

## SEAFARER SUBJECT GUIDE

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### USING LAWYERS IN SOUTH AFRICA

This Guide deals in general terms with using lawyers in South Africa. It aims to help a seafarer understand the legal profession in South Africa, and to provide information on 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 Africa.

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

- 1.1 The legal profession is divided between attorneys and advocates. Attorneys work as sole practitioners or as part of a law firm, whereas advocates work as individuals (although usually as part of a set of advocates in offices called 'chambers') and are self-employed.
- 1.2 **When in need of legal assistance, a seafarer should engage an attorney, who may, as and when required, instruct an advocate on the seafarer's behalf.**
- 1.3 Attorneys can advise on any legal matter, including criminal and civil matters. They can appear in the Magistrates Courts, which includes the District Courts (where civil cases with claims not exceeding R100 000 (approximately US \$12 000) and less serious criminal cases are dealt with) and in the Regional Courts (where civil cases with claims not exceeding R300 000 (approximately US \$36 000) and certain more serious criminal cases are dealt with). Generally attorneys cannot appear in the High Court.
- 1.4 Advocates are specialists in court procedure and evidence, and in conducting advocacy in court. They can appear in all levels of court, including the Admiralty Court, the Supreme Court of Appeal and the Constitutional Court. The advocates' profession is a referral profession, which means that a seafarer should first approach an attorney who, in turn, instructs an advocate.

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

- 2.1 Attorneys are regulated by the Law Society of South Africa ([www.lssa.org.za](http://www.lssa.org.za)) (website in English). All attorneys must be registered with the Law Society, and they are bound

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by a strict professional code which, if not complied with, will result in disciplinary enquiry with the possibility of being struck off the roll of attorneys.

- 2.2 Advocates who are members of the General Council of the Bar in South Africa ([www.sabar.co.za](http://www.sabar.co.za)) (website in English) are bound by the Uniform Rules of Professional Ethics which apply to all members.

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

- 3.1 General advice on appointing an attorney is available from the Law Society of South Africa ([www.lssa.org.za](http://www.lssa.org.za)) (website in English) and at [www.findanattorney.co.za](http://www.findanattorney.co.za) (website in English) and [www.attorneys.co.za](http://www.attorneys.co.za) (website in English). Attorneys who specialize in maritime law and other fields can also be found at:

- .1 Legal500 at [www.legal500.com](http://www.legal500.com) (website in English)
- .2 Chambers and Partners at [www.chambersandpartners.com](http://www.chambersandpartners.com) (website in English)
- .3 Martindale at [www.martindale.com](http://www.martindale.com) (website in English)
- .4 HG Global Legal Resources at [www.hg.org/firms-south-africa.html](http://www.hg.org/firms-south-africa.html) (website in English).

- 3.2 The website of the Maritime Law Association of South Africa also lists many lawyers who specialise in maritime law at [www.mlasa.co.za](http://www.mlasa.co.za) (website in English).

- 3.3 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.

- 3.4 If a seafarer faces an investigation by the police or the South African Maritime Authority concerning a marine accident or incident, he should appoint a criminal lawyer. Certain specialist maritime law firms have suitably qualified criminal lawyers in their firms.

- 3.5 A seafarer's trade union might be able to recommend a suitable attorney, or the union may appoint an attorney on behalf of the seafarer. If the incident concerns the operation of a ship, the ship owner's attorney may be able to represent the seafarer, provided there is no conflict of interest.

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

- 4.1 When accepting instructions from a seafarer, an attorney should set out the terms of engagement in a formal letter, known as a letter of engagement, which specifies the standard terms and conditions which will regulate the professional arrangement between the seafarer and his attorney.
- 4.2 The letter of engagement and standard conditions normally include the following important information:
- .1 details of the agreed scope of work to be undertaken and the procedures for keeping the seafarer informed on progress;
  - .2 the name(s) and status (for example, a partner in the firm or an associate) of the attorney(s) assigned to the case;
  - .3 quality assurance and the procedures for handling any complaints should the seafarer be dissatisfied with the standard of service provided;
  - .4 the basis on which the seafarer will be charged for work to be undertaken;
  - .5 details of any advance payment required from the seafarer, arrangements for rendering bills and terms of payment; and
  - .6 the firm's responsibility and professional liability to the seafarer.

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

- 5.1 Attorneys normally charge at hourly rates, which will be set out in the letter of engagement and standard conditions. A number of factors will influence the rates charged such as the seniority of the attorney(s) working for the seafarer, the type and location of the law firm, and the complexity and value of the dispute or the claim. In addition, attorneys will charge for any disbursements they incur on behalf of the seafarer, such as the advocate's fees, court fees and the fees of any other professional advisors they may instruct such as medical experts in personal injury claims.
- 5.2 Attorneys and advocates may enter into contingency fee arrangements with seafarers. An attorney and advocate 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 not be entitled to any fees unless the seafarer is successful to the extent set out in the agreement and that he will be entitled to fees equal to or higher than his normal fees if the seafarer is successful. The 'success' fee must not exceed the normal fees by more than 100% or, in the case of claims for

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money, 25% of the total amount awarded. The fee does not include costs. A contingency fee agreement must be in writing and in the form prescribed by the Minister of Justice.

- 5.3 An attorney may offer the seafarer a fixed fee arrangement, which is generally offered 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 by the police in connection with a suspected offence.
- 6.2 If a seafarer, who cannot afford legal representation, is subsequently charged with an offence, he may qualify for legal aid in relation to the costs of his defence in the criminal trial.

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

- 7.1 Legal aid in civil matters is only available to children resident in the country and to any indigent person who is either physically resident in South Africa and a citizen, or a permanent resident of the country. Therefore only seafarers who are South African citizens, or who have permanent residency in the country, can potentially qualify for civil legal aid.
- 7.2 There are certain types of matters in relation to which civil legal aid is not available, such as claims for damages on the grounds of defamation, or administration of estates and insolvency cases.
- 7.3 Detailed information about the availability of legal aid can be found on Legal Aid South Africa's website - [www.legal-aid.co.za](http://www.legal-aid.co.za).

### 8. Is there any other free legal advice?

- 8.1 The Rules of the High Court allow litigants, which would include a seafarer, to bring or defend proceedings in forma pauperis (literally translated as meaning 'in the manner of a pauper') which entails the Registrar of the court referring the litigant to an attorney for assistance. The nominated attorney is then required to inquire into such a person's means and the merits of his cause and upon being satisfied that the matter

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is one in which he may properly act in forma pauperis he can request the society of advocates to nominate an advocate who will be able to act. The advocate and attorney shall then act free of charge for the seafarer.

- 8.2 The Merchant Shipping Act provides that whenever a question as to wages is raised between the owner or master of a South African ship and a foreign or South African seafarer, and they agree in writing to submit such matter for adjudication to a proper officer, he may hear and decide the question and his decision shall be final. The services of the proper officer, who is generally an employee of the South African Maritime Safety Authority, are apparently free of charge.

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

- 9.1 A seafarer may sue his attorney and/or advocate where they have displayed gross ineptitude and gross negligence in, for example, failing to pursue the proceedings on behalf of the seafarer timeously. Generally, the court would be reluctant to penalise a seafarer on account of the conduct of his attorney, provided the seafarer is not responsible for the delay.
- 9.2 However, even if the delay is due entirely to the neglect of the seafarer's attorney, there is a limit beyond which a seafarer cannot escape the results of his attorney's lack of diligence. So, the seafarer is not entitled to hand over the matter to his attorney and then wash his hands of it. If it must have become obvious to a seafarer that there is a protracted delay, he cannot sit passively by, without directing any reminder or enquiry to his attorney and expect to be exonerated of all blame.

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

- 10.1 The letter of engagement should provide details of what the seafarer may do if he is dissatisfied with the progress of his case or with the service he is receiving from his attorney. All attorneys firms are required to have a procedure for dealing with complaints promptly, fairly, openly and effectively.
- 10.2 If the seafarer is still dissatisfied after going through the attorney's complaints procedure, the seafarer may refer the complaint to the law society.
- 10.3 If the seafarer is dissatisfied with the service of the advocate that represents him, the seafarer should report the complaint to the bar council.

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

- 11.1 A seafarer may terminate the services of his attorney at any time and appoint a new attorney. The seafarer's previous attorney 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 A seafarer may terminate the services of his advocate at any time by instructing his attorney to do so.
- 11.3 Seafarers 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 Foreign seafarers who pursue claims or who face criminal prosecution in South African courts are not treated differently to South African nationals.
- 12.2 However, in certain circumstances a foreign seafarer who is not resident in South Africa may have to provide security for the other side's legal costs of defending a claim.

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