

## SEAFARER SUBJECT GUIDE

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### USING LAWYERS IN MALTA

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

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

- 1.1 The legal system is a mixed system of English common law and civil law based on the Roman and Napoleonic civil codes.
- 1.2 The judicial system is a two-tier system made up of a Court of First Instance presided over by a judge or magistrate and a Court of Appeal. The Court of Appeal comprises three judges, when the appeal is from a court presided over by a judge and a single judge when the appeal is from a court presided over by a magistrate. There are also various tribunals, which deal with specific areas of law and have varying degrees of competence. Appeals from any party, on points of law, from decisions of any of these tribunals are almost always dealt with by the Court of Appeal in its inferior jurisdiction presided over by a single judge.
- 1.3 The legal profession is made up of lawyers and legal procurators. To practice law, a lawyer must obtain a warrant from the government. Lawyers work either as sole practitioners or as part of a law firm. No restriction is placed on the legal areas where a lawyer can practice. A lawyer can represent a seafarer before any court (whether inferior or superior), any tribunal, or an arbitrator. There are lawyers who specialise in a particular field, such as maritime law. A seafarer who requires the service of a lawyer in relation to his employment should seek the assistance of a maritime lawyer.

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

- 2.1 The legal profession is regulated by the Chamber of Advocates and the Commission for the Administration of Justice. The main responsibility of the Chamber of Advocates is to regulate the conduct of its members.
- 2.2 The Commission for the Administration of Justice has published a code of ethics defining the requirements of professional conduct for lawyers. Part Two of the Code of Ethics deals specifically with the relationship between an advocate and his client,

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the seafarer. Divided into six chapters, it regulates the manner in which an advocate obtains instructions from a seafarer, the duties owed to the seafarer, professional fees to be charged, conflict of interests, and the duty of confidentiality.

- 2.3 The objective of the Commission for the Administration of Justice is to ensure that lawyers do not act abusively or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such a manner as could seriously affect the trust conferred on them.

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

- 3.1 A seafarer who requires the services of a lawyer can refer to the Chamber of Advocates website – [www.avukati.org](http://www.avukati.org) (website in English) – which lists all the Maltese lawyers. The seafarer can also visit other international sites, such as [www.legal500.com](http://www.legal500.com) (website in English) and [www.martindale.com](http://www.martindale.com) (website in English).

- 3.2 As a seafarer's claim is, in most cases, related to maritime law, it is recommended that, when engaging a lawyer, a seafarer should ensure that the lawyer specialises in maritime law or that the firm specialises in maritime law.

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

- 4.1 A seafarer may reach an agreement with his lawyer as to the manner fees will be charged. However, the legal fees to be charged by the lawyer must always be those established by law.
- 4.2 The lawyer may ask the seafarer to make a payment on account of fees, costs and disbursements to be incurred. Article 83 of chapter 12 of the Code of Organization and Civil Procedure provides that a lawyer cannot, either directly or indirectly, enter into or make any agreement or stipulation *quotae litis* with his client. A lawyer cannot accept payment on a no win no pay basis.

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

- 5.1 When it comes to legal fees, civil and criminal proceedings should be distinguished. There is no official tariff regulating criminal proceedings. In such cases, the seafarer has to reach an agreement with his lawyer over the fees. In the case of civil proceedings, the fees are established by Schedule A to Chapter 12 of the Code of Organisation and Civil Procedures.

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- 5.2 Article 82 of the Code of Organization and Civil Procedures provides that it shall not be lawful for a lawyer to fix by agreement his fees in an amount higher or lower than that fixed by the Code. Seafarer can only be charged those fees established by law and these cannot be negotiated between the seafarer and his lawyer.
- 5.3 There are Court Registry charges, which have to be paid on the institution of court proceedings, whilst other charges become due when proceedings come to an end. On termination of proceedings, the Court Registry issues a judicial taxed bill indicating all the professional fees due to the lawyer and to the legal procurator, including charges due to the Court Registry.
- 5.4 During the course of the proceedings, separate fees may have to be paid for notarisation of judicial acts, and fees due to experts or referees appointed by the court. In general, the fees due to a lawyer are a percentage on the amount subject to litigation.
- 5.5 Once judgment is delivered, the court will decide whether the seafarer has to pay the costs of the proceedings. Unless the court decides otherwise, it is always the unsuccessful party that has to pay the registry charges of the court and the legal fees of the other party.

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

- 6.1 A seafarer, like any other person, is entitled to apply for and be provided with legal aid in respect of a criminal case. The Code of Organisation and Civil Procedure does not distinguish between legal aid for a civil case or a criminal case: the same procedure is adopted for both cases.
- 6.2 The Registrar of Courts has a list of lawyers appointed to provide legal aid and these are assigned to civil and criminal cases.

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

- 7.1 Malta, being a European country, has adopted the Directive 2002/8/EC of the Council of the European Union. This directive covers the provision of minimum common rules relating to the granting of legal aid to natural persons in cross-border disputes in civil and commercial matters. A seafarer who has received legal aid in a Member State other than Malta in respect of proceedings before a court in that other Member State is entitled to receive legal aid in Malta if recognition or enforcement of the judgment is sought in Malta. The office of the Advocate for Legal Aid is regulated by Article 911 of

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the Code of Organization and Civil Procedure. Legal aid is granted for all civil, criminal and commercial disputes.

- 7.2 Legal aid is only granted by the state to individuals, who on demand, and following assessment of their claim and their financial situation by the Advocate for Legal Aid, are declared not to have the means to access the courts of justice. The three criteria which an individual must satisfy for being granted legal aid are: (a) the merits; (b) the means; and (c) the procedure test. The Advocate for Legal Aid must be convinced that the seafarer applying for legal aid has reasonable grounds for taking or defending proceedings before the courts. The assessment carried out by the Advocate for Legal Aid includes examining the substance of the case, the possible outcome of the proceedings, and the prospect of success. The seafarer must not possess property of any sort with a net value in excess of 7,000 euro and his income during the last twelve months must not exceed the national minimum wage. The seafarer also has to make a sworn declaration to this effect.
- 7.3 The Advocate of Legal Aid files an application before the competent court requesting authorisation to file specific judicial acts on behalf of the seafarer. If the court in question consents to such a request, an advocate and legal procurator ex officio are appointed to assist the seafarer. Once the seafarer qualifies for legal aid, he has to contact the Registry of Civil Courts, which shall inform the seafarer of the name and contact details of the lawyer who has been assigned to assist him in the proceedings. A request for legal aid may be presented either by filing an application before the Civil Court or orally to an Advocate for Legal Aid.
- 7.4 Once the request for legal aid is approved, the seafarer will be assigned a lawyer, whose name appears on a list of lawyers appointed by the government to provide legal aid service. If the seafarer, for a good cause, wants to change the lawyer with another lawyer he may do so by filing a request with the Civil Court. Legal aid covers only the costs incurred by the seafarer. The seafarer will not be requested to pay fees or to give security for costs. If the seafarer succeeds in his judicial proceedings, he will have to pay such fees and costs as are due to the registry, advocate and legal procurator out of the amount obtained for legal aid.
- 8. Can a seafarer get any other free legal advice?**
- 8.1 There is no other official form of free legal service. A seafarer requesting legal aid is either granted such service or is refused. The concept of partial legal aid does not apply. A lawyer may decide to assist a seafarer gratuitously.

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

- 9.1 A seafarer can sue his lawyer for professional negligence or for wilful misconduct before the civil courts. Legal action can be filed by a seafarer against his lawyer if the latter does, or omits to do, something jeopardises the legal position or rights of the seafarer, for example, if the lawyer fails to file documents before the court within the time established by law.
- 9.2 A seafarer can file a report against his lawyer with the Chamber of Advocates or with the Commission of Administration of Justice. The seafarer can also institute proceedings against his lawyer if he suffered damages as a result of professional negligence or misconduct.

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

- 10.1 A seafarer can present his complaint against the lawyer before either the Chamber of Advocates or the Commission for the Administration of Justice. The Commission for the Administration of Justice, which was set up in 1994, comprises ten members and it has jurisdiction over the workings of the courts and behaviour of judges, magistrates, lawyers and legal procurators.
- 10.2 The seafarer has to file an application before the Commission for the Administration of Justice giving reasons for his complaint against his lawyer. The Commission for the Administration of Justice will then hear evidence from both sides on the merits.

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

- 11.1 A seafarer who decides to change his lawyer may do so by informing his lawyer that he wishes to terminate his engagement. Before engaging another lawyer the seafarer has first to settle all pending professional fees and costs for work carried out.
- 11.2 Upon receiving full settlement from the seafarer, his lawyer is obliged to issue a release letter to be presented to the new lawyer. The first lawyer will then inform the court that he will no longer be assisting the seafarer in the proceedings. The new lawyer informs the court that he will henceforth be representing the seafarer. All this will be recorded in the court proceedings.

### 12. Is a foreign seafarer treated differently?

- 12.1 Lawyers are by their professional conduct required to treat all seafarers equally. However, in the case of foreign non-resident seafarers, lawyers acting on behalf of

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such clients may request that a deposit be paid in advance to cover their fees and also to cover the possibility of payments due to third party.

- 12.2 When a lawyer files a lawsuit or other judicial proceedings before the courts on behalf of a seafarer absent from Malta, the lawyer acting in his capacity as curator or mandator, is liable for payment of any court registry fees and legal fees to a third party. For this reason it is general practice among Maltese lawyers representing foreign seafarers to ask such seafarers to provide them with either a bank guarantee or cash payment as security for fees and costs.

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