

SEAFARER SUBJECT GUIDE

USING LAWYERS IN THE UNITED ARAB EMIRATES

This Guide deals in general terms with using lawyers in the United Arab Emirates ('UAE'). It aims to help a seafarer understand the legal profession in UAE, 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 the UAE.

1. What is the structure of the legal profession?

- 1.1 The UAE is a federation of seven Emirates established in 1971. The seven Emirates are: Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain. All the member Emirates, except for Dubai and Ras Al Khaimah, are part of a federal judicial system. Dubai and Ras Al Khaimah have independent judicial systems. In all of the Emirates except Ras Al Khaimah, the court system consists of three tiers: Court of First Instance; Court of Appeal; and Court of Cassation. Ras al Khaimah has only the Court of First Instance and Court of Appeal.
- 1.2 The legal profession is divided between advocates and legal consultants. Advocates are local Arab lawyers (that is UAE national lawyers and lawyers from certain other Arab countries who have to satisfy specified criteria before a license is issued) and are given rights of audience in the UAE courts. Advocates may work as sole practitioners (both in civil and criminal matters) or as part of a firm. Legal consultants are usually non UAE international law firms licensed to advise on law and are not permitted to appear in court. Legal consultants often prepare all the memoranda to be filed in court and generally deal with civil matters rather than criminal matters. Depending on the amount of assistance provided by legal consultants and their relationship with the lawyers, the fees to be paid by a seafarer may be reduced when the services of legal consultants are used.
- 1.3 There are no specialist courts such as commercial or maritime divisions. All commercial cases are heard by the civil courts. However, recent federal legislation requires commercial disputes to be first referred to a 'Conciliation and Arbitration Committee' ('Committee') appointed by the Ministry of Justice. The Committee attempts to facilitate a settlement and usually hears parties in person. If a claim cannot be settled, the claimant can file a claim in the Court of First Instance. If the parties reach a settlement, they record and sign its terms. This agreement is binding and enforceable. This procedure does not apply in Dubai and Ras Al Khaimah.

SEAFARER SUBJECT GUIDE

1.4 Advocates are specialists in court procedure and evidence and in conducting advocacy in court. All court proceedings are in the Arabic language. All non-Arabic language documents filed in court by the litigants must be translated into Arabic by a translator licensed by the Ministry of Justice.

1.5 As regards the procedure in the courts, a seafarer should be aware that there is virtually no oral hearing in civil cases. The entire case is conducted using written memoranda and documentary evidence, and the matter is often referred to an expert registered with the court. Oral evidence can only be given to establish a fact in a civil case with the permission of the court and the right to cross-examine witnesses is severely restricted.

2. How is the legal profession regulated?

2.1 Both advocates and legal consultants are licensed and regulated by the Ministry of Justice. Each Emirate may have its own additional licensing requirements. For example, the Emirate of Dubai has issued Executive Council Resolution No. 22 of 2011 and the relevant licensing authority is the Government of Dubai Legal Affairs Department. Advocates are in addition regulated by and required to adhere to the Federal Law 'Regarding the Regulation of the Legal Profession' (the 'Federal Law').

3. How can a seafarer find a lawyer?

3.1 A seafarer should first engage a legal consultant (for example, an international law firm) to assist him in any legal matter. A list of reputable law firms practicing in a range of civil matters can be found at Legal 500 at www.legal500.com (website in English) and Chamber and Partners at www.chambersandpartners.com (website in English) A legal consultant may appoint on the seafarer's behalf an advocate to appear in court. Alternatively, in litigation related matters, the seafarer can directly approach an advocate to represent the seafarer in court.

3.2 If a seafarer faces an investigation by the police he should appoint a criminal advocate. He may first appoint a legal consultant who can assist the seafarer to appoint a criminal advocate on his behalf to appear in court. A seafarer can also directly appoint a criminal advocate to represent the seafarer.

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

4.1 When accepting instructions from a seafarer, legal consultants should set out their terms of engagement in a formal letter, known as a letter of engagement, which

SEAFARER SUBJECT GUIDE

specifies the standard terms and conditions which will regulate the professional arrangement between the seafarer and the legal consultant.

- 4.2 The letter of engagement and standard conditions normally include the following important information: (a) details of the agreed scope of work to be undertaken and the procedures for keeping the seafarer informed on progress; (b) the name(s) and status (for example, a partner in the firm or an associate) of the legal consultant(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 work to be undertaken; (e) details of any advance payment required from the seafarer, arrangements for rendering bills and terms of payment; and (f) the firm's responsibility and professional liability to the seafarer.

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

- 5.1 Fees are not fixed by law. Legal consultants 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, (a) the seniority of the legal consultant(s) working for the seafarer; and (b) the type and location of the law firm, and the complexity and value of the dispute or the claim. However, it is also not unusual for legal consultants to charge a fixed fee instead of an hourly rate. In addition, legal consultants 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 experts as they may instruct such as medical experts in medical injury claims.
- 5.2 Advocates usually charge a fee which is calculated as a percentage of the amount of the claim. For example, the fee charged for acting in the Court of First Instance does not usually exceed 10% of the claim amount (although there is no legal cap on the amount that can be charged). The percentage rate typically charged depends on the factors such as, (a) the amount of the claim; (b) the complexity of the matter; and (c) whether the services of the legal consultants are used. Additional fees are usually charged for acting in the Court of Appeal and the Court of Cassation. These typically may be 50% (Court of Appeal) and 25% (Court of Cassation) of the fee charged for acting in the Court of First Instance. If an advocate is engaged for non-litigation work, the advocate may charge a fixed fee or charge hourly rates along with disbursements.
- 5.3 Legal consultants and advocates may offer the seafarer a fixed fee arrangement, if the matter is relatively simple or routine.

SEAFARER SUBJECT GUIDE

- 5.4 A seafarer is obliged to pay the fees in accordance with the contract drawn up between himself and his advocate. However, the court hearing the case may, at the request of the seafarer, reduce the fees agreed upon if it regards them as excessive in relation to the effort demanded by the case and the benefit to the seafarer. The fees may not be reduced if they were agreed upon after the completion of the work. If there was no written agreement between the seafarer and the advocate concerning the fees or if the written agreement is invalid, the court which heard the case shall, if there is a dispute and at the request of the advocate of the seafarer, assess the advocate's fees in accordance with the effort which he has expended and the benefit obtained by the seafarer. Both the advocate and the seafarer have the right to appeal against the assessment order.
- 5.5 In the event that the advocate concludes a case by conciliation or arbitration in accordance with his commission from the seafarer, he is entitled to the fees agreed upon in full provided that there is no agreement to the contrary.
- 5.6 If further cases and actions, which were not taken into account at the time of the agreement arise out of the agreement between the lawyer and the seafarer, the lawyer is entitled to demand fees in connection with the further cases and actions.
- 5.7 Contingency fee arrangements are not permitted by law. In this regard, the Federal Law provides that it is not permissible for a lawyer to buy all or part of the rights which are in dispute, nor to take a part of the rights in respect of his fees.

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

- 6.1 An accused seafarer currently has no automatic right to legal counsel except in cases that involve a possible sentence of life imprisonment, or a period of imprisonment of not less than 20 years, or the death penalty.
- 6.2 Federal Law provides that if a court appoints a lawyer to defend a person accused of a crime for which the punishment is the death penalty, life imprisonment or a period of imprisonment not less than 20 years, the lawyer is obliged to attend and to act for the person whom he has been appointed to defend at all sessions of the trial.
- 6.3 When judgment is rendered in the case to which the lawyer is appointed, the court is required to assess his fees and its decision shall be final. The fees shall be payable from the treasury of the Ministry of Justice in accordance with a certificate given to him by the court which assessed the fees.

SEAFARER SUBJECT GUIDE

6.4 In practice, not everyone who is arrested and held by police is immediately granted legal counsel which can result in a suspect being left in prison for long periods of time without charge.

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

7.1 Commercial litigation has to be funded by the seafarer. There is presently no legal aid available for a civil case.

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

8.1 Legal consultants and advocates in the community do provide 'pro-bono' (for no charge) advice. However, it is the responsibility of the seafarer to seek such free legal advice from the legal community.

9. Can a seafarer sue his lawyer?

9.1 A seafarer can sue his legal consultant and advocate and also has the right to file a complaint.

10. How can a seafarer complain about his lawyer?

10.1 A seafarer dissatisfied with the service of the legal consultant or advocate who represents him, may file a complaint with the Ministry of Justice and, in the case of the Emirate of Dubai, with the Government of Dubai Legal Affairs Department. Except in the case of advocates, there is no prescribed complaints procedure or details as to how a complaint will be dealt with. However, the Ministry of Justice is apparently in the process of formulating a Code of Ethics regulating the standards of practice for legal consultants and advocates in the UAE. The Code of Ethics may give a seafarer more recourse where he is dissatisfied with the service of a legal consultant or advocate representing him. The Government of Dubai Legal Affairs Department is apparently also in the process of formulating 'by laws' and it remains to be seen whether the by laws will cover a complaints procedure.

10.2 In the case of advocates, the Federal Law provides that any lawyer who breaches the duties of his profession as stipulated in the Federal Law or who behaves in a manner which diminishes its value, shall incur one of the following disciplinary penalties: (a) a caution which shall be by a letter addressed to the lawyer drawing his attention to what he has done and asking him not to repeat it in the future; (b) suspension from practice for a period not exceeding two years; or (c) the striking off his name permanently from the 'roster' so that he cannot practice.

SEAFARER SUBJECT GUIDE

- 10.3 In the case of advocates, the Federal Law provides that 'complaints' shall be addressed to the 'Council for the Admission of Lawyers'. If it regards the misdemeanor as a minor one, it may, after hearing the statements of the two parties, execute the penalty of caution or suspension for a period not exceeding one month. A lawyer is permitted to protest against this decision within 15 days of the date of his being notified, or of his knowledge of it, to the Minister of Justice.
- 10.4 If a minor misdemeanor is repeated or if it is a serious misdemeanor, the matter is to be referred to the Public Prosecutor. The effect of a lawyer's suspension from practicing is that he is forbidden to pursue the profession for the duration of the suspension. If he violates this, he is subject to the disciplinary penalty of having his name struck off permanently from the 'roster'.

11. How can a seafarer change his lawyer?

- 11.1 A seafarer may terminate the services of his legal consultant and advocate at any time and appoint a new legal consultant and advocate.
- 11.2 Seafarers should bear in mind that changing legal consultants and advocates could involve delays and additional expenses, especially if the seafarer's case is at an advanced stage, as the new legal representation will need to read documents and familiarize themselves with the case.
- 11.3 If the seafarer dismisses his advocate without lawful cause after he has taken up the work for which he was commissioned the seafarer is obliged to pay fees agreed in full as if the lawyer had completed the work to the benefit of the seafarer.
- 11.4 If a seafarer dismisses his advocate before the work for which he is commissioned is commenced, the advocate is entitled to fees for the effort he has expended in preparation for taking up the work which cannot exceed 25 percent of the fees agreed upon. The seafarer would also be liable to pay the agreed fees of the legal consultants.

12. Is a foreign seafarer treated differently?

- 12.1 Foreign seafarers who pursue claims or who face criminal prosecution in UAE courts are not treated differently to national seafarers of the UAE.

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