

**INDUSTRY GUIDELINES FOR THE USE OF PRIVATE MARITIME
SECURITY CONTRACTORS (PMSC) AS ADDITIONAL PROTECTION IN
WATERS AFFECTED BY SOMALI PIRACY
(May 2011)**

Key Principles:

- Industry is strongly opposed to the arming of seafarers.
- Industry considers that it is the responsibility of Governments to ensure the freedom of Navigation on the high seas and to protect the right of innocent passage.
- Industry recognises it has a responsibility for self-protection using non-lethal means as an essential part of compliance with Best Management Practices (BMP).
- Subject to risk analysis, careful planning and agreements Industry believes the provision of Military Vessel Protection Detachments (VPDs) deployed to protect vulnerable merchant ships is the preferred option when considering armed guards.
- Industry believes that the use, or not, of armed Private Maritime Security Contractors (PMSCs) onboard merchant ships has to be a matter for individual ship operators to decide following their own voyage risk assessment. Industry does not however endorse nor recommend the general use of armed PMSCs.

Content

**Industry Guidelines for the Use Private Maritime Security Contractors as
Additional Protection in Waters Affected by Somali Piracy. (May 2011)**

A. Annex A – Glossary of Terms and Abbreviations.

Guidelines

**The undersigned organisations have developed and produced these
guidelines for their members:**

BIMCO, ICS, INTERCARGO, INTERTANKO, OCIMF, IG P&I Clubs.

1. Introduction

In the prevailing unique circumstances that apply in the case of Somali-based piracy there are occasions when companies may wish to consider placing armed guards on board their ships. These guidelines do not endorse use of armed PMSCs. The decision to use armed PMSCs, within the High

Risk Area defined in Industry Best Management Practices, is a decision for the individual Shipping Company after a thorough Risk Assessment. It should be borne in mind that such use does not alone provide effective security. Hence, if armed PMSCs are to be used, then they must be viewed as a layer of protection in addition to Industry BMP.

The purpose of these Guidelines is to provide guidance for shipping companies if the company decides to engage PMSCs, or to provide additional protection against piracy and/or armed attack. Maritime Security provision is commercially available in several forms, including both armed and unarmed PMSC personnel.

2. PMSC Selection Criteria

With the increase in attacks from, and an expansion of the area of operation of Somali based pirates, there has been a corresponding and noticeable increase in the number of PMSCs offering maritime security services to the shipping industry.

There is significant concern within the shipping industry about the competency of some security contractors and in particular concern that they do not have the relevant experience to provide effective protection when operating unsupported in the maritime environment.

Currently there is no international regulation or accepted code of conduct for Maritime Security providers, and therefore there is no standard accepted Practice for Private Security Contractors in the maritime environment. To this end it is essential that companies exercise very careful due diligence and that this is undertaken in full awareness that there is a large degree of variance of quality and competency within PMSCs

2.1 General

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

- Company structure and place of registration
- Company ownership
- Financial position (e.g. Annual accounts/Bank reference)
- Extent of insurance cover (in particular covering Third Party risks)
- Senior management experience
- Quality management Indicators – e.g. ISO accreditation

2.2 PMSC Background Information

To assess the capability of the PMSC to carry out a proposed task it will be necessary to undertake thorough enquiries regarding the prospective PMSC, particularly in the absence of a robust accreditation scheme for PMSCs.

Assessments should be made of the level of relevant experience and knowledge in providing security teams for a vessel transit. Relevant questions might include:

- Does the PMSC have relevant maritime (as opposed to land based) experience?
- Does the PMSC have a sound understanding of Flag State, Port State and Coastal State requirements with respect to weapons?
- Can the PMSC provide testimonials/references from previous clients in the Shipping Industry?
- If the PMSC is offering armed security provision, is there documentary evidence that arms are procured, transported, embarked and disembarked legally?
- Does the PMSC have a sound understanding of the Somali based piracy threat, and the means to maintain current knowledge?
- Does the PMSC have a sound understanding of Best Management Practices, and in particular Ship Protection Measures?
- Which Flag States does the PMSC have experience of working with?
- There is no specific Code of Conduct governing the Maritime Security Industry. How does the PMSC implement the relevant Guidance contained in the following generic Codes for the Security Industry which include:
 - (1) ICOC - PSSP
 - (2) The Voluntary Principles
 - (3) UN Basic Principles on the Use of Force & Firearms by Law Enforcement Officials (1990)

2.3 PMSC Understanding of International Legal Context

- Does the PMSC demonstrate a sound understanding of the relevant sections of the following International Conventions:-
 - (1) UNCLOS
 - (2) SUA
 - (3) SOLAS including ISPS Code
- How does the PMSC obtain legal advice (e.g. In house counsel / External legal advisers)?

2.4 Selection and Vetting of PMSCs Personnel

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 PMSC personnel team, the quality of the selection and vetting of that team is essential. The vetting criteria might include:

- A criminal background check
- A history of employment check
- A military background check where applicable
- An assessment of medical, physical, and mental fitness for the proposed duration of the deployment
- Can the PMSC show that they have verifiable Internal Policies and Procedures for determining suitability of their employees?

- Does the PMSC have a verifiable system in place to ensure continued suitability for employment of their personnel? If armed PMSC personnel are to be involved then relevant experience and certification in the use of the weapons to be deployed should be verified.

2.5 Training of PMSC Personnel

The quality of professional training given to PMSC personnel is of extreme importance. Training considerations might include:

- Are comprehensive and detailed records of training, both initial and refresher training, kept and available for inspection?
- Are the PMSC personnel suitably qualified to operate in a marine environment? (e.g. Do they have Sea Survival and Marine Fire Fighting training to a recognised standard?)
- Are the PMSC personnel trained to operate safely on the different vessel types that they may be deployed aboard?
- Are the PMSC personnel trained to operate the equipment and, where armed, the specific weapons' types that will be used, on the vessels that they may be deployed aboard?
- Are the PMSC personnel trained in the appropriate Use of Force following recognised principles/guidelines (e.g. *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)*)?
- Are the PMSC personnel given medical training to a recognised international standard?
- Are the PMSC personnel given appropriate training and/or briefing with specific reference to the vessel type and where that vessel will be trading, including:-
 - Pirate Action Group operations, tactics and behaviours?
 - Industry Best Management Practices, in particular Ship Self Protection Measures?
 - The relevant provisions of the Shipboard Security Plan (SSP) and the differing Security Levels?
 - Vessels Emergency Procedures and Contingency Plans?
- Does the training regime in place and the records of that training give confidence that the PMSC personnel have been provided with appropriate knowledge and skills to ensure that all Teams employed from the same PMSC across the Shipping Company's Fleet will receive a uniform level of professionalism and service?

3. Service Provision Considerations

3.1 Flag State and Nation State Jurisdiction Considerations

It is strongly suggested that at the earliest opportunity the PMSC provides a detailed plan of its proposed Security Team deployment to the Flag State to ensure compliance with the Flag State requirements, if any such requirements exist, inter alia:

- Most Flag States have strict requirements regarding the carriage of arms on vessels flying their flag including the individual licensing of personnel who may carry arms and the licensing of individual firearms.

- Some Flag States have limitations of the type of weapons that may be carried onboard (e.g. some Flag States do not allow the use of fully automatic weapons).
- Does the PMSC fully understand challenges and complexities of legally transporting (on land, in ports, at sea) embarking / disembarking firearms and ammunition onto and off a merchant vessel?
- Does the PMSC understand the concept of the "right of innocent passage" in territorial waters and how this might be compromised as opposed to the freedom of navigation on the high seas?

3.2 Insurance

Owners should ensure that PMSCs maintain insurance cover for themselves and their personnel and that the PMSC terms of engagement do not prejudice or potentially prejudice the ship owners' insurance cover.

PMSC insurance cover

PMSCs should provide and maintain for itself and its personnel:

- Public and employers liability insurance cover to an appropriate level; it is unlikely this would be less than US\$ 5 million.
- Personal accident, medical expenses, hospitalization and repatriation insurance.

Ship owners insurance cover

Liabilities, losses and expenses arising out of the deployment of armed PMSC personnel may impact on the ship owners property and liability insurance cover. Shipowners are strongly recommended to consult with their insurers prior to contracting with and embarking armed PMSC personnel to assess the potential impact on their insurance cover.

3.3 Embarked Security Team Size, Composition and Equipment

The size, composition and equipment of the proposed embarked Security Team should be carefully discussed and agreed as necessary with the PMSC. Factors for consideration might include:

- **Size of the Onboard Security Team** – this will be influenced by factors including, length of the estimated time of the vessel transit, latest threat assessment, the agreed duties of the Security Team (will they act as additional lookouts, assist with rigging Self Protection Measures?) and size and type of vessel. It is unlikely that risk analysis will indicate the team should comprise less than 4 personnel.
- **Composition** - it is important that there is an appropriate hierarchy, experience and skill mix within the onboard PMSC personnel. 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 PMSC personnel be qualified as the team medic.
- **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 Security Team, (Will they act as additional lookouts - day & night vision equipment - assist with rigging Self Protection Measures?) and the size and type of vessel. It is important that

the correct Personal Protective Equipment is available for all of the team including specialist ballistic protection clothing if the Security Team is armed. An enhanced medical is recommended.

- **Note - Ships Articles; All Security Teams should be expected to sign on the Ships Articles but Flag State will determine the requirements.**

3.4 Command & Control of Onboard Security Team – including Relationship with the Master

A pre requisite for a Ship Operator when entering into a contract with a PMSC is that the command and control structure linking the Ship Operator, the Master, and the PMSC Security Team leader has been clearly defined, documented and discussed by the relevant parties so that no doubt or ambiguity exists.

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

- A clear statement that at all times the Master remains the ultimate Authority on board, and retains the overriding responsibility for the navigation and safety of the vessel, its crew and cargo.
- A clearly defined set of vessel and voyage specific Operational Instructions.
- Clearly defined Rules for the Use of Force (see Section 3.5) written in an unambiguous form using terms that are understood by all involved.
- Clearly defined instructions governing the safe stowage, handling and management of any weapons on board.
- Clearly defined list of duties, expected conduct and behaviour of PMSC personnel on board.
- An effective command and control structure will provide transparent information flow and recognisable coordination and cooperation between the Ship Owner, Charterer, PMSC, PMSC Security Team and the master and crew.

Factors to determine such success may include:

- 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.
- Monitoring the daily activities of the onboard PMSC Security Team
- Having a 24 hour Emergency Response and a Contingency Plan in place covering all potential actions.
- Providing feedback on crew training and ship hardening requirements based upon reports received from the PMSC Security Team.

3.5 Management of Weapons and Ammunition from Embarkation to Disembarkation

An essential requirement of the PMSC Security Team will be to demonstrate responsible Management of Weapons and Ammunition at all times when on board.

Issues to be considered should include:

- Documented compliance with the relevant legislation governing the transport and provision of weapons and ammunition to the point of embarkation or ports/places at which the vessel may call as part of its intended voyage whilst the PMSC team is on board. PMSC personnel must be able to prove that actual inventory carried matches all documented declarations.
- At the point of transfer to the ship are weapons and ammunition in appropriate containers?

- Is there a complete inventory of all arms and ammunition available for checking upon arrival? (Inventory must detail make model calibre and serial number of all weapons and details of ammunition and amount).
- Onboard weapons' stowage and deployment.
- Areas where weapons 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 must be confirmed.
- Detailed orders for when weapons can be loaded and "made ready" for use must be confirmed. .
- The inventory must be reconciled on disembarkation of all arms and ammunition from the vessel.

3.6 Rules for the Use of Force

It is essential that all PMSC personnel have a complete understanding of the rules for the Use of Force as agreed between Ship Owner, PMSC and Master and fully comply with them.

- Does the PMSC provide a detailed graduated response plan to a pirate attack?
- Does the PMSC response plan differentiate between hostile intent and hostile act?
- Are PMSC personnel fully aware that their primary function is the prevention of boarding using the minimal force necessary to do so?
- Do PMSC personnel have a sound understanding of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)?

3.7 Reporting and Record Keeping.

As a matter of good practice the ship operator and Master should maintain a log of every circumstance in which weapons 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. It is a requirement of many Flag States under both the ISM and ISPS Code. Company requirements will also need to be complied with.

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

- Time and location of the incident
- Details of events leading up to the incident
- The identity, and details of personnel involved in the incident
- Details of the incident
- 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

In addition to incident reporting it is suggested that following a tour of duty the Onboard PMSC Security Team should submit a full report to the Shipping 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.

Conclusions

The decision on the employment of a PMSC is a complex one for a ship owner. The absence of applicable regulation or industry self-regulation coupled with complex legal requirements governing the legitimate, transport, carriage and use of arms is regrettable. This situation is further complicated by the rapid growth in the number of maritime security industry companies 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.

In order to make an informed decision a thorough and properly conducted risk assessment is essential. The risk assessment should thoroughly explore whether all practical means of self protection have already been effectively implemented in advance of considering PMSC employment as an additional measure. Applying effective due diligence in contractor selection is essential if there is to be reasonable confidence that the service provided in practice is equal to the expectations.

These Guidelines will be reviewed and updated by the supporting Industry organisations.

Annex A - Glossary of Terms and Abbreviations

PMSC - Private Maritime Security Contractor:

Private Contractors employed to provide Security Personnel, both armed and unarmed, to serve onboard ships to protect them against piracy / armed attack.

VPD - Vessel Protection Detachment

A Military detachment provided by States to provide Armed Security on board ships to protect against piracy / armed attacks acting under formal Rules of Engagement.

ICOC – PSSP

The International Code of Conduct for Private Security Service Providers (2010)

This Code builds upon the Montreux Document and is the result of an active collaboration of members of the private security industry along with the Swiss Department of Foreign Affairs, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Geneva Academy of International Humanitarian Law and Human Rights (ADH) to support the development of a Global Code of Conduct that lays down international industry norms and standards for the provision of private security services.

Signatory Companies affirm that they have a responsibility to respect the human rights of, and fulfil humanitarian responsibilities towards, all those affected by their business activities, including Personnel, Clients, suppliers, shareholders, and the population of the area in which services are provided. The Signatory Companies also recognise the importance of respecting the various cultures encountered in their work, as well as the individuals they come into contact with as a result of those activities.

Montreux Document

On pertinent legal obligations and good practices for States related to operations of private military and security companies during armed conflict.

The Montreux Document is the result of an international process launched by the Government of Switzerland and the ICRC. It is an intergovernmental document intended to promote respect for international humanitarian law and human rights law whenever private military and security companies are present in armed conflicts.

SAMI

Security Association for the Maritime Industry (2011)

The Security Association for the Maritime Industry (SAMI) provides an independent regulatory trade association for maritime security companies. The Association introduces a level of regulatory discipline and scrutiny to ensure that the maritime industry can easily identify reputable maritime security companies. SAMI endeavours to provide reassurance and guidance, where none has existed before and establishes the benchmark for standards within the industry. SAMI as a Non Governmental Organisation, (NGO), represents the industry at an international level.

Voluntary Principles

Governments of the United States, the United Kingdom, the Netherlands and Norway, Energy & Mining companies in the extractive and energy NGOs agreed voluntary set of principles on Security and Human Rights.

The Voluntary Principles on Security and Human Rights are a set of non-binding principles developed in 2000 to address the issue of balancing safety needs while respecting human rights and fundamental freedoms. The Voluntary Principles are seen as genuinely filling a critical void for companies seeking guidance about managing potential exposure to risks related to their security and human rights practices, especially in countries that are often associated with conflict or alleged abuses. The Principles also provide guidance for companies on identifying human rights and security risk, as well as engaging and collaborating with state and private security forces. The principles were developed through multi-stakeholder participation from governments, extractive industry and NGOs.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)

Adopted in 1990, during the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, these principles set up a series of human rights standards regarding the use of force and firearms by law enforcement officials. They function as the global standards for police agencies worldwide, although they are not enforceable in law.