

SEAFARER SUBJECT GUIDE

USING LAWYERS IN GERMANY

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

1. What is the structure of the legal profession?

- 1.1 Anyone who has completed a degree in law (first state examination), a two year practical legal clerkship, and a second state examination can become a lawyer in Germany. Anyone fulfilling the above conditions can apply to the bar association for admission as a lawyer.
- 1.2 Lawyers work either individually or in partnerships. Lawyers are specialists in their respective legal fields, including, for example, the employment law which applies to seafarers. They are also experts in statutory procedural provisions. There are specialists who call themselves 'specialist lawyers' indicating particular expertise and experience, for example, 'specialist lawyers in employment law,' who are also responsible for seafarers. There are no courts dedicated to seafarers.
- 1.3 If a seafarer requires legal advice, he may engage a lawyer. Lawyers are authorised to provide legal advice in all areas of law, that is, both civil law (which also includes employment law), and criminal law. Lawyers may represent seafarers before almost any court, with the exception of the Federal Court of Justice, which requires specific admission.
- 1.4 The jurisdiction of the courts is structured as follows. (a) District courts have jurisdiction in civil matters if the amount in dispute is less than €5,000.00, otherwise the regional courts have jurisdiction. Regional courts also act as the court of appeal for rulings by district courts if the amount in dispute is over €600.00. There are also higher regional courts for civil and criminal law. They act as the court of appeal for regional court rulings. (b) Employment tribunals have jurisdiction over employment disputes. Regional employment tribunals act as the court of appeal for rulings by employment tribunals. In the field of employment law, the Federal Employment Tribunal in Erfurt has appellate jurisdiction, ensuring uniform judgments in the field of

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employment disputes. It rules on appeals against decisions by regional employment tribunals.

- 1.5 Should a seafarer have, for example, a payment claim, he is entitled to undertake court collection proceedings, irrespective of the amount, without a lawyer. This is a simplified, cost-effective, formalised procedure to be conducted before the court with jurisdiction. If the opponent files an objection (default summons), the seafarer should then engage a lawyer, who will then take responsibility for the court proceedings. Should no objection be filed, the seafarer will also receive an enforcement order on application, with which he can then instruct a bailiff to implement the judgment thereby enforcing the claim.
- 1.6 Attention should also be drawn to the possibility of resolving a dispute within the scope of advanced dispute resolution, that is, mediation. This is a voluntary and confidential process where a neutral third-party (the mediator), helps the parties in conflict to come together to talk and decide how to resolve their disputes regarding specific issues. The mediator does not take sides or make decisions for the parties (see www.advanceddisputeresolution.com). The Mediation Act, which has been in force since 2012, governs both in-court and out-of-court mediation.

2. How is the legal profession regulated?

- 2.1 All lawyers belong to the German Federal Chamber of Lawyers ('the BRAK') (www.brak.de) (website in German). The BRAK is the umbrella organisation of 28 regional law societies. It exists, for example, in Bremen (www.rak-bremen.de) (website in German) and in Hamburg (www.rak-hamburg.de) (website in German).
- 2.2 Under section 43 of the German Federal Lawyers' Act ('the BRAO'), lawyers are governed by disciplinary regulations and ethics as a consequence of undertaking to pursue their profession conscientiously.

3. How can a seafarer find a lawyer?

- 3.1 A lawyer can be found by contacting various institutions and information agencies. The BRAK with its regional organisations (www.brak.de/fuer-verbraucher/) (website in German) or www.anwaltverein.de/English-information/) (Website in English) can be contacted. The website also lists specialist lawyers, including specialist employment lawyers. The facility to search for a lawyer is available on the bar association's regional pages. In Hamburg, for example, see www.rak-hamburg.de/h/) (website in German).

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- 3.2 There is also the German Association of Lawyers ('the DAV') (www.anwaltverein.de) (website in German). All members of the DAV are lawyers. The DAV also has regional state associations, for example, in Bremen (www.anwaltverein-bremen.de) (website in German) and in Hamburg (www.hav.de or www.anwaltssuche-hamburg.de) (websites in Germany).
- 3.3 There are also numerous commercial legal services, which cannot all be listed here. See, for example:
- .1 www.german-lawyers-directory.com (website in English): an English gateway page to a German lawyers directory
 - .2 www.anwalt-seiten.de (website in English)
 - .3 www.legal500.com/c/germany/maritime-shipping-and-transport (website in English) (LEGAL500 DEUTSCHLAND specialises in maritime law)
 - .4 www.legal500.com/c/germany/employment (website in English)
 - .5 Employment law specialists: www.legal500.com/c/germany/employment (website in English)
 - .6 www.juve.de (website in German): JUVE manual "Legal practices in Germany" (Kanzleien in Deutschland)
 - .7 www.martindale.com (website in English): Martindale's List of Lawyers
 - .8 www.chambersandpartners.com (website in English): Chambers and Partners
 - .9 www.hg.org/lawfirms/Germany: HG High Global Legal Resources
 - .10 www.comitemaritime.org (website in English): Comité Maritime International with reference to maritime lawyers
 - .11 www.reederverband.de (website in German: Association of German Shipping Companies (VDR). A link can be found under .10
 - .12 www.reederverband.de/service/tarifvertraege.html (website in German) to collective agreements, for example, collective agreements for maritime rates of pay ('HTV-See') or the framework collective agreement for German maritime shipping and transport ('MTV-See').
- 3.4 Should a seafarer fall foul of the police or public prosecution service, he should engage a lawyer specialising in criminal law. The seafarer's trade union can also help. The ver.di trade union represents seafarers' interests (www.verkehr.verdi.de/schifffahrt) (website in German). Reference is also made in this connection to the International Transport Workers' Federation.

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

- 4.1 Should a lawyer be engaged, the seafarer must ensure that he concludes a written retainer agreement. The agreement should include the following details: (a) a description of the scope of the brief; (b) the method of communication between the

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lawyer and seafarer (for example, post, e-mail, text message or by proxy) so that confidentiality is guaranteed; (c) the name of the lawyer handling the matter and his deputy; (d) the lawyer's fees (an hourly rate or the Lawyers' Remuneration Act ('the RVG') and the payment terms; (e) disbursements (for example, travel expenses and accommodation costs); (f) the payment and the amount of any advance; and (g) the liability of the lawyer and his legal practice liability insurance certificate.

- 4.2 The seafarer must also pay the court costs, which are not included in the lawyer's fees.

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

- 5.1 The fees of the lawyer will be charged as follows: (a) remuneration in accordance with a freely negotiated agreed hourly rate; (b) remuneration at an agreed inclusive amount; or (c) remuneration in accordance with legislation, the RVG. The RVG consists of the text of the applicable law, containing the general provisions regarding fees, plus an annex in the form of a list of the individual acts performed by a lawyer and the respective applicable rates.

- 5.2 A lawyer may not usually act on a 'no win no fee' basis. The lawyer must also inform the seafarer if his case has insufficient prospects of success. The seafarer should raise the subject himself with the lawyer. If the seafarer has insurance covering legal expenses, he must first contact the insurer, who will often have a pool of lawyers under contract.

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

- 6.1 There is generally no entitlement to legal information and advice in respect of criminal matters. A distinction must be drawn between out-of-court situations and in-court situations.
- 6.2 In respect of out-of-court situations, legal information and advice regarding criminal matters and administrative offences are governed by the Legal Advice Scheme Act ('the BerHG'). In criminal cases and cases involving administrative offences, only advice under the BerHG is given, if there is a German connection. No representation will be provided. Under the BerHG applications for legal information and advice must be filed with the local courts. In some federal states, such as Hamburg or Bremen, legal advice is available through dedicated advice agencies. In Hamburg, for example, legal advice is available at the Public Office for Legal Information and Settlement Office ('the ÖRA') (www.hamburg.de/oera) (website in German).

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6.3 In respect of in-court situations, under section 49 of the BRAO, seafarers in a criminal court are entitled to a defence counsel appointed by the court, who must be a lawyer. This does not involve legal aid, but the disbursement of costs. The counsel for the defence will be appointed by the criminal court if the seafarer fails to appoint his own counsel or cannot afford to do so. If the seafarer is acquitted, the state will pay the court costs and the costs of the defence. If the seafarer is convicted and sentenced, the court cashier will pay the costs of the lawyer/defence counsel, which the seafarer must repay to the court cashier.

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

7.1 A distinction must be drawn between legal aid for out-of-court situations and in-court situations.

7.2 In respect of out-of-court situations, the legal advice scheme is found in the BerHG. Assistance under the BerHG (advice and, where necessary, representation) is given in civil cases including employment, administrative, constitutional, and social cases.

7.3 The BerHG grants: 'assistance in perception of rights outside the judicial proceedings and mandatory arbitration proceedings if (i) the party seeking assistance is unable to provide the resources required because of his personal financial circumstances; (ii) no other options are available for the assistance which individuals seeking legal advice are entitled to expect; (iii) assertion of the rights is not vexatious. The conditions are fulfilled if legal aid were granted to the individual seeking legal advice under the stipulations of the Code of Civil Procedure ('ZPO') without a personal contribution being required." Further information can be found at: www.ec.europa.eu/civiljustice/legal_aid/legal_aid_ger_en.htm (website in English).

7.4 In respect of in-court situations, under section 114 of the ZPO, a seafarer who (because of his personal and financial circumstances), is not able to meet the costs of proceedings before the civil courts, including the employment tribunal, or is only able to meet some of the costs or can only meet the costs in instalments, will receive legal aid for procedural costs on application if the intended litigation or legal defence has sufficient prospects of success and does not appear vexatious. Sections 1076 to 1078 of the ZPO also apply to cross-border legal aid within the European Union.

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

8.1 There are no other ways to obtain free legal advice.

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- 8.2 Lawyers in many legal practices have declared their willingness to provide legal advice pro bono (free of charge) to individuals seeking legal assistance but who are unable to pay for it or to fulfil the conditions for a claim under the BerHG. However, each individual case must be considered on its merits. In particular, the lawyer need not readily waive his fee or even all fees due under the RVG.
- 8.3 The Legal Services Act has liberalised free legal advice. For example, there is an independent student legal advice association (www.student.litigators.de) (website in German). It offers free legal advice and information, in real situations, including employment disputes, with supervision by a lawyer. Student lawyers do not, of course, provide the same level of service as qualified lawyers.

9. Can a seafarer sue his lawyer?

- 9.1 The lawyer is responsible and liable for his acts and omissions as a lawyer. Should the lawyer culpably breach his obligation, the seafarer may demand compensation from him in accordance with section 280 I Civil Code ('the BGP') provided the lawyer has actively breached his obligation. The main obligations of the lawyer are to clarify the circumstances with the seafarer, make an accurate legal assessment, advise and instruct the seafarer, explain the 'safest' way to proceed, and to observe his obligation to act confidentially.
- 9.2 Under section 286 of the ZPO, the seafarer bears the burden of demonstrating and proving the lawyer's breach of obligation. Under section 254 of the BGB, however, the seafarer may be guilty of contributory negligence if the lawyer can prove that the seafarer knew of any circumstances which affected the occurrence of a loss but did not inform the lawyer.
- 9.3 The lawyer is usually protected in the written retainer agreement by a limitation of liability clause which does not apply in cases of deliberate intent or gross negligence. All lawyers are obliged to conclude and maintain professional indemnity insurance. Claims for compensation are also subject to time-bars.

10. How can a seafarer complain about his lawyer?

- 10.1 Should the seafarer be dissatisfied with the work of his lawyer and/or be of the opinion that the lawyer has breached his professional obligations, he has the following methods of taking action.

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- 10.2 First, the seafarer can complain in writing to BRAK (www.rak.de) (website in German) or the local bar association in, for example, Hamburg (www.rechtsanwaltskammerhamburg.de) (website in German). The bar association will only consider whether the lawyer has infringed any professional obligations stipulated by law. It will not examine or assess the quality of the lawyer's work but consider, for example, whether confidentiality has been observed. In serious cases, the bar association will submit the seafarer's claim to the public prosecutor's office, which will institute investigation proceedings by a committee on the standards of lawyers' conduct.
- 10.3 Second, the seafarer can also engage the mediation office of the public prosecutor's office (www.schlichtungsstelle-der-rechtsanwaltschaft.de) (website in German), if the claim does not exceed 15,000.00 euros and a court hearing regarding the dispute is not already pending.
- 10.4 Third, should the seafarer not agree with his lawyer's fee note, he can also contact the fee committee of the law society, for example, the Hamburg Law Society (www.hav.de) (website in German).
- 10.5 Fourth, the seafarer may engage another lawyer, who will conduct an initial examination to determine the chances of success of a claim for compensation in civil law proceedings.

11. How can a seafarer change his lawyer?

- 11.1 The seafarer may terminate the client/lawyer relationship or the retainer agreement with his lawyer under section 627 of the BGB at any time and engage a new lawyer. The previous lawyer will be entitled to appropriate remuneration of the work already completed. However, he must deduct the expenditure saved.
- 11.2 Should the previous lawyer still be entitled to payment of a fee and should the seafarer demand the return of documents or reference files, this will entail the risk that the previous lawyer may assert a right of retention over them until payment of the outstanding invoice. The previous lawyer is entitled to do so under civil law in accordance with section 273 and section 320 of the BGB and under the professional code of practice in accordance with section 50 III of the BRAO and section 17 of the BORA.

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12. Is a foreign seafarer treated differently?

- 12.1 The question of whether foreign seafarers who pursue claims or are subject to criminal proceedings in Germany are treated differently to German seafarers depends on the individual circumstances.
- 12.2 If a foreign seafarer commits a crime in Germany under German criminal law, the same law applies to him as to German seafarers. If a crime is committed abroad, it is investigated in individual cases to determine whether the seafarer may be extradited to the seafarer's native country for trial and punishment.
- 12.3 As a general rule, nationality is immaterial in civil law proceedings. However, it must be investigated in individual cases to determine whether there is agreement between the seafarer and the other party as to the court which should have jurisdiction.
- 12.4 Finally, it must be determined whether the court of jurisdiction in employment matters is governed by European law or international law. Council Regulation EC No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters is relevant to this determination.
- 12.5 Under section 110 of the ZPO, a foreign seafarer taking his case to German courts must provide security for the costs of the action, should the German defendant so demand. This does not apply to employment tribunals, as each party must pay his own lawyer's fees.

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