

## **Guidelines on Deployment of Armed Security Guards on Merchant Ships**

### **Background**

The menace of piracy continues unabated in spite of increased naval presence in the Gulf of Aden region and merchant ships being asked to comply with best management practices which includes establishment of “Citadel”.

2. There are reports of more and more ship-owners deploying security guards on their ships while transiting piracy infested waters of Gulf of Aden and Arabian sea. It has been estimated that about 35% of the total number of ships transiting these waters, deploy armed security guards. There have been no reports of successful hijacking on ships where such security guards have been deployed. Marine insurance companies/clubs have also started to factor their premium rates with the level of implementation of Best Management Practices relating to anti-piracy measures on board ships.

3. The subject of armed security guards has been deliberated in International Maritime Organization (IMO) and also in meetings of Contact Group on Piracy off the Coast of Somalia (CGPCS). Several States agree to deployment of armed guards on their ships, however, there is also serious concerns being raised which essentially focus on,

3.1 military personnel as against private security guards and the possible infiltration of ‘non-state actors’

3.2 the possibility of escalation of violence at sea,

3.3 issues of liabilities for injuries/deaths of innocent fishermen and seafarers

3.4 transit of merchant ships (with armed security guards) through territorial waters of a coastal state using right of ‘innocent passage’ granted under the provisions of United Nations Convention on the Laws of the Seas (UNCLOS), 1982, and,

3.5 the required facilitation by coastal states for embarking / disembarking of foreign security guards from hitherto unarmed merchant ships.

3.6 infringement of over-riding authority of the Master, mandated under the Regulation V/34-1 of the International Convention for Safety of Life at Sea (SOLAS)

4. Deployment of armed security guards on merchant ships does change the very paradigm of a merchant ship which is granted a liberty to transit the territorial waters of any state under the concept of “innocent passage”. Further, a merchant ship arriving with weapons on board, in a commercial port of a coastal state, would also invoke concern for customs, police and other security agencies tasked with law enforcement and coastal security. Therefore, IMO has left the decision to the concerned flag states. Several flag administrations have generally left to ship-owners to examine their risk assessments and take appropriate measures including deployment of armed security guards from private agencies. Subsequently, IMO has also issued interim guidance on deployment of armed security guards through MSC.1/Circ. 1405 and 1406 both dated 23/5/2011.

5. The subject has been deliberated at length in the Ministry of Shipping and it is noted that decision to employ armed security guards is complex one and whilst not endorsing the use of armed guards on merchant ships, given the present serious danger to shipping from the pirates, the Indian ship owners may deploy armed security guards, subject to their risk assessment particularly for ships which bear slow speed and have low freeboard, and in pursuance of section 86 “Transit and transshipment of stores” 77-“Declaration by owner of baggage” and 80-Temporary Detention of Baggage of Customs Act 1962 and section 45 A of the Indian Arms Act 1959. The following guidelines are issued in this regard:

## **6 Criteria for engaging Private Maritime Security Company (PMSC)**

### **6.1 General**

It is imperative that while considering contracting a PMSC to deploy their security guards on board Indian ships, due diligence is undertaken on following issues which are investigated and enquired upon;

- .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. International Organisation for Standardization (ISO) accreditation.

### **6.2 PMSC Background information**

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

- .1 maritime (as opposed to land-based) experiences.
- .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 anti-piracy measures as outlined in notices issued by DG Shipping and the industry Best Management Practices for ship protection measures.
- .8 access to legal advices (e.g. in-house counsel / external legal advisors) on a 24 x 7 basis.

### **6.3 Selection and vetting of PMSC**

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 system for provision of security identity documentation, travel documents and visas.

### **6.4 Training of Privately Contracted Armed Security Personnel (PCASP)**

Given the very peculiar nature of duties by armed security guards on board merchant ships trading in international waters, it is essential that ship owners should verify that PMSC have adequate training procedures in place. Therefore, 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, armed security guards should have received, as a minimum, ship-board familiarization training;
- .3 personnel trained and qualified to documented company standards in the appropriate use of force 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 references to the vessel type, where that vessel will be trading, and the provisions of the International Ship and Port Facility Security (ISPS) Code, and the industry Best Management Practices for anti-piracy measures.

### **6.5 Service provision considerations**

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.

### **6.5.1 Shipowners insurance cover**

Liabilities, losses and expenses arising out of deployment of Private armed security guards may impact the shipowners insurance cover. Therefore it is strongly recommended that shipowners consult their insurers prior to deploying private armed security guards on their ships.

### **6.5.2 PMSC insurance cover**

PMSC should provide evidence that they hold and will continue to hold valid insurance cover:

- .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 firearm 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 use of firearms.

### **6.6 Armed Security Guards team size, composition and equipment**

Though ideal team size would be 5 persons, the composition could include 4 security guards and one team leader and one of the team members as certified team medic (medical personnel). The following factors should be discussed between the PMSC and the shipowner.

- .1 **Size of the security team-** This would depend upon issues such as estimated time of the vessel transit, latest threat assessment, whether duties also include keeping additional look out duties and assisting the ship's crew in rigging/unrigging ship protection measures and the size and the of the vessel.
- .2 **Ship safety certificate** – The number of persons (including the team of security guards) on board the vessel is not to exceed, anytime, the maximum number for which the vessel is certified as per her Safety Certificate.
- .3 **Equipment** – This would be as per the requirements discussed between the shipowner and PMSC and commensurate with the risk assessment.

### **6.7 Command and control of onboard security team:**

6.7.1 Shipowner when entering into contract with the PMSC, should ensure that command and control structure with the Master/ship's officers and the armed security guards team is clearly defined and documented. In order to provide clarity, the documented command and control structures should provide inter-alia;

- .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, *iter alia*, covering procedure in the following paragraphs which include procedures for conducting exercise based on these procedures;
- .3 A documented list of duties, expected conduct, behavior and documentation of actions of armed security guards on board;
- .4 Transparent two-way information flow and recognizable coordination and cooperation between the shipowner, charterer, team of security guards on board, PMSC and vessel's Master, officers and crew.

#### 6.7.2 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 routing, amending same if required, and under the ship's contractual arrangements;
- .2 Monitoring the daily activities of the onboard team of security guards;
- .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 security guards team on board the ship.
- .5 Providing for effective monitoring and shore based support for on board security guard team. Shore based support should also need to develop liaison through United Kingdom Maritime Trade Operations (UKMTO) and Maritime Security Centre Horn of Africa (MSCHOA).
- .6 On board, the ship's crew would need to be trained along with the security personnel to undertake counter piracy measures. This would be necessary so that command and control during an actual live operational situation where security guards may have to open fire to ward off the pirates, are clearly understood and practiced, keeping in view the unquestionable legal authority the Master of the vessel over his ships and its crew including the security guards.

### **6.8 Management of Firearms and Ammunitions from Embarkation to Disembarkation**

It is essential that armed security guard team onboard is able to demonstrate responsible management and use of weapons and ammunition at all times when on board.

The following issues should be included while conducting verification audit of PMSC:

- .1 Documented compliance with national, coastal and port state legislation and relationship 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 armed security guard team is on board. The on board team 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 the make, model, caliber and serial number of all firearms; and details of ammunition and amount)

.4 Control procedures for separate and secure onboard stowage in a 'strong room' and deployment of firearms, ammunition and security equipment as per **Annexure A** enclosed;

.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 PMSC contract, to ensure the highest of safety and operational capabilities for use of arms aboard the vessel; and

.7 The inventory should be reconciled on disembarkation of all arms and ammunition from the vessel.

## **6.9 Rules for use of force**

It is essential that armed security guards team on board have a complete understanding of the rules for the use of force as agreed between shipowner, PMSC and the Master and fully comply with them. The on board armed guard team 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 responsible 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 severity of threat and actual situation at hand at the material point of time.

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 preparation of a particularly serious crime involving grave threat to life.

## **6.10 Reporting and Record keeping**

The Master should maintain a log of every circumstances 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.

In the event, it becomes necessary to use force by the armed security guard team, the team leader should be advised to photograph(if appropriate), log, report and collate 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 onboard team should submit a full report to the shipowner and the flag administration, giving full details of the deployment, operational matters, any training and /or ship hardening conducted, and offering advice as to any other enhancements to security that may be considered.

**6.11** A PMSC along with the shipowner should make arrangements with coastal state to embark & disembark security guards with their weapons. Suitable permission from coastal state may be obtained by concerned ship-owners for their ships to call at foreign ports and for transiting through their coastal waters while such armed guards are onboard their ships.

## **7 Transit of armed merchant ships through Indian Exclusive Economic Zone (EEZ)**

**7.1** While several navies concentrate on protecting the trade route through Gulf of Aden, pirates have changed their tactics by using hijacked ships as ‘mother ships’, away from Gulf of Aden resulting into the ‘map’ of piracy incidents cluttering the expanse of Arabian sea. This has resulted in ships charting their course more closer to the Indian coast line, as against taking a more direct route across the Arabian sea and hence account for -quantum jump on shipping traffic in the India EEZ and even within Indian territorial waters. Substantial increase in number of ships transiting through Indian EEZ/territorial waters and proliferation of private security agency offering services of security guards (use of non-state actors in the guise of security guards), particularly in view of the fact that deployment of armed guards on board, appears to be the only effective deterrent, consequently increases the security concern for India.

Indian EEZ and the territorial waters are regulated through Maritime Zones Act of India, 1976.

**7.2** Considering that the right of ‘innocent passage’ to merchant ships can not be summarily withdrawn, it is imperative that measures are initiated to ensure due notification about carriage of weapons/ammunition or armed security guards is received from all ships within Indian EEZ and Indian Search and Rescue Region (ISRR).

Therefore it is essential that following information is provided in this context;

**7.3 All Indian vessels when visiting Indian ports** shall provide the following information to the jurisdictional port authority, customs and regional coast guard authority and Indian Navy, 96 hours prior to their arrival, with their Pre Arrival Notification for Security (PANS);

- .1 Names, addresses and details of identification cards and passports of the security personnel.
- .2 Number and details (Make, Model, bore, caliber, serial number etc.) of firearms and ammunition.
- .3 Details of license issued or accepted by the jurisdictional national administration where the PMSC is registered.

**7.4 All Indian vessels, when visiting foreign ports / waters** shall be required to comply with the concerned regulations/requirements of the coastal states concerned.

**7.5 Foreign merchant vessels visiting Indian ports with armed security guards:**

.1 All armed security guards are required to be in possession of valid arms licenses issued by the flag administration of the vessel.

.2 Where a private security company has been engaged by a ship owner to provide armed guards, such a private security company shall be in possession of a valid license issued by the flag administration of the country.

.3 All foreign vessels visiting Indian ports are required to secure their firearms and ammunition in a guarded/secured 'strong room' when entering Indian territorial waters.

.4 All foreign vessels are required to follow the reporting and declaration requirements as stipulated under para 7.3.

**7.6 Merchant vessels transiting Indian waters with armed security guards**

7.6.1 All merchant vessels transiting through Indian EEZ and carrying armed guards are required to provide the information contained under para 7.3 to the Coast Guard and Indian Navy.

**7.7 Facilitation to allow embarking / disembarking of armed security guards in Indian ports**

Armed security guards when embarking or disembarking at any Indian port, would be required to provide information contained in paras 7.3.1 to 7.3.3 herein before to the jurisdictional immigration and custom authorities and fully comply with the all other applicable customs and other regulatory / statutory requirements.

These guidelines are subject to modifications by DG(Shipping) as and when felt necessary.

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Annexure-A  
(Para 6.8)

- (a) The strong room should have metallic bulkheads and there should not be any porthole/window.
- (b) The strong room should have a secure door.
- (c) Strong room door must have inbuilt lock with an additional arrangement for a padlock.
- (d) The stowage racks for the small arms must have a chain securing arrangement.
- (e) All keys must be numbered and in duplicate. An access control log for the keys and the strong room must be maintained. The list of personnel authorized access must be cleared by the master of the vessel in addition to the company.
- (f) A log of entry or arms and the personnel authorized to do so, must be maintained.
- (g) If feasible the ammunition must be stowed in a separate compartment/separate locked arrangements.
- (h) No other stores should be kept in the strong room.
- (i) The temperature in respect of fixed small arms ammunition must be below 49 deg Celsius. Towards this a temperature measuring arrangement and regular inspection procedure should be instituted.
- (j) No naked electric wire/cable to pass through the strong room. If unavoidable suitable insulation to be provided. Switches for all electric point to be located outside the strong room. All bulbs to be sheathed/ covered.

The above recommendations may however be supplemented by other precautions/additional safety measures as dictated by the particular circumstances of a case or as deemed appropriate by the shipowners/master.