

Advice to PCASPs Regarding Their Exposure to Financial and Contractual Risks

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INTRODUCTION

1. The catastrophic collapse of GoAGT in 2014 led to a significant number of PCASP operationally deployed but without insurance or a means of repatriation. Many of the PCASP suffered financially including for unpaid work and repatriation costs. The situation was resolved by the intervention of other PMSCs and Agents who managed the complex logistical, legal and contractual issues involved in administering 18 vessels in transit and the subsequent repatriation of all PCASP.

PURPOSE

2. The purpose of this document is to provide advice to PCASP on their exposure to contracting risks, identify warning signs associated with company insolvency and to better prepare mitigating courses of action.

KEY MESSAGE

3. The paper will provide further detail but the key actions that a PCASP should sensibly consider in order to safeguard his position are as follows:

- Ensure agreement to fees being paid regularly (and in any event within 30 days of work being completed) and monitor that fees are received in bank.
- Seek payment of major expenses in advance or paid-for tickets etc.
- Require advance provision of return flights (so the PCASP can always get home if the company becomes insolvent)
- Request evidence of current insurance policies and confirmation of renewal payments
- Raise concerns with head office if PCASP hears of any issues about late / non-payment of supplier invoices.
- Be alert!

WHY DOES IT MATTER?

4. Employment in the offshore security industry offers several potential contracting structures and those who do not conduct sufficient due diligence may end up at risk of significant financial penalty if another PMSC suffers insolvency. In addition, the unique terms under which umbrella companies engage PCASP compels the latter to understand their rights and exposure – to engage with the intricacies of their liabilities and truly understand them.

CONTRACTING CONSIDERATIONS IN THE EVENT OF PMSC INSOLVENCY

The Contracting Structure

Insurance

5. Insurance only responds if the PMSC has complied with all the conditions of insurance and paid the appropriate premiums and consequently there is a risk that cover will not be in place if a PMSC enters insolvency. Most PMSCs will cover you for accident or

injury whilst on duty and will provide public liability insurance which provides cover against claims by third parties (such as fishermen) for injury or damage to property. Contractors should request details of what insurance is provided by the PMSC on your behalf and ensure it is up to date. If you are further concerned, speak with an insurance broker as to whether there is additional insurance that you could take out as an additional measure.

Remuneration & Repatriation

6. Restrictions on cash flow are the primary warning sign an employer is likely to face ahead of a declaration of insolvency, while consistent late payments or changes to the agreed terms of payments will be the principal indicator to subcontractors. A significant downturn in the throughput of work may be a parallel indicator of the PMSC struggling. If utilising an umbrella / intermediary company, contractors should seek clarification on what the contractual terms are if the intermediary is not paid by the PMSC. In addition, every individual should understand what the terms are under which the intermediary will support the contractors' repatriation should a PMSC be declared insolvent while on a transit. At all times contractors must ensure they have systems in place for receiving payments on time and in accordance with contract. It is ill-advised to continue work for PMSCs or umbrella companies that are in significant or repeated breach of their terms.

CONTRACTOR WARNING SIGNS

Ageing of creditors increasing:

7. If payments to individuals is still being made a further indicator of cash flow restrictions could be an increase in the time it takes a given PMSC to pay creditors. Immediate repercussions will affect agents and management companies of transfer vessels / floating armouries. Word of mouth and rumour control amongst deployed personnel may be plausible but could be factually incorrect.

Supplier credit terms

8. Consignment supplies may be affected if PMSCs are subject to payment plans entered into with creditors as they are a common means of managing an overdue account. Indicators for PCASP to look out for may involve disruption to the supply chain and include the restriction of access to weapons or equipment, changes to maintenance programmes and resupply.

Physical aspects of business

9. A struggling PMSC may neglect permanent overseas locations and the regular replenishment of kit and equipment, ammunition levels and provision of HSE equipment which may start to deteriorate. A decline in the maintenance of a PMSC's overseas premises and equipment will provide an indication as to a PMSCs financial wellbeing.

Communication with head office

10. The demeanour of staff at head office, both operational and financial may provide an indication of a PMSCs overall health. Employees at head office are generally aware of the success of the business and the implementation of restrictions to processes which have routinely been seen as normal working practice may result in deterioration in mood and associated culture that may be communicated to deployed personnel. Operational personnel

should seek confirmation of impending or sudden departure of key management personnel or other deployed operatives and attempt to keep an eye on the mood of head office staff - attempts should be made to visit head office when possible to assist your judgement in this regard.

Legal Action

11. Notices of winding up petitions and company insolvency proceedings are published in the London Gazette. If you are concerned about a PMSC, go to www.london-gazette.co.uk, click on insolvency and put in the name of the company. If your search does not reveal any information you should still consider the other factors set out in this document as insolvency can happen very quickly and with little or no warning.

12. The Companies House website 'www.companieshouse.gov.uk' is also a useful source of free information about companies. To find information about companies go to the website and click on 'Find Company Information', then put the name of the appropriate PMSC into the box and click search. The information returned will tell you whether a company is listed as active, in liquidation or administration or if there is a proposal to strike off (dissolve) the company. If it is in liquidation or administration you can click on the link "Insolvency History" to bring up details of the official receiver or insolvency practitioner who is dealing with the matter who you should then contact for further information if you are owed money. Be warned, however, it usually takes the official receiver or insolvency practitioner several months to review a company and to establish if there are any monies to be paid out to creditors. If a company is listed as 'active', check that its accounts are not listed as 'overdue' as this is another indicator that there could be a problem on the horizon.

Social Media

13. PCASP monitoring social media may interpret a sudden change in how a PMSC presents itself, possibly defending current situations and addressing rumour as a precursor to financial difficulty. Online forum discussions should not be solely relied upon as an indicator of the health of the contracting business as statements may be factually incorrect; details combined with other negative indicators mentioned should be given consideration.

PERSONAL MITIGATION MEASURES

PCASP Due Diligence Prior to Contract:

14. PCASP should ensure they are aware of the commercial and financial status of PMSCs they are potentially contracting with. A proactive approach on the part of PCASP, asking the right questions and conducting the correct research, can give individuals a better understanding of the current position of the PMSC, risk tolerance and future business aspirations prior to contracting. Research in the public domain is worthwhile but ultimately is unlikely to provide an accurate or up to date snapshot of the health of a business. This will only come through your own due diligence which should attempt to explore the following:

- **Financial Information**
 - Annual financial information
 - Planned/ briefed versus actual results
- **Products / clients**
 - Major clients / contracts (are they supporting major names in the sector)
 - New clients – Are they growing?

- **Competition**
 - Market position and related strengths and weaknesses as perceived in the market place
 - Basis of competition (price, service, team composition)
- **Research and Development**
 - Strategy including major activities
- **Management of Personnel**
 - Company structure
 - Recruitment pool and standards
 - On-going refresher training
 - Career management process
 - Headcount head office (Current v historical)
 - Subcontractor pool (Current v historical)
 - Significant employee / contractor problems (Current and historical)
- **Communication**
 - Head office sub-contractor communication process
- **Legal / Insurance**
 - Pending lawsuits against the PMSC
 - Pending lawsuits initiated by the PMSC
 - Summary of insurance cover, contracts and payment terms

PCASP Repatriation Measures

15. The above is not an exhaustive list and remuneration and repatriation may not be something individuals can insure against. Prior to deployment PCASP should be proactive, ensuring they conduct prior research into the PMSC; if they are still unsure the individual must question the PMSC. Ultimately, should a PMSC become insolvent whilst PCASP are deployed, consideration should be given to immediate repatriation:

16. PCASP can ensure personal repatriation by maintenance of credit cards/ cash sufficient to cover associated costs, such as:

- Cost of launches
- Hotels
- Flights
- Personal Insurance