

COUNCIL MEETING

AGENDUM ITEM 11 – EXTERNAL RELATIONS

Due to the restrictions imposed by the COVID-19 pandemic, all meetings with external bodies are being held virtually.

UNCTAD MINIMUM STANDARDS REVIEW

The Minimum Standards project has made significant and positive progress over the past year. Following endorsement of our internal draft by the Miami Liner & Port Agency plenary, it was sent to UNCTAD and UN/CEFACT for their review and further action. The draft was well-received, following which a presentation was made to the UN/CEFACT Trade & Logistics group in Paris in February. From this, a project group was established, led by the undersigned, to take the revision forward. After several virtual meetings, an agreed draft text, now including ship brokers as well as ship agents, was published for a compulsory public review. The latter generated four responses, of which two came from FONASBA members as follows:

- France: Include an expectation that the agent is domiciled in the country where they operate
- Turkey (Chamber of Shipping):
 - Clarify that agents are expected to execute, as well as observe, national laws
 - Reference to use of, and adherence to, national tariffs

The project group reviewed these proposals, and it is pleasing to report that the first two were accepted and have been incorporated in the text. The third request relating to the use of, and adherence to, national tariffs, was not endorsed to avoid any issues with anti-trust or competition law. With these amendments made, the draft document was signed off at a meeting on 1st October and passed to the UN/CEFACT Bureau for review and endorsement, which it received. A copy of the Bureau-approved text of the new Standard is attached for information.

As project lead, the undersigned was invited to present the project to the UN/CEFACT Transport & Logistics domain (a wide-ranging group looking at all aspects of international standards for transport operations) during its virtual forum that ran from 5th to 16th October. The presentation was well-received.

The final stage in the process is for the Standards to be discussed (and hopefully approved) at the UN/CEFACT Plenary Meeting that is now scheduled for April 2021.

INTERNATIONAL CHAMBER OF SHIPPING INDUSTRY GROUP ON COVID-19

As members will be aware, in March FONASBA was invited by the International Chamber of Shipping to participate in regular (initially weekly but now bi-weekly) meetings of the international industry associations group comprising ship owners, operators and managers, ship masters, P&I Clubs, marine employers, the port industry and ourselves representing ship agents. This group has been instrumental in driving forward action on the shipping industry's response to the COVID pandemic, particularly in ensuring crew changes can be undertaken, highlighting the plight of stranded seafarers and raising awareness of the importance of the shipping industry

in mitigating the effects of the virus. It has also been the instigator of several IMO policies and protocols including those on crew changes recently adopted by the Maritime Safety Committee. Whilst the impact of COVID-19 continues to dominate the discussions, other topics, such as use of alternative fuels, are also coming to prominence. The Chamber is also in receipt of our COVID-19 updates.

Being a part of this group ensures that we are kept aware of major developments within the shipping sector and this has fed into other actions that we have undertaken. For example, we were recently contacted by the Chamber to assist with a letter to the Indian tax authorities in relation to GST (VAT) on provision of services to ships. We therefore drafted the sections of the letter referencing the relationship between the agent and the principal (which is at the root of the problem) and so were included in the letter as co-signatories. Furthermore we were also able to discuss some issues in Peru with our colleagues from the World Shipping Council.

WORLD ECONOMIC FORUM: ACTION ON CREW CHANGES

Again, by reason of our actions to support the plight of stranded seafarers, FONASBA was contacted by the World Economic Forum to contribute to a blog on the Forum's website in June entitled "Stuck at sea, how to save the world's seafarers and the supply systems they support" In relation to bureaucratic and administrative obstacles to crew changes, we were quoted as follows:

"It's an immediate response. We're not talking about opening countries up to travel and tourism, we're talking about a specific, easily identifiable group of people, who've made an immeasurable contribution to making this pandemic as bearable as it can be. And they've got to recognize this."

The article also included quotes from the Secretaries General of the UN, the International Chamber, International Transport Workers' Federation and senior representatives of Maersk, and MSC. The report was referenced on our social media pages.

IMO: FAL 44 AND RE-ESTABLISHMENT OF CORRESPONDENCE GROUPS

FAL 44, which was held virtually the week commencing 28th September, was notable as the first-ever full meeting of an IMO Committee to be held by video conference. During the meeting, the correspondence group on the Annex to the FAL Convention was re-established, as was a new group, to address corruption in the maritime sector, this followed the actions of the MACN cross-industry working group (see below). FONASBA has joined both groups and we look forward to continuing to support their work. Other outcomes from FAL 44 include action to enhance the resilience of the maritime sector towards future pandemics, and to further developing digital solutions to ship reporting and related matters.

IMO: IAPH PORTS GROUP

We remain engaged with this group and although it has not been able to meet, it has continued to work in the background. One of its highest profile actions was the publication of a public statement, signed by ten major international shipping and port related bodies, FONASBA included, calling for the significant progress made in digitalisation and streamlining of port procedures and operations, as a result of COVID, to be continued into the future. One of the key demands was to ensure the establishment of port community systems or other means of electronic data exchange in the main ports of all IMO Member States. A copy of the statement is attached.

UNITED FOR WILDLIFE

FONASBA continues to be represented within United for Wildlife's Transport Taskforce by the Immediate Past President and the undersigned. We both attended a meeting of the Transport Taskforce at IMO in February and virtually since then. Regrettably, the plans for a major awareness-raising event at IMO in April were cancelled but since then the organisation has focused on the increase of wildlife poaching and illegal wildlife transportation due to COVID-19. We continue to receive UfW Intelligence Briefings and where these reference FONASBA member countries as sources of illegally traded species, they are passed on to the association concerned for information and guidance.

MARITIME ANTI-CORRUPTION NETWORK

We continue to support the work of MACN both multilaterally as a member of the cross-industry working group and individually where member countries are the subject of focussed action. Argentina (hold cleaning), and Ukraine (ballast water surveys) are examples of countries where such action has been taken in conjunction with our member association, and in both cases the results have been positive. As reported above, the cross-industry working group drafted a paper for FAL 44 on combatting corruption in the maritime sector, copy attached, and this led directly to the establishment of an intersessional correspondence group on the topic. This group, of which we are now a member, will now work to develop a guidance document for FAL 45.

WCO PRIVATE SECTOR CONSULTATIVE GROUP (PSCG)

John Foord continues to represent FONASBA on the PSCG, which has met regularly by videoconference since the COVID lockdown. Much of the activity undertaken by the Group over the last year has been in connection with how Customs authorities have responded to the pandemic and can continue to do so, for example in the context of the efficient and effective movement of vaccines globally and without undue delay as a result of Customs formalities. John has fully updated PSCG members on the actions being taken in the maritime sector to ensure goods continue to be moved. The PSCG Chair, John Mein, also receives our COVID-19 updates.

In terms of FONASBA input to the PSCG, we carried out a survey in April to ascertain how well Customs authorities were coping with COVID-compliance measures. At that time staff absences due to strict quarantine regulations were a major issue, as were the difficulties in carrying out effective customs checks whilst maintaining social distancing. More recently, the Group requested information on national financial viability criteria under the AEO programme and in other similar programmes as part of an exercise to review the need for, and relevance of, such criteria in the AEO programme. As our contribution, we provided information on the relevant requirements under the Quality Standard.

BASCAP

There has been no action in relation to BASCAP since the last meeting.

FONASBA CLUB MEMBERS

As ever, FONASBA continues to work closely and effectively with our Club members on matters of mutual interest. BIMCO, INTERCARGO and INTERTANKO are also members of the ICS industry group.

Council is invited to note the report.

JCW/London, November 2020

UNITED NATIONS
CENTRE FOR TRADE FACILITATION AND ELECTRONIC BUSINESS
(UN/CEFACT)

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INTERNATIONAL SUPPLY CHAIN PROGRAMME DEVELOPMENT AREA
TRANSPORT AND LOGISTICS DOMAIN

RECOMMENDATION ON SHIP AGENT AND SHIP BROKER MINIMUM STANDARDS

SOURCE: Project Team
ACTION: Public Review

DATE: 9th July 2020
STATUS: **Version following Public Review**

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9 Part I: Recommendation No XXX: Minimum Standards for Ship Agents 10 and Ship Brokers

11 Introduction

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

18 Purpose and Scope

19 This current release of these standards aims to make the necessary amendments to ensure that they
20 continue to provide appropriate and up to date guidance to national authorities and professional
21 associations. This includes changes to operational practices in the ship agency profession since the first
22 issue in 1988 and the increasing emphasis on quality service, as well as increased requirements,
23 including in the context of the IMO Convention on the Facilitation of International Maritime Traffic,
24 1965, as amended and in force from 1st January 2018 (henceforth the “IMO FAL Convention”), for the
25 digital exchange of shipping information between ships and ports aiming to reduce the administrative
26 burden and increase the efficiency of maritime trade and transport. These amendments also specifically
27 reference ship brokers as being covered by this standard.

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

30 The 1988 Minimum Standards recommendation provided a definition of Ship Agent which encompassed
31 the activities of Ship Agents and of Ship Brokers. The current recommendation proposes to align the
32 definition of Ship Agent to the IMO Convention .

33 Benefits

34 Ship Agents can serve as the local representative for a ship owner or charterer (also called the Principal).
35 Together with the port stakeholders, they can assist with all relevant services for the arrival, discharge,
36 release and loading of vessels, ensuring that the Principal is aware and in accordance with the
37 dispositions.

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

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

47 **International Standards**

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

49 **Recommendation**

50 UN/CEFACT, at its twenty-seventh Plenary session on XXX April 2021 in Geneva recommends the
51 following:

- 52 a) Governments should consider endorsing the Ship Agency and Ship Broking professions in line
53 with the minimum standards in Part II of this document.
- 54 b) Professionals who would like to practice the Ship Agency and Ship Broking professions should
55 consider the minimum standards in Part II of this document as the base line best practices.
- 56

57 Part II: Guidelines to Recommendation N°XXX: Minimum Standards for 58 Ship Agents and Ship Brokers

59 ARTICLE 1: Objectives

60 The objectives of these Minimum Standards are:

- 61 a) To uphold a high standard of business ethics and professional conduct among ship agents and
62 ship brokers;
- 63 b) To promote a high level of professional education and experience, essential to provide efficient
64 services;
- 65 c) To encourage operation of financially sound and stable ship agents and ship brokers
- 66 d) To actively contribute to combatting illicit trade and illicit maritime practices including but not
67 limited to, maritime and customs fraud, corruption, the illicit movement of banned drugs and
68 other illegal or restricted substances, counterfeit goods, endangered species and fraudulent ship
69 registration, digital fraud and cyber-crime, by ensuring ship agents are trained to the highest
70 levels and if possible professionally qualified
- 71 e) To provide guidelines for national authorities and or professional associations in establishing
72 and maintaining a sound ship agency and ship broking system
- 73 f) To encourage ship agents and ship brokers to gain and maintain an internationally recognised
74 quality standard covering their ship agency and ship broking operations.

75 ARTICLE 2: Definitions

76 For the purpose of these Minimum Standards:

- 77 • **Ship Agent** means: The party representing the ship's owner and/or charterer (the Principal) in
78 port. If so instructed, the agent is responsible to the Principal for arranging, together with the
79 port, a berth, all relevant port and husbandry services, tending to the requirements of the
80 Master and crew, clearing the ship with the port and other authorities (including preparation
81 and submission of appropriate documentation) along with releasing or receiving cargo on behalf
82 of the Principal.¹
- 83 • **Ship Broker** means: A party acting as an intermediary between parties (the Principals) engaged
84 in negotiating and accomplishing the sale and purchase or hire of a ship. This may also include
85 collection of freight and/or charter hire where appropriate and all related financial matters.
- 86 • **National Authority** means the body constituted under national law to implement legislation
87 governing the licensing and/or registration of ship agents and ship brokers.
- 88 • **Professional association** means an organisation constituted for the purposes of:
 - 89 a) Providing a central organisation for those engaged in the professions of ship agents and
90 ship brokers in the country concerned;
 - 91 b) Establishing and upholding standards of conduct and practice for those professions;
 - 92 c) Exercising supervision over the members and securing for them such professional
93 standards as may assist them in the discharge of their duties
- 94 • **Examination** means an examination carried out on subjects specifically related to those
95 professions in order to ensure adequate knowledge and expertise.

¹ International Maritime Organization, Convention on Facilitation of International Maritime Traffic, 1965, as amended, 2017 edition (IMO FAL), see, as of July 2020:
<http://www.imo.org/en/OurWork/Facilitation/ConventionsCodesGuidelines/Pages/Default.aspx>

- 96 • **Adequately and appropriately trained** means that individuals employed by a ship agent or ship
97 broker should receive full and regular training such that they can carry out all their expected
98 duties to a high standard.
99 • **Quality Programme** means a programme established by a recognised quality assurance provider
100 with the aim of ensuring that ship agencies and ship brokers accredited thereto meet clearly set
101 minimum standards for professional qualifications, adequate and appropriate training and
102 financial qualifications.

103 ARTICLE 3: Qualifications

104 To be deemed qualified, the ship agent or ship broker should:

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

114 ARTICLE 4: Education and Training

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

122 ARTICLE 5: Financial Qualifications

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

- 125 a) Have financial resources adequate to its business evidenced by references from banks, financial
126 institutions, auditors and reputable credit reference companies to the satisfaction of the
127 national authorities and/or professional associations; and
- 128 b) As evidence of best practice should have in place adequate and appropriate² insurance cover,
129 where possible provided by an internationally recognised mutual club or insurance company, in
130 respect of professional indemnity risks and/or errors and omissions by the company.³

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

³ See for example, FONASBA Quality Standard Eligibility Criteria, FONASBA, October 2017, available as of July 2020 at: <https://www.fonasba.com/wp-content/uploads/2017/10/QUALITY-STANDARD-CRITERIA-v7-COUNCIL-APPROVED-OCTOBER-2017.pdf>

131 c) Maintain appropriate accounting policies and controls, ensuring that Principals' funds are
132 accounted separately from those of the company or individual itself.⁴

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

136 ARTICLE 6: Code of Professional Conduct

137 The ship agent or ship broker shall:

- 138 a) Discharge their duties to their Principal(s) with honesty, integrity and impartiality
- 139 b) Apply a standard of competence in order to perform in a conscientious, diligent and efficient
140 manner all services undertaken as a ship agent or ship broker;
- 141 c) Observe and effectively execute all national laws and regulations relevant to the duties they
142 undertake;
- 143 d) Operate from a permanent address with all the necessary facilities and equipment, in the port of
144 call, or being represented in the port of call, or in the country of port of call, to conduct business
145 in an efficient and timely manner⁵;
- 146 e) Exercise due diligence to guard against fraudulent practices; and
- 147 f) Exercise due care when handling monies on behalf of their Principal(s).

148 ARTICLE 7: Accreditation to a Recognised Quality Programme

149 As further evidence of their commitment to the provision of a high standard of professionalism in the
150 delivery of services to their Principals, ship agencies and ship brokers should seek accreditation to a
151 relevant quality programme administered by a recognised provider.⁶

152 ARTICLE 8: Enforcement

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

- 157 a) Warnings;
- 158 b) A requirement for undertakings as to the ship agent or ship broker's future conduct;
- 159 c) Temporary suspension of authorisation to operate as a ship agent or ship broker if/where
160 granted by the relevant authority;
- 161 d) Temporary suspension of membership from the relevant professional association;
- 162 e) Temporary suspension of accreditation to a quality programme;
- 163 f) Cancellation of authorisation to operate as ship agent or ship broker, if/where granted by the
164 relevant national authority;

⁴ Op.Cit.

⁵ FONASBA Code of Conduct, 1998 revised 2008, available as of July 2020 at: <https://www.fonasba.com/fonasba-member/code-of-conduct>

⁶ For example, a national Authorized Economic Operator schema (as foreseen in the World Customs SAFE Framework of Standards, see, as of July 2020: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe_package.aspx), the FONASBA Quality Standard (Op. Cit.) or ISO 9001 on Quality Management (see, as of July 2020: <https://www.iso.org/iso-9001-quality-management.html>)

165 g) Expulsion from membership of the relevant professional association;

166 h) Expulsion from accreditation to a quality programme.

167 Ship agents and ship brokers already operating who do not meet the foregoing standards should be
168 given reasonable time to conform to the requirements.

ACCELERATING DIGITALISATION OF MARITIME TRADE AND LOGISTICS A CALL TO ACTION

2 June 2020

Seaports are critical infrastructures to keep supply chains moving and economies across the world functioning. This becomes especially visible in times of global crisis. A great variety of business and government actors interact in port communities to ensure multimodal flows of vital medical and food supplies, critical agricultural products, energy streams and other goods and services reach their intended destinations in time.

Port community interactions comprise physical interactions - such as cargo handling operations, vessel-related services and supplies and multimodal transfers - as well as exchanges of data that facilitate clearance of cargo between jurisdictions. Being part of larger transport and logistics supply chains and representing clusters of companies and businesses in themselves, ports are well-placed to fully grasp the potential generated by the latest wave of technological innovation and integration, so that physical and data interactions occur in a safe, secure, efficient and overall sustainable manner.

The COVID-19 crisis has painfully demonstrated the heterogeneous landscape that currently exists across ports worldwide. While some port communities seized the opportunities of the fourth industrial revolution and developed into full-fledged ‘smart’ ports, many others have barely grasped the essentials of digitalisation and continue to struggle with larger reliance on personal interaction and paper-based transactions as the norms for shipboard, ship-port interface and port-hinterland based exchanges. As an illustration, only 49 of the 174 Member States of the International Maritime Organization have functioning Port Community Systems to date, systems which are considered the cornerstone of any port in the current digitalised business landscape.

With the world’s attention now focused on exiting from lockdowns and preparing for a ‘new normal’, there is an urgent need for inter-governmental organisations, governments and industry stakeholders concerned with maritime trade and logistics to come together and accelerate the pace of digitalisation so that port communities across the world can at least offer a basic package of electronic commerce and data exchange, in compliance with all relevant contractual and regulatory obligations.

To realise this overall ambition, the International Association of Ports and Harbors (IAPH), BIMCO, the International Cargo Handling Coordination Association (ICHCA), the International Chamber of Shipping (ICS), the International Harbour Masters’ Association (IHMA), the International Maritime Pilots Association (IMPA), the International Port Community Systems Association (IPCSA), the International Ship Suppliers’ Association (ISSA), the Federation of National Associations of Ship Brokers and Agents (FONASBA) and the PROTECT Group launch a call to action along the following priorities:

1. To assess the state of implementation and find ways to enforce the already mandatory requirements defined in the International Maritime Organization’s Facilitation (IMO FAL) Convention to support transmission, receipt, and response of information required for the arrival, stay, and departure of ships, persons, and cargo, including notifications and declarations for customs, immigration, port and security authorities, via electronic data exchange, making the transition to full-fledged single windows.

2. To ensure harmonisation of data standards beyond the IMO FAL Convention to facilitate sharing of port and berth-related master data for just-in-time operation of ships and optimum resource deployment by vessel services and suppliers, logistics providers, cargo handling and clearance, thereby saving energy, improving safety as well as cutting costs and emissions. This can be achieved through use of the supply chain standards of the International Standardization Organization, the standards of the International Hydrographic Organization as well as the IMO Compendium on Facilitation and Electronic Business.
3. To strive for the introduction of Port Community Systems and secure data exchange platforms in the main ports of all Member States represented in the International Maritime Organization.
4. To review existing IMO guidance on Maritime Cyber Risk Management on its ability to address cyber risks in ports, developing additional guidance where needed.
5. To raise awareness, avoid misconceptions, promote best practices and standardisation on how port communities can apply emerging technologies such as artificial intelligence, advanced analytics, internet of things, digital twins, robotics process automation, autonomous systems, blockchain, virtual reality and augmented reality.
6. To facilitate the implementation of such emerging technologies and other innovative tools to increase health security in port environments, allowing port and marine employees, contractors, and the vessel crew to work and interact in the safest possible circumstances.
7. To develop a framework and roadmap to facilitate the implementation and operationalisation of digital port platforms where authorised port community service providers and users can share data under secure data sharing protocols, enabling these platforms to connect with hinterland supply chains as well.
8. To establish a coalition of willing stakeholders to improve transparency of the supply chain through collaboration and standardisation, starting with the long overdue introduction of the electronic bill of lading.
9. To set up a capacity building framework to support smaller, less developed, and under-staffed port communities, not only with technical facilities but also with training of personnel. Quality data exchange requires a trained workforce with mid- and long-term perspectives to build, implement, support, and sometimes override technology.

Working on these priorities requires collaboration between maritime supply chain industry stakeholders and government. Above all, it calls for inter-governmental collaboration as the acceleration of digitalisation will require change management at local, regional, and national levels. National trade facilitation committees implemented under the WTO Trade Facilitation Agreement could be an excellent instrument for member states and port authorities to drive the change.



www.iaphworldports.org
www.sustainableworldports.org



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www.ichca.com



www.ics-shipping.org



www.harbourmaster.org



www.impahq.org



www.ipcsa.international



www.shipsupply.org



www.protect-group.org

FACILITATION COMMITTEE
44th session
Agenda item 13

FAL 44/13*
7 February 2020
Original: ENGLISH
Pre-session public release:

GUIDANCE TO ADDRESS MARITIME CORRUPTION

IMO Guidance to address bribery and corruption in the maritime sector

Submitted by Liberia, Marshall Islands, Norway, Panama, United States, Vanuatu, ICS, IUMI, IAPH, BIMCO, IMPA, IFSMA, INTERTANKO, P & I Clubs, InterManager, IPTA, IHMA, IBIA, FONASBA, ITF and NI

SUMMARY

Executive summary: This document contains a proposal with respect to developing IMO guidance to address bribery and corruption in the maritime sector

Strategic direction, if applicable: 5 and 6

Output: 5.7

Action to be taken: Paragraph 12

Related documents: FAL 43/20; TC 69/6(d); FAL 43/17; FAL 42/17, FAL 42/16/3; PSCWS 7/3/7; MSC-MEPC.4/Circ.2 and resolution A.1119(30)

Introduction

1 At its forty-third session, the Facilitation Committee considered document FAL 43/17 and, recognizing that capacity-building on the subject of corruption in the maritime industry could contribute to the achievement of Sustainable Development Goal 16, Target 16.5, "Substantially reduce corruption and bribery in all its forms", agreed to inform the Technical Cooperation Committee about its decision to embark on this work.

2 The Committee agreed that corruption had a significant impact on the image of the maritime industry and ports, and on the facilitation of maritime traffic and security of operations.

3 The Committee, having noted existing output 5.10 on "Review and update of the annex to the FAL Convention", with a target completion year of 2021, under which proposals to include the issue of maritime corruption in the FAL Convention could be made, agreed to

* Reissued on 17 July 2020: Panama added as co-sponsor.

include in its 2020-2021 biennial agenda and the provisional agenda for FAL 44 an output on "Guidance to address maritime corruption", with a target completion year of 2021.

4 The Council at its 122nd session endorsed the decisions of the Committee to include in its biennial agenda for 2020-2021 and the provisional agenda of FAL 44 a new output on "Guidance to address maritime corruption".

IMO objectives

5 *The Strategic Plan for the Organization for the six-year period 2018 to 2023* (resolution A.1110(30)) sets out the mission statement, which states that "The mission of the International Maritime Organization (IMO), as a United Nations specialized agency, is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This will be accomplished by adopting the highest practicable standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO Instruments, with a view to their universal and uniform application."

6 IMO guidance will shape the contribution towards achieving the goals and mission of the Organization, if duly implemented.

Discussion

7 The maritime industry is exposed to the risk of many forms of corruption, particularly with respect to the multi-layered interface with ports. Corrupt demands include unlawful requests for payments to allow ships to enter and depart the port or disproportionate penalties being applied for minor errors and can lead to interruptions to normal operations, a risk to personal and ship safety, ships being delayed, and/or put off-hire, incurring higher operational costs.

8 Corrupt practices can have far-reaching consequences that, as well as being detrimental to shipping operations and port communities, can lead to seriously damaging effects on trade and investment. This in turn can have a negative effect on social, economic and sustainable development as well as a country's risk and integrity rating, potentially impacting on foreign direct investment.

9 The intent of this submission is to provide a proposed draft of IMO guidance for all stakeholders in the ship/shore interface, to implement and embrace anti-corruption practices and procedures, for further development prior to finalization and publication.

10 This proposal aims to align actions in the maritime sector with the United Nations Convention against Corruption (General Assembly resolution 58/4 of 31 October 2003) and other relevant instruments.

Proposal

11 The co-sponsors have prepared draft IMO guidance for all stakeholders in the ship/shore interface to implement and embrace anti-corruption practices and procedures, as set out in the annex.

Action requested of the Committee

12 The Committee is invited to consider this document and especially the proposal contained in paragraph 11 and the annex and take action as appropriate.

ANNEX

IMO GUIDANCE TO IMPLEMENT AND EMBRACE ANTI-BRIBERY AND CORRUPTION PRACTICES AND PROCEDURES

1 Introduction

1.1 Many countries already have laws that prohibit bribery and corruption, even when committed outside their national boundaries.

1.2 Bribery and corruption in the maritime sector can take various forms, and all relevant stakeholders should never accept, give or promise anything that could be interpreted as intending to improperly influence any person or decision. Lack of transparency, for example around fees or fines and their misuse, should be eliminated.

1.3 There is a compelling need for the maritime sector to formalize actions to combat bribery and corruption and to align with the United Nations Convention against Corruption (A/Res/58/4).

1.4 IMO is committed to preventing and eliminating bribery and corruption in the maritime sector.

1.5 This guidance should be used as tool for all stakeholders to combat bribery and corruption in the maritime sector.

1.6 All stakeholders in the ship/shore interface are encouraged to ensure compliance with national and international laws prohibiting bribery and corruption.

1.7 All stakeholders are further encouraged to work against corrupt practices by constantly focusing on anti-corruption measures and establishing processes and procedures, where not already in place, or improving them.

1.8 Member States and other stakeholders in the maritime sector are invited to familiarize, educate and train relevant personnel who are part of the ship/shore interface in matters pertaining to the avoidance of bribery and corruption.

1.9 Member States are also encouraged to promote awareness that a breach of national laws is a serious offence, which can result in fines or more serious consequences, including criminal sanctions, on organizations and individuals.

1.10 Member States are further encouraged to cooperate with each other, share and learn from existing best practices, including the adoption and implementation of anti-bribery and corruption policies and procedures.

2 Stakeholders

2.1 The stakeholders are all parties in the ship/shore interface, both ashore and on board.

2.2 The following lists are indicative, and may equally apply to others:

.1 shore-based stakeholders

Government officials
Port officials
Port workers
Third-party officials
Third-party workers
Contractors
Shipyards workers
Pilots
Ship agents
Ship chandlers
Crew suppliers
Other suppliers of port services

.2 Onboard stakeholders

Master
Officers
Crew
Shipping company representatives

3 Personal safety

If a situation develops due to a demand, request or offer being refused, no one should place themselves or anyone else in danger. The situation initially needs to be defused, following which it should be reported and actioned appropriately.

4 Tackling maritime corruption

4.1 The following non-exhaustive list should be implemented as appropriate by all stakeholder organizations, whether they be governmental, non-governmental or private sector and relate to both shore-based and ship-based organizations.

.1 *Prevent corrupt requests/demands*

- .1 Establish/implement legislation prohibiting bribery and corruption.
- .2 Implement an anti-bribery and corruption policy and procedures.
- .3 Provide anti-corruption training.
- .4 Promote awareness that even the appearance of a breach of these laws can have a serious reputational impact.
- .5 Encourage all personnel to resist, and where possible stop corrupt practices, bearing in mind that the safety of personnel is always paramount.
- .6 Establish electronic means for submitting/receiving documentation.
- .7 Establish a system of record-keeping of any requests/demands for payment/gifts.

- .8 Ensure that any official payments, fees or fines are recorded, and are transparent and publicly available.
 - .9 Provide formal/official identification for all persons.
 - .10 Require formal/official identification to be shown.
 - .11 Provide formal/official invoices for any payment requirements, including those for fees or fines with the appropriate letterhead.
 - .12 Provide an official non-cash only method for payment of any fees or fines.
 - .13 Provide a formal/official receipt for any payment received, with the appropriate letterhead.
 - .14 Implement an anti-bribery and corruption clause in all employment contracts.
 - .15 Implement an anti-bribery and corruption clause in all supplier contracts.
 - .16 Implement an anti-bribery and corruption clause in all contractor contracts.
 - .17 Establish an official local contact point for any clarification requirements.
 - .18 Establish and make publicly available a confidential national contact (telephone and email address) for reporting cases of bribery and corruption in the maritime sector.
 - .19 Establish and make publicly available the process that will promptly investigate and resolve any issues raised.
 - .2 *Reject corrupt requests/demands*
 - .1 Be calm, polite, firm and respectful.
 - .2 Explain through positive wording with the aim of coming to a mutual understanding as to what can and cannot be done.
 - .3 Explain the official/organization's anti-bribery and corruption policy and procedures.
 - .3 *Eliminate corrupt requests/demands*
 - .1 Regularly review the effectiveness of anti-corruption policies and procedures.
 - .2 Publish regular updates on anti-bribery and corruption compliance.
 - .3 Address any concerns to senior levels within the appropriate body/organization.
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