

FONASBA MEMBERSHIP ENQUIRY



ENQUIRY RESPONSE FORM

ORIGINATING ASSOCIATION:	AMCF (France)
ENQUIRY DETAILS:	<p>In France we have problems with agents not being fully funded for the port calls they are required to handle.</p> <p>We would therefore like to know from FONASBA members if there are any requirements for a set level of pre-funding to be in place before the vessel is allowed to enter the port. If there is such a requirement, is it:</p> <ol style="list-style-type: none"> 1. A statutory obligation, a port regulation or just common custom and practice? 2. Is the level based on a percentage of the estimated disbursements account or it is it required to cover certain obligations, for example, navigation dues?
REPLY TO:	admin@fonasba.com
CLOSING DATE FOR REPLIES:	1st March 2017

RESPONDING ASSOCIATION COMMENTS:

Algeria	In the Algerian ports it is based on the disbursements account, the vessel will not be allowed to berth until the amount requested by the agent is transferred following a proforma invoice.
Belgium	<ol style="list-style-type: none"> 1. The requirement for pre-funding is common practice. This practice is confirmed in the general conditions of the ship agent federations in Belgium, e.g. in Antwerp “During, before as well as after the execution of the services entrusted to them, ship’s agents may ask either a guarantee or and advance for the payment of sums they disburse. They will not be obliged to make any payment on behalf of the ship owner as long as they have not obtained the guarantee or the advance requested....”. 2. In principle the level of pre-funding is 100% of the estimated disbursements, but subject to negotiations on a case by case basis this level may be reset at a lower percentage. Important considerations for the ship agent for resetting or not, may be one or more of the following: <ul style="list-style-type: none"> - Frequency of calls (for very regular calls a current account system may be considered) - Duration of the cooperation (what history does the agent share with the principal) - Market conditions (e.g. present hard market conditions for liquid bulk - most agencies will accept only 80 or 85% pre-funding nowadays) - Does the agent have to collect the freight amounts from the shippers and is he allowed to set these off against the disbursements - Nomination by charterer - Credit terms received from suppliers (port dues, pilotage fees... are payable through direct debit after 15 or 30 days).
Brazil	According to Brazilian Central Bank Regulations , Owners must remit 100% of PDA. However, some agents accept less, in some cases 70% of total PDA, of

	<p>course considering very long relationship with Owners, and also how many calls per month.</p>
Croatia	<p>As per Croatian Maritime Code, an Agent should receive pre-funds covering full DA before vessel's arrival.</p> <p>Article 681.</p> <p>(1) The Maritime Agent shall be entitled to an advance for his expenses and those made for the Principal and to remuneration.</p> <p>(2) If the expenses and the remuneration are not paid to the Agent, the Agent has the right of retention of the Principal's property.</p>
Cyprus	<p>Please be advised that in Limassol port the new Operators (for marine services, container operations and general cargo/passengers) require a bank guarantee to be lodged by our Members amounting to €10.000 for the services provided to vessels by them.</p> <p>For services provided by the Cyprus Ports Authority to vessels CSA's Members do not have to lodge any bank guarantee for any services amounting up to €5.000 (each case).</p>
Denmark	<p>1: There are no statutory rules that a port call should be pre-funded when calling Danish ports. The agent would obviously ask for advanced funds when acting on behalf of the principal based on a proforma DA as well as balance settlement after the port call according to the final DA.</p> <p>2: N/A due to the reply to 1.</p>
Dubai	<p>1. No statutory obligation. Individual Agents make their own decision.</p> <p>2. If Agent does require advance funding the norm is around 80%.</p>
Great Britain	<p>Most ports in the UK are privately owned so terms for each are very different.</p> <p>As a general rule it is not required for agencies to obtain prefunding. Whether they do or don't is a commercial decision they make as part of their agreement with vesseloperators/owners based on their relationship.</p> <p>Under U.K. Law an agent is protected under the 'Law of Agency' which protects them from pursuit by a supplier for a vessel owners' non-payment assuming that they have declared that they are acting 'as agent only on behalf of xxxxxx'. They MUST declare who the principal is. This gives the supplier the chance to check the worthiness of the principal.</p> <p>However, we are now seeing more instances of port authorities advising agencies that they MUST advise if they are not in funds - failure to advise means it is assumed they are in funds or are guaranteeing funds which makes the agent liable under the ports terms and conditions - this is still to be tested in the UK courts so not sure if such conditions could be upheld or disputed. Even with these conditions it is common for agencies not to be prefunded - in the majority of regular contracts the agency will probably agree to credit terms 30 days is common. If they don't offer credit they are unlikely to will regular caller business.</p>

	In the case of spot business, charterers nominated agents and unknown vessel owners calling them the agent is almost certain to obtain prefunding to protect himself as in these cases he may not even know the principal.
Greece	<ol style="list-style-type: none"> 1. Prefunding of agents in Greece is not statutory, it is just common custom and practice. 2. Usually it is 100% on the PDA.
Hungary	We do not have such regulation.
Israel	In the Israeli Ports there are no requirements for pre funding before the vessel is allowed to enter the port.
Italy	IN ITALY WE HAVEN'T ANY REQUIREMENTS FOR A SET LEVEL OF PRE-FUNDING TO BE IN PLACE BEFORE THE VESSEL IS ALLOWED TO ENTER THE PORT, BUT IN OUR PROFESSIONAL LAW (Legge n. 135/77) IT IS STATED THAT "Before the sailing of a foreign ship from the port where the agent is operating, said shipping agent has to obtain by his commissioner ship owner, charterer or carrier the availability, in the Italian territory, of the amount of money in foreign currency, sufficient to guarantee the fulfilment of the obligations contracted through the Agent during the call of the ship in the port."
Malta	<p>In Malta we have similar problems also.</p> <ol style="list-style-type: none"> 1. Prefunding is based on common custom and practice. 2. The Agents in Malta usually prepare a proforma invoice, based on which a request is made to owners / charterers for a prepayment, either for the full amount, or a percentage (say 50%) or, on certain occasions, no prepayment is requested, which all depends on the level of business relations between the parties.
Mexico	<p>In Mexico there is no rule in place regarding pre-funding for the port call's expenses.</p> <p>Mexican Shipping agents normally request full pre-funding, in the minority of the cases they get it complete, most get only part of the funds.</p> <p>This puts Mexican shipping agents in a difficult situation, as most port expenses (port and berthing dues, authorities, launch, towage, pilotage, are due right before, during, or immediately after the call. Only stevedoring companies/terminals grant some credit to regular liner services (but normally not to tramp ships), all other expenses are to be paid as mentioned.</p>
Morocco	As per local exchange control regulations, vessels agents are to be fully covered by owners of vessels disbursements. The local agents usually require prefunding of full vessels proforma disbursements account amount prior to, or on vessels arrival on the roads.
Netherlands	There are no official regulations for prefunding. It is a commercial decision of the shipping agent to negotiate between no pre-funding or 100% pre-funding.
Portugal	No requirements for pre-funding. However, the common practice is that if an agent is nominated for the first time normally sends the provisional D/A and asks for 100 payment before the vessel call.

Russia	<ol style="list-style-type: none"> 1. No any statutory obligation in documents. 2. 100% advance of the estimated disbursement is required. Any deviations between the advance and the final disbursement amount are settled after vessel's departure.
Spain	<p>In Spain, it's only regulated the guarantee of payment to the Port Authority 'expenses', that is:</p> <ul style="list-style-type: none"> - T1 (ship tax: tax payed for vessel berth) - T3 (tax charged to the goods). - T2 (Pax tax charged to the ferry and cruise passengers) - Navigation aids tax (charged to vessels in their first three calls of the year) <p>To obtain authorization from the Port Authority to attend vessels in each port, the ship agent must present a year bank guarantee, covering is monthly average invoice (of the mentioned taxes). In this way, the Port Authority is sure to collect the public taxes from the ship agent even if the 'ship owner' fail to meet the payments.</p> <p>It's a national law. But this law only says that 'the ship agent must guarantee the payment of the mentioned public taxes on behalf of his principal. The rest of the disbursement account expenses are not regulated in any law nor any practice, and they are under ship agent's risk and venture.</p> <p>So, there is obligation for the ship agent to guarantee the payment of the taxes generated by their principals, but there is not any law that guarantees the ship agent recovering (nor in advance nor afterwards) such expenses from the ship owners. There is not any regulation that allow ship agents to demand any specific level of funds to the ship owners.</p> <p>Furthermore, I have to say that Anti-trust Spanish authorities persecute this kind of practice.</p> <p>Disbursement accounts must be done under open market and free competition criteria, obviously under ship agent risk and venture.</p> <p>Ship agent must answer for his principal but nobody answers for the ship agent.</p>
Sweden	<p>There are no formal requirements, but we try to force our members to at least get 90 %, but it is not easy to get.</p>
Tunisia	<p>Usually owners (tramp) have to prefund the full Proforma before the call, or during the call. 90% should be already on the agency account</p> <p>This is a common practice of course, 85 to 90% usually cover port dues the biggest part of the PDA</p>
Uruguay	<ol style="list-style-type: none"> 1- Yes. It is the obligation to register in the Administracion Nacional de Puertos with insurance and guarantees in order to be able to apply for the dock port to the administration. 2- Tax - port dues - tax lien dues - taxes Prefectura Nacional Naval Montevideo

	<p>In the special case of cruises arriving you should charge 50% (Dock Dues) when you make the dock reservation two years before the arrival generally to cruises arrivals.</p>
USA	<p>In the United States, there are no statutory or port regulations that require any level of funding prior to the vessel's arrival at the port.</p> <p>Our members are finding it near impossible to secure full funding prior to the vessel's arrival this is particularly true for vessel owner/operators who use third party DA service providers.</p> <p>Securing 100% funding is a major issue with US based ship agents especially since there are not laws/port based requirements that require same. It has become a business decision on the part of ship agents as to whether or not they refuse business based on amount of pre-funding. Ultimately, the majority of our member REFUSE to sail the vessel without full funding.</p>

Justification for 100% Funding

The agency industry in the U.S. has been blemished by high profile bankruptcies. Given this fact and the fact that it is an unregulated industry, ASBA Agent Members recognized the need to raise the bar for agency service providers in February of 2005 by establishing their Guidelines for Certification. All ASBA Agent Members must be certified annually to maintain their membership. In October of 2009, the Federation of National Associations of Ship Brokers embraced this concept and now offers their Quality Standard which is internationally recognized which is awarded to our certified agent members. Owners' organizations that include BIMCO, INTERTANKO and INTERCARGO have supported these initiatives.

Our Certification includes a number of important components that are of significant importance to all principals. Of critical importance is that ASBA Certified Agent Member Companies provide an Annual Procedural Review by an outside Certified Public Accountant (CPA). The CPA attests that the member's accounting procedures are such that amounts due from/to principals are supported by invoices/receipts are reported by principal and agree in total to their general ledger. Members must maintain separate accounts by principal with all supporting documentation. Members must also meet minimum insurance cover and all boarding agents and their direct managers must successfully complete the ASBA Agent Exam.

ASBA Certified Agents are asking that their principals recognize the importance of this initiative by providing 100% funding basis their Pro-Forma Disbursement Account. Certified Agent Members work with DA Desk, World-wide Hub Agents and other third party service providers for the processing and final settlement of disbursement accounts. One of the benefits provided to principals by these service companies is the careful review of the pro-forma by comparing to previous vessel calls which insures that the pro-forma is accurate and comes close to the actual port costs provided there are no unforeseen changes/issues. Agent members must pay all port based providers in terms in order to guarantee that the expected level of service will be guaranteed for the next port call. The ASBA Certification provides the principals the security of knowing that advanced funds are safe and maintained according to established accounting principles in the United States.

Recognize "quality" agency providers by fully funding your vessel calls handled by an ASBA Certified Agent.