

SEAFARERS'
RIGHTS

international centre for
advancing the legal
protection of seafarers

SEAFARER FACT FILE

Using Lawyers



Using Lawyers

As a seafarer, you may need to consult a lawyer in the course of your employment if you face a legal problem.

Legal problems arising during your employment may or may not require a lawyer. Some problems, even if legal in nature, may be more appropriately dealt with by other means, such as using procedures established by your employer or within your employment contract; involving flag and/or port state administrations; using services offered through welfare organisations; and involving appropriate trade unions.

However, if you do need a lawyer, then this Fact File is aimed at providing practical guidance to enable you to find a lawyer, and to instruct a lawyer. It also explains how to negotiate fees for legal advice, or find free legal advice.

For guidance on Using Lawyers in specific countries, see the website of Seafarers' Rights International (SRI) at www.seafarersrights.org.

This is a general guide that can be used where there is no specific guide on Using Lawyers in a particular country.

Lawyers are known by several titles around the world including 'advocate', 'legal consultant', 'attorney', 'barrister', 'solicitor', 'counsellor' or simply 'lawyer'.



ENGAGING A LAWYER



If you have a legal problem, then the first question to decide is in what country you need a lawyer? This will depend on the specific nature of the legal problem.

Examples of legal problems

TYPE OF LEGAL PROBLEM	PLACE WHERE LAWYER SHOULD BE ENGAGED	LEGAL EXPERTISE REQUIRED
Claim against recruitment or manning agent	The country where the recruitment or manning agent is situated	Maritime Lawyer (with expertise in seafarers' claims)
Claim for unpaid wages and other financial claims under employment contract e.g. repatriation, abandonment, unpaid overtime, wrongful termination of employment contract	The port where the ship is located; and/or the country where the employing company has its registered offices or its actual place of business	Maritime Lawyer (with expertise in seafarers' claims)
Claim against employer for loss or damage to your property	The port where the ship is located; and/or the country where the employing company has its registered offices or its actual place of business	Maritime Lawyer (with expertise in seafarers' claims)
Claim for personal injury/death whilst working	The place where the personal injury/death occurred; and/or one of the ports visited by the ship; and/or the country where the employing company has its registered offices or its actual place of business	Personal Injury Lawyer
Marine casualty or incident	The port where the marine casualty or incident took place; and/or the first port the ship berths at after a marine casualty or incident	Maritime Lawyer (with expertise in seafarers' claims)
Criminal investigation/charge	The country where the criminal investigation/charge is made	Criminal Lawyer
Claim for salvage service	The country where the ship, cargo or freight is located; and/or the country where the owners of the ship and cargo have their registered offices or their actual place of business	Maritime Lawyer (with expertise in seafarers' claims)
Civil claim against seafarer by someone else	The country in which the claim is made against the seafarer	Lawyer experienced in Civil Law Claims

HOW TO FIND A LAWYER



The lawyer should:

- Be experienced in the type of legal problem that you have. For example, maritime law is a specialist area. All countries with a coastline will have specific maritime laws, and sometimes maritime courts, however not all lawyers will be familiar with maritime law
- Not act for you if they also act for shipowners or other maritime interests in the dispute, or generally. This might create a conflict and the lawyer might be unable to advise you independently

Seafarers can find lawyers:

- Listed on the website of Seafarers' Rights International (SRI). The website is at www.seafarersrights.org. Here you will find a list of lawyers/law firms who have subscribed to a Charter of Good Practice for the Provision of Legal Services to Seafarers
- Listed in international guides and directories where specialist lawyers are set out and rated. Examples of these websites are www.legal500.com and www.chambersandpartners.com (websites in English)
- Listed on the membership bodies or regulatory bodies of the legal profession in specific countries. However often these websites will be in a foreign language
- Recommendations from friends or members of the family
- Recommendations from local trade unions or welfare organisations
- Recommendations from the local consulate

ENGAGING A LAWYER



If you have a legal problem, you should appoint a lawyer as soon as possible since most legal proceedings have to be brought or defended within specific time periods.

Once a lawyer agrees to represent you, the lawyer should explain the following:

- The options for sorting out your problem
- The chances of getting the result you want
- How long the case will take
- An estimate of the likely cost of the work to be done
- Whether legal aid is available
- What you might have to pay if you lose the case
- Whether you must provide security for the other side's legal costs
- What you should do if you are unhappy with the lawyer's services

Generally, during the conduct of the legal problem, the lawyer should keep you regularly informed of progress, and follow professional rules.

PAYING A LAWYER



Common fee arrangements are described below. However these arrangements are not always available in every country.

- Contingency Fee is referred to as 'no win-no fee' since a fee is payable only if there is a favourable result for you. Contingent fees are usually calculated as a percentage of the amount awarded to you. In some countries, lawyers are not allowed to charge on a contingency fee basis. However they may charge on a conditional fee which is similar to contingency fees
- Flat or Fixed Fee is where the lawyer charges a fixed total fee which is sometimes a percentage of the value of the claim. This is generally offered if the claim is relatively simple or routine but it is still important to ask exactly what services and expenses are covered and what are not
- Hourly charges are where the lawyer charges according to the number of hours he spends working on your claim. Hourly rates vary significantly depending on a number of factors such as the location, experience and reputation of the lawyer. Some lawyers charge different fees for different types of work (legal research versus court appearance)
- Retainer Fee is where you pay the lawyer a set fee which acts as an advance payment against which future costs are billed. The retainer is usually non-refundable, and if the fees go above the retainer amount, you must pay that amount also. Additional fees beyond the retainer are often required when a matter must go to court
- Statutory Fee is where the law of a particular country sets fees by statute, or a court sets and approves the fee that the seafarer must pay

OBTAINING FREE LEGAL ADVICE



The following are options for seeking free legal advice.

Legal Aid

Legal aid is a system that ensures that those who cannot afford lawyers can have access to legal services. However it is not available in every country, and it is not available for every type of legal problem. Broadly there are two types of legal aid: civil legal aid and criminal legal aid.

Civil legal aid: Some countries provide legal aid for civil claims but often this is only available to nationals or residents of that country.

Criminal legal aid: Some countries provide legal aid for all criminal offences, whereas others only provide it for serious crimes such as murder.

Legal aid clinics: In many countries, the government funds legal aid clinics. However generally they only handle cases concerning the poor and impoverished, and due to limited funding, they may only take certain types of cases.

'Pro bono' legal services

'Pro bono' is a Latin phrase for professional work undertaken voluntarily and without payment or at a reduced fee as a public service. Lawyers working in private law firms often work a portion of their time on pro bono cases so you should enquire if the lawyer provides pro bono legal services, and if so, whether you would be eligible.

Non-government organizations

Certain non-government organizations (NGOs) representing groups of workers such as seafarers may offer free legal services. You could contact a local union or seafarer centre to find out if they provide free legal advice.

Telephone helplines

Helplines may be available for seafarers but these will only provide initial advice and you will need to talk to a lawyer for specific advice.

IF THINGS GO WRONG WITH THE LAWYER



Most countries require lawyers to belong to a lawyer's association and to comply with a code of conduct for lawyers. Therefore if you are unhappy with the way your legal problem is handled (for example, if there are delays) then a complaint can be made to the lawyer/law firm, or to the lawyer's professional regulatory body. If the lawyer has been negligent, then you may be able to take legal action against the lawyer.

Remember – at any stage, you can change your lawyer. However this can be expensive since the new lawyer will need to become familiar with your problem. Also if you change lawyers, it is important to be careful that deadlines in the case are not missed.

Using Lawyers Checklist

- ✓ Decide in what country you need a lawyer
- ✓ Find a lawyer experienced in the type of legal problem you have
- ✓ Check that the lawyer does not have a conflict and can give you independent legal advice
- ✓ Inquire if there is any free legal advice available to you
- ✓ Negotiate a fee arrangement that is acceptable to you
- ✓ Ask to be kept informed regularly about progress in your case
- ✓ Remember you can always change your lawyer or complain if you are dissatisfied with the lawyer's services

Visit www.seafarersrights.org for a list of lawyers who subscribe to a charter of good practice for the provision of legal services to seafarers

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Seafarers' Rights International (SRI) is an independent centre dedicated to advancing the rights of seafarers through research, education and training in issues concerning seafarers and the law.