

In its previous Member Alerts, the Club has considered issues of piracy and the use of armed guards aboard vessels transiting high risk areas. This Alert serves as an update on the latest guidance issued by the IMO on these issues.

The IMO first issued interim recommendations to Flag States and to Owners, Operators and Masters in May 2011. These recommendations were updated by way of revised Circulars issued on 16 September 2011. Also on that date, the IMO published for the first time a Circular containing interim recommendations for port and coastal states.

1. Interim Recommendations for Port and Coastal States : Circular MSC.1/Circ.1408

It has become increasingly clear recently that vessels in coastal, territorial waters are not necessarily safe from pirate attacks. In August 2011, for example, the “FAIRCHEM BOGEY” was hijacked whilst anchored off the coast of Oman. It is notable that armed guards had been deployed on board the vessel during her transit through high risk areas, but had disembarked when she anchored.

The IMO has recognised that the movement of armed guards and their equipment is affected by both national legislation and the policies of individual ports and coastal States. These States in turn have their own concerns about the presence of armed guards. The IMO therefore developed recommendations to reflect:

- (a) the need of Flag States, shipping companies and private security companies to know whether and under what conditions armed guards may embark or disembark a vessel in a particular port, and/or whether and under what conditions the use and storage of firearms and related equipment is permitted; and
- (b) the need of Owners, Masters and private security companies to know what requirements have to be complied with when a vessel carrying armed guards will be arriving in, staying at and departing from ports, anchorages etc under the jurisdiction of a particular port or coastal State.

The IMO has recommended that Governments, and in particular those of the coastal States bordering high risk areas, have in place policies and procedures which facilitate the movement of armed guards and their equipment. These policies and procedures should be made known to both shipping companies and private security companies.

The IMO goes on to recommend that, when developing such policies and procedures, Governments take into account (in relation to embarkation and disembarkation of armed guards, and vessels calling at ports):

- (a) requirements regarding notification of the presence of armed guards, firearms and related equipment;

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- (b) arrangements and requirements relating to the storage and control of firearms, both on shore and on board the vessel;
- (c) requirements regarding identification of the armed guards; and
- (d) requirements regarding documentation of Flag State authorization.

If the Governments of coastal States follow the IMO's recommendations, then it is likely that it will be easier for vessels carrying armed guards to call at ports located in such States, and indeed for the guards to embark and disembark at those ports.

From these recommendations Members can infer some guidance as to exactly what enquiries should be made of a port prior to a vessel arriving there with armed guards on board. It is suggested that enquiries are made well in advance of a vessel's arrival as to whether that particular port or State permits vessels with armed guards on board to call there, and if so whether there are any specific procedural requirements. This will ensure that the necessary notifications can be given (for example, as to whether guards will be boarding or disembarking the vessel) and arrangements made (for example, as regards storage of firearms).

The full text of the IMO Circular is available from the IMO website: www.imo.org/MediaCentre/HotTopics/piracy/Documents/1408.pdf

2. Revised Interim Recommendations for Owners, Operators and Masters: Circular MSC.1/Circ.1405/Rev.1

The original IMO Recommendations dealt with issues for Owners, Operators and Masters to consider when contemplating deploying armed guards. These included the criteria to take into account when choosing a security company, insurance considerations, issues of command and control on board the vessel, the management of firearms and rules for the use of force.

The amended Recommendations incorporate all of these points, as well as adding more details, including the following:

- (a) All references to firearms (for example in relation to licensing and restriction of use) are now specified to include all associated ammunition and equipment.
- (b) Guidance is given regarding the firearms to be used. When considering the firearms which the guards will use, Owners should take into account the provisions of the relevant Flag State legislation as well as the weaponry needed to provide an "accurate and graduated level of deterrence, at a distance". This emphasises the fact that when deploying armed guards, any use of force must be proportionate to the threat posed.
- (c) It is suggested that for all firearms used, the documentation provided by the security company should include a company end user certificate and proof of purchase.
- (d) Owners/Operators should refer to Flag State legislation in relation to the "categorization" of armed guards on board their vessels. Some Flag States categorise armed guards as crew or passengers, and some as supernumeraries. The precise categorisation will affect the guards' rights and Owners' obligations under the law of the relevant Flag State.
- (e) The Master should report to the appropriate military authorities when a vessel carrying armed guards and related equipment is transiting, or intends to transit, a high risk area.

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The full text of the revised IMO Circular is available on the IMO website:
www.imo.org/MediaCentre/HotTopics/piracy/Documents/1405-Rev-1.pdf

3. Revised Interim Recommendations for Flag States: Circular MSC.1/Circ.1406/Rev.1

The original IMO Recommendations stated that all Flag States should have in place a policy as to whether or not the use of armed guards would be authorised. Such a policy should include a process for authorizing armed guards, a process by which Owners etc may be authorized to use them, specific terms and conditions under which such authorization is granted and reporting and record-keeping requirements.

The amended Recommendations incorporate all of these points, and also add some new points, as follows:

- (a) All references to firearms (for example in relation to licensing and restriction of use) are now specified to include all associated ammunition and equipment.
- (b) Any policy developed by a Flag State should, where appropriate, reference applicable national legislation which deals with the category assigned to the armed guards (see point 3(d), above).

The full text of the revised IMO Circular is available on the IMO website:
www.imo.org/MediaCentre/HotTopics/piracy/Documents/1406-rev-1.pdf

Comments

The publication of revised guidance by the IMO reflects the fact that the deployment of armed guards in the fight against piracy is still very much a developing issue. Whilst the IMO still does not specifically endorse their use, it recognises that Owners are choosing to use armed guards and that their use therefore needs to be regulated as much as possible.

The Club recommends that Members pay particularly close attention to

- (a) the recommendations for Owners (etc) in order that they bear in mind all of the relevant issues when considering whether to deploy armed guards; and
- (b) the recommendations for port and coastal states so that the necessary enquiries may be made of any port at which a vessel may call.

Should Members have any queries regarding the use of armed guards, they should contact the Club. It is also strongly recommended that any contracts with private security companies are sent to the Club for review prior to being signed.

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