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VANUATU ARMED GUARDS ON BOARD SHIPS POLICY

To help ensure that ships registered in Vanuatu are able to protect themselves as effectively as possible against acts of piracy and pirate attacks, the decision has been made to regulate the use of private armed security guards.

It should be noted that it is the company that decides whether to use private armed security guards. The Vanuatu Armed Guards on board Ships Policy is intended to regulate the selection and use of private armed security guards to ensure that the highest possible professional and ethical standards are followed in connection with the use of such services on vessels registered in Vanuatu.

Vanuatu policy complies with MSC.1/Circ.1406/Rev.1 16 September 2011

A/ Use of force

- (1) When necessary to prevent or protect against acts of terrorism and piracy, the master shall be permitted to decide to employ force subject to the limitations laid down by international law. Any person on board shall be obliged to provide assistance and to respect the measures taken.
- (2) The use of force shall only be permitted against a threat which is direct, immediate, significant and otherwise unavoidable. The use of force shall be avoided wherever possible, and when it is necessary, it shall be reasonably proportionate in view of the scope of the threat and the conditions otherwise.
- (3) The unlawful use of force may result in criminal liability.

B/ Reporting

- (1) If the ship has been subjected to an attack and the ship has employed force, the incident shall be reported to VMSL within 72 hours using a D-1 Form. The report shall describe the incident and detail the persons involved and the use of force,

- (2) including firearms. If the circumstances permit it, the situation should be documented by means of sound and video recordings, to the extent that this is possible.

C/ Use of armed guards and documentation requirement

- (1) Shipowners should ensure that VMSL is consulted at an early stage in their consideration of the decision to place PCASP on board to ensure that any statutory requirements are met.
- (2) To prevent or protect the ship against acts of terrorism and piracy, armed guards may be employed following the completion of a risk assessment in accordance with guidelines developed by the International Maritime Organization, IMO, and following consultation with the master.
- (3) Before armed guards are taken on board pursuant to the second paragraph, the company shall send the following documents to VMSL for briefing purposes:
 - a) A statement of reasons stating why the industry's guideline preventive measures (BMP4 as amended) are deemed insufficient and that there is a need for armed guards¹.
 - b) An assessment of the suitability of the security firm and the guards, including the security firm's own documentary evidence²:
 - i. of satisfactory procedures for the recruitment and training of personnel;
 - ii. of satisfactory procedures for the procurement, use, maintenance, storage and transportation of equipment, including firearms and ammunition, relevant to the assignment in question;
 - iii. that the guards hold the necessary qualifications and have completed necessary training, including firearms training, for the assignment in question; and

¹ A decision to use armed guards may only be taken once a risk assessment has been completed that shows that measures in accordance with the BMPs will not ensure satisfactory security. This requirement affirms the duty of companies to carry out a risk assessment before private armed guards are brought on board. Moreover, it also affirms the fundamental condition that private armed security guards must be a supplement to, and not a replacement for, passive security measures recommended by the industry. The aim of the provision is to help ensure that companies assess, specifically and in each individual case, the need for private armed security guards, and that private armed security guards are not used unnecessarily on board ships registered in Vanuatu. Section 1.2 of the IMO guidelines (Risk Assessment) contains supplementary provisions concerning the risk assessment.

² An assignment on board a ship requires other qualities than an assignment on land. Companies will also be required to take the IMO guidelines into account in this context. In the assessment of the suitability of the security firm and the guards, the security firm's own documentation relating to the matters specified in items i) to iv) will be relevant minimum factors. It should also be noted that section 2.1 of the IMO guidelines (General (PMSC Selection Criteria)), contains a list of matters which should be considered with regard to the security firm, including its ownership, financial position, insurance coverage, any accreditations, etc. See also section 2.2 of the guidelines (PMSC Background Information), which recommends that companies investigate the experience of the firm, including whether it has references from other clients and whether it has a sufficient understanding of the situation in the high risk areas, including of the military operations being conducted in these areas.

- iv. that the guards are at least 18 years of age, can identify themselves and can submit a recently issued certificate of good conduct. If a certificate of good conduct cannot be obtained, an alternate, similar confirmation or reference should be procured.

- v. Rules of Engagement.

The documentation shall also be stored on board.

- (4) When selecting and using security firms, the company shall take account of guidelines developed by the International Maritime Organization, IMO.
- (5) If VMSL becomes aware that a specific security company cannot be regarded as suitable for use on Vanuatu-registered ships, VMSL shall be permitted to decide that companies are not permitted to use the company in question.

D/ Duty of the company to notify its insurers³

- (1) Before using armed guards, the company shall give reasonable notice to the insurers covering its liability, losses, expenses or expenditure resulting from piracy, and provide any information required by an individual insurer in order to clarify matters relating to its insurance policy.

E/ Procedures for the use of armed guards⁴

- (1) The company shall establish procedures for the use of armed guards, and for the use and storage of firearms, that take into account the requirements laid down in this Policy. The procedures shall be notified to the master, the crew and guards accompanying the ship.
- (2) The procedures shall state that guards on board are under the master's command.

³ The provision requires a company, before using armed guards, to give reasonable notice to the insurers covering its liability, losses, expenses or expenditure resulting from piracy, and to provide any information required by an individual insurer in order to clarify matters relating to its insurance policy. Note should also be taken of section 3 of the IMO guidelines (Service Provision Considerations), which specifies, among other things, that the company should investigate whether the security firm itself is insured, and what this insurance policy should cover. The guidelines do not specify any sum which the security firm's insurance should cover. The company should consult its insurer in this regard.

⁴ Section E of this Policy establishes a requirement that a company must have in place procedures for the use of armed guards, firearms, etc. In addition, security firms must have in place their own procedures for the use of firearms; see section C.3.b.ii, of this Policy. Section 3.5 of the IMO guidelines (Rules for the Use of Force) also contains supplementary rules regarding the required content of the procedures, and states, among other things, that the company and the security firm should agree these. The master should also be consulted about the framing of the procedures. It is crucial that such procedures are in place, so that no doubt can arise about the circumstances under which force may be employed, not least in view of potential subsequent investigations of incidents during which force has been used. Procedures for the use of armed guards and firearms must be used and implemented by the master. The company must, in consultation with the security firm and, if necessary, external advisers, establish operational procedures which comply with Vanuatu law.

- (3) The procedures shall further state that guards brought on board must be briefed on the ship and conditions on board which are significant for their assignment.

F/ Storage of firearms⁵

- (1) Firearms shall be stored in a safe manner in accordance with international standards.
- (2) The company or the master shall ensure that a register is kept of the firearms and ammunition loaded onto and unloaded from the ship, and shall report such loading and unloading to VMSL immediately. An explanation shall be provided for any discrepancy.

G/ Use of firearms.

- (1) Force may be used when "necessary" to prevent or protect against a pirate attack. The Rules of Engagement shall clearly state that the use of force shall be limited to cases in which it is, "necessary, justifiable and proportionate".

H/ Licensing issue.

Owner's obligation to make sure any weapons carried on board are properly licensed in the country where the security company is based.

⁵ Firearms must be stored properly. This implies that firearms and ammunition must be stored in such a manner that unauthorized persons do not gain access to them. This means that all firearms or a vital component of such firearms must be stored in cabinets with a higher security rating.