

Questions and answers on the Merchant Shipping (Protection) Act

What problem will be addressed by the Merchant Shipping (Protection) Act (Supplementary Provisions)?

The Act itself will make it possible for ship managers (shippers) to deploy armed private security guards on board so as to better protect ships against piracy in the Gulf of Aden.

The supplementary provisions will also make it possible, for example, for armed private security guards to be made available to a maritime security company under a temporary employment contract.

Why is this Act needed?

Pirates in the waters off the coast of Somalia have been making the maritime area of the Gulf of Aden unsafe for years now. The Ministry of Defence is not always able to provide military protection, or to provide it in good time.

When will the Act enter into force?

The Act and accompanying regulations are intended to enter into force on 1 January 2022. Once they enter into force, security companies will be able to apply to the Human Environment and Transport Inspectorate (ILT) for a permit, after which ship managers may apply to the Coastguard to allow armed private security guards, supplied by a company with a permit, on board when their ship passes through the Gulf of Aden.

How is security currently organised?

At present security can be provided only by a Vessel Protection Detachment (VPD) of the Ministry of Defence.

What security companies will be allowed to provide security?

Maritime security companies will be required to have a permit to supply armed security guards to ship managers. The ILT will issue these permits. Maritime security companies will be able to apply to the ILT for a permit as soon as the Act enters into force, which is expected to occur on 1 January 2022.

How will maritime security companies be able to apply for a permit?

Companies will have to apply to the ILT for a permit, which is valid for a period of three years. The ILT will also supervise every aspect of the implementation of the Act, including supervising security companies to which a permit has been issued and overseeing the role played by the captain and security team on each voyage.

What conditions must a security firm satisfy to obtain a permit?

One major condition is that the maritime security company must possess valid ISO certificates for the normative references 9001:2015, 28000:2017 and 28007:2015.

A maritime security company must also satisfy requirements relating to reliability, continuity, transparency and compliance with international obligations. The permit requirements will be elaborated in greater detail in the Merchant Shipping (Protection) Decree and the associated regulations.

How long will the process of issuing a permit take?

The draft Merchant Shipping (Protection) Decree provides that the decision on a permit application will be made within eight weeks of the application's receipt. This time limit may be extended by no more than 12 weeks if advice or investigation by a third party is required.

From what date can a ship manager apply for permission to deploy a private security team?

Applications to deploy a private security team can be submitted from the time the first maritime security company has obtained a permit. Maritime security companies can submit an application for a permit to the ILT as soon as the Act has entered into force, which is expected to occur on 1 January 2022. The exact date on which ship managers will be able to apply for permission to deploy a private security team is not yet known, as this will depend on the time required for issuing the aforementioned permit.

How will ship managers be able to request protection in the Gulf of Aden?

Ship managers will be able to request permission from the Coastguard to deploy armed private security guards on board. They will not be charged any fee for submitting an application for permission.

What conditions must shippers satisfy to deploy private security guards on board once the Act enters into force?

The Merchant Shipping (Protection) Act will make it possible for armed private security guards to be deployed on board if the ship qualifies for military protection but the Ministry of Defence is unable to supply it (or to supply it in good time); or if the ship would have to travel too far to obtain a Vessel Protection Detachment (VPD); or if a VPD team would cost disproportionately more than a team of armed private security guards.

The captain and the ship manager must also take a minimum number of security measures themselves on board the ship. Armed private security guards are no substitute for such security measures.

May security guards also be deployed in other dangerous waters?

No, permission will be granted only for the route through the Gulf of Aden, and only for merchant shipping vessels flying the Dutch flag. Permission must be requested from the Coastguard for each voyage. Unarmed security guards are of course permitted on board in other dangerous areas.