Commissions to Third Parties
MACN Best Practice Principles

MACN
Maritime Anti-Corruption Network

Background

Agreement to and payment of commissions requires internal procedures to ensure an adequate level of compliance. With reference to MACN's principles on anti-corruption compliance, i.e. Risk Assessment and Proportionate Procedures, commissions should be subject to due diligence of the third party, level of fee, and payment structure. To provide guidance to members, an MACN Working group has defined a set of recommended best practices re. internal procedures—commissions to third parties.

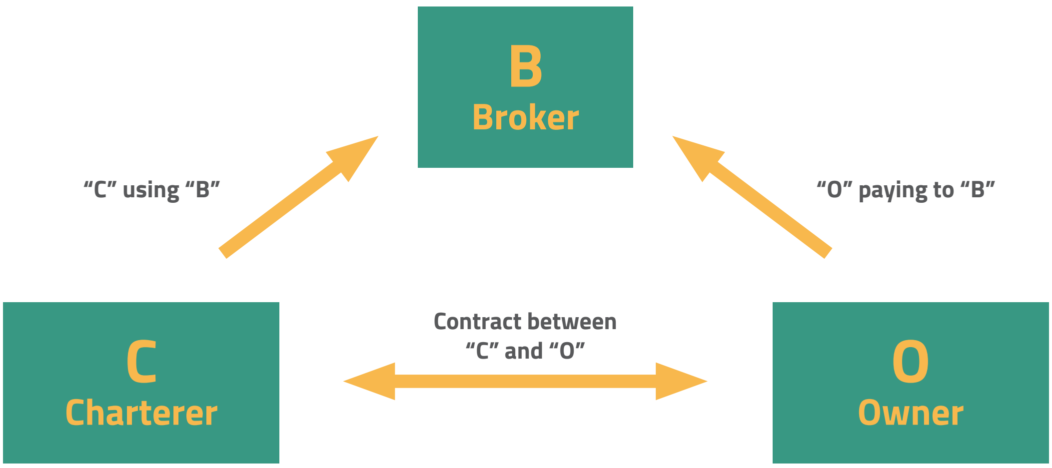
Introduction

MACN's framework for anti-corruption governance consists of seven principles. One of these deals with **Due Diligence**:

> *Members should conduct risk-based due diligence on counterparties as well as in respect of the hiring and oversight of third parties and business partners. The due diligence should include an anti-bribery commitment from third parties.*

Brokers are often referred to as Owners' or Charterers' brokers, depending on who they have been engaged by (with or without formal agreement). Sometimes the broker is referred to as independent, fitting together ship and cargo without any prior engagement. The broker's commission is, however, invariably paid by the Owner, irrespective of how the broker is brought into the picture.

In the below example the broker ("B") is the Charterer's ("C") broker, while the broker commission is being paid by the Owner ("O") to the broker—without any formal agreement between the two latter. The charter party is made between "C" and "O", and "B" is not a formal part of this agreement, even though the broker is mentioned.



The Owner should have comfort re. due handling of any potential corruption (and other compliance) risks related to the third party (Broker), at the time of agreeing a contract with the Charterer.

Recommended Best Practice: Internal Procedures

No part of any commission shall be paid, directly or indirectly, to: (i) any government official; (ii) officers or employees of any of the parties; or (iii) any other third party, if the purpose of the payment to such other party is to unduly influence the award or performance of the contract/ charter party.

The following principles are best practice recommendations, which the organization should incorporate in order to manage risks related to payment of commissions to third parties.

No.	Principle
1.	All parties paying or receiving commission shall be disclosed with full and correct style in the contract/charter party, and commission shall only be paid to parties thus identified. If there is no reference to any commission in the contract, and there is a separate agreement between one of the parties and a third party, the party paying the commission shall notify the other party in writing of the fact that a commission is being paid to a named third party.
2.	The organization shall establish protective / due diligence routines to verify each recipient's role and that the commission to each recipient is payment for lawful services provided.
3.	The organization shall verify the standard commission rates in the relevant market, pre-approved, and implement a routine in order to identify non-standard commissions (structure or level). Such commissions shall be subject to internal review and express approval.
4.	Commission rates shall be stated in full in the contract/charter party ensuring transparency amongst the parties involved.
5.	Any changes with regards to the commission structure/rate or payment details shall be made in writing (e.g. through an addendum) and signed by the original parties.

The above principles should be incorporated into the organizations' policies, and reflected in relevant measures (e.g. authorizations, due diligence questionnaires, contract clauses etc.).

Address Commission

In several shipping segments, a notion called address commission is used. Even though the word commission is used, this is not actually a commission. "Address commission" is a discount given by one party to another party and should be deducted directly off the invoiced amount.