

MSS Global comments – Dutch Act of 15 May 2019 - Merchant Shipping Protection Act (2019)

Reference	Topic	Comment
Chapter 1, Section 1, para a & e	Accreditation Body	<p>I know that UKAS are to remain invited members of the EA, but am not sure of the legal position regarding EU regulations.</p> <p>At present UKAS are the only CB who have brought the 28000/28007 scheme on as an accreditation scheme. This was paid for by UK HMG back in 2012. I doubt, given the size of the market and the technical/specialist – and therefore expensive nature of this scheme, there is any commercial incentive for any of ABs to introduce this scheme.</p> <p>Note there are currently only 2 x internationally accredited CBs delivering this specialist scheme (MSS Global and LRQA – this is in large part due to the commercial incentive for such a skillset set alongside a relatively small market place).</p>
Chapter 3, Section 9, para 3	Use of Force	<p>In our (non-legal) experience of this type of discussion internationally for both land and maritime security standards, we feel this may prove unlikely to stand up when tested in a court of law. Fundamental human rights include the right to life – and self-defence of that life – including, if “absolutely necessary”, the taking of life. Suggest a legal review.</p>
Chapter 4, Section 15, para 1.	CB designed for the purpose by the Minister.	<p>What is the application process? Cost etc (including time burden)? There is very limited commercial incentive for a CB to apply for government license in addition to fees it already pays for internationally recognized accreditation. No other country places this requirement on a CB for the 28007 scheme. Suggest that if they are accredited for the 28000/28007 scheme under the EA/IAF MLA then that should be sufficient administrative oversight and impartial accountability.</p>
Chapter 4, Section 15, para 1.	Notification of suspension/withdrawal of certification	<p>An accredited CB is not part of the Dutch regulatory framework. It cannot be. Demanding that we are risks fundamentally undermining our impartiality – a key principle of accredited, 3rd party certification. We would potentially resist this requirement. An alternative (which the US Government use for land security companies), is to periodically (quarterly) request an update from the CB on the certification status of the companies they have licensed, and verify the certification status during a PMSC license application process, or during their investigation of a complaint.</p>

**MSS Global comments – Draft Merchant Shipping Protection Decree – consultation version
December 2019**

Reference	Topic	Comment
Section 3.1	Firearms and ammunition	<p>12.7mm is a large calibre. The calibre should be drive by a risk assessment; the normal would be 7.62mm</p> <p>The decree should stipulate the ammunition type. There is a risk that above 7.62 could carry a ‘payload’ – for example an incendiary round, this would not be suitable for counter piracy.</p>
Section 3.4, Clause 3	Further rules governing the use of force.	<p>This appears to risk undermining the inherent right to life of the PCSAP; if “absolutely necessary” every individual is entitled to use lethal force if they believe their life is threatened and there are no other actions they could take in self-defence.</p> <p>Firing at “non-vital” parts only requires a higher burden of training than normal for PCASP. This is, in our experience an unworkable interpretation of both law and operational reality – two different sized vessels moving at different speeds in a sea state <3, with height differences etc make this requirement unworkable (our advice comes from our Performance Director – who was the senior sniper instructor in the British Royal Marines (who trained Dutch marine snipers)).</p>
Chapter 5, Section 5.1, Clause 1	ISO standards	<p>9001 should read 9001:2015 if kept in.</p> <p>We cover ISO 9001; in our learned experience, 9001 is in no way a credible alternative to ISO 28000/28007. Granting a license to a PMSC who only has 9001 places substantial, tangible risk on the Dutch government – even if they comply with Section 5.2. How do you know a CB is competent to audit a PMSC under 9001 (which is a very generic standard)? Suggest replacing the word or, with ‘and’ as that infers the delivery of a quality service is a requirement as part of providing credible and competent supply chain security.</p>
Section 5.5, Clause 3a & b	Reliability of the company	<p>Note that a CB does not undertake legal compliance assurance. We assess whether a company has management controls in place that give a reasonable expectation of legal compliance. We do not undertake legal reviews.</p>
Section 5.8 Clause 1.c	Age of guards	<p>ISO 28007 requires 21 years old or more (Clause 4.3.2) so a company cannot be certified and us people under 21 if they are carrying firearms.</p>

MSS Global comments – Draft Explanatory Memorandum Merchant Shipping Protection Decree – Consultation version December 2019

Reference	Topic	Comment
Part 2 – Legislative and international law framework; Sect 2, page 2 “second element” para	Accreditation Bodies	See our previous comments with regard to Chap 1, Sect 1, para a & e of the Act with respect to UKAS position under EU regulations, despite being a member of the EA, and the requirement for a CB to be ‘designated’ by the Minister – in addition to already being (paying for) internationally accredited for the schemes.
Part 2; Sect 2, page 2 “fallback option” para	Role of a CB	See our previous comments with regard to Sect 5.5, Clause 3a & b of the Decree. CBs do not undertake legal reviews; they are not a regulatory authority. We assess management system control that should provide expected confidence of legal compliance, but the legal/regulatory/licensing authority retains responsibility and accountability for legal oversight and assurance.
Part 2; Footnote 4	Designation of CBs	See our previous comments with regard to Chap 4, Sect 15, para 1 of the Act. This process is yet to be defined – including cost and administrative burden – and therefore incentive to be ‘designated’.
Part 2; Section 2.5 – first para “soft law”	International standards	Typing error. 9000 should read 9001 28000 should read “ISO 28000 with 28007” 28007 is not a certifiable standard on its own – it is a guidance document that ‘sits on top’ of 28000. See ‘introduction’ section of 28007 for more.
Part 2; Section 2.5, 2 nd para UKAS	UKAS	Suggest additional wording at the end of the sentence “who currently will remain part of the EA construct after BREXIT” (See https://www.ukas.com/download/brochures/Brexit-FAQs-14Feb20-2.pdf for more)
Part 3; Section 3.1, 2 nd bullet point – Supervision	Accredited CBs	See our previous comments regarding Chap 4, Sect 15, para 1 of the Act in regards to both ‘designation’ and ‘reporting’ and the risk that presents to impartiality. CBs are not regulatory/legal/licensing authorities. An alternative approach has been suggested in our previous comment.

By SECTION:

Chap 3, Sect 3.1	Firearms	See our previous comments with regard to Sect 3.1, para of the Decree. 12.7mm opens up too many ammunition options – including incendiary payload carrying ability.
Chap 3, Sect 3.4, Section 9 of the act, para 3,	Use of Force – fatal injuries.	See our previous comments with regard to Sect 3.4, Clause 3 of the Decree.

Chap 3, Sect 3.4 of the decree para 3	“non vital parts”	See our previous comments with regard to Sect 3.4, Clause 3 of the Decree.
Chap 3, Sect 3.4, “Self defence” para	“Self defence”	But what about their inalienable right to life as an individual human being – which is a higher order right and act of self-defence than just in the role as a security guard? That argument is not currently addressed in this section.
Chap 4, Sect 4.4	Transfer of licence	Can a non-licensed company subcontract to a licensed company, and thereby gain ‘access’ to their license, yet still deliver the services to the client? In effect the licensed company becomes a contractual vehicle to its license for non-licensed companies. Or does the shipping company have to contract directly with a licensed company?
Chap 5, Sect 5.1, 1 st para	ISO standards	See our previous comments with regard to Chap 5, Sect 5.1, Clause 1 of the Decree.
Chap 5, Sect 5.1, 2 nd para	‘designation of CB’	See our previous comments with regard to Chap 4, Sect 15, para 1 of the Decree.
Chap 5, Sect 5.1, 2 nd para, sub bullets	ISO list	28000: Incorrect; should read “Specification for security management systems for the supply chain”. 28007: Incorrect; should read “Guidelines for Private Maritime Security Companies (PMSC) providing privately contracted armed security personnel (PCASP) on board ships” 9001: Incorrect; should read “Quality management systems – requirements” Note that this is generic – not ‘business’.
Chap 5, Sect 5.8, 1 st para	Age of guard	See our previous comments with regard to Sect 5.8, Clause 1.c of the Decree.
Chap 5, Sect 5.10, 3 rd para	ISO 28007 reference	Should be ISO 28000 certified as well – they are securing the firearms supply chain.