

UDC 656.614.2

Iuliia Mykhailova¹, Anastasyia Steba², Galina Silvanskaya³, Marina Vil'shaniuk⁴

¹Assistant professor, Fleet operation and shipping technology Department, Odesa national maritime university, 34, Mechnikova str., Odesa, 65029, Ukraine ORCID: <https://orcid.org/0000-0002-4882-7803>

²Senior Lecturer, Fleet operation and shipping technology Department, Odesa national maritime university, 34, Mechnikova str., Odesa, 65029, Ukraine ORCID: <https://orcid.org/0009-0005-5777-9785>

³Assistant professor, Fleet operation and shipping technology Department, Odesa national maritime university, 34, Mechnikova str., Odesa, 65029, Ukraine ORCID: <https://orcid.org/0000-0002-1272-8029>

⁴Senior Lecturer, Fleet operation and shipping technology Department, Odesa national maritime university, 34, Mechnikova str., Odesa, 65029, Ukraine ORCID: <https://orcid.org/0000-0001-5396-6691>

Commercial and legal conditions for the organization of sea passenger transportation

This article explores current trends and prospects in passenger cruise ship chartering. In light of events in recent years, including the global COVID-19 pandemic, the cruise industry has faced serious challenges, prompting companies to look for new approaches to support their operations. The article examines different chartering models, including long-term and short-term agreements, as well as the possibility of sharing vessels between operators. Two organizational and legal forms of operation of marine passenger ships are considered in more detail: liner and cruise. Formalized and provided a schematic representation of the process of interaction of the participants of sea passenger transportation in various forms of ship operation. The interaction schemes of the shipowner, the charterer and the managing agent are described. The interaction technology of the participants in the passenger transportation process is considered in the context of the types of ship charter contracts. Differences in technological processes of interaction of participants in the process of organization and provision of sea passenger transportation, distribution of responsibilities, risks, costs and income in the organization of sea passenger transportation according to various schemes of interaction of participants are given.

Keywords: passenger transportation, shipping companies, sea transportation contract, ship rental, charter.

Introduction. At the stage of market instability, under current circumstances, Ukraine is unable to build and purchase marine passenger ships for the organization of passenger transportation. However, taking into account the logistical and tourist potential, this issue remains promising. Creation of own network of maritime passenger communications is absolutely necessary. Otherwise, this free segment of the market will be occupied by foreign capital. The small fleet of domestic shipowners, working sporadically, with separate voyages, on the Greek and Italian routes, will also not hold their positions in the long run. Therefore, the need to develop and revive cruise routes in the Black Sea region remains relevant. For the effective organization of the process of sea transportation of passengers, it is important to have a clear understanding of the conditions of interaction of the participants in this process, which determines the relevance of this study.

Analysis of recent research and problem statement. With the development of international contacts, shipping enterprises of Ukraine entered shipping market. However, the problems of the development of the activity of shipping enterprises, as before, remain complex and multifaceted and require a comprehensive and professional approach, both from the state and from the side of the shipping enterprises themselves. Analysis of the operating conditions of shipping companies during the transition to market relations and internal aspects of activity allows to formulate a strategy for ensuring the sustainable functioning of shipping enterprises.

The study of theoretical and practical of and foreign scientists, such as V.V. Basevych, M.N. Bilenkyi, B.V. Burkinskyi, S.V. Glebov, Sh.M. Gurevich, B.A. Ridota, L.K. Kendall, O.A. Kybalchich, M.I. Kotlubai, A.M. Kotlubai, M.E. Lynskyi, G.S. Makhurenko, I.V. Morozova, H.P. Pylypenko, M.G. Lyokhov, M.Ya. Postan, N.T. Primachev, N.I. Savin, V.I. Chekalovets, J. Codsman, A. Dessler, A. Lawrence, T. Plisley and many others [2, 3, 4].

The domestic authors, including M.E. Lynsky, V.S. Petukhov, N.T. Primachev, A.N. Tymoshchuk et al.

It is necessary to note the absence of scientific research in the domestic literature in this field for a long period of time. Modern problems of the development of maritime passenger transportation are considered in the works of B.A. Lynskyi, V.V. Markov, S.I. Rylov, A.A. Siomin et al [10, 13]. But, despite the detailed study of individual areas of development shipping market in scientific research by domestic scientists, there is no systematic knowledge in the field of functioning of Ukrainian shipping companies on the cruise shipping market in modern conditions.

The efficiency of transport management can be increased only by using the experience of generations and the achievements that already exist, which is a necessary condition for survival in the competition. Studying the theory allows to determine the principles of construction of the transport system, categories and types of transport, historical patterns of the construction of transport systems, classification schemes of the world transport market.

The existing scientific works and articles highlight the current problems and directions of development of the maritime passenger transport industry, carried out by scientists of the transport industry, such as A.V. Selivanov, V.G. Boyko, M.P. Gerasymenko, S.V. Malska, I.M. Pisarevskyi, E.V. Stetsyuk, F.I. Khmil, A.A. Zaitsev, V.V. Panin, I.A. Golubkova – works on regional transportation.

In particular, V.V. Panin considers the prospects and development of integrated transport and logistics systems of the Dniepro basin, the Danube and the Black Sea as a component of the transport system of Ukraine. The imperfect legacy of the Soviet Union in the form of outdated infrastructure, together with a morally outdated management system, outdated technologies and pricing led to a significant decrease in the efficiency of the transport system of Ukraine as a whole, and in particular to an increase in the transportation price, a decrease in traffic flows, and unprofitable logistics. The main problem of V.V. Panin considers the absence of a systematic approach in state regulation of the transportation system. V.V. Panin considers the Danube region as an optimal transit channel Dnipro-Danube, Black Sea-Volgodon-Bosphorus. Such systems worked in the Black Sea Maritime Shipping, on the Danube River, nowadays such systems work in the USA, Canada, Great Britain, Germany and France.

In the works of V.V. Selivanov illuminated the tourist aspect of passenger transportation. The involvement of travel companies in the carrier business and the use of existing developments would allow the development of the passenger transportation market, including such different types as ferry transportation, coastal transportation, short-distance transportation, and segment cruise shipping. The articles consider the passenger transport market and its interaction with other markets - the transport market as a whole, the shipping market, the entertainment and recreation industry market, the tourism market, and the cruise charter market (cruise tonnage charter).

I.A. Golubkova emphasizes systematization in shipping, substantiates the principles of world shipping, presents a set of tools for the development of regional cruises and the shipping business as a whole [5].

In our opinion, the most detailed and essential description of the development processes of cruise tourism is revealed in the works of M.B. Birzhakov V.I. and Nikiforova, in which scientists consider the conditions for the emergence of cruises and their evolution from a historical perspective, systematize the principles of organizing cruise routes, analyze the geography of cruise activity and the features of ships intended for cruising. The authors pay attention not only to the process of serving tourists on board the ship, but also to the system of realization and promotion of the cruise tourist product, the problems of embarking and disembarking passengers in seaports [6, 14]. At the same time, despite a rather detailed description of the processes of the cruise industry, the works of scientists do not present an economic interpretation of indicators that assess the level of development of the studied processes in the context of a comprehensive analysis of their constituent elements [11].

The transport component is undoubtedly an important part of the tourist business, but other aspects should be taken into account - primarily organizational and social, due to the fact that cruise transportation is undoubtedly a complex business. The problems of insufficient attention to these aspects have a negative impact on the development of maritime passenger transport as a whole and on the decrease in demand for cruise transport services.

The aim and objectives of the research. The purpose of the work is to consider and formalize the commercial and legal conditions of interaction of the participants in the process of organizing sea transportation of passengers. To achieve the aim, the following objectives are set:

Consider the organizational and legal conditions for the operation of marine passenger ships.

Formalize and provide a schematic representation of the process of interaction of participants in maritime passenger transportation in various forms of ship operation.

Consider the interaction technology of the participants in the passenger transportation process in the context of types of ship charter contracts.

Research materials and methods. The world market of maritime passenger shipping is divided into the market of liner transportation and cruise shipping according to the form of organization (Fig. 1) [12].

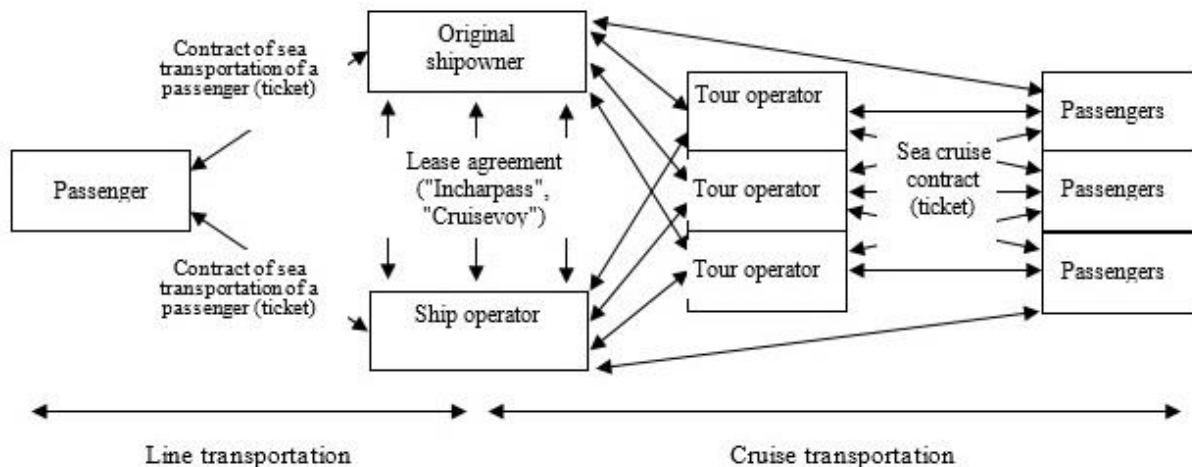


Fig. 1. Organizational and commercial provision of sea passenger transportation

Customers of passenger sea transport services are:

- individual passengers who buy tickets for linear transportation and cruises and thereby conclude contracts for sea transportation and maritime transport cruise;
- tourist organizations that charter passenger ships for the organization of cruises or book tickets for linear transportation (organizers) (Fig. 1).

Counterparts are companies engaged in ship agency, ticket and cruise ticket sales, organization of excursions and outings, etc.

The operation of the passenger fleet is associated with two organizational forms ship operations - linear navigation and cruise voyages.

These two forms of work also determined the commercial nature of the use of passenger ships [1]. Thus, in the practice of global passenger shipping, depending on the form of the organization, two schemes of commercial interaction of the shipowner, operator and passengers are distinguished (Fig. 2):

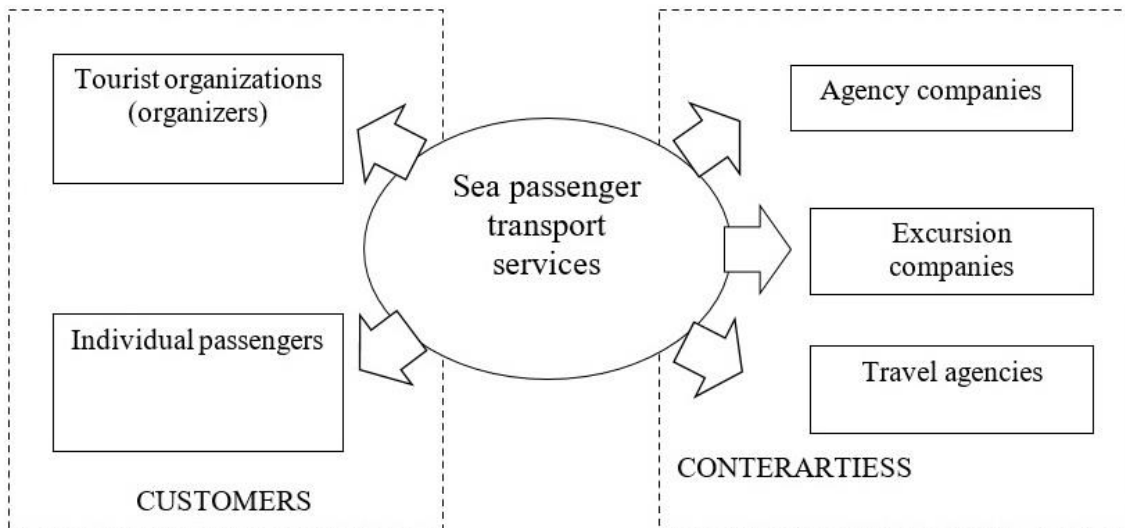


Fig. 2. Customers and counterparties of marine passenger transport services

1) if the shipowner is the organizer of transportation. The tariff rate is set in advance unilaterally by the shipowner and is valid for a fairly long period of time. It can be used by any customer who wants to use the shipping company's services. In the field of passenger shipping, tariff rates are applied on local, cabotage and international lines, as well as in cruise shipping when cruises are organized by shipping companies.

2) if the transportation is organized by a tour operator. Then the shipowner receives a fee for renting the ship under the condition of a time or bareboat charter, and the operator sets passenger tariffs for transportation. The rental rate when using charter contracts is established in each individual case as a result of the agreement between the shipowner and the charterer and is fixed in the charter contract. When organizing transportation on a ship chartered by it, the charterer (tour operator) sets passenger tariffs by which it sells tickets directly to the passenger (tourist).

During the performance of linear transportation, the maritime contract is valid transportation of passengers, which is considered concluded after the purchase of a travel ticket.

When organizing cruises on chartered vessels, two types of contracts apply:

- a sea cruise contract, which acts as a cruise ticket and regulates the relationship between the charterer as the cruise organizer, who carries out this cruise, and the tourist;
- the lease agreement, which regulates the interaction between the shipowner and charterer

The basis of the contract for chartering a passenger ship is the interest of the shipowner and the travel company to preserve its commercial prestige and competitiveness in the market. Therefore, both parties place on each other the obligation of high-quality passenger service in the field of competence of the ship or travel company: omissions of one party undermine the reputation of the other, since the passenger perceives the cruise as a single enterprise.

The charterer's income is generated from the sale of cruise tickets and is directly proportional to the number of passengers involved. Thus, the risk of unprofitability of the cruise rests entirely with the charterer (operator). The shipowner's income consists of the rent, as well as the profit from the provision

of paid services (above those that it is obliged to provide to the passenger for free) and trade on board the ship (kiosks, bars, restaurants).

When organizing cruises at the risk of the shipowner, it bears all costs related to the execution of cruises and receives full income from the sale of tickets or vouchers for such voyages. Travel agencies and other intermediary organizations are involved in advertising and distribution of tickets, for which the shipowner pays them a commission, which is calculated as a percentage of the amount for which the tickets are sold.

In the second case, when the charterer assumes the risks related to the organization of the cruise, it is provided with a passenger ship for rent for the duration of the cruise. Let's consider the establishment of such a form of relationship between the shipowner and the charterer as a chartering operation of a passenger ship.

The process of concluding a freight agreement is carried out with the help of conditional and firm offers (offers). A conditional offer is given to several shipowners in order to find out the demand in the market, to find out the availability of free tonnage, to call for its offer. Only after that, the most suitable shipowner is given a firm offer valid for a certain period of time. Its acceptance means the conclusion of a freight agreement. However, full acceptance of such an offer is an extremely rare phenomenon due to differences in the parties' positions on a number of conditions (usually, the main one is the rental rate). Therefore, the party that received the offer issues its counteroffer. This process of exchange of offers and counteroffers continues until the interests of both parties converge (as a result, a freight agreement is concluded) or the negotiations are terminated (in case of impossibility of reaching an agreement) and the search for new counterparties. In some cases, when the charterer has a clear intention to charter a specific ship of a certain shipowner, the chartering process begins with a firm offer.

The concluded agreement is drawn up with a charter. The broker, taking part in its implementation, not only provides qualified assistance in the process of negotiations and convergence of the parties' positions, but also draws up the charter and in some cases monitors its implementation. For this, it receives a brokerage fee, the amount of which is set as a percentage of the freight amount.

In the practice of passenger shipping, depending on the form of transport organizations, the following types of charters are distinguished:

- time charter
- voyage charter;
- bareboat charter.

Time charter for passenger vessels. When chartering passenger vessels for time charter, a pro forma code-named "Incharpass" (Passenger Charter Party), issued in 1967 by the Institute of Freight Brokers of Great Britain (Institute of Chartered Shipbrokers). In many respects, the pro forma is similar to the usual terms of a time charter contract, but it sufficiently takes into account the specifics of the execution of cruise voyages and passenger transportation.

The characteristics of the ship are not stipulated in detail in the contract, since it is a specific ship, well known to the charterer, but the shipowner hands over to the charterer a number of mandatory appendices to the contract relating to the "passenger characteristics" of the ship, namely:

Appendix 1 (Description of the Vessel), which contains information about: passenger quarters of the ship; capacity of cargo compartments intended for the storage of passenger luggage; volumes of fresh water taken on board; capacities of lifeboats and rafts; the number of seats in restaurants and salons; characteristics of air conditioning systems and duck tranquilizers.

Appendix 2 (Vessel's Passenger Accommodation Plan) contains a plan-diagram of passenger spaces. All premises indicated in the plan-scheme must be made available to the charterer.

Appendix 3 (Services that Be Provided by Owners) contains: services that the shipowner undertakes to provide to passengers to ensure their rest and treatment, with the obligation to maintain devices in a condition suitable for effective operation during operation; services that the shipowner provides to passengers on board the ship free of charge (first aid, games, swimming pool, etc.); a list of paid services that the shipowner must provide on board the ship (communication services, special household services, showing movies, etc.). The hours of operation of establishments on board the ship are agreed with the

charterer, in turn the shipowner must provide them with a sufficient range of food, drinks and other provisions. The charterer has the right to independently and at its own expense organize the entertainment of passengers on board, however, the nature of the entertainment on board must be agreed with the shipowner or captain.

Appendix 4 (Inventory) is a form of inventory information and contains: equipment; adaptation; games, slot machines, etc., the assortment of which is specified by the parties upon delivery and upon return of the ship from the time charter.

Appendix 5 (Owner's Standard Form of Passenger Ticket) contains a typical passenger ticket form developed by the shipowner and the charterer. This form must be approved by the Mutual Insurance Company (To be Approved by Owner's P&I Association) and recognized by the contract concluded between the charterer and the passenger (Embodied in Charterer's Contract with Passenger).

The schedule of the route with the ports of call and the time of arrival and departure of the ship at each port is also a mandatory appendix to the contract. The specifics of chartering a ship for one or more voyages allow to accurately determine the total term of the ship's lease, which simplifies the planning of the ship's operation and the lease calculations.

The length of the route, the duration and the ports of call are agreed upon in the time charter, so the shipowner's income, expenses and profit during the normal course of the voyage are certain values known in advance.

The chartering contract of a passenger ship stipulates the procedure for resolving disputed issues, terminating the contract, indemnifying damages, regulating the accounting of acts of unforeseen circumstances and force majeure.

Let's consider the main commercial and legal conditions of the specified contract. They can be reduced to six main groups.

1. Ship. The shipowner provides the charterer with a passenger ship, specifying in the contract its passenger capacity, broken down by individual classes. A plan for the placement of passenger cabins is attached to the contract, the seaworthiness of the ship and the obligation of the shipowner to maintain it in proper technical condition are specifically stipulated.

The pro forma, in addition to the general requirements for the shipowner regarding the seaworthiness of the ship, contains requirements for cleaning living and other spaces used by passengers. The entire space and capacity of the ship is transferred to the charterer, except for the premises for the captain, command staff, crew, supplies, inventory, bunker, provisions and equipment.

2. The period of the ship's stay with the charterer and regulation of its work. The charterer charters the ship for a certain period, which is calculated per day. The start and end times of this period, as well as the number of voyages, are precisely marked. A characteristic feature of this contract is the presence of an agreed schedule, which firmly defines the rules of the ship's movement in single or consecutive voyages. This schedule is attached to the contract and is part of it. It should be noted that the contract states that the ship is provided to the charterer for the organization of passenger transportation, i.e., the purpose of its work is clearly and unambiguously defined.

3. Distribution of costs between the shipowner and the charterer. Services provided on board the ship. The expenses related to the execution of voyages between the shipowner and the charterer are distributed according to the principle of assigning fixed costs to the shipowner, and variable costs to the charterer. It is worth noting that the mode of operation when renting a passenger ship and the ports of call are regulated by the schedule. Therefore, the shipowner can accurately calculate fuel costs, port ship fees in advance and more logically assign them to the permanent category.

Among the variable costs attributable to the charterer, in particular, the following articles should be noted:

- port fees for boarding and disembarking passengers, transit fees, payment of ship's raid service, fees for boarding and disembarking passengers at ports of embarkation and disembarkation, as well as possible fees for transit passengers at planned ports of call;
- payment of the difference between the actual amount of port fees and the amount of these fees, calculated according to preferential tariffs, in the event that the shipowner loses the right to benefits in

this field, granted to passenger ships, as a result of the charterer embarking or disembarking passengers at intermediate ports of call;

- payment of vessels of the port of call, which deliver passengers from the raid to the shore and back in case of a raid parking of the ship in those ports where the approach of the ship to the pier is impossible for technical reasons (shallow depths, short length of the pier, etc.). If, during the voyage, the ship cannot be docked or will not be accepted at one of the scheduled ports of call, due to force majeure circumstances (weather conditions, quarantine, etc.), which will cause raid operations regarding the boarding and disembarking of passengers or will force, by mutual agreement, to replace scheduled port of call to another with higher rates of port fees, then all additional costs must be distributed between the shipowners and the charterer in equal shares on a parity basis;

- expenses for shore excursion service for passengers;

- voyage advertising and other similar expenses.

Costs for the purchase of fuel and lubricants for the ship, galley and electric lighting are borne by the charterer, fuel for motor lifeboats is provided by the shipowner. This condition does not in any way affect the commercial conditions of the lease, but pursues only the strengthening of the shipowner's responsibility for the condition of the lifesaving equipment.

The contract stipulates in detail the types of services that must be provided to passengers on board the ship during the voyage at the expense of the shipowner, the charterer or personally paid for by the passengers. The organization of leisure and entertainment of passengers on board the ship is carried out by the charterer (in agreement with the captain of the ship). Medical assistance on board the ship is provided free of charge.

If extraordinary expenses arise during the voyage as a result of force majeure or government orders, they are usually shared equally between the shipowner and the charterer.

4. Rental rate and payment procedure. the rental rate is stipulated in the charter in the form of a rate for the ship or a kind of " lump sum " payment for the term of the ship's lease. At the same time, the entire passenger capacity fixed in the contract is taken into account, without taking into account its actual use. The rental fee is set for each day, since the duration of the voyage is precisely determined, the total rental amount is known in advance. Rent is paid in advance for the agreed term, and in case of delay in payment, the shipowner cannot withdraw the ship from the voyage, but can charge a penalty on the amount of payment for each day of delay in the amount established by the contract.

The shipowner guarantees the execution of the voyage in exact accordance with the schedule and is responsible for any delays, if they are not related to the fault or omissions of the charterer. The charterer can unilaterally consider the voyage completed and demand the return of unearned rent if the ship is out of service for more than three consecutive days. In the event of the ship's loss or the impossibility of continuing the voyage due to force majeure or other reasons beyond the control of the shipowner and the charterer, the ship's charter fee is paid until the actual termination of the voyage.

The currency of payment must be specified. When chartering vessels, the currency of the charterer's country is used. In the latter case, clearing may be used.

The contract provides payment terms, penalties for non-compliance, names of operator banks. In some cases, when chartering ships by charterers from other countries, the shipowner is provided with a bank guarantee.

5. Meals for passengers._Special attention is paid to the regulation of passenger meals, bar maintenance and provision of drinks, protocol events and presentations. In addition, the number of meals and the daily cost of the passengers' ration, which the shipowner has no right to reduce, are agreed in the contract. At the end of the voyage, the shipowner's expenses for passenger meals are compensated by the charterer, based on the actual number of passengers on board.

Charterers pay the cost of meals additionally, based on the actual number of passengers on board. The contract establishes a daily rate per passenger and, based on it, a part of the cost of passenger meals is paid by the charterer to the shipowner in advance, and the final calculation is made after the voyage is completed.

6. Legal principles. Here, first of all, it should be noted the regulation of issues related to the termination of the contract, which may arise in the event of unforeseen circumstances that do not depend on the shipowner and the charterer, such as: war, blockade, delay of the ship by the order of the authorities in ports of call, orders of governments, damage to the ship's hull or machinery. In this case, the freight is charged only for the number of actual days of the ship's stay with the charterer.

In separate articles of the contract, the procedure for its termination at the initiative of the shipowner or charterer and the penalties associated with this, as a rule, are determined (covering the actual losses of the other party). Issues related to the possible termination of the voyage due to the ship's accident, which cannot be eliminated within a three-day period, are discussed separately. In this connection, the obligation of the shipowner to compensate the charterer for part of the rental fee for the remaining unused days is established. Issues of lien law are not touched upon here.

One of the articles of the charter envisages the mandatory entry of the chartered ship into the Mutual Insurance Club. At the same time, the payment of the specified commercial transaction belongs to the charterer.

Although the ship is chartered with the shipowner's crew, this charter has certain elements of a bareboat charter. In particular, the charterer has the right to paint the ship's hull and superstructures in other colors, to put its emblem on the chimney, and to fly under its company's flag during the lease period.

All claims of passengers regarding the program, organization and conduct of the cruise are regulated by the charterer. The presence of representatives of a tourist or cruise company on board a passenger liner and 24-hour work with passengers requires the regulation of labor issues and the ship's relations with the border and emigration authorities. Usually, the charterer, if this is provided for by the ship's article (The Vessel's Article), pays the crew overtime (Overtime), and the shipowner – enters in the ship's documents mandatory representatives of the charterer (tourist company, etc.) as "personnel hired overtime" ("... be signed it as supernumeraries it the Vessel's Articles").

Voyage charter for passenger ships. "Cruisevoy" is the pro forma voyage charter for passenger vessels. This standard document is intended for wide use by companies - cruise fleet operators and charterers - travel firms that organize sea cruises. **"Cruisevoy" allows a cruise ship, with an agreed route and voyage schedule, to be** chartered by several different charterers or tour operators at once. At the same time, each of them acts as a charterer of the corresponding quota of the ship's passenger capacity on behalf of its customers on a proportional basis.

"Cruisevoy" foresees the need for long-term planning of the work of tour operators involved in the organization of short-term cruises. At the same time, planning is expected no later than a year before the expected start of the cruise. The pro forma contains equal conditions for termination and termination of the contract when circumstances prevent the cruise, delay or interrupt the voyage.

The pro forma provides charterers with a complete description of the ship, the equipment on board and the intended cruise route, enabling the charterer to conduct effective marketing to customers. Particular emphasis is placed on ensuring that charterers are fully aware of the time constraints required for embarking/disembarking passengers and loading/unloading baggage, in order to avoid disruption to the overall cruise programme. This circumstance is important in cases where several tour operators work on the same cruise ship, each of which ensures the embarkation/disembarkation of its passengers in different ports during the same voyage.

Among all the new charter proformas recently developed by BIMCO, Cruisevoy is characterized by such a format that embodies standard approaches to the composition and placement of various information, including the rental rate, full name and other characteristics of the parties to the contract. 5 appendices have been developed to the pro forma, containing detailed information about the cruise route, a description of the living quarters, catering facilities, types of payments, as well as a sample passenger ticket.

Bareboat charter for passenger ships. Bareboat charter is a contract under which the shipowner leases the ship to the charterer for a certain period of time without the crew and the ship's supplies for a fee. The pro forma used to conclude a bareboat charter agreement is called "Barecon-89". In this

agreement, the charterer accepts wider rights to use the ship than under the terms of a time charter. It fully controls its operation and the shipowner does not interfere in the issue of operation. The ship can be operated under the flag of the charterer's country, which has the right to rename it.

Thus, under the terms of a bareboat charter, the charterer becomes the owner of the ship for the duration of the contract and can use it at its discretion, while it bears almost the entire commercial risk of operating the ship. The owner of the ship for its use by the charterer usually receives a fixed monthly rent specified in the contract, regardless of the commercial performance of the ship.

The charterer of a ship under a bareboat charter becomes a temporary shipowner, since such a contract gives legal title to the owner of the ship, regardless of whether it owns the ship or uses it on another legal basis. A bareboat charter is a "legal basis" for operating a ship on its own behalf, and only within the framework of this contract does the party that accepts the ship become its shipowner.

A bareboat charter, unlike a voyage charter or a time charter, does not provide for a detailed distribution of the obligations and costs of the parties regarding the maintenance and commercial operation of the ship, as well as the execution of voyages. The commercial conditions of a bareboat charter are very simple and boil down to the following: protection of the rights of the ship owner; insurance of property and other risks; financial settlements of the parties. The shipowner pays for fuel and engine oil on board, as well as all unpacked seats and ship's supplies.

The rights of the charterer for the use of the ship are defined very broadly, since the ship is transferred to its possession and under its full control. However, there are some restrictions related to the preservation of the legal and physical property rights of the shipowner:

- the charterer may not use the ship for illegal transportation, which may lead to confiscation of the ship;
- the ship should not be operated in areas of high latitudes and other areas not covered by normal CASCO insurance.

Maintenance and operation of the ship is carried out at the expense of the charterer in full compliance with the requirements of international conventions, classification societies and rules of technical operation. The shipowner has the right to monitor the condition of the ship, the conditions of its operation and maintenance, compliance with classification requirements regarding the periodicity of docking, cleaning and painting of the hull. The shipowner carries out such control with the help of surveyor inspections of the ship, which can be carried out at any time and in any port of call of the ship. If it is found that the charterer operates the ship in violation of technical rules or classification requirements, does not carry out timely repairs, docking and measures to maintain the ship's class, the shipowner has the right, after an appropriate warning, to withdraw the ship from operation without prejudice to its other requirements regarding the bareboat charter (except for the case of subsequent repurchase of the ship by the charterer). If, during the bareboat charter period, international or national regulations require the ship to be modernized or equipped with some additional equipment, the charterer must do so at its own expense, however, if the amount of the charterer's expenses for these measures exceeds 5% of the actual value of the ship, this may serve as a basis for review of rent or other expense regulation incurred by the charterer.

Payment for the lease of the ship in the bareboat charter is made in advance for the agreed period of the future operation of the ship. In the event of non-payment of rent within 7 consecutive days, the shipowner has the right to withdraw the ship from the bareboat charter without prejudice to its other claims against it (with the exception of the option of the contract with the subsequent purchase of the ship).

Under the conditions when the shipowner concludes sea transportation contracts on its behalf as a carrier, insurance of its property interests and liability risks is its voluntary decision. In a bareboat charter, risk insurance becomes a contractual condition, but most often this duty is entrusted to the charterer, who must insure: property risks of the shipowner on the widest terms of CASCO insurance coverage; risks of liability of the shipowner to third parties; carrier (charterer) liability risks. In connection with the fact that the liability of the charterer as a bareboat shipowner or carrier may lead to the seizure of the ship, which in turn will create a threat to the preservation of the right of ownership.

According to the terms of the Vageson-89 pro forma, property insurance of the ship against maritime and military risks can be carried out both at the expense of the charterer and at the expense of the owner of the ship, which is reflected in the amount of the rental fee, respectively.

Other bareboat charter conditions include the following:

- the charterer cannot pledge the ship or allow its detention or arrest as a result of its actions. In any case, the detained (arrested) ship must be released immediately at the expense of the charterer. Regarding the impossibility of bailing the ship, the charterer must place a warning on the bulkhead of the running room: "This ship is the property of..., the ship is leased from..., and under the terms of the bareboat charter, neither the charterer nor the captain has the right and is not authorized to carry out or allow any lien on the ship to be exercised";

- the reward for the rescue received by the ship as a result of a successful rescue operation belongs to the charterer; the costs of repairing damage to the ship received during the rescue operation, as well as other costs, are also charged to its account;

- any bills of lading or other transport documents signed on behalf of the charterer shall fully release the shipowner from any liability;

- in case of requisition (temporary seizure) of the ship by state authorities for a reward, such reward belongs to the charterer, and it must pay the shipowner the full rent for the entire period of requisition. In case of confiscation of the ship by the competent authority with loss of ownership of the ship, the bareboat charter is considered terminated;

- the war clause and the arbitration clause are of the nature usual for contracts of charter.

- bareboat charter in practice, along with fulfilling the function of a ship charter contract, it is used as an option for purchasing a ship on credit.

Thus, the bareboat charter provides for two options for ending the contract:

1. returning the ship to the owner;
2. redemption of the ship by the charterer (Fig. 3).

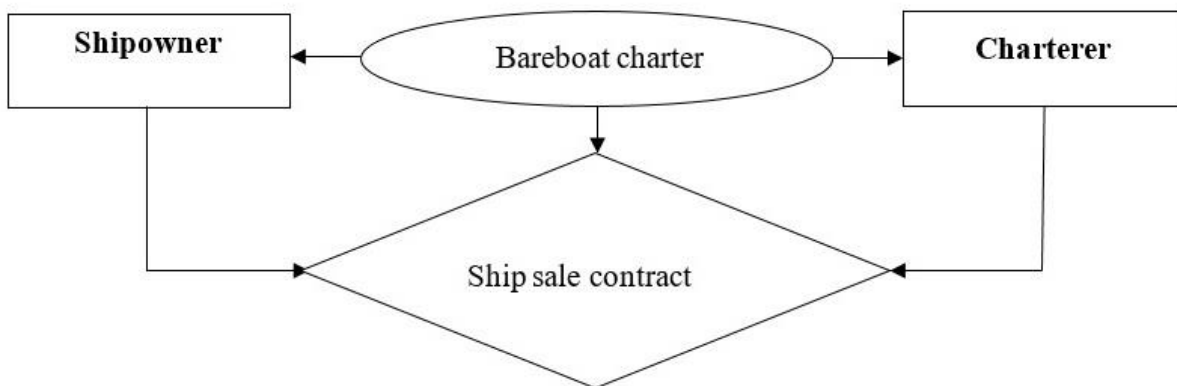


Fig. 3. Commercial relations of the parties in the form of a bareboat charter

The agreement on the purchase of the ship by the charterer after the end of the lease period is reduced to the following items:

1. an agreement on the future purchase of the ship must be reached at the time of concluding the bareboat charter.

2. The charterer has the right to redeem the leased ship if it has fully fulfilled its obligations regarding the bareboat charter.

3. The shipowner-seller guarantees that the ship is free of liens and other debts.

4. All expenses related to the removal of the ship from the registry of the home port shall be borne by the shipowner.

5. All expenses related to the registration of the ship after its purchase are borne by the charterer-buyer.

6. The charterer must settle all labor relations with the crew and other legal issues related to the change of ownership.

Agreement on ship management. The emergence of operating companies became another stage in the development of forms of organization and management of sea passenger transportation. In modern world practice, there are many companies that are separate from shipownership and specialize in ship management (ship management) or transportation organization.

Ship management (Ship Management) is a form of ship operation caused by the practice of separating the functions of shipownership from the function of professional management (management), when all work with agents-managers is based on the requirement of achieving the optimal economic effect through joint commercial activity as participants in the logistics transport chain.

A company specializing in ship management concludes a ship management agreement with the shipowner, in other words, a ship management contract, which is not a ship charter contract for a voyage or time, but an agreement for the performance of a wide range of management services. It should be noted that the traditional delivery of ships built or under construction to long-term bareboat or time charter has justified itself and is currently justified.

But the optimal solution for the results and prospects for the future turned out to be the concentration in the hands of the investor-shipowner (holding company, joint-stock company, financial and industrial group) of solving the following issues: investments, ensuring the quality of services, attracting capital, credit control, insurance. However, the operation of ships, marketing, chartering, issues of the technical condition of the fleet, provision of food, fuel supply, management of freight issues, crewing, reporting, etc., are advisable to be transferred to the management of highly qualified specialists – agent-managers.

Currently, in maritime transport, the separation of the function of ownership of ships from the function of their professional management has already affected more than 25% of the total number of the world merchant fleet and received its legal form in the standard agreement on ship management developed by BIMCO in 1998 under the code name "Shipman-98 " (Standart Ship Management Agreement Code Name "Shipman-98"), on the basis of which the relationship between the shipowner and the managing agent is determined.

According to the ship management agreement, the agent-manager undertakes on behalf of the shipowner-principal and at its expense:

- to ensure a reasonable practice of ship operation management;
- to expand the interests of the shipowner in all aspects of transportation.

As a rule, the following functions are included in the scope of services provided under the ship management contract to the ship operator:

- crewing of the ship;
- ship maintenance;
- commercial operation of the ship;
- bunkering and other types of ship supply;
- accounting;
- ship insurance organization;
- other services, for example, conducting claim and lawsuit work.

All revenues from the operation of the ship go to the account of the shipowner, and the agent-manager is compensated for all expenses related to the operation of the ship, and the established remuneration agreement is paid (Fig. 4) [15].

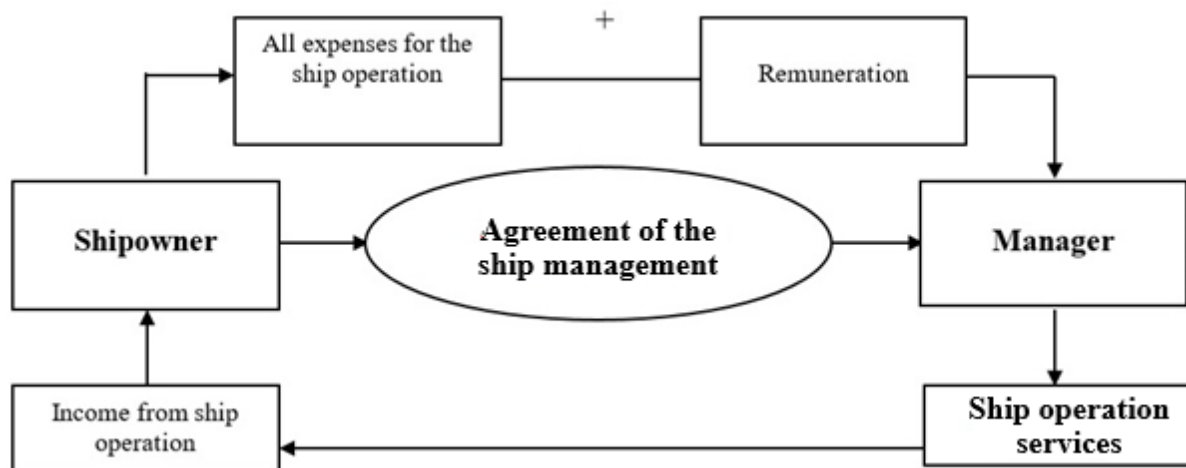


Fig. 4. Commercial terms of the ship management agreement

The manager may be assigned to supply the ship with provisions and fuel, but the choice of quality must be prescribed by the shipowner depending on the ship's operating conditions.

The main obligation of the shipowner is to pay the annual management fee in advance monthly payments, that is, in the form of prepayment, starting with the first payment, which is usually made immediately after the conclusion of the contract. Management remuneration is subject to annual review. It can be revised both upwards and downwards. If the ship is decommissioned for more than three months, the shipowner has the right to raise the issue of a corresponding reduction of the management fee for a period exceeding this period, but this period ends no later than one month before the return of the ship to operation. In addition, the shipowner must reimburse, at the request of the manager, all costs reasonably incurred by it under the terms of the contract of ship management, with the exception of office maintenance costs. In particular, postage and other communication costs, as well as travel expenses, are subject to reimbursement.

The manager's fee is an annual lump sum **payable in equal** quarterly advance installments. At the same time, the first payment is made at the beginning of the term of the agreement, and subsequent payments are made once every three months.

Very important is the condition that the shipowner must pay the manager a fee within three months after the termination of the agreement for reasons that are not related to the manager's failure to fulfill its duties or due to the death or sale of the ship. This condition also applies to the financial support of the ship's crew hired by the manager. Financial planning is carried out by drawing up an agreed estimate, which is valid for the first year of the agreement. The manager must submit the next estimate to the shipowner three months before the end of the current estimate. The shipowner is obliged to notify the manager of the acceptance and approval of the new annual estimate within one month from the date of submission of the draft estimate. If such notification is not received, the manager has the right to consider the estimate accepted.

The manager also prepares and presents to the shipowner an estimate of working capital, which is necessary for the operation of the ship. The estimate is updated every month, and the manager, based on it, asks the shipowner in writing about the allocation of funds for the next month. Funds must be available to the manager within 10 days after the shipowner receives the corresponding request. The manager must provide the shipowner with a comparative analysis of the ship's actual costs and those approved by the budget in the form required by the shipowner and at a frequency agreed by the parties, and by default – monthly.

The manager prepares and directs to the shipowner the calculation of the ship's need for working capital with the right of monthly clarification. Guided by the annual estimate and calculation of working capital, the manager asks the shipowner every month to transfer to it the funds necessary for the

operation of the ship, including covering unplanned expenses: for emergency repairs, additional insurance premiums, fuel and food.

Issues of general management are regulated as follows:

1. The manager undertakes to settle any claim related to its activities, as well as to inform the shipowner of any event known to it that may cause claims and disputes concerning third parties.

2. The shipowner has the right to give instructions to the manager to initiate or deny cases in court, to file lawsuits or to take other procedural actions in connection with the cases entrusted to the manager under this agreement.

3. The manager is given the authority to engage legal, technical or other experts.

4. The shipowner ensures that any necessary guarantee letter, subscription or other legal security is issued to the manager.

5. The shipowner undertakes to reimburse the manager for any expenses incurred by it in the performance of its obligations, while it has the right to conduct an audit of the manager's activities, but only in mutually agreed terms.

The operator can be authorized to sell and buy the ship.

The agreement considers in detail the procedure for terminating its effect, protecting both the interests of the principal - the shipowner and its agent-manager.

The ship management contract is close in its legal nature to the agency contract. The actions of the manager create, change or terminate the rights and obligations of the shipowner, therefore, all risks remain with the shipowner.

If the manager acts on behalf, then two types of relationships are formed in relations with third parties:

- internal agency relations – "agent-principal" relations;
- external relations formed between the agent and third parties, as well as between the principal and third parties in those legal systems that allow it.

The court management contract is valid until it is canceled by one of the parties. The contract enters into force on the day indicated in box 4 of part I of the pro forma. After the expiration of the period specified in box 17, each of the parties has the right to withdraw from the contract by notifying the other party about it in two months.

The pro forma "Shipman-98" is not without certain shortcomings, however, it is successfully used for the organization of the commercial operation of the ship by a third-party operator, as well as for the organization of the internal management of the ship.

Conclusions. The paper examines and formalizes the commercial and legal conditions of interaction of the participants in the process of organizing sea transportation of passengers. To achieve the goal, the following tasks were set and solved:

1. The organizational and legal conditions for the operation of marine passenger ships are considered.
2. The schematic representation of the process of interaction of sea passenger transportation participants in various forms of ship operation is formalized and provided.

3. The technology of interaction of the participants in the process of transporting passengers in the context of types of contractual relationships is considered.

The further development of the shipping business in Ukraine is a complex and multifaceted problem and requires a comprehensive and professional approach, both from the state and from individual enterprises, in particular, shipping companies. The study confirms the importance of further study and systematization of the technical, economic and social conditions of the organization of sea passenger transportation.

REFERENCES

1. Kirillov, Yu. I. (2012). Anti-crisis ways to extend the life cycle of a vessel in commercial shipping. *Collection of scientific papers SWorld*, 1 (1), 35-38.
2. Berrio, L. (2019). Strategic modelling of passenger transport in waterways: the case of the Magdalena River. *Transport*, 34(2), 215-224. <https://doi.org/10.3846/transport.2019.8943>.

3. Qian, B.-Yi., & Shuai, B. (2014). Revenue Management for Dedicated Passenger Line Based on Passenger Preference Order. *Information Technology Journal*, 13, 2152-2158. <https://doi.org/10.3923/itj.2014.2152.2158>.
4. Qiu, B., Jin, Y., Lv, L., & Jin, Z. (2010). An Optimization Model and Heuristic Algorithm for the Ro-Ro Ship Loading. In *ICLEM 2010: Logistics For Sustained Economic Development: Infrastructure, Information, Integration* (pp. 2827-2835). [https://doi.org/10.1061/41139\(387\)396](https://doi.org/10.1061/41139(387)396).
5. Naletina, D., Ačkar, I., Vuletić, A., Petljak, K., & Štulec, I. (2018). Development opportunities of liner maritime passenger traffic in the Republic of Croatia. *Economic and Social Changes: Facts, Trends, Forecast*, 11(5), 182-197. <https://doi.org/10.15838/esc.2018.5.59.12>.
6. Vyskupaitis, A. (2003). Efficiency estimation of transport companies' activity. *Transport*, 18(2), 61-65. <https://doi.org/10.3846/16483840.2003.10414067>.
7. Zhang, S., Li, Y., Yuan, H., & Sun, D. (2019). An alternative benchmarking tool for operational energy efficiency of ships and its policy implications. *Journal of Cleaner Production*, 240, 118223. <https://doi.org/10.1016/j.jclepro.2019.118223>.
8. Lupták, V., Drożdziel, P., Stopka, O., Stopková, M., & Rybicka, I. (2019). Approach methodology for comprehensive assessing the public passenger transport timetable performances at a regional scale. *Sustainability*, 11(13), 3532. <https://doi.org/10.3390/su11133532>.
9. Leurent, F. (2011). Transport capacity constraints on the mass transit system: a systemic analysis. *European Transport Research Review*, 3(1), 11-21. <https://doi.org/10.1007/s12544-011-0046-5>.
10. Matviyenko, M.V., Navrozova, Yu.O., & Sherbina, V.V. (2010). *Osnovi ekonomiki morskogo transportu: Navch. Posibn. Odesa: ONMU*. <https://doi.org/10.31375/966-7716-61-9-2019>. [in Ukrainian].
11. Nesimko, O.D. (2014). Osoblivosti dogovoru mors'kogo charteru [Peculiarities of the sea charter contract]. *Visnik Natsional'nogo universitetu «L'viv's'ka politehnika». Seriya: Iuridichni nauki – Series of Legal Sciences of Visnyk of Lviv Polytechnic National University*, 807, 180-186. [in Ukrainian].
12. Mihajlova, Yu. V., Steba, A.A., & Navrozova, Yu.O (2022). Osoblyvosti orhanizatsii kruiznykh perevezen pasazhyriv na yakhtakh [Peculiarities of the organization of cruise transportation of passengers on yachts]. *Visnyk Pryazovskoho Derzhavnoho Tekhnichnoho Universitetu. Seriya: Tekhnichni nauky - Bulletin of the Azov State Technical University. Series: Technical sciences*, 45, 126-134. <https://doi.org/10.31498/2225-6733.45.2022.276272>. [in Ukrainian].
13. Nezdoimov, S.G. (2022). Suchasnyy rozvytok infrastrukturi mizhnarodnogo kruiznogo rynku [Modern infrastructure development of the international cruise market]. *Naukovii visnik Odes'kogo natsional'nogo ekonomichnogo universitetu – Scientific Bulletin of the Odessa National Economic University*, 3-4, 107-112. <https://doi.org/10.32680/2409-9260-2022-3-4-292-293-107-113>. [in Ukrainian].
14. Chaikovskiy, I.V. (2019). Zastosuvannya optymizatsiynykh metodiv v kontroli ta analizi roboty flotu [Application of optimization methods in the control and analysis of fleet operation]. *Transportni systemy ta tekhnologii perevezen - Transport systems and transport technologies*, 17, 76-79. <https://doi.org/10.15802/tstt2019/178219>. [in Ukrainian].
15. Tzannatos, E. S. (2005). Technical reliability of the Greek coastal passenger fleet. *Marine Policy*, 29(1), 85–92. <https://doi.org/10.1016/j.marpol.2004.04.001>.

Юлія Михайлова¹, Анастасія Стеба², Галина Сільванська³, Марина Вільшанюк⁴

¹ Доцент кафедри «Експлуатації флоту та технології морських перевезень», Одеський національний морський університет, вул. Мечникова, 34, Одеса, 65029, Україна, ORCID: <https://orcid.org/0000-0002-4882-7803>.

² Старший викладач кафедри «Експлуатації флоту та технології морських перевезень», Одеський національний морський університет, вул. Мечникова, 34, Одеса, 65029, Україна, ORCID: <https://orcid.org/0009-0005-5777-9785>.

³ Доцент кафедри «Експлуатації флоту та технології морських перевезень», Одеського національного морського університету, 65029, м. Одеса, вул. Мечникова, 34, ORCID: <https://orcid.org/0000-0002-1272-8029>.

⁴ Старший викладач кафедри «Експлуатації флоту та технології морських перевезень», Одеський національний морський університет, 65029, м. Одеса, вул. Мечникова, 34, ORCID: <https://orcid.org/0000-0001-5396-6691>.

Комерційно-правові умови організації морських пасажирських перевезень

Ця стаття досліджує сучасні тенденції та перспективи фрахтування пасажирських круїзних суден. У світлі подій останніх років, включаючи глобальну пандемію COVID-19, круїзна індустрія зіткнулася з серйозними викликами, що підштовхнуло компанії до пошуку нових

підходів підтримки своєї діяльності. Фрахтування круїзних суден стає все більш привабливим варіантом для круїзних операторів, дозволяючи їм скоротити витрати і гнучко адаптуватися до попиту, що змінюється, на круїзні подорожі. В статті розглядаються різні моделі фрахтування, включаючи довгострокові та короткострокові угоди, а також можливість спільного використання суден між операторами. Докладно аналізуються переваги та ризики фрахтування круїзних суден, включаючи економічні, операційні та юридичні аспекти. Більш деталізовано розглянуто дві організаційно правові форми роботи морських пасажирських суден: лінійну та круїзну. Формалізовано та надано схематичне відображення процесу взаємодії учасників морських пасажирських перевезень при різних формах роботи суден. Описано схеми взаємодії судновласника, фрахтувальника та агента-менеджера. Розглянуто технологію взаємодії учасників процесу перевезення пасажирів в контексті видів договорів фрахтування судном. Наведено відмінності у технологічних процесах взаємодії учасників процесу організації та забезпечення морських пасажирських перевезень, розподілі відповідальності, ризиків, витрат та доходів при організації морських пасажирських перевезень за різними схемами взаємодії учасників.

Ключові слова: пасажирські перевезення, судноплавні компанії, договір морського перевезення, оренда судна, чартер.