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INTERSECTION DUTIES SHIP-OWNER AND MARINE AGENT REGARDING TO THE PRINCIPAL

ПЕРЕТИН ОБОВ'ЯЗКІВ СУДНОВЛАСНИКА І МОРСЬКОГО АГЕНТА ЩОДО ПРИНЦИПАЛА

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Ярмолів Д.Ю. Перетин обов'язків судновласника і морського агента щодо принципала. Оглядова стаття.

У світі діяльність морських агентств регулюється національним законодавством, а також нормами і документами, які розробляються міжнародними торговими, транспортними, агентськими асоціаціями та федераціями. Стаття присвячена предметного розгляду роботи морських агентських компаній в розрізі їх обов'язків по відношенню до безпосереднього принципала, які частково можуть конфліктувати з рядом обов'язків судновласника. Розглянуто варіанти класифікації даних обов'язків обох зацікавлених сторін. З приходом судна в порт агентів доводиться від імені і за рахунок судновласника вступати у взаємини з діючими в порту державними контролюючими органами, які виконують загальнодержавні функції: капітан порту, головна диспетчерська, інші портові служби і владні органи, прикордонники, митниця, санітарно-карантинні служби, органи внутрішніх справ.

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

Iarmolovych D. Yu. Intersection duties ship-owner and marine agent regarding to the principal. Review article.

In the world, the activities of maritime agencies are regulated by national legislation, as well as the norms and documents that are developed by international trade, transport, agency associations and federations. The article is devoted to a substantive review of the work of maritime agent companies in the context of their responsibilities with respect to the direct principal, which in part may conflict with a number of duties of the ship-owner. With the arrival of the vessel in the port, the agent has to act on behalf of and at the expense of the ship-owner to interact with the state control bodies acting in the port, which perform national functions: port master, dispatcher, other port services and authorities, border guards, customs, sanitary, quarantine services, internal affairs bodies.

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

The statutory basis for the functioning of the Maritime Agents Institute is the provision of international maritime law, which has incorporated the relevant rules of both public and private international law. For a long time, these relations, like all other maritime affairs, were governed by international customs – the generally accepted rules of trade between the ports of certain geographical regions as a result of centuries-old practice. To this day, they are an important source of international maritime law as "evidence of a common practice recognized as a rule of law".

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 thesises 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. Miroshnichenko, 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 to consider a number of duties that ship owner and marine agent has against principal and to clarify main moments were they intersect with duties of marine agent for ship-owner.

The main part

In many countries' civil and maritime law, a ship agency contract is recognized as being identical to a contract of agency, mediation, commission or commission. A maritime agency contract may contain elements of all those types of contracts. By concluding a contract with a maritime agent, the shipowner enters into business relations with third parties in various areas of commercial activity, such as assisting the ship's captain in establishing communications with local and port services, arranging for the ship's delivery and servicing at the port, processing of cargo documents, collection of sums freight and others, belonging to the shipowner, the sums of money according to the requirements under the contract of sea transportation of cargo, payment at the order of

the shipowner and the master of the ship of the amount, as and is subject to payment in connection with the vessel's stay in port, freight collection, towing, freight forwarding, pilotage, equipment rental, stevedoring services, risk insurance, supply, etc., whereby the shipowner establishes legal relations with third parties, are based on various contracts: transportation, towing, leasing, commissions, storage, etc.

The provisions of the CTMU allow maritime agents and their principals to use international forms of agency agreement. However, standard forms of agency contract are widely used in maritime practice.

Some large shipowners have standard forms of maritime agency contracts. At the same time, large agency companies recommend that the shipowner propose his own agency agreements.

Standard Linear Agreements (the "FONASBA Standard Linear Agreement" and the "FONASBA General Agency Agreement (for liner shipping)") were developed by the Federation of National Associations of Maritime Brokers and Agents (FONASBA) and recommended for practical use by the Shipowners Organization (BIMCO). The joint development of the document by parties representing the interests of both agents and principals allows us to take into account the interests of the two opposing parties. When concluding a particular contract, the parties may exclude certain provisions and at the same time make new ones that will meet their requirements.

In general, in the practice of international navigation such types of agency agreements, which are presented in fig. 1:

- port agency agreement, which applies mainly to the port agency of tramp ships;
- a general agency agreement, which grants an exclusive right to an agent for the agency of all principal ships in the agent's region of operation, and in doing so, gives the agent broad authority over matters relating to the ship's service, cargo, crew, passengers, equipment and other aspects business circle. The General Agent under the principal agreement has the right to delegate some of his powers to other agents, concluding with them a subagency agreement;
- liner agency agreement – drawn up by liner shipowners with line agents. Contents depend on the type of line: conventional, container, roller, light;
- equipment control agreement.

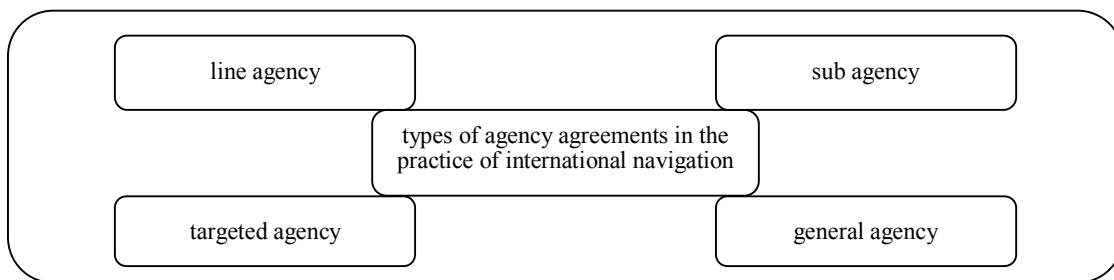


Fig. 1. Types of agency agreements in the practice of international shipping

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

As a maritime agent performs legal and other actions not only on his own behalf, which impose on him personally agreed upon obligations, but also on behalf of the shipowner, the latter also have obligations. An agreement entered into by a maritime agent with a bona fide third party is valid and provides for the rights and obligations of the shipowner to exercise the agreement if the third party was not aware of such restriction.

The principal's instructions and instructions may be expressed in both specific and general forms, such as "the exercise of ordinary agency functions". The agent is not entitled to refuse the powers conferred on him. However, if the instructions are strictly followed, there is a validity of damages for the principal, the agent may also refuse to give him the instructions. Therefore, there are times when the essence of the relationship between the agent and the principal prevails over the terms of the agreement.

Under English law, a maritime agent empowered to act at his discretion, if he conscientiously performs his duties, even if his actions result in undesirable results for the principal, the agent will not be liable [2].

Part 3 of Article 116 of the KTMU provides for the agent not only the representation of interests of both parties, ie concluding agreements on their behalf, but also the implementation of legal and other actions of the agent in the interests of both parties in other situations, namely:

- in his own name for the benefit of the shipowner and at the same time for the benefit of the other party;
- on behalf of and for the benefit of the shipowner, at the same time on his own behalf and for the benefit of the other party.

It is generally accepted that an agent cannot act on his own behalf for the benefit of both parties.

Thus, the agent acts subject to the agreement of both parties. It should be noted that the relationship between the maritime agent and the other party (supplier company, etc.) will be governed not by the maritime agency agreement but by the agency agreement.

An important issue for the legal support of a ship agent's activity is the pro forma arrangements that are developed by large agencies, shipping companies, and agent associations and shipowners.

Ukraine's contractual practice uses agency agreements. The practice of treaties, the relationships governed by these treaties, implies that they are most clearly and fully spelled out in Anglo-American law. In turn, continental law covers contractual commissions (Chapter 34 of the Civil Code of Ukraine) and assignment (Chapter 35 of the Civil Code of Ukraine).

The agency agreement under Anglo-American law confers autonomy on the existence and activities of these organizations; in its turn, the autonomy of the agency contract is enshrined in the Civil Code of Ukraine together with the commission agreements, as well as power of attorney.

An agency contract has differences from a commission agreement and a power of attorney. Here are the differences:

- the subject matter of the agency agreement envisages both actions leading to legal consequences and actions which will have no legal consequences;
- the term of existence is extended because the agency agreement provides for the agent's actions, which can be repeated many times and for a long enough time;
- the maritime agent has the opportunity to act for the benefit of the other party to the contract, especially if the agent was authorized by that party, or if the shipowner does not dispute that the commissioner or the contracting party does not object.

When studying the agency contract, from the standpoint of law, we can note that from is divided into the following varieties:

- bilateral – such that the rights and obligations are shared by both parties;
- consensual – which becomes valid only from the moment of agreement of its basic terms;
- free of charge – when the agent receives a contractual remuneration after fulfilling obligations previously entered into the contract.

Considering the duties of the agent in relation to the principal presented in the scheme in fig. 2:

- act in accordance with the powers conferred;
- have no commercial interests that are contrary to the interests of the principal (for example, to compete with a competing shipping line, belong to a stevedoring agent, etc.), to report additional illegal transactions and to transfer them quickly, to keep money and property of the principal "separate from their personal";
- perform personally their professional functions, the subagent may be hired in the case of the principal's personal consent;
- specify everywhere as "as agent only" or "for and on names", in accordance with an open (the name of the principal is indicated) or not an open principal;
- to keep secret information about the commercial activities of the principals during the joint activity, as well as after the termination of the contract;
- to inform the shipowner of any changes occurring in the freight market, the port services market, as well as changes in the fuel market or changes in the equipment fleet market [5].

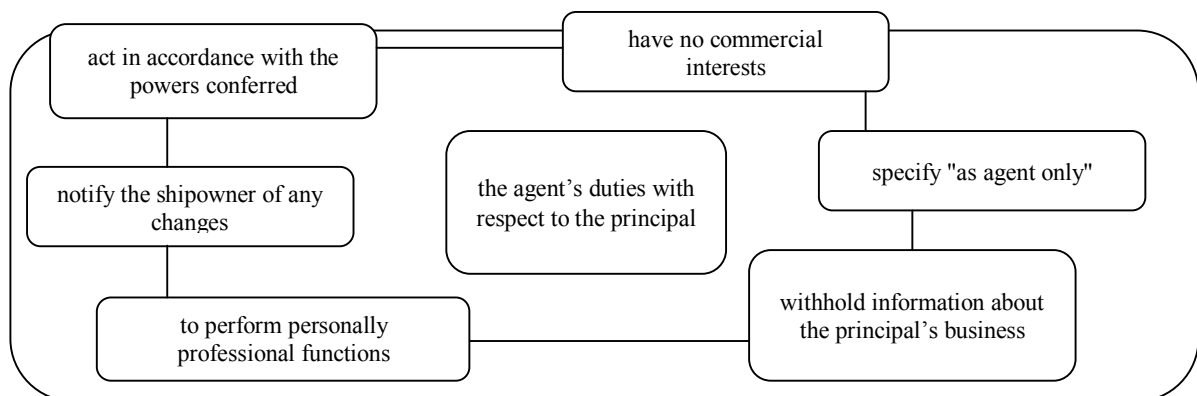


Fig. 2. Agent's responsibilities to the principal
Source: compiled by the authors on the materials [2]

Agent rights are the responsibility of the shipowner. The duties of the shipowner, presented in fig. 3, are divided into information obligations, according to the payment for services and remuneration, of a general nature [3]. The duties of an information shipowner include the following:

1. Providing the agent with timely information on the approach of the ship, submitting applications with a detailed list of necessary services;
2. Providing the agent with information about the ship's characteristics;
3. Providing necessary information on the specifics of the agreements between the shipowner and the charterer, as well as between the cargo owner and third parties.

The duties of the shipowner, in terms of payment for services and remuneration, include the following:

1. Pay agency fees on time;
2. Issue an advance upon request of an agent;
3. Reimburse the additional costs of the agent by prior arrangement;
4. Transfer of the advance in advance, in order to pay the fees and services at the port.

The duties of a shipowner of a general nature include:

1. Comply with the rules and traditions established in the port;
2. Appoint a certain agent for all ships of the specified shipowner;
3. Not to order the performance of any services to other persons, if such can be performed by the agent or his subcontractor.

The structure of agency agreements also includes the following:

- subagents and other subcontractors;
- financial obligations of the parties in accordance with the calculated transactions for freight and disbursement expenses;
- liability of the parties in case of improper and improper performance of obligations under the contract;
- the procedure of dispute settlement (arbitration);
- the validity of the contract and the procedure for amending it;
- the order of execution of the contract.

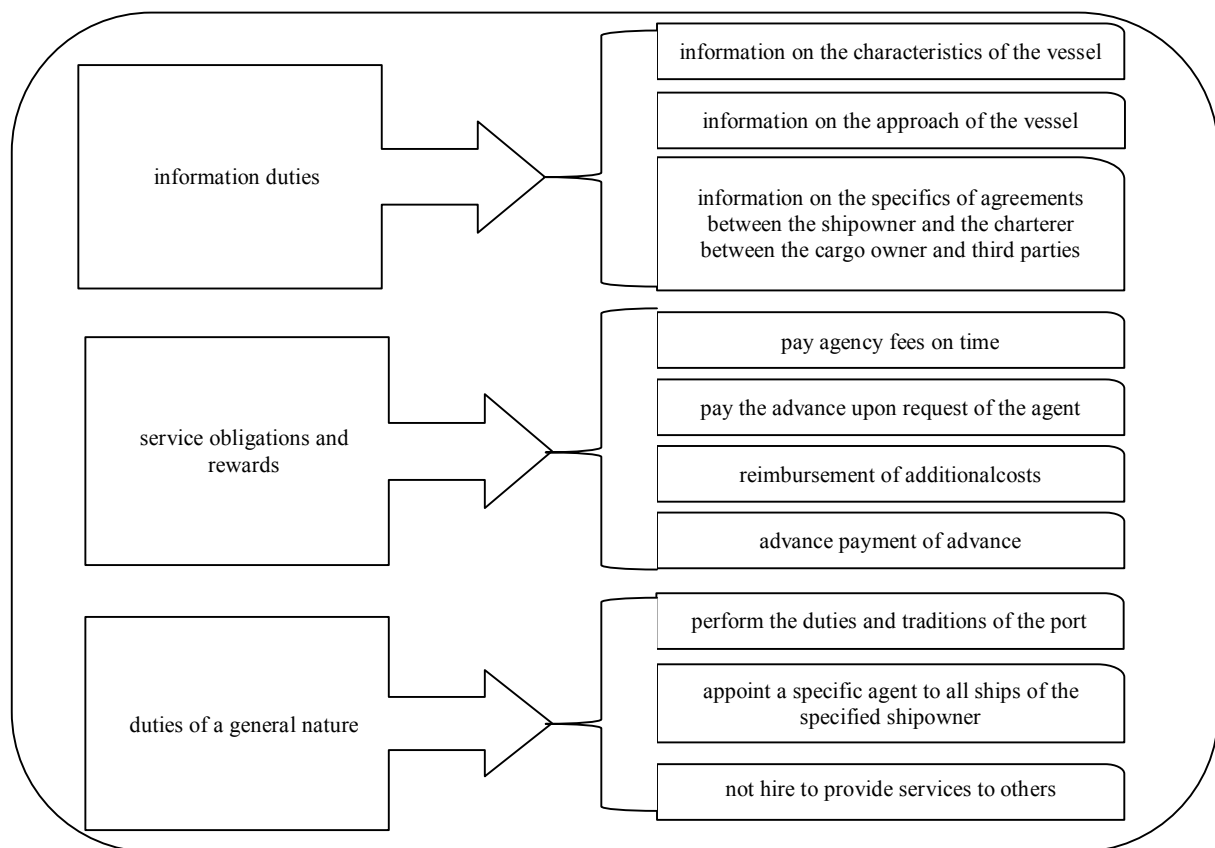


Fig. 3. Duties of the shipowner with respect to the maritime agent
 Source: compiled by the authors on the materials [3]

In the world, the activities of maritime agencies are governed by national law, as well as norms and documents developed by international trade, transport, agency associations and federations.

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 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.

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

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