



Flag State Administration Advisory No. 2012-06

Series of 2012

TO : All Shipping Companies/Ship Owners/Ship Operators/Charterers of
Philippine-flagged Ships Operating in International Waters

SUBJECT : **EMPLOYMENT OF PRIVATELY CONTRACTED ARMED SECURITY
PERSONNEL ONBOARD PHILIPPINE-REGISTERED SHIPS TRANSITING
THE HIGH RISK AREA IN INTERNATIONAL WATERS**

Reference is made to the following Circulars of the International Maritime Organization (IMO) and its endorsed Recommended Best Practices:

1. Maritime Safety Circular (MSC) Nos. 1333, 1334, 1405, 1406 and 1408, with the subsequent amendments;
2. The current version of the Best Management Practices to Deter Piracy (BMP); and,
3. MARINA MC Nos. 169 and 182.

I. OBJECTIVE

To provide Advisory on the existence of cited circulars and recommended actions regarding the employment of Privately Contracted Armed Security Personnel (PCASP) onboard Philippine-registered ships transiting the High Risk Area in international waters.

II. COVERAGE

This Advisory covers Philippine-registered ships with PCASP onboard in transit in the High Risk Area in international waters.

III. INTERPRETATION

Notwithstanding the provisions of VII and VIII of this Advisory, this Advisory is not a policy of the Administration to employ PCASP on board Philippine registered ships.

IV. DEFINITION OF TERMS

1. Administration– refers to the Maritime Industry Authority.
2. Private Maritime Security Companies (PMSC) – Private contractors employed to provide security personnel, both armed and unarmed, onboard for protection against piracy.

3. Privately Contracted Armed Security Personnel (PCASP) – armed employees of PMSC.
4. High Risk Area - an area defined under the current version of the BMP .
5. Piracy Attack – refers to any of the following:
 - 5.1. The use of violence against the ship or its personnel, or any attempt to use violence;
 - 5.2. Attempt to board the ship where the Master suspects the persons are pirates;
 - 5.3. An actual boarding whether successful in gaining control of the ship or not; and
 - 5.4. Attempts to overcome the ship's self protection measures by the use of ladders, grappling hooks; and weapons deliberately used against or at the ship.

V. GENERAL PROVISIONS

1. The agreement between the shipowner and the PMSC shall be considered by the Administration as a private contract between the private parties involved.
2. The PCASP on board can be considered as supernumerary on the ground that the definition of supernumerary found in MARINA Circular 182 can encompass PCASP in the manner that supernumerary and PCASP on board are necessary for a limited period of service engagement on board a specified Philippine-registered ship without having to intervene on its control, management and navigation.
3. The use of PCASP shall serve only as an appropriate measure to augment the security arrangements already in place onboard Philippine-registered ships transiting the High Risk Area.
4. The use of PCASP onboard Philippine-registered ships should be in accordance with the existing instruments and guidelines developed by the International Maritime Organization, including the Best Management Practices in preventing and suppressing acts of piracy.
5. The use of PCASP should not be considered as an alternative, but in addition to Best Management Practices (BMP) and other protective measures to suppress and deter piracy attack.

VI. SPECIFIC PROVISIONS

1. The shipping company shall inform the MARINA of its ship's itinerary. Such itinerary shall be communicated by the MARINA to relevant Flag State Administrations.

2. The shipowner/charterer should have conducted a thorough risk assessment and have employed all other practical means of self protection against piracy prior to making the determination to use PCASP onboard Philippine-registered ships that will transit the High Risk Area. The risk assessment may include the following:
 - 2.1. vessel and crew security, safety and protection;
 - 2.2. whether all practical means of self protection have been effectively implemented in advance;
 - 2.3. the potential misuse of firearms resulting in bodily injury or death;
 - 2.4. the potential for unforeseen accidents;
 - 2.5. liability issues;
 - 2.6. the potential for escalation of the situation at hand; and
 - 2.7. Compliance with international and national law.
3. The shipowners, charterers, ship managers and crew shall have determined compliance with all the relevant requirements of other flag, port and coastal States on the use of PCASP.
4. In selecting the Private Maritime Security Companies (PMSC) which will provide the PCASP team onboard Philippine-registered ships, where foreign PMSC and Filipino PMSC have the same qualifications, preference in the selection may be given the Filipino PMSC to facilitate communication and in the enforcement of Philippine laws, the shipowner/charterer should have undertaken the following considerations:
 - 4.1. due diligence in selecting the PMSC;
 - 4.2. thorough inquiry on the prospective PMSC to assess their capability in providing security personnel onboard the ship;
 - 4.3. ensure that the PMSC can demonstrate verifiable, written internal policies and procedures for determining suitability of their employees;
 - 4.4. verify that the PMSC have adequate training procedures in place and that the records of training should give confidence that the PCASP have been provided with appropriate knowledge and skills;
 - 4.5. verify that PMSC maintain insurance cover for themselves, their personnel and third-party liability cover and the PMSC terms of engagement do not prejudice or potentially prejudice the shipowners/charterers' insurance cover;
 - 4.6. Consult with their insurers prior to contracting with and embarking PCASP to assess the potential impact of their insurance cover, particularly as it relates to armed engagements and liability insurance held by the PMSC.
 - 4.7. carefully discuss and agree as necessary with the PMSC, the following factors:

- 4.7.1. **Size of the PCASP Team** – this can be influenced by factors including: length of the estimated time of the vessel transit, latest threat assessment, the agreed duties of the PCASP team (will they act as additional lookouts, assist with rigging self protection measures?) and the size and type of vessel. 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.
 - 4.7.2. **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.
 - 4.7.3. **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 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.
 - 4.7.4. **Equipment requirements** - this will be influenced by factors including: length of the estimated time of the vessel 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 vessel. Enhanced medical equipment is recommended.
 - 4.7.5. **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.
5. The shipowner/charterer should have ensured that the command and control structure linking the ship operator, the Master, the ship's officers and the PCASP team leader had been clearly defined and documented. Further, prior to boarding the PCASP, the shipowner/charterer 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 High Risk Area. The documented command and control structure should provide the following:
 - 5.1. A clear statement that at all times the Master remains in command and retains the overriding authority onboard;
 - 5.2. A clearly documented set of vessel and voyage-specific governance procedures, *inter alia*, covering procedures in Management of Firearms and Ammunition from Embarkation to Disembarkation, Rules for the Use

of Force and Reporting and Record Keeping which include procedures for conducting exercises based on these procedures;

- 5.3. A documented list of duties, expected conduct, behavior and documentation of PCASP actions on board; and
- 5.4. Transparent two-way information flow and recognizable coordination and cooperation between the shipowner, charterer, PCASP, PMSC and the Master, officers and crew onboard.
6. The shipowner/charterer should ensure that the PCASP team will be able to demonstrate responsible management and use of weapons and ammunition at all times when onboard. The issues may include the following:
 - 6.1 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 ship may call as part of its intended voyage whilst the PCASP team is on onboard. PCASP team should be able to prove that actual inventory carried matches all documented declarations.
 - 6.2 Appropriate containers for firearms, ammunition and security equipment at the point of transfer to the ship.
 - 6.3 Documented standards and procedures for a complete inventory of all firearms, ammunition and security equipment available upon arrival aboard the ship. (Inventory should detail license, make, model, caliber and serial number of all firearms, and details of ammunition and quantity.
 - 6.4 Control procedures for separate and secure onboard stowage and deployment of firearms, ammunition and security equipment.
 - 6.5 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.
 - 6.6 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 PCASP contract, to ensure the highest of safety and operational capabilities for use of arms onboard the ship; and
 - 6.7 The inventory should be reconciled on disembarkation of all firearms and ammunition from the ship.
7. The shipowner/charterer should have required the PCASP a detailed response plan to a pirate attack as part of its teams’ operational procedures to ensure that all PCASP have a complete understanding of the rules for the use of force (Rules of Engagement) as agreed among the shipowner, the PMSC and the

Master. The set of rules for the use of force while intended to protect the lives and property onboard Philippine flag ships, it is also primarily intended to chase the pirates away from the ship.

8. The shipowner/charterer should ensure that the PCASP should not use firearms against persons except in self defense or defense 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. The use of firearms may also include defense of property or cargo or of the ship itself. It may include and cover any and all pre-emptive action to prevent any direct act of piracy made by pirates. It may not be limited to retaliatory action or after being fired upon.
9. The shipowner/charterer should require the PCASP team to submit to him a full report via their employers giving full details of the deployment, operational matters, any training and/or ship hardening conducted.
10. The ship shall have sufficient life-saving appliance to accommodate the number of PCASP onboard for the period being requested by the applicant-company.
11. The shipowner/charterer should ensure that the PCASP shall have appropriate accommodation during employment onboard the Philippine-registered ship.
12. The shipowners/charterers should ensure that the Master and the crew receive familiarization in relation to the Interim guidance on the use of PCASP onboard ships in the High Risk Area.

VII. DOCUMENTARY REQUIREMENTS

In addition to the documentary requirements specified under MARINA MC 169, the applicant-company shall submit to the Administration the following documents in support of the application:

1. Letter of Intent, indicating the purpose, route and the period of employment of the PCASP;
2. Qualifications of the PMSC;
3. Copy of the Agreement between the PMSC and the shipowner/charterer/ship manager of the ship;
4. Copy of the Rules of Engagement to be adopted by the PCASP;
5. Credentials and qualifications of the PCASP;
6. Copy of the valid Passport of the PCASP; and,
7. Copy of the Risk Assessment made by the shipowner/charterer applying under this Circular.

VIII. PROCEDURAL REQUIREMENTS

1. The applicant shall submit to MARINA a letter request, together with the documents.
2. A filing fee shall be paid prior to official acceptance of the request from the applicant.
3. The MARINA shall issue a letter-approval or a letter of denial to the applicant company after careful evaluation has been performed.

IX. REPORTORIAL REQUIREMENT

1. The applicant-company should submit to MARINA a certified true copy of a document stipulating the date of embarkation and estimated date of disembarkation of PCASP within fifteen (15) days from the date of disembarkation.
2. The shipowner/operator should submit to MARINA a formal report within fifteen (15) days from the event that the PCASP uses force against suspected pirates, in which firearms are discharged, whether accidental or deliberate.
3. The shipowner/charterer should ensure that the Master should maintain a log of every circumstance in which firearms are discharged, whether accidental or deliberate in order to produce a formal written record of the incident which includes the following:
 - 3.1. Time and location of the incident;
 - 3.2. Details of events leading up to the incident;
 - 3.3. Written statements by all witnesses and those involved from the ship crew and security team in the incident;
 - 3.4. The identity and details of personnel involved in the incident;
 - 3.5. Details of the incident;
 - 3.6. Injuries and/or material damage sustained during the incident; and
 - 3.7. Lessons learned from the incident and, where applicable, recommended procedures to prevent a recurrence of the incident.
4. The shipowner/charterer should require the PCASP team leaders, in the event the PCASP uses force, to log, report and collate contemporaneous statements from all persons present at the incident in anticipation of legal proceedings.

X. EFFECTIVITY CLAUSE

This Advisory shall take effect immediately following its publication once in a newspaper of general circulation in the Philippines.

(Signed) EMERSON M. LORENZO, CESO V
Administrator

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AFL/ARE/NSA/PSC