



THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

MANAGERS: STEAMSHIP INSURANCE MANAGEMENT SERVICES LIMITED
AQUATICAL HOUSE, 39 BELL LANE, LONDON, E1 7LU
TEL: 020 7247 5490 & 020 7895 8490 TLX: 9416451 & 920120 FAX: 020 7377 2912 & 020 7895 8484
E-MAIL: steamship@simsl.com WEBSITE: www.simsl.com
REGISTERED NO: 3855693 ENGLAND

To the Members

June 2004

Dear Sirs,

Maritime Safety and Security

The ISPS Code

Following the 78th session of the IMO's Maritime Safety Committee held between 12th and 21st May 2004, MSC Circular 1111 has been issued. In an effort to achieve consistent measures to ensure compliance with the ISPS Code, resolution MSC 159(78) sets out Interim Guidance on Control and Compliance Measures. Details of the guidelines which the IMO intends should be followed by port state control officers when inspecting ships to determine if they comply with the ISPS Code are contained in Circular 1111.

Ships will be expected, prior to arrival, to confirm that a valid ISSC is onboard, and provide information concerning the security level at which the ship is currently operating, and that at which it operated at the previous ten calls at port facilities. The requirement to keep records of past calls at port facilities will however only commence from 1st July 2004. Other information required will be details of any special or additional security measures taken by the ship in any of the previous ten port calls. Current indications are that the pace of implementation of the ISPS Code has been slower for port facilities than vessels. In the medium term, there are therefore likely to be a substantial number of non-compliant port facilities. Ships that are required to call at these facilities will need to take care to document the additional security measures taken because of the non-compliance, and any Declarations of Security entered into with the port facility. Under the ISPS Code the main purpose of a Declaration of Security is to ensure agreement is reached between the ship and port facility on the respective security measures each will undertake.

Other security related information that may be required in advance of arrival could be information from the Continuous Synopsis Record, the crew and passenger list, a general description of the cargo, and information about the party responsible for appointing the crew and determining the employment of the ship. When the vessel is employed under a charter, the parties to the charter may need to be identified.

On the basis of the information provided prior to arrival, a state will decide whether the ship will be allowed to enter port.

Once a vessel has arrived at a port, she is likely to be visited by port state control officers. Their control is limited to verifying that the ship has a valid ISSC or interim ISSC. The IMO Guidelines stipulate that a valid ISSC shall be accepted unless there are clear grounds for believing that the ship is not in compliance with the ISPS Code. However, the determination of clear grounds of non-compliance may involve the professional judgment of the port state control officer. Consequently Masters, Officers and crews need to prepare for these visits in order that a favourable impression is created from the outset so that the potential for delay can be minimised.

The IMO Guidelines suggest that Port State Control officers should observe and gain a general impression of the overall security arrangements of the ship by considering the following aspects whilst they are approaching, boarding and moving around the vessel:

- The control exercised by the ship on its access points, and particularly whether the identity of all persons seeking to board is checked.
- For passenger ships whether, in liaison with the port facility, designated areas have been established for searching, and whether checked persons and their baggage are segregated from those and their effects that are unchecked. Is unaccompanied baggage screened and/or searched.
- Are embarking passengers segregated from disembarking passengers, and are unattended areas adjoining areas to which passengers and visitors have access, secured.
- Are restricted areas marked, and doors to such areas locked.

L15

- Are the bridge and engine room locked or capable of being locked or secured, or is access otherwise controlled, for example by being manned or using surveillance equipment.
- Are deck watches being carried out or is surveillance equipment being used to monitor the ship. Are both the landward and seaward approaches monitored.
- Are ship's stores checked for signs of tampering prior to being loaded, and that they match the items ordered.
- Are cargo spaces, cargo transport units and cargo checked prior to and during cargo handling operations, particularly seals and other anti-tampering devices. Is cargo checked against its documentation, and are vehicles subject to search prior to loading.

For vessels operating at security level 2 more detailed attention in the above areas would be expected.

Examples of situations constituting clear grounds of non-compliance would be:

- An invalid or expired ISSC or interim ISSC
- Evidence or reliable information establishing that serious deficiencies exist in the security equipment, documentation or arrangements required by the ISPS Code.
- A report or complaint which in the professional judgment of the PSC officer contains reliable information that clearly indicates the ship does not comply with the ISPS Code.
- Evidence or observation by a port state control officer using his professional judgment that the Master or ship's personnel are not familiar with essential shipboard security or cannot carry out security drills, or that such procedures or drills have not been carried out.
- Evidence or reliable information that the ship has embarked persons or loaded stores or goods at a port facility or from another ship that are not compliant with the ISPS Code, and where the ship being inspected has not completed a Declaration of Security nor taken appropriate or additional security measures
- If the ship holds a subsequent, consecutively issued Interim ISSC and if in the professional judgment of the PSC officer one of the reasons why such a certificate has been requested is to avoid full compliance with the ISPS Code.

When clear grounds of non-compliance exist a more detailed inspection may be conducted. The areas in which the ship is deemed to be non-compliant shall be discussed with the Master and/or Ship Security Officer with a view to rectification. If the vessel is not able to rectify the non-compliance to the satisfaction of PSC, the vessel may be delayed from departing, or its operations may be restricted, or it may be detained. The vessel should only be expelled from the port when there are clear grounds that the ship poses an immediate threat to the security or safety of persons or of ships or other property, and where there are no other appropriate means of removing the threat.

If a more detailed inspection is carried out, the guidelines indicate that this should focus upon practical issues associated with the operation of the security plan, and the familiarity of the Master, Officers and crew with the security procedures. There may be situations where the only means to verify or rectify the non-compliance is to review the security plan itself. The guidelines envisage that limited access to specific sections of the plan relating to the non-compliance should be exceptionally allowed. Requests for access to specific sections of the plan should include details of the non-compliance to be verified or rectified.

There are only certain sections of the security plan that can be inspected with the consent of the flag state or of the Master of the ship. These sections are those that make provision for:

- Prevention of introduction of non-authorised articles
- Prevention of unauthorised access to the ship
- Evacuation of the ship
- Auditing security activities
- Training drills and exercises
- Interfacing with port facility security activities
- Review of ship security plan
- Reporting security incidents
- Identification of the Ship Security Officer
- Identification of the Company Security Officer
- Frequency of testing or calibration of security equipment
- Security of Ship Security Plan
- Security activities not covered by the ISPS Code

The following provisions of the Ship Security Plan are considered to be confidential and cannot be inspected by a PSC official unless otherwise agreed by the flag state:

- Restricted areas
- Responding to security threats or breaches of security, including frequency of inspection data
- Responding to any security instruction at security level 3
- Duties of those assigned security responsibilities
- Procedures for maintenance of security equipment
- Ship security alert system

The guidelines seek to incorporate safeguards by stressing that control and compliance measures should be proportionate. The measures should be reasonable and of the minimum severity and duration necessary to rectify the non-compliance. All possible efforts should be made to avoid a ship being unduly detained or delayed. If there is undue detention or delay, the guidelines indicate that compensation shall be due for any loss or damage suffered. Access to and disembarkation from the ship must not be prevented where required for emergency, humanitarian, or security purposes.

When, as the result of the exercise of control or compliance measures a PSC officer inspects, delays, restricts operations, detains or expels a ship that is in port after clear grounds of non-compliance have been established, a report will be submitted to the Administration of the flag state, and to the recognised security organisation (RSO) that issued the ISSC and to the IMO. When a ship is denied entry to, or expelled from a port, the port state is required to notify the relevant authorities of the ship's next port of call, if known, and any other coastal states. Similar provisions are set out in the guidelines when clear grounds of non-compliance are established in respect of a vessel intending to enter a port.

It is important to realise that in order to be able to demonstrate compliance to PSC officers, the Ship Security Plan must be regarded as a dynamic rather than static document. Beyond 1st July 2004, the ship must be in a position to demonstrate that security has been continuously evaluated with reference to the differing circumstances that prevail on the various voyages undertaken and at the interface with various port facilities. This is particularly important when compiling records of security measures implemented at the preceding ten ports of call.

The United States

Rigorous enforcement of the ISPS Code is to be expected in the United States. Unless a vessel has been inspected in the period 1st April to 30th June 2004, the following controls on non-U.S. flag vessels can be expected:

- All non-U.S. flag vessels will be boarded at their first port of arrival in the U.S. to verify that they have fully implemented the provisions of the ISPS code.
- Any non-U.S. flag vessel that arrived in the U.S. on or before 30th June and found in port on or after 1st July without a valid ISSC will be expelled unless prior arrangements have been made for the ISSC to be issued at that port, and the ISSC is issued during that visit.
- Any non-U.S. flag vessel arriving in the U.S. after 1st July without a valid ISSC will be denied entry.
- The only document that will be accepted by U.S. officials is a valid ISSC. Statements or Certificates of Compliance with the ISPS Code issued by classification societies will not be sufficient.
- Denial of entry or expulsion from port after 1st July will result in the affected vessel, and any other owned, operated, and/or chartered by the same entity being categorised as ISPS Priority 1 vessels. Such vessels will be subject to "at sea" boarding for at least one year before entry into any U.S. port, and are likely to suffer delays at every port call.

It would appear that in relation to expulsion, the U.S. approach is likely to be more onerous than envisaged in the IMO's guidelines.

A recent non-binding resolution of the U.S. House of Representatives proposed that the ship security plans of non-U.S. flag vessels should be reviewed and approved by the U.S. Coast Guard. That proposition conflicts with the requirement of the ISPS Code that the flag state administrations are responsible for reviewing the ship security plans as part of the process of issuing the ISSC. The U.S. Senate opposes the position adopted by the House of Representatives, as does the U.S. Coast Guard who have determined that ship security plans having appropriate international approval, as evidenced by a valid ISSC should be respected. The International Group also supports the view that the U.S. Coast Guard should not be required to review the security plans of foreign flag vessels, and that valid ISSCs should be recognized.

In the event Members have any queries arising from the above, the Managers' London representatives should be contacted.

Yours faithfully,

THE STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION LIMITED