

## SEAFARER SUBJECT GUIDE

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### USING LAWYERS IN SOUTH KOREA

This Guide deals in general terms with using lawyers in South Korea. It aims to help a seafarer understand the legal profession in South Korea, and how to select, engage, and if need be, change his lawyer. This Guide does not, however, constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practice in South Korea.

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#### 1. What is the structure of the legal profession?

- 1.1 The legal profession is not divided into solicitors and barristers. Lawyers work as sole practitioners or as part of a law firm. Lawyers can advise on any legal matter, including criminal, civil and administrative matters. They can appear in all levels of court, including the District Court, the High Court (Court of Appeal), the Supreme Court and the Constitutional Court. There is no admiralty court that has a special jurisdiction over maritime matters. The District Court has jurisdiction over maritime claims.
- 1.2 There is also the Marine Safety Tribunal, founded and administered by the Minister of Land, Transport and Maritime Affairs. The tribunal operates at two levels: the District Marine Safety Tribunal, and the Central Marine Safety Tribunal. The Marine Safety Tribunal deals with marine accidents that occur in the course of ship operations and result in loss of life, personal injury, loss of or damage to ships, port facilities and offshore facilities. The task of the Marine Safety Tribunal is to find out the cause of casualties and to impose administrative penalties on the navigational officers or pilots whose action or omission, committed with intent or neglect, contributed to the occurrence of the casualty.
- 1.3 Lawyers who are registered as maritime counsel with the Central Marine Safety Tribunal can also appear at all levels of the Marine Safety Tribunal.

#### 2. How is the legal profession regulated?

- 2.1 All lawyers are regulated by the Korean Attorney-At-Law Act ('KAALA'). All lawyers must be registered in the Korean Bar Association ([www.koreanbar.or.kr](http://www.koreanbar.or.kr)) (website in English) and they are bound by the KAALA and a strict professional code which, if not complied with, may result in disciplinary enquiry and possibly being struck off the roll of lawyers.

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### 3. How can a seafarer find a lawyer?

- 3.1 General advice on appointing a lawyer is available from the Korean Bar Association and local bar associations. The websites of local bar associations provide information (such as education and experience) in the Korean language. Lawyers specialising in maritime law and other fields can also be found in Legal 500 ([www.legal500.com](http://www.legal500.com)) (website in English) and in Chambers and Partners ([www.chambersandpartners.com](http://www.chambersandpartners.com)) (website in English). Seafarers with claims or problems arising from their employment on board a ship, or against their employer for wages should consider instructing a specialist maritime law firm.
- 3.2 If a seafarer faces an investigation by the police or the Marine Safety Tribunal concerning a marine accident or incident, he should appoint a maritime lawyer. Certain specialist maritime law firms have lawyers experienced in dealing with criminal matters and representing seafarers in the Marine Safety Tribunal proceedings.
- 3.3 A seafarer involved in certain serious criminal cases has a constitutional right to counsel. If a criminal defendant is unable to secure counsel by his efforts, the State must assign a counsel to the seafarer. However, if the charge against a seafarer relates to a marine accident or incident, the seafarer is advised to appoint a lawyer specialised in maritime law.

### 4. On what terms can a seafarer engage a lawyer?

- 4.1 When a seafarer engages a lawyer, the lawyer will draw up a written contract of engagement with the seafarer, specifying the terms and conditions which will regulate the professional arrangement between the seafarer and his lawyer. However, it is not uncommon that, rather than a written contract, the lawyer and the seafarer execute a power of attorney ('POA') on a standard form used by lawyers, which is delivered to the lawyer as evidence of engagement. The POA sets out basic terms such as the agreed scope of work to be undertaken and the name(s) and status of the lawyer(s) assigned to the case. Other conditions are agreed verbally.
- 4.2 The contract of engagement normally includes the following important information: (a) details of the agreed scope of work to be undertaken and the procedures for keeping the seafarer informed on progress; (b) the name(s) and status (for example, a partner in the firm or an associate) of the lawyer(s) assigned to the case; (c) the procedures for dealing with any complaints should the seafarer be dissatisfied with the standard of service provided; (d) the basis on which the seafarer will be charged for work to be undertaken; (e) details of any advance payment required from the

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seafarer, arrangements for rendering bills and terms of payment; and (f) the firm's responsibility and potential professional liability to the seafarer.

### 5. How will a seafarer be charged fees by his lawyer?

- 5.1 Lawyers normally charge at hourly rates in international cases, which involve foreign seafarers or foreign ships. A number of factors will influence the rates charged such as: (a) the seniority of the lawyer(s) working for the seafarer; (b) the type and location of the law firm; and (c) the complexity and value of the dispute or the claim. In addition, lawyers will charge for any disbursements they incur on behalf of the seafarer, such as travel costs, court fees, the fees of any other professional experts whom they may instruct, such as medical experts in personal injury claims.
- 5.2 Lawyers may enter into contingency fee arrangements with seafarers, which means that the lawyer will only be entitled to a fee if the seafarer is successful in his claim. The 'success' fee will be higher than the normal fee but it must not exceed a reasonable sum. There is neither a guideline nor a tariff for the success fee. The fee does not include costs. Should a seafarer be dissatisfied with the success fee charged by the lawyer after litigation, the seafarer can bring a suit for the court to reduce it to a reasonable amount, even though the seafarer has already agreed the success fee with the lawyer at the beginning of the engagement.
- 5.3 A lawyer may offer the seafarer a fixed fee arrangement, if the matter is relatively simple or routine.

### 6. Can a seafarer get legal aid in a criminal case?

- 6.1 Every seafarer has the right to free independent legal advice (legal aid), regardless of his financial standing and nationality, if he is detained, questioned or arrested by the police in connection with a suspected offence.
- 6.2 If a seafarer, who is the accused charged with an offence, is: (a) placed under arrest; (b) a minor; (c) seventy years of age or over; (d) deaf and dumb; (e) suspected of having a mental and physical disorder; or (f) indicted for a case carrying the death penalty, life imprisonment, or imprisonment with or without labour for a term of three years or more, the court shall appoint a defence counsel for him.
- 6.3 If a seafarer charged with an offence is unable to appoint a defence counsel because of poverty or any other reason, if the seafarer so requests, the court shall appoint a defence counsel for him.

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### 7. Can a seafarer get legal aid in a civil case?

- 7.1 Legal aid in civil litigation is available to any indigent person, regardless of his nationality, at the decision of a court. A seafarer, who files a civil lawsuit or is sued by a third party and wishes to obtain legal aid, must apply to the court for a grant of legal aid with evidence proving that he is financially unable to pay the legal fees and court costs.
- 7.2 The Korea Legal Aid Corporation ('KLAC') also provides legal aid to an indigent person who is either physically resident in South Korea or is a citizen. Although in principle, legal aid is not available to a foreign seafarer, the KLAC decides whether to give legal aid to foreign seafarers on a case by case basis. Normally, legal aid is made available by the KLAC to a foreign seafarer in relation to a claim for unpaid wage when the seafarer submits to the KLAC a certificate of non-payment of wages issued by the Regional Employment and Labour Agency. The KLAC also provides legal aid to a foreign seafarer who has obtained a decision from the court in favour of legal aid.
- 7.3 Detailed information regarding legal aid can be found on the KLCA's website ([www.klac.or.kr](http://www.klac.or.kr)) (website in English).

### 8. Can a seafarer get any other free legal advice?

- 8.1 The KLAC provides indigent seafarers with free legal aid, which covers not only litigation but also general consultation.

### 9. Can a seafarer sue his lawyer?

- 9.1 A seafarer may sue his lawyer, where the lawyer has displayed gross ineptitude and gross negligence, which has caused damage to the seafarer.
- 9.2 In general, a court would be slow to find the lawyer responsible for the loss. However, if the lawyer commits gross negligence, such as failing to file the lawsuit within the time limits, the lawyer will be liable for the seafarer's damages caused by the lawyer's negligence.

### 10. How can a seafarer complain about his lawyer?

- 10.1 The contract of engagement or POA does not regulate, in detail, quality assurance and the procedures for dealing with complaints from seafarers.

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- 10.2 Should the seafarer be dissatisfied with the service provided, he should communicate the details of the complaint to his lawyer. A better legal service can be expected after the communication.
- 10.3 If the seafarer is still dissatisfied after going through the attorney's complaints procedure, the seafarer may refer the complaint to the Korean Bar Association or local bar association.

### **11. How can a seafarer change his lawyer?**

- 11.1 Where a seafarer is dissatisfied with the service of his lawyer, a seafarer may terminate the services of his lawyer at any time and appoint a new lawyer. The seafarer's previous lawyer will, however, be entitled to hold on to documents in his possession relating to the matter while there is still money owing to him for fees and disbursements.
- 11.2 The seafarer should bear in mind that changing lawyers could involve delays and additional legal costs, since it usually takes time for a new lawyer to read the relevant files and familiarise himself with the case.

### **12. Is a foreign seafarer treated differently?**

- 12.1 Foreign seafarers who pursue civil claims or who face criminal prosecution in South Korea are not treated differently to national seafarers.
- 12.1 However, a foreign seafarer who is not resident in South Korea may have to provide security for the other side's legal costs of defending a claim, if the other side requests it.

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