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Recommendations and standards:

Recommendations for approval

Recommendation No. 45: Minimum Standards for Ship Agents and Ship Brokers

Submitted by the Bureau for approval

Summary

The ship agent is the coordinator of the port call, representing the ship owner or charterer before the authorities, service providers and other parties and ensuring the smooth, effective, and efficient execution of the call. A ship broker brings the ship and the cargo together to perform the voyage. In some countries these professions are regulated, but in others specific laws may not be in place. This recommendation, which is an updated version of the 1988 recommendation of the United Nations Conference on Trade and Development (UNCTAD), provides clear guidance on those professions and minimum standards which may serve as a baseline both for governments and those providing ship agency and ship broking services.

Document ECE/TRADE/C/CEFACT/2021/8 is submitted by the Bureau to the twenty-seventh session of the Plenary for approval.



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I. Recommendation No. 45: Minimum Standards for Ship Agents and Ship Brokers

A. Introduction

1. In 1988, the United Nations Conference on Trade and Development (UNCTAD) issued the first version of *Minimum Standards for Shipping Agents* (UNCTAD/ST/SHIP/13) in response to a request from the UNCTAD *Ad Hoc Intergovernmental Group to Consider Means of Combatting all Aspects of Maritime Fraud, including Piracy*. These are non-mandatory in nature and are intended to assist national authorities and professional associations in establishing their own standards. This recommendation was developed in close collaboration with UNCTAD.

B. Purpose and scope

2. This recommendation aims to make the necessary amendments to ensure that they continue to provide appropriate and up-to-date guidance to national authorities and professional associations. This reflects (i) changes to operational practices in the ship agency profession since the first issue in 1988; (ii) the increasing emphasis on quality service; (iii) as well as increased requirements, including in the context of the International Maritime Organization (IMO) *Convention on the Facilitation of International Maritime Traffic*, 1965, as amended and in force from 1st January 2018 (henceforth the “IMO FAL Convention”), for the digital exchange of shipping information between ships and ports aiming to reduce the administrative burden and increase the efficiency of maritime trade and transport. The recommendation expressly references ship brokers as being covered by these standards.

3. These guidelines can further assist countries who do not yet have ship agency or ship broking sectors to develop these professions.

4. The 1988 Minimum Standards recommendation provided a definition of a ship agent which encompassed the activities of ship agents and of ship brokers. The current recommendation proposes to align the definition of ship agent to the IMO Convention.

C. Benefits

5. Ship agents can serve as the local representative for a ship owner or charterer (also called “the principal”). Together with the port stakeholders, they can assist with all relevant services for the arrival, discharge, release and loading of vessels, ensuring that the principal is aware and in accordance with the dispositions.

6. Ship brokers act as intermediaries between the ship owner and the charterer in the establishment of contracts for the chartering of vessels and for the carriage of goods and passengers by sea. Ship brokers also act as intermediaries for the sale and purchase of ships and other seagoing vessels.

7. Compliance by ship agents and ship brokers to the minimum standards set out in this document will contribute to the raising of standards of professional service delivery for ship owners, ship operators and other engaged parties and thereby enhance the efficiency and effectiveness of the maritime transport chain. These standards will also contribute to capacity building by providing guidance to companies and national authorities in the establishment of professional and well-founded ship agency and ship broking sectors.

D. International standards

8. These guidelines have been developed in compliance with and to support the IMO FAL Convention.

E. Recommendation

9. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), at its twenty-seventh Plenary session on 19-20 April 2021 in Geneva, recommends the following:

- (a) National authorities and professional associations should consider the minimum standards in Part II of this document as guidelines when establishing their own standards.
- (b) Professionals who would like to practice in the ship agency and ship broking professions should consider the minimum standards in Part II of this document as the baseline for best practices.

II. Guidelines to Recommendation No. 45: Minimum Standards for Ship Agents and Ship Brokers

A. Objectives

10. The objectives of these minimum standards are as follows:
- (a) To uphold a high standard of business ethics and professional conduct among ship agents and ship brokers;
 - (b) To promote a high level of professional education and experience, essential to provide efficient services;
 - (c) To encourage operation of financially sound and stable shipping agents and ship brokers;
 - (d) To contribute to combatting illicit trade and illicit maritime practices (including but not limited to maritime and customs fraud; corruption; the illicit movement of banned drugs, other illegal or restricted substances, counterfeit goods and endangered species; fraudulent ship registration; digital fraud and cybercrime) by ensuring shipping agents are trained to the highest levels and, if possible, professionally qualified;
 - (e) To provide guidelines for national authorities and/or professional associations in establishing and maintaining sound ship agency and ship broking systems; and
 - (f) To encourage ship agents and ship brokers to gain and maintain an internationally recognized quality standard covering their ship agency and ship broking operations.

B. Definitions

11. For the purposes of these minimum standards the following definitions apply:
- **Ship agent** means the party representing the ship's owner and/or charterer (the principal) in port. If so instructed, the agent is responsible to the principal for arranging, together with the port, a berth, all relevant port and husbandry services, tending to the requirements of the master and crew, clearing the ship with the port and other authorities (including preparation and submission of appropriate documentation) along with releasing or receiving cargo on behalf of the principal.¹
 - **Ship broker** means a party acting as an intermediary between parties (the principals) engaged in negotiating and accomplishing the sale and purchase or hire of a ship. This may also include collection of freight and/or charter hire where appropriate and all related financial matters.
 - **National authority** means the body constituted under national law to implement legislation governing the licensing/registration of ship agents and ship brokers.
 - **Professional association** means an organization constituted for the purposes of
 - providing a central organization for those engaged in the professions of ship agent and ship broking in the country concerned,

¹ International Maritime Organization, *Convention on Facilitation of International Maritime Traffic, 1965, as amended, 2017 edition* (IMO FAL). See <https://www.imo.org/en/OurWork/Facilitation/Pages/FALConvention-Default.aspx>

- establishing and upholding standards of conduct and practice for those professions, and
- exercising supervision over the members and securing for them such professional standards as may assist them in the discharge of their duties.
- **Examination** means an examination carried out on subjects specifically related to those professions in order to ensure adequate knowledge and expertise.
- **Adequately and appropriately trained** means that individuals employed by a ship agent or ship broker should receive full and regular training such that they can carry out all their expected duties to a high standard.
- **Quality program** means a program established by a recognized quality assurance provider with the aim of ensuring that ship agencies and ship brokers accredited thereto meet clearly set minimum standards for professional qualifications, adequate and appropriate training, and financial qualifications.

C. Qualifications

12. To be deemed qualified, the ship agent or ship broker must:

- (a) As an individual, be of good standing and be able to demonstrate their good reputation and competence, and
 - (i). have obtained the necessary expertise in the profession by working for a significant period of time in a responsible capacity with a qualified ship agent or ship broker, and
 - (ii). have passed such examination(s) or assessment(s) as required or recognized by the national authorities, or professional associations. The scope and details of such examination(s) shall be determined by the said authorities/professional associations.
- (b) As a corporate entity, employ such persons qualified as above to ensure the proper performance of the entity's function as a ship agent or ship broker.

D. Education and training

13. A ship agency or ship broking company should ensure that all employees are adequately qualified or trained in order to ensure the provision of a high level of service to its customers. Such training should cover all the duties the employees would reasonably be expected to undertake. It should be reviewed regularly and, where necessary, updated or expanded. Training could be provided by the company itself, national associations, commercial training providers and other suitably qualified bodies. Ship agents or ship brokers in partnership or acting as a sole trader should also undertake such training or education as may be necessary to ensure the maintenance of a high level of service provision to their principals.

E. Financial qualifications

14. To be considered financially sound, a corporate entity, and where they provide such services in partnership or as a sole trader, a ship agent or ship broker must

- have financial resources adequate to maintain its business, as evidenced by references from banks, financial institutions, auditors, and reputable credit reference companies to the satisfaction of the national authorities/professional associations; and
- as evidence of best practice, have in place adequate and appropriate² insurance coverage, provided, where possible, by an internationally recognized mutual club or insurance company, in respect of professional indemnity risks and/or errors and omissions by the company³; and
- maintain appropriate accounting policies and controls, ensuring that principals' funds are counted separately from those of the company or individual itself.⁴

15. Measures must be taken to ensure that the above financial standards continue to be met. This could be achieved through regular scrutiny of ship agents and ship brokers by national authorities or professional organizations.

F. Code of professional conduct⁵

16. The ship agent or ship broker shall
- discharge their duties to their principal(s) with honesty, integrity and impartiality;
 - apply a standard of competence in order to perform in a conscientious, diligent and efficient manner all services undertaken as a ship agent or ship broker;
 - observe and effectively execute all national laws and regulations relevant to the duties they undertake;
 - operate from a permanent address with all the necessary facilities and equipment in the port of call, or being represented in the port of call, or in the country of port of call, to conduct business in an efficient and timely manner;
 - exercise due diligence to guard against fraudulent practices; and
 - exercise due care when handling monies on behalf of their principal(s).

² "Adequate" shall mean at or above any minimum limits of coverage set by the association or national authorities and "appropriate" shall mean that the coverage extends to all aspects of the company's activities.

³ Criteria and wording derived from FONASBA Quality Standard Eligibility Criteria, FONASBA, October 2017. Available at <https://www.fonasba.com/wp-content/uploads/2017/10/QUALITY-STANDARD-CRITERIA-v7-COUNCIL-APPROVED-OCTOBER-2017.pdf>. (Accessed 8 January 2021)

⁴ Ibid.

⁵ Items in this section are aligned with various criteria found in the The FONASBA Code of Conduct, 1998 (revised 2008). Available at <https://www.fonasba.com/fonasba-member/code-of-conduct>. (Accessed 8 January 2021)

G. Accreditation in a recognized quality program

17. As further evidence of their commitment to the provision of a high standard of professionalism in the delivery of services to their principals, ship agencies and ship brokers should seek accreditation through a relevant quality program, administered by a recognized provider.⁶

H. Enforcement

18. National authorities and/or professional associations charged with overseeing ship agency and ship broking services should ensure that these minimum standards are complied with. In proven cases of non-compliance, they should determine the appropriate disciplinary measures applicable. These may include the following:

- Warnings
- A requirement for undertakings as to the ship agent's or ship broker's future conduct
- Temporary suspension of authorization to operate as a ship agent or ship broker if/where granted by the relevant authority
- Temporary suspension of membership from the relevant professional association
- Temporary suspension of accreditation in a quality program
- Cancellation of authorization to operate as ship agent or ship broker, if/where granted by the relevant national authority
- Revocation of membership by the relevant professional association
- Revocation of accreditation with a quality program

19. Ship agents and ship brokers who are already operating, but who do not meet the foregoing standards, should be given reasonable time to conform to the requirements.

⁶ For example, through a national authorized economic operator (AEO) schema (detailed in the World Customs Organization's SAFE Framework of Standards (available at http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe_package.aspx); the FONASBA Quality Standard; or ISO 9001 on quality management (available at <https://www.iso.org/iso-9001-quality-management.html>).