

SEAFARER SUBJECT GUIDE

USING LAWYERS IN PAKISTAN

This Guide deals in general terms with engaging lawyers in Pakistan. It aims to help a seafarer understand the legal profession in Pakistan, 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 Pakistan.

1. What is the structure of the legal profession?

- 1.1. All practicing lawyers are known as advocates, who work either on their own or as part of a law firm. There is therefore no distinction here between barristers and solicitors. However, in the Supreme Court there is a semblance of a distinction between barristers and solicitors in as much as a litigant in the Supreme Court has to engage an advocate on record and also an advocate of the Supreme Court. An advocate on record acts like a solicitor and an advocate of the Supreme Court acts as a barrister, arguing the case before the Supreme Court.
- 1.2. The legal profession is not a referral profession. A seafarer requiring legal assistance has to approach an advocate who can then take the brief and deal with it until it is concluded.
- 1.3. An advocate can advise on any legal matter, including criminal and civil matters. He can appear in the Session Courts consisting of Judicial Magistrates and District Session Judges (which are criminal courts) and before the District Courts, where civil claims not exceeding Rs.15 million are handled at least in so far as Karachi, in the Province of Sindh is concerned. In the rest of the country (barring the Capital City of Islamabad) the District Courts have unlimited original civil jurisdiction. The High Courts have only appellate jurisdiction. However, in Karachi the High Court also exercises original jurisdiction for claims exceeding the value of Rs.15 million.
- 1.4. There are three categories of advocates. Firstly, there are advocates who are only entitled to appear in district and all other courts except the High Courts. Secondly, there are advocates who can appear in the High Courts as well as all other courts except the Supreme Court. Thirdly, there are advocates who are entitled to appear in all Courts of Pakistan, including the Supreme Court. Considering that the High Courts have jurisdiction over admiralty matters, it is only an advocate of the second or third category who is entitled to appear before the Admiralty Courts.

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2. How is the legal profession regulated?

2.1 Advocates are regulated by Provincial Bar Councils (which are autonomous bodies) in which they are required to be registered, and which issue licenses to practice law. The legal profession is regulated by a Legal Practitioners and Bar Council Act, 1973, which lays down stringent rules and guidelines for the conduct of advocates. If an advocate fails to abide by the rules, his name may be struck off from the list of the advocates entitled to appear in the courts. The only two Bar Councils concerned with Admiralty Courts in the first instance are the Sindh Bar Council (for the Province of Sindh) and the Balochistan Bar Council (for the Province of Balochistan). All practitioners of the Supreme Court are governed by the Pakistan Bar Council. This is all established in section 3 Legal Practitioners & Bar Councils Act.

3. How can a seafarer find a lawyer?

3.1 A seafarer wishing to appoint an advocate has to approach the advocate directly. However, advice in this connection is available from some seafarer's organisations such as Master Mariner Society of Pakistan, the Merchant Navy Officers Association and All Pakistan Seamen's Workers Union. A list of advocates who practice maritime law is on the Internet as most law firms have their own websites. Another option is to contact a Protection & Indemnity (P & I) Club (who generally hold a list of specialised maritime lawyers in various countries).

3.2 Seafarers who have claims regarding their wages should engage advocates from a law firm specialising in maritime law. Information regarding such advocates can be obtained from the local shipping agents.

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

4.1 Once seafarer engages an advocate it is necessary for him to sign a power of attorney of the advocate, which is known as 'vakalatnama.'

4.2 This printed document enables the advocate to appear and defend the proceedings on behalf of the seafarer. Often this document gives power to the advocate also to compromise the claim, although this must be specifically stated. If a seafarer does not wish to give his advocate the power to compromise he should delete it from the vakalatnama. This is the only document that is required for the advocate to appear in the courts on behalf of the seafarer.

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

- 5.1 If a seafarer engages an advocate, it is necessary for him to settle the fees of the advocate in advance. Most advocates charge 50 percent of their fees in advance and the balance of the fees during the course of the proceedings. Advocates usually charge their fees on lump-sum basis. However, there are certain firms that charge fees on work done basis.
- 5.2 Advocates are not permitted by law to charge fees on contingency basis. However, there are certain individual lawyers (not law firms) who do work on contingency basis in a disguised manner, that is to say, it does not appear that fees are being charged on contingency basis.

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

- 6.1 Every seafarer has a right to free independent legal advice if he is detained or arrested by police for any offence.
- 6.2 A seafarer who can not afford to engage an advocate can request the court to appoint an advocate to defend him.

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

- 7.1 There is no organisation which provides legal aid to seafarers. Seafarers have to consult a lawyer on their own or through the shipping agent.

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

- 8.1 There are no organisations which give free legal advice to a seafarer.
- 8.2 According to Merchant Shipping Ordinance 2001, the shipping master who is a Government official, is authorised to resolve issues regarding seafarers' wages.

9. Can a seafarer sue his lawyer?

- 9.1 Seafarer can sue his advocate for negligence in the performance in his duty, that is to say, failing to conduct the proceedings on behalf of the seafarer in a professional manner. However, such actions are usually not brought in Pakistani Courts, and if

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initiated can take a long time for decision. The normal procedure is to file a complaint before the appropriate Bar Council, who shall adjudicate upon the matter.

10. How can a seafarer complain about his lawyer?

10.1 If seafarer is not satisfied with performance of his lawyer or suspects that the advocate has been unethical, he can lodge a complaint before the Provincial Bar Council, which may result in the advocate being disbarred. This would involve writing a letter to the relevant Bar Council (attaching the vakalatnama and any payment made to the advocate as proof of being a client and having paid the advocate monies) along with the grievance. The Bar Council offices are usually within the respective provincial court premises.

11. How can a seafarer change his lawyer?

11.1 If a seafarer wishes to change his lawyer he can dis-instruct him, but before he does so he has to ensure that the fees of the lawyer are paid; otherwise the court may not permit the discharge of lawyer's power of attorney.

11.2 A seafarer should bear in mind that changing lawyers could involve delays and additional expenses, especially if the seafarer's case is at an advanced stage, as the new lawyers will need to read the documents and familiarise themselves with the case.

12. Is a foreign seafarer treated differently?

12.1 A foreign seafarer facing civil or criminal proceeding is treated the same as any local seafarer. The courts do not distinguish foreign seafarers from national seafarers.

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