

## SEAFARER SUBJECT GUIDE

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### USING LAWYERS IN THE NETHERLANDS

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

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

- 1.1 The legal profession is divided into 'advocaten' and 'juristen'. Advocaten are admitted to the Dutch Bar and may work as sole practitioners or as part of a law firm. Juristen are law graduates but are not qualified and not admitted to the Dutch Bar.
- 1.2 For legal assistance, seafarers should engage an advocaat. Advocaten can advise on any legal matter including criminal and civil matters, although many advocaten specialise in a particular area, such as maritime law. Advocaten may appear before any court in the Netherlands (including the District Court, Court of Appeal and Supreme Court).
- 1.3 For civil cases before the Small Claims Court the assistance of an advocaat is not required. The Small Claims Court deals with claims up to EUR 25,000 as well as claims in respect of labour law disputes (provided there is international competence for such a dispute). A seafarer may appear in person or authorise someone (other than an advocaat) to appear for him. The language in the courts is Dutch, so all hearings take place in the Dutch language and papers filed with the court have to be in the Dutch language.
- 1.4 For criminal cases, it is not necessary to be represented by an advocaat. The suspect can appear and defend himself, although this rarely happens in practice.

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

- 2.1 Advocaten are regulated by the Nederlandse Orde van Advocaten ([www.advocatenorde.nl](http://www.advocatenorde.nl) (website in Dutch)). All advocaten are registered with the Nederlandse Orde van Advocaten and are bound by a strict professional code of conduct, which is a practice code. Moreover, every advocaat is bound by the Advocaten Wet, which is a statutory Act. Violation of this code of conduct may lead to

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disciplinary inquiries. Disciplinary measures may vary from an initial warning to permanent disbarment whereby the advocaten are struck off the roll of advocaten.

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

- 3.1 The Nederlandse Orde van Advocaten can provide general advice on appointing an advocaat. Information may be found on [www.advocatenorde.nl](http://www.advocatenorde.nl) (website in Dutch). On this website one can also search on the basis of fields of expertise, such as transport law. Advocaten who specialise in maritime law and other fields can also be found at Legal 500 ([www.legal500.com](http://www.legal500.com)) (website in English), Chambers and Partners ([www.chambersandpartners.com](http://www.chambersandpartners.com)) (website in English) and other similar websites. The website of the Dutch Maritime Law Association ([www.nvzv.nl](http://www.nvzv.nl)) (website in Dutch) and the Dutch Association for Transport Lawyers (no website available) do not list advocaten specialising in this field of law.
- 3.2 Where a seafarer encounters problems associated with his employment on board a ship or with the wages paid by his employer, he should consider engaging a specialist maritime law firm or advocaat. Seafarers who are subject to an investigation by the police or Dutch authorities concerning a maritime incident or accident, should consider appointing a criminal advocaat. Only a few Dutch maritime specialist law firms have suitable and experienced qualified in-house advocaten who can also advise on aspects of criminal law, but the lawyers can advise on a suitable criminal advocaat to take up the matter.
- 3.3 Where a seafarer is a member of the ITF, the union may appoint an advocaat on behalf of the seafarer. Often the shipowner and its P&I Club will appoint an advocaat in order to protect the seafarer's interest, provided there is no conflict of interest.

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

- 4.1 It is rare for advocaten to issue a formal letter of engagement. In general, instructions are confirmed by letter or email. A confirmation from the advocaat should include the following important information:
- .1 details of the agreed work and scope of work;
  - .2 general conditions which will apply, hourly fees/rate to be applied or other financial arrangements; and
  - .3 if agreed, the amount of an advance payment.

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

- 5.1 Advocaten normally charge fees on the basis of an hourly rate and the time spent on the case. There are no regulated rates. The exact details should be agreed between the lawyer and the seafarer. Rates may vary according to the specialism and seniority of the advocaten and the complexity of the claim and quantum of claim. It is common for advocaten to charge disbursements or a standard percentage (flat rate) for office disbursements. Furthermore, depending on the nationality of the seafarer, Dutch VAT (21% from 1 October 2012) may be applied. EU seafarers will be charged their own national VAT, whilst non EU seafarers will be charged Dutch VAT.
- 5.2 Advocaten may agree to a capped fee or fixed price. Parties may agree that the rate is dependent on the financial position of the seafarer and on the outcome of the case. Advocaten may offer two rates, a lower rate which is sufficient to cover costs and a reasonable salary in case the desired result is not achieved, and a higher rate in the event of a positive result.
- 5.3 Agreeing to a percentage of the result (*pars quota litis*) or agreements on the basis of 'no cure, no pay' are not allowed.

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

- 6.1 Any suspect, including a seafarer accused of a criminal offence, has the right to free accessible independent legal advice (legal aid).
- 6.2 If a suspect can afford it, he may appoint his own advocaat; if a suspect cannot afford to appoint his own advocaat, the Government will provide an advocaat for him free of charge.

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

- 7.1 Foreign seafarers can get legal aid in civil matters if they cannot afford to pay for an advocaat. The Act on Legal Aid stipulates that legal aid is provided for all legal interests of individuals located in the Netherlands. It should be noted that often, in practice, specialist advocaten do not provide services on the basis of Government-paid legal aid.

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

- 8.1 There are no other regulated ways of obtaining free legal advice.

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

- 9.1 A seafarer may start legal proceedings against his advocaat if, due to a breach of contract, the seafarer has suffered damages. These proceedings are ordinary civil proceedings where the seafarer, as a plaintiff, would have the burden of proof, on the basis of the Dutch Code of Civil Procedure, title 2, part 9, article 149-207.

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

- 10.1 Advocaten are subject to the code of conduct of the Dutch Bar Association. Complaints against an advocaat can be lodged with the Dean of the Bar of the district in which the advocaat resides. In addition, the Dutch Bar Association has guidelines for dealing with complaints which are filed with the law firm. Law firms are encouraged to implement these guidelines in their policies, although it is not mandatory for them to do so.

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

- 11.1 Any seafarer may terminate the services of his advocaat and appoint a new advocaat. In certain situations, the first advocaat may be entitled to hold onto documents in his possession in respect of unpaid fees, although he may not do so where it would mean that the second advocaat could not file papers on time with the court, even where fees have not been settled. In this situation the Dean of the district Bar should be consulted in order to mediate between the parties.
- 11.2 It is important to note that changing from one advocaat to another may cause delays and involve additional expenses, because the newly instructed advocaat will have to familiarize himself with all the documents and details of the case.

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

- 12.1 In criminal cases foreign seafarers are treated no differently to Dutch nationals. In certain proceedings, depending on the nationality of the seafarer, the seafarer as plaintiff may be required to provide security for the other side's legal costs of defending the claim.

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