

SEAFARER SUBJECT GUIDE

USING LAWYERS IN PORTUGAL

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

1. What is the structure of the legal profession?

- 1.1 An 'advogado,' which is translated from Portuguese as a 'lawyer' or 'advocate,' may practice law as a sole practitioner or as part of a law firm.
- 1.2 Lawyers can advise on any legal matter, including criminal and civil matters. They are specialists in court procedure and evidence, and in conducting advocacy in court. They can appear in all levels of the courts, including the Maritime Court, the Supreme Court of Justice and the Constitutional Court. The language of the court is Portuguese, and all court documents must be in Portuguese.
- 1.3 The use of a lawyer is mandatory in civil cases where the amount involved is in excess of EUR5,000, as well as in cases where an appeal is always admissible, irrespective of the amount of the claim; and in appeals and cases brought before the higher courts. This stipulation is the result of the combined interpretation of the following rules, of which no English version is available:
 - .1 Article 32.º of the Portuguese Code of Civil Procedure (<http://www.pgdlisboa.pt>) (website in Portuguese)
 - .2 Article 31.º of the Portuguese Law of Organization and Operation of Judicial Courts (<http://www.pgdlisboa.pt>) (website in Portuguese)

2. How is the legal profession regulated?

- 2.1 Although lawyers are regulated by the Bar Association (www.oa.pt) (website in Portuguese) only lawyers currently registered with the Bar Association can practice professionally and represent seafarers or provide them with legal advice. Lawyers are bound by a strict professional code which, if not complied with, may result in disciplinary enquiry and possibly expulsion from the Bar Association. The rules concerning professional ethics are established in Title III of the Statute of the

SEAFARER SUBJECT GUIDE

Portuguese Bar Association (articles 83.^o to 108.^o) <http://www.pgdlisboa.pt> (website in Portuguese). No English version is available.

3. How can a seafarer find a lawyer?

- 3.1 General advice on appointing a lawyer is available from the Bar Association at www.oo.pt (website in Portuguese). Lawyers who specialize in maritime law and other fields can also be found at Legal 500 at www.legal500.com (website in English) and Chambers and Partners at www.chambersandpartners.com (website in English). The website www.sociedadesadvogados.com (website in Portuguese) also lists many of the law firms specialising in maritime law (<http://www.sociedadesadvogados.com/direito-maritimo> (website in Portuguese)).
- 3.2 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.
- 3.3 If a seafarer faces an investigation by the maritime police or the National Maritime Authority concerning a marine accident or incident, he should appoint a specialist maritime lawyer or law firm.
- 3.4 A seafarer's trade union might be able to recommend a suitable lawyer, or the union may appoint a lawyer on behalf of the seafarer. If the marine accident or incident concerns the operation of a ship, the shipowner's lawyer may be able to represent the seafarer, provided there is no conflict of interest.

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

- 4.1 When accepting instructions from a seafarer, a lawyer should (although it is not mandatory), set out the terms of engagement in a formal letter, known as a letter of engagement, or in a written contract which specifies the standard terms and conditions which will regulate the professional relationship between the seafarer and his lawyer.
- 4.2 Such documents normally include the following information: (a) details of the agreed scope of work to be undertaken and the procedures for keeping the seafarer informed about 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 basis on which the seafarer will be charged for work to be undertaken; (d) details of any advance payment

SEAFARER SUBJECT GUIDE

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

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

- 5.1 Lawyers normally charge at hourly rates, which will be set out in the letter of engagement or in the written contract. The only regulations concerning the fees of lawyers are in articles 100.^o, 101.^o and 102.^o of the Statute of the Bar Association.
- 5.2 There are no rules concerning the maximum or minimum fee rate. A number of factors will influence the rate charged: (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. Lawyers will charge additionally for any disbursements they incur on behalf of the seafarer, such as court fees and the fees of any other professional advisors they may instruct, such as medical experts in personal injury claims.
- 5.2 A lawyer may enter into a contingency fee arrangement with a seafarer. A lawyer may, if he is of the opinion that there are reasonable prospects of success in the proceedings, enter into an agreement with a seafarer in which it is agreed that he will be entitled to fees equal to or higher than his normal fees if the seafarer is successful. However, fees cannot be exclusively contingent on the outcome of the proceedings: it is illegal to establish that the lawyer will only be entitled to fees if the seafarer is successful.
- 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 independent legal advice, regardless of his financial standing and nationality, if he is detained by the police in connection with a suspected offence.
- 6.2 If a seafarer who cannot afford legal representation is charged with an offence, he may qualify for free legal aid in relation to the costs of his defence in the criminal trial.
- 6.3 Free legal aid is available to: (a) Portuguese and European Union citizens; (b) foreigners and stateless persons habitually resident in Portugal; and (c) foreigners not resident in Portugal to the extent that legal aid would also be granted to Portuguese nationals by the laws of the states of the foreigners who, in respect of (a), (b) or (c),

SEAFARER SUBJECT GUIDE

demonstrate that they do not have sufficient financial means to pay the fees of the legal representatives and to pay, in full or in part, the normal costs of legal proceedings

6.4 Legal aid in criminal or civil cases is ruled by the same law: Law no 34/2004, which modifies the system of access to the law and to the courts, assigning to social security the task of assessing applications for legal aid:
http://www.pgdlisboa.pt/pgdl/leis/lei_mostra_articulado.php?nid=80&tabela=leis&ficha=1&pagina=1 (website in Portuguese).

6.5 The main difference between legal aid in criminal cases and in civil cases is that in criminal cases legal aid is always provided, although it may or may not be for free.

6.6 Since in criminal cases the accused has the right to independent legal advice, the court must immediately appoint a public defence lawyer, whose fees and other legal proceedings costs may, or may not, ultimately be charged to the accused, depending on whether request for free legal aid request is approved or not.

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

7.1 Legal aid in civil matters is only available to: (a) Portuguese and European Union citizens; (b) foreigners and stateless persons habitually resident in Portugal; or (c) foreigners not resident in Portugal to the extent that legal aid would also be granted to Portuguese nationals by the laws of the states of the foreigners who, in respect of (a), (b) or (c) demonstrate that they do not have sufficient financial means to pay the fees of the legal representatives and to pay, in full or in part, the normal costs of legal proceedings.

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

8.1 There is no other free legal advice available.

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 in, for example, failing to pursue the proceedings on behalf of the seafarer on a timely basis.

SEAFARER SUBJECT GUIDE

10. How can a seafarer complain about his lawyer?

- 10.1 If the seafarer is dissatisfied with the progress of his case, or with the service he is receiving from his lawyer, and considers that his lawyer is not dealing with his complaint promptly and effectively, the seafarer may complain in writing to the Bar Association.
- 10.2 Such a complaint will be referred to the Ethics Committee that will decide which – if any - of the following disciplinary measures shall be imposed on the lawyer: (a) a written warning; (b) a reprimand; (c) a fine up to an amount not exceeding the first instance court's jurisdiction (currently, EUR 5.000,00); (e) a fine up to the second instance appeals court's jurisdiction (currently EUR 30.000,00); (f) suspension up to ten years; or (g) expulsion.

11. How can a seafarer change his lawyer?

- 11.1 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 or objects in his possession relating to the matter while there is still money owing to him for fees and disbursements, unless such documents are necessary to produce proof of the seafarer's rights, or such retention causes him irreparable damage.
- 11.2 A seafarer should bear in mind that changing his lawyer 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 Foreign seafarers who pursue claims, or who face criminal prosecution in, Portuguese courts are treated no differently from Portuguese seafarers.

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