Living by the sword: Germany moves to regulate armed guards

Bill will clarify rights and responsibilities in the battle against piracy

Michael Karschau — Hamburg

GERMAN owners command the third-largest merchant fleet, though only a small part of the vessels sail under German flag, but from August 1, 2013, private maritime security companies on board these vessels will have to be certified.

In cases of violations, security companies and owners may face criminal charges.

On July 18, 2012, the German cabinet introduced a Bill to regulate the use of PMSCs. This article aims at providing an overview of this Bill and the potential consequences for companies, owners and insurers.

The reasons given for the need of regulation are the danger piracy poses for seafarers, owners and trade.

More decisively, the current regulation for the use of armed guards was designed for armoured car services and the like.

It deviates considerably from standards suggested by the International Maritime Organization, planned by the International Standards Organisation or used in the Guardcon sample contract for security services by ship owner's association, BIMCO.

The costs of the certificate, which will be valid for two years, are estimated between €8,000-€16,000 ($9,875m-$19,751m) for the administrative fees alone.

The proceeding will be mostly documentary only. By and large, companies will have to prove to be economical fit, the managing personnel will have to be qualified and personally reliable, and the security personnel's qualification and reliability should be guaranteed.

This will chiefly encompass proof of compliance with consistent rules on the use of force, with standard operating procedures and with German weapons laws.

The records of the employees should show their nautical, maritime, technical and firefighting experience, their experience with the use of firearms and their ability to act in critical situations. The personnel should also have knowledge of the relevant German legal provisions.

If written in English, parts of the documents, including the RUF and SOPs, will have to be translated.

Sufficient insurance cover is a necessity, but the range and minimum sums are not clear yet.

Passages in the official explanations lead to the assumption that the cover necessitated will be similar to IMO or Guardcon standards, at least as regards the range of cover — that is, the employer's liability insurance; third-party injury, death, damage or loss; professional indemnity; personal accident, medical expenses and repatriation.

The specifics of this proceeding and the requirements are not clear yet, either. These are subject to a forthcoming statutory order that will follow the standards of the Interim Guidance MSC.1/Circ. 1443 and MSC.1/Circ 1405/rev.2 of IMO. It is already evident that the Bill was modelled on these.

Germany's weapon law will be changed to allow PMSCs and their personnel to buy, own and carry weapons and ammunition as long as the certificate is valid. Additionally, this licence will allow importing and exporting of the weapons in question on board a vessel under the weapon authority of Hamburg.

German security contractors already serving on vessels, for example, see it as an unnecessary costly burden as they already adhere to higher international standards

In general, under German weapon law only semi-automatic weapons may be used.

No exceptions for the use of fully automatic rifles will be granted, the German government has already made clear, in a substantial difference to the situation of vessels sailing under UK flag or Liberian flag.

German weapons law will allow onboard security teams to use only semi-automatic weapons against pirates.

Heavy weapons are likewise out of question.

The new regulatory proceeding will be administered by a not-yet-formed unit of the German Federal Office of Economics and Export Control, known as BAFA, and part of the certification documents will be audited by other authorities.

Importantly, a yet-to-be-formed unit of Federal Police the Bundespolizei will audit the company's written RUF and SOP. Companies will have to send a report of each incident and of the mission to BAFA and to the Bundespolizei.

The draft is intended to come fully into force on August 1, 2013. Certification prerequisites and procedures and the newly formed administrative units should be ready at the end of this year. This is meant to provide a transition period for obtaining the certificate.

The Bill is not undisputed. German security contractors already serving on vessels, for example, see it as an unnecessary costly burden as they already adhere to higher international standards.

International critics ask whether semi-automatic weapons are appropriate to counter heavily armed pirates. VDR, the German shipowners association, sees the Bill as semi-best solution, having argued instead for the use of German military forces on board the vessels, which will not be authorised.

Problems may arise for national and foreign PSMCs alike, if they are already guarding German vessels. They will be under pressure to have the certification process ended at 1st August 2013 or owners will have to terminate the contracts.

If the new requirements are comparable to existing standards, these companies should have some three-quarters of the documentation to hand, if not in German language.

Foreign personnel may need to receive training in legal and administrative issues. Existing training requirements, for example, comprise 18 hours for guards and 36 hours for managers.

As this is a totally new procedure administered by not-yet-formed administrative units, working methods and standards for the interpretation of the documents will have to be established and competences will have to be clarified. This may take some time, especially in the first months. It might be a close race.

P&I Clubs will have to decide whether German certification conforms with club cover and pooling requirements. The company's liability insurers will have to verify the existing policies with German standards.

Most importantly, in cases of repelling pirates with force, the master and security team members will be in imminent danger of criminal prosecution and should know their rights.

The German law of self-defence, Notwehr, which may be executed by security guards, really is a sharp sword, by the way. You need neither run nor yield. Even lethal force is admissible if it necessary to deter an attack immediately and if it is the best suitable method available. ■

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