

SEAFARER SUBJECT GUIDE

USING LAWYERS IN SPAIN

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

1. What is the structure of the legal profession?

- 1.1 Lawyers ('abogados') can deal with any legal matter, including advising on criminal and civil matters, preparing a case and evidence, and appearing in any court.
- 1.2 Lawyers usually work as part of a firm, either as partners or employees, although many work as sole practitioners.
- 1.3 In order to be allowed to practice law, a lawyer must be registered with the Bar Association ('Colegio de Abogados') in the place where he performs his professional activity.
- 1.4 If a seafarer needs to go to court, then in most courts, in addition to a lawyer, it will be necessary for the seafarer to engage a procurador. The procurador is also a law graduate and technically represents the seafarer in court.

The role of the procurador is to receive communications from the court, to pass them to the lawyer, and to receive documents from the lawyer and deliver them to the court. A seafarer thus engages a lawyer to handle his case, and the lawyer will, on behalf of the seafarer, engage a procurador.

- 1.5 In order to represent a seafarer in court, the lawyer and procurador must have a power of attorney ('poder para pleitos') which the seafarer must sign in front of a Spanish public notary ('notario'). If the seafarer is not in Spain, the power of attorney must be granted at a Spanish Embassy or Consulate, or by public notary outside of Spain and in this last case the power of attorney must be legalized (by the Spanish Embassy or Consulate or with the Hague Apostille).

SEAFARER SUBJECT GUIDE

2. How is the legal profession regulated?

- 2.1 Lawyers are regulated by the Lawyers General Council of Spain ('CGAE')(Consejo General de la Abogacía Española/CGAE: www.cgae.es) (website in Spanish). The CGAE is the body responsible for regulating the practice of lawyers and ensuring the prestige of the profession. The CGAE is also the representative body, and top executive coordinator, of the Bar Association.
- 2.2 Every Lawyer in private practice must be registered in a Bar Association. All lawyers must comply with a detailed Code of Conduct ('Código Deontológico') issued by the CGAE. Failure to comply with these rules may result in disciplinary proceedings against the lawyer concerned.
- 2.3 Procuradores are regulated by the Procuradores General Council ('Consejo General de Procuradores de España'/CGPE: www.cgpe.es) (website in Spanish) and must also comply with a detailed Code of Conduct issued by the CGPE.

3. How can a seafarer find a lawyer?

- 3.1 General advice on appointing a lawyer is available in the Bar Associations. The websites of all the Bar Associations can be found in Lawyers General Council of Spain ('Consejo General de la Abogacía Española'/CGAE: www.cgae.es) (website in Spanish).
- 3.2 The following publications are useful guides to appointing lawyers to conduct criminal or civil matters: (a) a Client's Guide to the Spain Legal Profession, published by Chambers & Partners (or visit www.chambersandpartners.com) (website in English) which lists and ranks Lawyers in over several specialist areas of law; (b) Legal 500: Spain, published by Legalease (or visit www.legal500.com) (website in English), which is a similar guide; and (c) Best Lawyers: Spain (or visit www.bestlawyers.com) (website in English).
- 3.3 If a seafarer has a claim or a dispute arising from his employment on his ship, or against his employer for unpaid wages, he should consider appointing a specialist maritime law firm. Details of specialist maritime firms are available on the above mentioned websites. Some of these firms may, however, only act for ship owners.
- 3.4 If the seafarer faces an investigation by the police or maritime authority concerning a marine accident or incident, he should appoint a criminal lawyer.

SEAFARER SUBJECT GUIDE

3.5 In relation to personal injury and death claims, a seafarer should appoint a civil lawyer.

3.6 A seafarer's trade union may 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 the ship, the ship owner's lawyer may be able to represent the seafarer provided there is no conflict between the interests of the seafarer and the ship owner.

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

4.1 When accepting instructions from a seafarer, lawyers set out their terms of engagement in a formal letter, commonly known as a 'hoja de encargo profesional' (lawyer-client fee agreement), which may be accompanied by a set of standard conditions.

4.2 The lawyer-client fee agreement includes the following important information: (a) details of the agreed scope of the work to be undertaken and the procedures for keeping the seafarer informed of 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) quality assurance and the procedures for handling any complaints should the seafarer be dissatisfied with the standard of service provided; (d) the basis on which the seafarer will be charged for the work to be undertaken and (where practicable) an estimate of the overall cost of the matter; (e) details of any advance payment required from the seafarer, arrangements for rendering bills and payment terms; and (f) the firm's responsibility and professional liability to the seafarer, as the client.

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

5.1 The fees will be agreed between the seafarer and his lawyer, according to the professional Code of Conduct ('Código Deontológico') issued by the Lawyers General Council of Spain ('Consejo General de la Abogacía Española').

5.2 Lawyers are paid for their work in a variety of ways. In private practice, there are several recognized fee arrangements. A seafarer should always ask a potential lawyer to explain fully his fees and billing practices. A lawyer may charge as follows: (a) hourly charged (lawyers charge for work on a time spent basis); (b) contingency fee (commonly referred to as a 'no win-no fee', this is a percentage of the recovery,

SEAFARER SUBJECT GUIDE

with the lawyer taking a percentage of the settlement or money awarded to the seafarer at the end of the case; (c) a retainer fee (like an advance payment against which future costs are billed, additional fees beyond the retainer are often required when a matter must go to court); and (d) a fixed fee (the lawyer may charge a fixed total fee if the matter is relatively simple or routine).

- 5.3 The contingency fee basis was forbidden in Spain by the Lawyers General Council of Spain, but following a judgment in 2008 of the Supreme Court, a contingency fee is now allowed. Almost all personal injury claims are conducted under a contingency fee basis.
- 5.4 The court, in the final judgment, has to decide which party is ultimately to bear the costs; this is known as the 'order to pay the costs' ('condena en costas') and is governed by the 'loser pays' principle. The unsuccessful party will be obliged to bear the costs of his own lawyer and procurador, in addition to the costs incurred by the other party.
- 5.5 In civil courts, however, the claimant or defendant has to be 100% successful in order to be awarded costs in his favour; otherwise no costs order is made. The amount of costs awarded is subject to an assessment procedure called taxation ('*tasacion*'), which usually reaches a figure significantly less than the actual legal costs and expenses paid out.

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

- 6.1 Legal aid is available for all cases and it covers all proceedings, except minor offences, for which the services of a lawyer and procurador are not compulsory. It includes appeals and enforcement of judgments. Any arrested seafarer must be informed of the criminal charges. He has the right to designate a lawyer; and, if no lawyer is designated, the Bar Association will designate a lawyer.
- 6.2 In relation to foreign nationals, legal aid is available in criminal matters to anyone who qualifies, provided his case concerns a court of Spain and the case is within the scope of the legal aid scheme. Applications for funding are considered without reference to the applicant's nationality, residency or citizenship.

SEAFARER SUBJECT GUIDE

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

- 7.1 Every seafarer has the right to free independent legal advice (legal aid), if he does not have sufficient means to contract a private lawyer. For that purpose, a seafarer should show his income declarations and properties. The applications for free legal aid ('asistencia jurídica gratuita') must be submitted to the Bar Association, which will review the application.
- 7.2 A seafarer who obtains legal aid does not have to pay the following costs: (a) pre-trial legal advice, (b) lawyers' and procuradors' fees, (c) costs of publishing announcements in official journals, (d) deposits required for lodging certain appeals, and (e) experts' fees.
- 7.3 The application for legal aid must be filed with the Bar Association in the place where the court responsible for trying the main issue is located or with the Senior Court ('juzgado decano') of the seafarer's place of residence. If a seafarer is the defendant, he must file his application before filing his defence. An application filed by a defendant does not suspend the action; nonetheless, the court may, of its own motion or at the defendant's request, suspend the proceedings pending the decision awarding or refusing free legal aid.
- 7.4 As a general rule, the lawyer providing legal aid is appointed by the Bar Association on the basis of a rota. Detailed information about the availability of legal aid can be found on the website: (www.justiciagratis.es (website in Spanish)).

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

- 8.1 There are lawyers who work for a part of their time on a 'pro bono' basis (free of charge). This is generally restricted to particularly meritorious cases where vulnerable or disadvantaged seafarers may be at risk or would otherwise be unable to obtain access to justice.
- 8.2 There is currently no website which lists the lawyers who works on a 'pro bono' basis.

9. Can a seafarer sue his lawyer?

- 9.1 A seafarer can sue his lawyer under civil and criminal law.

SEAFARER SUBJECT GUIDE

9.2 Lawyers may be subject to civil liability for damages caused by their fraud or negligence in respect of their seafarer clients.

9.3 Lawyers may also be subject to criminal liability in the exercise of their profession.

10. How can a seafarer complain about his lawyer?

10.1 Lawyers are subject disciplinary responsibility for infringement their professional or ethical duties. A board meeting of the Bar Association is competent to exercise disciplinary jurisdiction.

10.2 Bar associations deal with complaints from clients about the behaviour of and adequacy of representation by lawyers, and conduct disciplinary proceedings in respect of non-compliance with the Bar's Code of Conduct. If the lawyer is acting for a seafarer who is not satisfied with the service of his lawyer, the seafarer should contact the Bar Association.

11. How can a seafarer change his lawyer?

11.1 A seafarer may terminate the contract with his lawyer at any time and appoint another lawyer in his place. The seafarer's previous lawyer will not be entitled to keep the papers and documents even though money is owing to him for fees and disbursements.

11.2 A seafarer may terminate the services of his procurador at any time by instructing his lawyer to do so.

11.3 The seafarer should bear in mind that changing lawyers could involve delay and additional expense, particularly if the seafarer's case is at an advanced stage, as the new lawyers will need time to read the documents and familiarise themselves with the case.

12. Is a foreign seafarer treated differently?

12.1 Foreign seafarers who pursue claims in the courts are treated no differently from Spanish seafarers.

SEAFARER SUBJECT GUIDE

- 12.2 However, a foreign seafarer who is not resident in Spain or in another European Union or European Free Trade Association state may, in certain circumstances, have to provide security for the other side's costs of defending a claim.

01 October 2012