

SEAFARER SUBJECT GUIDE

USING LAWYERS IN RUSSIA

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

1. What is the structure of the legal profession?

- 1.1 Legal services may be rendered by advocates and by law firms. Advocates combine the functions of both solicitors and barristers; there is, therefore, no distinction between solicitors and barristers.
- 1.2 The status of an advocate is granted to a natural person who has a higher legal education and has passed a qualification examination before a Qualification Commission of Advocate's Chambers in the Russian Federation.
- 1.3 There are advocates' registries in the Russian Federation, which are maintained by relevant Justice Departments. An advocate may practice individually in a consulting room; or with two or more advocates in an advocate's collegium, or an advocate's bureau, or a legal consulting office.
- 1.4 In order to represent a seafarer in court an advocate needs a power of attorney to be verified by a notary or by the organization where the seafarer is employed. Advocates represent their clients in courts of any level including the Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation.
- 1.5 Advocates may render legal services both in civil and in criminal cases, although they may specialize in criminal proceedings or civil proceedings. With regard to these two fields, advocates prefer to specialize in certain types of criminal and civil cases.
- 1.6 Foreign advocates may render legal services in the Russian Federation only in respect of legal issues relevant to their own state. They are subject to registration in a special registry maintained by the Federal Ministry of Justice.
- 1.7 Law firms are typically organised as limited liability companies. Law firms may be described as: (a) domestic (where all the partners are Russian nationals); (b) those with foreign investments (comprising Russian and foreign partners, that is, joint

SEAFARER SUBJECT GUIDE

ventures on the one hand, and 100% subsidiaries of foreign firms on the other hand); or (c) branch offices of foreign law firms.

- 1.8 Both domestic firms and those with foreign investments enjoy the status of legal entities under Russian law. Branch offices of foreign firms do not enjoy the status of legal entities and are deemed to be subdivisions of foreign firms located in Russia.
- 1.9 Law firms are entitled both to render consultancy services to seafarers and to represent them in courts, since there is no advocacy monopoly. A seafarer's legal representative will not be a law firm as a legal entity, but its partner or employee as a natural person having a power of attorney, since only a natural person may act as a representative in court. There is no requirement for a court representative to have higher legal education, although in practical terms all partners and employees of law firms representing seafarers in courts do have such education.

2. How is the legal profession regulated?

- 2.1 The advocates' profession is regulated by the Federal Law 'On Advocate Activity and Advocacy' of 31 May 2002 N 63-FL. This law provides that in the course of his activity an advocate is entitled, in particular, to: (a) gather information needed for rendering legal services; (b) gather and submit items and documents as evidence; (c) involve experts (on a contractual basis) for the clarification of issues connected with the legal services; and (d) meet with the seafarer - even if the seafarer is in custody - in conditions where confidentiality is ensured.
- 2.2 An advocate is prohibited from: (a) accepting a commission for legal services if there is a conflict of interests; (b) taking a position contrary to the seafarer's unless the advocate is convinced of the seafarer's self-incrimination; and (c) disclosing information received from the seafarer without the consent of the seafarer.
- 2.3 An advocate is obliged to: (a) protect reasonably and in good faith the seafarer's rights and legitimate interests; (b) permanently improve his professional qualifications; (c) render legal services free of charge when it is so provided by federal law; (d) remit monthly allocations for the common needs of the advocate's chambers; and (e) comply with the rules of the Advocate's Professional Ethics Code.
- 2.4 The advocate's professional conduct in civil, criminal or administrative proceedings is regulated respectively by the Civil Procedure Code, the Criminal Procedure Code, and the Code on Administrative Violations. There is also the Advocate Professional Ethics

SEAFARER SUBJECT GUIDE

Code adopted by the First Whole Russian Congress of Advocates of 31 January 2003. The Code provides, among other things, that an advocate should keep professional confidentiality without any time restrictions and that he may be exempted from the duty of professional confidentiality only by his client, the seafarer.

- 2.5 As for partners and employees of law firms, their professional conduct in court proceedings is also regulated by the abovementioned Codes. There are no specific rules concerning their professional conduct in the field of legal consultancy. However, in practical terms they follow the statutory and ethical rules established for advocates.

3. How can a seafarer find a lawyer?

- 3.1 A seafarer who needs legal assistance may approach a local advocate's chambers. Depending on the nature of the legal problem in question (whether, for instance, it involves civil law, labour law, maritime law, administrative law, or criminal law), the chamber's officials will recommend an advocate who specialises in the relevant field.
- 3.2 If a seafarer wants to deal with a law firm specialising in the field of maritime law, he may approach a local Chamber of Commerce and Industry, which will provide him with contact details of appropriate law firms.
- 3.3 A seafarer may also obtain contact details of legal firms (including those specialising in the field of maritime law) from Legal 500 or similar guides.

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

- 4.1 According to the Federal Law 'On Advocate Activity and Advocacy' an advocate's professional conduct must be performed on the basis of an agreement between the advocate and the seafarer. As concerns its legal nature, such an agreement is a civil law contract reduced to writing.
- 4.2 Essential conditions of the agreement are: (a) the advocate's name; (b) the subject of the agreement; (c) the amount of the fee and conditions of its payment (unless legal services are to be rendered free of charge according to a federal law); (e) the amount and the procedure of recovery of the advocate's expenses (unless legal services are to be rendered free of charge according to a federal law); and (d) the amount and the character of the advocate's potential liability.

SEAFARER SUBJECT GUIDE

- 4.3 Since law firms do not have a status of advocates' organizations, the Federal Law 'On Advocate Activity and Advocacy' is not extended to them. Law firms also render legal assistance on a contractual basis.
- 4.4 If legal assistance takes the form of a consultancy, it is rendered under a contract providing for compensated services regulated by chapter 39 of the Civil Code of the Russian Federation. Under this contract, the lawyer undertakes to provide services to the seafarer who is obliged to pay for services rendered to him.
- 4.5 If a seafarer approaches a law firm in order to provide him with a representative in court proceedings (an attorney), the contract to be concluded in such a situation is a commission contract under which one party (the attorney) undertakes to perform certain legal actions in the name and at the expense of the seafarer. The relationship of the parties to this contract is regulated by chapter 49, articles 971-979 of the Civil Code.

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

- 5.1 The fees for legal services are to be agreed between the lawyer and the seafarer. In practical terms both advocates and law firms may charge seafarers on the basis of: (a) a fixed amount, if the matter is not too complicated; (b) an hourly rate; or (c) a contingency fee.
- 5.2 The most typical basis of charging for legal services is an hourly rate, the amount of which is established with due consideration of the experience and qualification of the lawyer, complexity and volume of the work, the extent of its urgency, and so on.
- 5.3 While a contingency fee is not statutory prohibited, it is also not encouraged. According to the Advocates' Professional Ethics Code an advocate should refrain from including in an agreement a clause under which payment of fees is dependent upon the result of the case. This rule is not extended to proprietary disputes upon which a fee may be determined in proportion to the amount of the claim provided the case is successfully completed.

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

- 6.1 According to the Criminal Procedure Code of the Russian Federation anyone who is regarded as a suspect or an accused in the commission of a crime is entitled to the services of a defence counsel and to meet him confidentially prior to the first interrogation.

SEAFARER SUBJECT GUIDE

6.2 A defence counsel may be engaged by the seafarer who must pay for the legal services; or, at the seafarer's request, a defence counsel will be provided by the police or by the court in which case the defence counsel's services are paid from the federal treasury.

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

7.1 According to the Federal Law of 21 November 2011 N 324-FL 'On Legal Aid Free of Charge in the Russian Federation' legal aid is free of charge to Russian nationals who are: (a) law income people whose per capita income is less than the amount of living wage; (b) invalids who have lost the ability to work; (c) invalid children, orphaned children without parental care; or (d) persons recognized as incapable by a court, and some other groups.

7.2 Legal aid free of charge may be rendered by state legal bureaus and by advocates.

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

8.1 Federal bodies of executive power and institutions subordinated to them, bodies of executive power in the Russian Federation, and institutions subordinated to them shall render legal aid free of charge to citizens by means of legal consulting (in oral or written form) in relation to issues within their competence.

8.2 In cases involving the violation of labour law, trade unions are entitled (upon request of their members, other employees, or at their own initiative), to apply to bodies, which deal with the resolution of labour disputes, with applications for protection of labour rights. Such services are rendered free of charge.

9. Can a seafarer sue his lawyer?

9.1 Since the relationship between a seafarer and his lawyer is based upon a civil law contract, the seafarer may sue his lawyer if he is of the opinion that the lawyer failed to perform his duty or performed it in an improper way. The lawyer is liable, if he is at fault.

9.2 According to the Civil Code a person shall be deemed not to be at fault if, exercising the degree of care and prudence required of him by the nature of the obligation and the conditions of commerce, he has taken all measures for the proper performance of the obligation. It is the debtor (in this situation the lawyer) who should prove that he

SEAFARER SUBJECT GUIDE

is not at fault. The seafarer, in his turn, should prove the amount of the loss that has resulted from his lawyer's conduct and that the seafarer wants to recover.

10. How can a seafarer complain about his lawyer?

- 10.1 If a lawyer is an advocate, a complaint may be submitted to the Council of the Advocates' Chambers whose member the advocate is. The Council will refer the complaint to the Chamber's Qualification Commission that is in charge of the consideration of such complaints and for an opinion as to whether the advocate did or did not violate the rules of the Advocate's Professional Ethics Code and whether he did or did not fail to perform his professional duties properly. The Council of the Advocate's Chambers makes its decision on the complaint with due consideration of the Qualification Commission's opinion.
- 10.2 If the lawyer subject to complaint by the seafarer is a partner or an employee of a law firm, the complaint may be submitted to the law firm's management board or to the Chief Executive Officer.

11. How can a seafarer change his lawyer?

- 11.1 The Federal Law 'On Advocate Activity and Advocacy' provides that issues related to cancellation of an agreement on rendering legal assistance are regulated by the Civil Code. As noted above, legal assistance (depending on its character) may be rendered under a contract providing for compensated services or a commission contract. The former contract may be unilaterally cancelled by the seafarer who is obliged to compensate his lawyer for the expenses actually borne by him.
- 11.2 The latter contract may be unilaterally cancelled by the seafarer, who is obliged to reimburse expenses paid by the attorney in the course of performance of the commission contract and to pay him a fee in proportion to work done by him. In effect, therefore, a seafarer may change his lawyer any time he wishes.

12. Is a foreign seafarer treated differently?

- 12.1 According to the Constitution of the Russian Federation foreign nationals and stateless persons enjoy rights and bear duties equally with nationals of the Russian Federation unless otherwise provided by federal law or an international treaty entered into by the Russian Federation with another state.

SEAFARER SUBJECT GUIDE

- 12.2 The Federal Law on 25 July 2002 N 115-FL 'On Legal Status of Foreign Nationals in the Russian Federation,' also states that 'foreign nationals enjoy in the Russian Federation rights and bear duties equally with nationals of the Russian Federation unless otherwise provided by a federal law.' According to the Merchant Shipping Code, the crew of a vessel flying the Russian flag may include, in addition to Russian seafarers, also foreign seafarers and stateless seafarers who, however, may not hold the positions of master, chief mate, chief engineer or radio operator.
- 12.3 According to the Civil Procedure Code foreign nationals and stateless persons are entitled to apply to Russian courts for the protection of their violated or disputed rights, freedoms and legitimate interests. Foreign nationals and stateless persons also enjoy procedural rights and bear procedural duties equally with Russian nationals. In effect, therefore, foreign seafarers in the courts are treated no differently to Russian seafarers.

01 October 2012