCASP are aboard a commercial vessel.

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ANNEX A

REPORTING OF PIRACY INCIDENTS WITHIN THE HIGH RISK AREAS

DATE OF REPORT:	
NAME OF VESSEL:	
IMO NUMBER:	
DATE OF INCIDENT:	TIME OF INCIDENT:
LOCATION OF INCIDENT:	
OPERATOR OF VESSEL (ISM):	
ADDRESS OF OPERATOR (ISM):	IMO No.:
NAME OF PRIVATE MARITIME SECURITY COMPANY:	
DETAILS OF INCIDENT:	
ID AND DETAILS OF PERSONNEL INVOLVED IN THE INCIDENT AND WITNESSES	

*A BLANK SHEET OF PAPER CAN BE USED TO COMPLEMENT DETAILS OF THE INCIDENT



DETAILS OF INJURIES AND/OR MATERIAL DAMAGE SUSTAINED DURING THE INCIDENT

LESSONS LEARNT FROM THE INCIDENT AND, WHERE APPLICABLE, RECOMMENDED PROCEDURES TO PREVENT A RECURRENCE OF THE INCIDENT.

ACTION TAKEN BY MASTER AND CREW:

WAS THE INCIDENT REPORTED TO A COASTAL AUTHORITY:

IF SO TO WHOM:

REPORTING STATE OR INTERNATIONAL ORGANISATION

ACTION TAKEN BY COASTAL STATE:

Attached evidence:

PHOTOGRAPHS (No.)

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WRITTEN STATEMENTS (No.)

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VIDEO SURVEILLANCE (FOR EXAMPLE, FROM CCTV AND / OR BODY MOUNTED CAMERAS) (No.)

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INFORMATION REQUIRED FOR THE ISSUE OF A LETTER OF NON-OBJECTION FROM THE VIRGIN ISLANDS SHIPPING REGISTRY

NAME OF VESSEL:	NANE OF MASTER:
NAME OF PRIVATE MARITIME SECURITY COMPANY (PMSC):	
NAMES AND NATIONALITIES OF INDIVIDUAL PCASP TEAM MEMBERS:	PASSPORT NUMBERS OF INDIVIDUAL PCASP TEAM MEMBERS:
DETAILS OF LICENSED OWNER OF FIREARMS:	DETAILS OF NATIONAL LICENSING AGENCY:
INDIVIDUAL WEAPON TYPES (MAKE AND MODEL):	INDIVIDUAL WEAPON SERIAL NUMBERS:
AMMUNITION CARRIED (CALIBRE ANDNUMBER OF ROUNDS):	
DESCRIPTION OF ADDITIONAL KIT (IF PROVIDED):	
LOCATION/DATE OF EMBARKATION	LOCATION/DATE OF DISEMBARKATION
VESSEL ITINERARY DURING PCASP TEAM EMBARKATION:	