

DOI: 10.5281/zenodo.3591958
 UDC Classification: 338.22:656.96 (477) (043.3)
 JEL Classification: L91, 92

ECONOMIC INTERESTS OF PARTICIPANTS IN THE AGENCY AND ENTERPRISE PROCESS OF MARINE AGENCY

ЕКОНОМІЧНІ ІНТЕРЕСИ УЧАСНИКІВ ПРОЦЕСУ АГЕНТУВАННЯ ТА ПІДПРИЄМСТВ З МОРСЬКОГО АГЕНТУВАННЯ

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 Recieved 03.06.2019

Ярмолевич Д.Ю. Економічні інтереси учасників процесу агентування та підприємств з морського агентування. Оглядова стаття.

Статтю присвячено дослідженню діяльності морських агентів, як на Україні, так і учасників процесу агентування, що є не відомою частина даного процесу. Змальовано місце морського агентської компанії щодо інших учасників процесу морського агентування і зв'язку виникають при здійсненні агентської діяльності. Були виокремити основні складові економічного інтересу даних компаній. Дії морського агента по прийому і відправленню судна передбачають дотримання всіх необхідних формальностей, пов'язаних із заходом судна в порт, що виконуються від імені за дорученням та за рахунок судовласника / принципала. Відносини між морським агентом і принципалом здійснюються на принципах доручення (мандата), а відносини між морським агентом і третіми особами – на принципах виконання повноважень, які охоплюють зовнішню сторону відносин представництва.

Ключові слова: морське агентування, діяльність морських портів, торгове судноплавство, чинники оцінки, контрагенти морського агента, ефективності діяльності компанії

Iarmolovych D.Yu. Economic interests of participants in the agency process and maritime agency companies. Review article.

The article is devoted to the study of the activities of maritime agents, both in Ukraine and participants in the agency process, which is not an integral part of this process. The location of the maritime agency company with respect to other participants in the process of maritime agency and communication is shown in the course of the agency activity. The main components of the economic interest of these companies were identified. The actions of the maritime agent for the reception and departure of the vessel shall include compliance with all necessary formalities related to the vessel's entry into port, executed on behalf on behalf and at the expense of the shipowner / principal. The relationship between the maritime agent and the principal is based on the principles of the mandate, and the relationship between the maritime agent and third parties is based on the principles of exercising powers that cover the outside of the relations of representation.

Keywords: marine agency, seaport activity, merchant shipping, factor assessments, maritime agent contractors, company efficiency

Due to the specificity of the agency, it is also largely related to the international aspect of merchant shipping due to changes in domestic conditions and legislation in different countries, at all stages of the port visit there is a huge number of rules and formalities, calculations and payments, so for the most efficient carrying out of all necessary The operations of the shipowners require the services of maritime agents. This is why isolating the components of economic interest and considering the interconnection of all participants in the maritime agency process becomes so important.

Analysis of recent research and publications

Today there are many publications on subject of maritime agency and there aspects. It is necessary to mention latest works of such researchers as B. Burkinsky, A. Kibik, A. Tselovalnikov, and many others who studied market, economic, legal and business aspects of the activity of sea ports and enterprises working in the near transport- maritime sector. Among researchers of this problems of activity of maritime agencies, it is necessary to separately mention scientific theseses of V. Vyhovsky, I. Petrov, N. Sergeeva, O. Poltavsky, D. Popov, as well as journalistic publications (in specialized editions) by A. Bronetsky, I. Lander, N. Mirosnichenko, V. Selivanova, O. Chebotarenko and others. Basing on all previous publications, we can state that there was made complete market analysis for further work and the identification of trends on it.

The aim of the article is study of the activities of maritime agents, both in Ukraine and participants in the agency process, which is not an integral part of this process. The location of the maritime agency company with respect to other participants in the process of maritime agency and communication is shown in the course of the agency activity.

Presentation of the main material. The objective patterns of the development of trade relations, which led to the division of labor in the trade turnover, coincided with the need for maritime agency. In the old days of the establishment of the shipping industry, the functions now entrusted to the ship's agent were entirely performed by the captain of the ship, who was usually also the shipowner. It was the shipowner who accompanied the cargo

to the port of destination, completed all necessary formalities at the time of arrival or departure of the vessel, controlled loading and unloading processes, etc.

In the process of development of trade and navigation, there was a gradual need to allocate functions related to ship co-operation into a separate industry – a type of activity carried out by specially authorized persons – maritime court agents. Being on shore and constantly analyzing the current conditions, they helped the captain to service the ship, to search for cargoes for transportation. Today, maritime agency is an independent industry of the market for servants, which includes numerous enterprises. The effectiveness of modern maritime agency businesses depends on the speed of adaptation to the requirements of the market for services in the field of merchant shipping.

Commercial shipping is an activity carried out through the use of ships for the carriage of goods of various kinds (mail, baggage, fishing, etc.) or passengers [1]. The subjects of merchant shipping are shipowners, charterers, agency organizations (maritime agents), seaports and river ports. Agents providing agency services for remuneration under the maritime agency contract are the permanent representatives of the shipowners.

As stated in the Merchant Shipping Code of Ukraine (hereinafter referred to as KTMU), a shipowner is a legal or natural person who operates a vessel on its own behalf, regardless of whether it is the true owner of the ship or uses it for other legal reasons. In other words, the owner of the vessel is the property right or the person exercising the right to which the property rules apply to the particular vessel. Charterer – a person who, under the charter (charter) contract of a vessel, for a certain period of time, receives from the shipowner for a stipulated fee (freight) a vessel for the carriage of passengers, cargo and for other purposes of merchant navigation. According to Article 116 of the KTMU, when executing a maritime agency contract, a maritime agent acting on behalf of the shipowner may also act in favor of the other party to the contract if he has authorized it and if the shipowner does not object to such actions.

The duties of a maritime agent include all actions relating to the arrival of the vessel at the port, its subsequent departure, maintenance and departure from the port. The maritime agent must attract cargo for the shipping lines, draw up the necessary freight and customs documentation, assist the master of the vessel in the process of contacting the port services and local executive authorities, collect the freight, pay for the stay of the ship in the port, hire a servicing workforce, forwarding cargo, to act on behalf of the cargo owner and as a counterparty to the participants of the carriage of goods in direct mixed traffic [5].

The principal functions of a maritime agent are considered to be representative functions, which provide that the maritime agent will, on his own volition, perform the service of the principal's vessels, acting on his behalf and at his expense. Representative functions are also emphasized in maritime agency agreements – it is relations of representation that make up the main content of the contract. The concept of representation covers the relationship of a maritime agent and principal, as well as a maritime agent and third parties, with whom the agent contacts on behalf and at the expense of the principal. The relationship between the maritime agent and the principal is based on the principles of the mandate, and the relationship between the maritime agent and third parties is based on the principles of exercising powers that cover the outside of the relations of representation.

The fact that a maritime agency contract creates legal relations between the principal and third parties is very significant. Some experts equate a contract of representation to a contract of maritime agency, while the representation is considered an analogy of agency. However, in our view, representation is only part of the content of the maritime agency agreement, and therefore the concept of agency and representation cannot be equated.

When the vessel enters the port and then leaves it on the flight, all necessary actions for registration of the visit to the port are performed by the sea agent. The main functions are presented schematically in fig. 1. According to English terminology, such activity is called "clearance of the vessel", which literally means "obstruction", and in free – "permission to depart." About the same meaning is embedded in the French expression "duduite du navire", in German – "klarierung", in Italian – "appoggio della nave" or "raccomandazione insensostretto". Port slang contains the same special expression "clearance case".

The actions of the maritime agent for the reception and departure of the vessel shall ensure that all necessary formalities related to the vessel's entry into port are complied with. Port formalities are referred to as the vessel's clerking. Performing functions related to the reception and departure of the vessel, the maritime agent usually assists the shipowner, assuming the responsibilities on his behalf and at his own expense.

Typically, the first agent-captain contact occurs at the ship's approach to the port, usually via mobile communications or email to expedite the ship's loading, unloading and maintenance operations. If the maritime agent has not previously identified the cargo details of the vessel, when the vessel enters the port, he arrives on board and receives from the master information that the ship is to be unloaded or loaded.

The agent receives information relating to the crew of the ship, receives from the master applications for the supply of the ship products, oils, replacement parts, navigation charts and books, orders cash for payment to crew members, provides medical assistance to sick sailors [5].

In the process of receiving the vessel, the agent takes into account the steady and counterstable time, captures the actual record of the time spent by the ship ("Statement of Faustus"). If the ship is foreign, the agent may also perform the function of translator if necessary. The agent's functions in this case also include the registration of the vessel at the border, police and consular authorities.

The cargo control specialists work at the port to supervise the cargo, its measurement or weighing, fixing of possible damage to the cargo, determination of the losses incurred, etc. When leaving the ship for the flight, the formal support is similar to the procedure of receiving the ship, however, the amount of work will be smaller, although there is its own specificity. This is a discussion of bill of lading, cargo manifests, freight calculation and other operations. With the arrival of the ship in the port, the agent has to act on behalf of and at the expense of the shipowner to interact with the state control bodies acting in the port, which perform national functions: port master, control room, other port services and authorities, border guards, customs, sanitary offices, law enforcement agencies, etc.

The agent begins to interact with the port master upon receipt of the arrival note from the captain. Upon arrival and mooring of the vessel, the agent receives a "free practice" permit from the master of the port, which means that the crew is allowed to communicate freely with shore and vice versa. It should be noted that in many countries, the masters of ports manage the provision of towage and pilotage support services. As part of its representative functions, the maritime agent may order these services on behalf and at the expense of the shipowner. The relationship of representation also requires the port master's agent to inform the master of the vessel's intention to declare a naval pro-test. In this case, the maritime agent appears before the master of the port personally, and his actions should be considered as the actions of the shipowner.

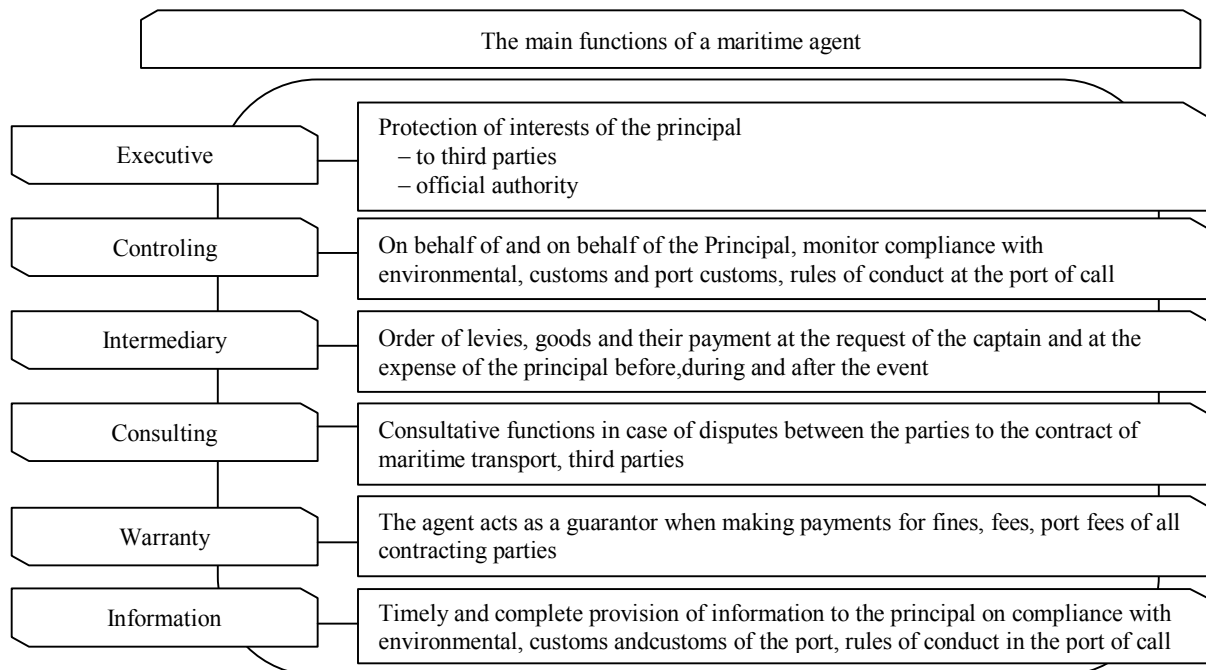


Fig. 1. Main functions of a maritime agent

Source: compiled by the author on the materials [2]

With the permission of the freelance vessel, the port master must obtain the consent of the quarantine authority. In countries where this is not within the competence of the port master, the agent contacts directly with the controlling sanitary authorities (veterinary, phytosanitary) and requires them to have a free practice permit for the vessel. The agent shall represent the shipowner before these authorities.

During the stay of the ship in the port, regardless of the flag of the ship, all cargo (loaded, unloaded and transit cargo) is controlled by the customs. It checks that the actual data is consistent with what is stated in the cargo declaration, the correctness of registration of bills of lading and cargo manifests. Here it is worth dwelling on the relationship of the maritime agent with the customs authorities. The maritime agent provides the customs with a customs declaration for the cargo, to which is attached the cargo manifest, and the forwarder - the export declarations. Agents act in accordance with the requirements of applicable customs legislation. If necessary, maritime agents also order customs supervision, for example, if a ship, especially a passenger, is moored out of the customs berths. Similarly, representation of the agent on behalf of the shipowner before local and city authorities is carried out in order to protect the rights and interests of the shipowner.

The representation of the shipowner's maritime agent before the consular authorities of the flag state of the vessel should be noted separately, if required by the applicable rules or if the agent and the shipowner deem it necessary [11]. Relationships with third parties are relationships that arise in connection with the needs of the shipowner and other participants in the transport process. Therefore, these relations are related to the cargo: its loading, unloading, re-loading and delivery to the recipients.

The most important functions of a maritime agent in the field of relations with cargo owners and their representatives are: delivery of a bill of lading to the sender of cargo after departure of the ship, delivery of cargo

or "clean" cargo documents, which provide the transfer of cargo after departure of the ship. In both cases, the maritime agent will collect the freight from the cargo owner's representative or accept any other guarantee for the future payment of the freight. Here it is expedient to distinguish such functions of the maritime agent, such as the issuance of orders for loading, bill of lading "accepted for loading", the establishment of non-strike and damage of cargo, the transfer and reception of protests in connection with the loss of cargo transportation, its damage-loss or loss.

As an example of relations of representation, the maritime agent on behalf, at the expense and on behalf of the shipowner, contacts the stevedoring, warehouse, freight forwarding companies engaged in loading, unloading, reloading, warehousing, processing, finishing, bringing the cargo into transportable condition, etc.

There are a number of examples of the relationship of a maritime agent with third parties (fig. 2). Third parties may be food and technical chippers, bunkering companies and the like. All orders for the supply and maintenance of a ship in port are made on behalf and at the expense of the shipowner by his agent. To do this, he, in particular, analyzes the work of repair shipyards, which are in almost every port and perform the necessary repair of ships. The study of the functions assigned to the maritime agent makes it possible to state that his role is to harmonize all formalities, the proper registration of documents, to provide the ship with all necessary: supplies, equipment, maintenance, etc. Thus, the maritime agent is a specialist in providing mediation services to participants in the process of ship transportation.

Due to the change of numerous factors related to the threat to the ship and / or cargo, such as increasing the risk of piracy and terrorism, the threat of radiation or other dangerous pollution, the specifics of the activity of a maritime agent undergo constant changes, since the totality of factors of the trading environment of the trading vessel – gives a significant imprint on the market of agency of ships and cargoes.

Changes in the specifics of agency are also largely related to the international dimension of merchant shipping, due to changes in domestic conditions and legislation in different countries. There are a large number of rules and formalities, calculations and payments at all stages of a visit to a port vessel, so for the most efficient carrying out of all necessary operations, shipowners require the services of maritime agents. The agent himself provides the court-owner with entry into official relations with cargo owners, stevedoring companies, services servicing ships at the port [6].

The common responsibilities of an agent include the following:

- compliance with all formalities and requirements directly related to the vessel's entry into and departure from the port (customs and sanitary inspections, payment of fees, receipt of various documents, etc.);
- preparation and processing of documents;
- timely provision of the vessel with tugs, pilots;
- assistance in organizing and carrying out cargo operations;
- organization of supply of food, water, fuel, fuel and lubricants, etc. ;
- timely informing the shipowner of the arrival of the ship, the course of cargo and various auxiliary operations, the circumstances of the ship's stay in port, the departure of the ship and the amount of cargo on board;
- payment at the expense of the shipowner of all fees and other costs for the ship;
- timely informing the master of the ship and the owner of the cargo about the rules, regulations, local customs, etc.;
- participation in the investigation of an accident, drawing up various acts related to the accident, inspection, examination, etc.;
- fulfillment of possible orders of the captain and the owner of the vessel [1].

The modern maritime agency market is represented by a large number of companies competing with each other. The service of ships in ports, carried out through ship agents, is based on an agency contract, the parties of which are the shipowner (principal) and the agency enterprise (agent). The agency agreement sets out the conditions of representation of the shipowner, ensures the protection of his or her last interests and the proper support for maritime navigation in a particular region or port.

Thus, the payment of agency services is provided in the agency contract in the form of agency rewards. The amount of agency fees is no longer negotiable between the agent and the court-owner, as the agency's rates are set by the associations of port or regional agents. The absolute value of agency fees is small. Agency fees are differentiated by the size of the ships served and depending on the purpose of the event of the vessel: non-commercial measure (for bunkering, water supply, hospitalization, etc.) is paid at the minimum rates, the charge for unloading with subsequent load is paid at max. low rates. All the numerous expenses of a vessel in a separate port in one form or another are paid by the agent and are issued by the dessert account.

The agent has no right to receive any additional income in any way in the agency process: no additional commissions, gratuities, deductions from other people's income, etc. are allowed, except for the agency fee paid by the shipowner under the agency agreement. Any incidental income of the agent is illegal and is considered a bribe. All discounts received by the agent from the ship-servicing firms should be credited to the shipowner.

The main component of the economic interest of agency businesses is profit maximization through:

- expansion of the market of activity through aggressive market policy of displacement of competitors at the local level;

- expansion of the market of activity due to penetration into new maritime agency markets (creation of branches, subsidiaries in neighboring ports or regions);
- expansion of the market of activities by concluding treaties of agency protection or participation in transnational agency companies;
- ousting competitors from "their" terminal or port (in recent years the fight for the status of terminal agent or monopoly port has become more efficient and relevant);
- establishing a trust relationship with the port administration and suppliers so that they can act as guarantor in difficult situations;
- encouraging more shipowners to cooperate;
- support (advisory and information) of national traders who plan to engage in maritime transport.

Table 1. Components of economic interest

| Components of economic interest | A method of increasing profits |
|--|--|
| Expansion of the market of the activity | Displacement of competitors at the local level |
| Expansion of the market of activity | Penetration into new maritime agent markets (directly establishing subsidiaries, subsidiaries in neighboring ports or countries) |
| Expansion of the market of activity | Conclusion of agency protection treaties or participation in transnational agency companies |
| Forcing competitors out of "their" terminal or port | (The fight for terminal agent status or monopoly port has become the most effective in recent years and so to speak) |
| Establishing trust relations with the port administration, suppliers | Be able to act as a guarantor in complex situations |
| Encouraging more shipowners to cooperate | Increase of client base and status of reliable agent |
| Support (advisory, informational) of national traders planning to engage in sea transportation | Receive feedback and expand your customer base |

Source: own elaboration

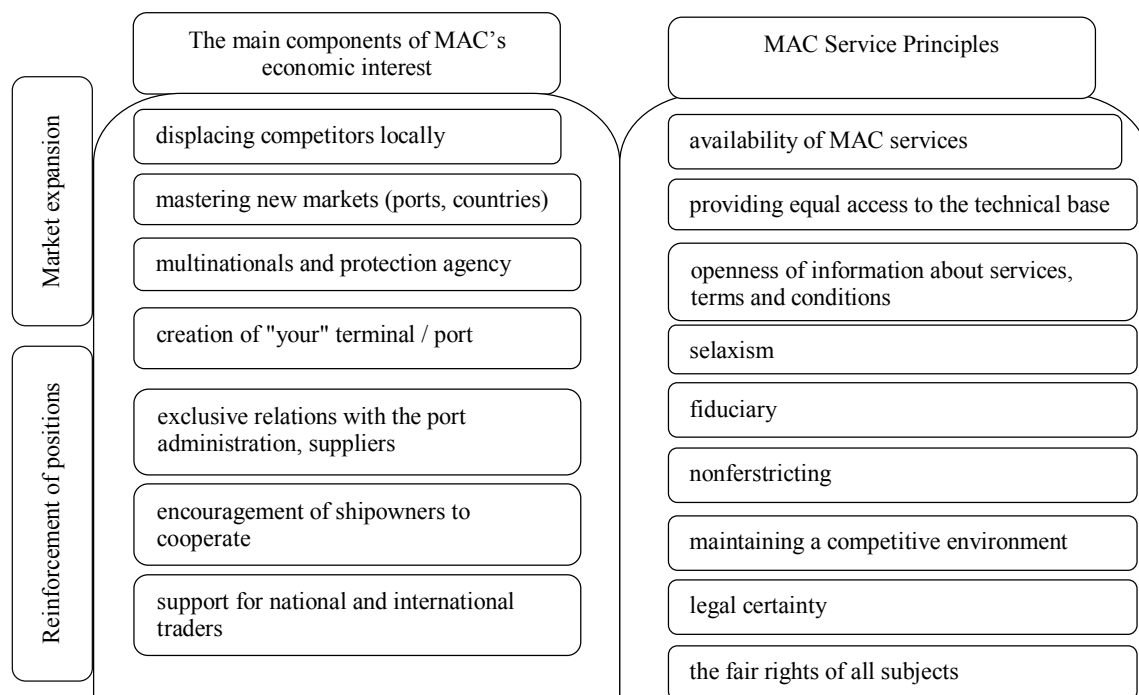


Fig. 2. Economic interest with service principles
Source: compiled by the author on the materials [18]

Successful professional activity of agency companies is possible subject to the following principles of providing agency services:

- principle of availability of agency services – any shipowner can refer to any agent;
- the principle of ensuring equal access to the necessary material and technical base for the provision of basic forms of agency services in order to ensure that the request of the shipowner of any complexity;
- the principle of openness of information about services, the procedure and conditions of their provision (the list and cost of services are usually available on the websites of ports or agency companies);
- the principle of selaxism – the professional fortune of agents providing maritime agent services);

- fiduciary principle (especially trusting relations between the shipowner and the ship agent);
- the principle of nonrestricting (nonverstrickung, German. – conflict of interests), according to which the agent can not be both the plaintiff and the defendant for one principal;
- the principle of maintaining a competitive environment in the provision of agency services;
- the principle of respect for the rights of all maritime agents;
- the principle of legal certainty.

The fiduciary nature of the economic relations of the shipowner and his ship agent determines the particular nature of the financial flows inherent in the activity of the ship agency. The main difference between the financial flows of a ship agency is the presence of significant financial resources of the principal in the accounts that the agency manages both on behalf of the principal and on its own behalf. It is the necessity, under certain conditions, to dispose of the principal's money on its own behalf and create certain conflicts with national Ukrainian law. In the normal situation where a sub-agent is required to involve a sub-agent in certain circumstances, it enters into an appropriate agreement with him and pays him an advance to perform the necessary activity, then the agent company makes such a transfer on its own behalf and delegates on its own behalf the right to use it. Only in the future when forming a disbursement account such an operation is closed by the principal's funds. The supervisory authorities usually refer to such an operation as payment to a third party who is not a party to the agreement. Of course, you will need to provide proof of service and acceptance, for example: correspondence, various receipts, etc.

Conclusions

Ukraine is a coastal state, for which the maritime economic complex plays an important economic role. Without organization of interaction of all its parts, economic development of any country is impossible. That is why development of maritime agency companies, as largest intermediaries of almost all participants of multimodal and regular transportation, is very important for the entire marine-economic complex of the country. The developed method allows to evaluate and correct position of each maritime agency company separately and to see picture in general. From development of companies this significant part of work depends on the country's presentation to international carriers, principals, ship-owners and other third-party companies that have linked their business / work / transportation to that country. The advantage of this method is ability to conduct self-assessment without involvement of third parties, but in this case, the responsibility for results and their relevance to the real picture of market lies entirely with employee who conducted evaluation and depends on his view of a particular company, which is not always an impartial look.

Abstract

The article investigates activity maritime agents both in Ukraine and around the world. The main legal acts that determine the form and content of such relations marine agent with third parties and the principal, as well as set the volume of legal sides of the agency agreement. Were considered international and national agency organization. In recent years there has been a significant reduction in the level of the service sector of maritime transport. It is caused not so much an increase in tariffs and reduction of traffic in the Ukraine as a redistribution of "cargo" markets, and hence the transition of principals to other agents. Therefore, it becomes necessary to consider the activities of the marine agent, consider their rights, responsibilities and identify possible trends. Conduct a research-action, aimed at analyzing the situation and improve the operations of port infrastructure and content of the work is to protect the interests of the ship-owner (charterer) in collaboration with the port authorities, local authorities, other business entities. All this is caused not so much by the increase in tariffs and the decrease in the flow of goods in Ukraine as a redistribution of "freight" markets, and hence the transition of principals to other agents. In this regard, it becomes necessary to consider the activities of the maritime agent, consider its rights, functions and identify possible trends in the market of marine agency. Conduct scientific and practical research aimed at analyzing the status and improvement of each individual agency company, its place among its competitors. The article is devoted to the study of the activities of maritime agents, both in Ukraine and participants in the agency process, which is not an integral part of this process. The location of the maritime agency company with respect to other participants in the process of maritime agency and communication is shown in the course of the agency activity. The main components of the economic interest of these companies were identified. The actions of the maritime agent for the reception and departure of the vessel shall include compliance with all necessary formalities related to the vessel's entry into port, executed on behalf on behalf and at the expense of the shipowner / principal. The relationship between the maritime agent and the principal is based on the principles of the mandate, and the relationship between the maritime agent and third parties is based on the principles of exercising powers that cover the outside of the relations of representation.

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Посилання на статтю:

Iarmolovych D. Yu. Economic interests of participants in the agency process and maritime agency companies // Економічний журнал Одеського політехнічного університету. – 2019. – № 2 (8). – С. 66-73. – Режим доступу до журн.: <https://economics.opu.ua/ejopu/2019/No2/66.pdf>. DOI: 10.5281/zenodo.3591958.

Reference a JournalArticle:

Iarmolovych D. Yu. Economic interests of participants in the agency process and maritime agency companies // Economic journal Odessa polytechnic university. – 2019. – № 2 (8). – С. 66-73. – Retrieved from <https://economics.opu.ua/ejopu/2019/No2/66.pdf>. DOI: 10.5281/zenodo.3591958.

