

## SEAFARER SUBJECT GUIDE

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### USING LAWYERS IN FRANCE

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

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

- 1.1. A lawyer is an officer of the court, who is in charge either of the legal representation of a seafarer or of advising the seafarer on legal issues. Unlike the United Kingdom, there is no distinction between barristers and solicitors. Litigation and advising have been amalgamated by Law no. 90-1259 of 31 December 1990 and Decree no. 91-1197 of 27 November 1991. A lawyer's practice encompasses litigation, advising and the drafting of legal documents.
- 1.2. A lawyer can be hired directly by a seafarer. Lawyers usually work as part of a law firm, either as associates or partners, although some of them work as sole practitioners.
- 1.3. Every lawyer is a member of a local bar established within the jurisdiction of an ordinary court of first instance. There is one bar set up within each ordinary court of first instance. Each bar is administrated by a Bar Council.

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

- 2.1. The legal profession is regulated by Law no.1-1130 of 31 December 1971 and by Decree no. 91-1197 of 27 November 1991 organizing the profession of lawyers. In order to practice, every lawyer must be a member of one of the French Bar Associations. The applicant to a bar should hold a French Master's Degree as well as a Professional Lawyer's Certificate, obtained after legal training provided by the Regional Professional Training Centre.

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

- 3.1. Lawyers are members of local Bar Associations. A list of lawyers is available at each local Bar Association.

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- 3.2 The following publications are useful guides to appointing lawyers to conduct criminal or civil matters:
- .1 the National Council of Bars website, which provides a directory of lawyers and local bars: <http://cnb.avocat.fr/> (website in French); and
  - .2 the Legal 500: France, published by Legalease (visit [www.legal500.com](http://www.legal500.com)) (website in English) which is a similar guide.
- 3.2 Despite the fact that lawyers act as general practitioners, most of them also have a one-year specialisation in a particular field of law. It is important before appointing a lawyer to check his specialisation (although specialisation does not prevent a lawyer from of his specialisation).
- 3.3 If a seafarer has a claim or a dispute arising from his employment onboard the ship, or against his employer for unpaid wages, he should consider appointing a specialist maritime law firm. If the seafarer faces an investigation by the police or maritime authority concerning a marine accident or incident, he should appoint a lawyer specialised in criminal law. In relation to personal injury and death claims, the seafarer should appoint a specialist personal injury lawyer.

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

- 4.1 Before being allowed to practice, a lawyer must declare as follows: "I swear as a French lawyer, to exercise my functions with dignity, consciousness, independence, righteousness and humanity". He must observe the legal and ethical rules of the profession: the principle of independence; the loyalty principle; the confidentiality principle; the observance of professional secrecy as well as the duty of information and diligence. Non-compliance with these ethical and professional obligations is likely to trigger, in parallel with criminal liability, disciplinary sanctions ranging from a warning, to temporary prohibition, or to disqualification.
- 4.2 A lawyer is covered in his practice by mandatory professional liability insurance. Professional liability insurance covers misconduct causing damage or loss of opportunity to the seafarer or a third party, for example, where a deadline to undertake an action has been missed. Mandatory insurance also covers the funds entrusted to the lawyer and deposited in an account known as the Caisse des Règlements Pécuniaires des Avocats or Funds for Lawyers' Pecuniary Settlements.

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

- 5.1 It is difficult to determine the total fees and costs that a seafarer may have to pay. Nevertheless, this question must be addressed at the first meeting between the seafarer and his lawyer.
- 5.2 There are two types of fees. Costs and expenses ('frais et dépens') incurred during court proceedings and which are not part of the lawyer's compensation. In principle, these are borne by the losing party. The cost of the allocation is also part of these expenses.
- 5.3 The fees of the lawyer constitute the lawyer's compensation. The seafarer bears them, unless the judge decides the opposing party will pay them, in full or in part, if he deems it fair.
- 5.4 The lawyer's compensation can be determined in discussion with the seafarer either by a verbal agreement or a fee agreement in writing, which will specify the rules for calculating the expenses and the lawyer's compensation as well as the invoice terms. The compensation can be calculated on the basis of the time spent, the hourly rate depending on the importance of the firm, its reputation and/or the lawyer's specialisation. The compensation can also be fixed as a lump sum.

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

- 6.1 In most cases, foreign seafarers will not get the benefit of legal aid to instruct a lawyer.
- 6.2 Foreign seafarers who are not living in France will only get the benefit of legal aid in the course of criminal cases if they are a minor, accused, detained, or convicted.
- 6.3 Legal aid, which was initially created to benefit French nationals, has been expanded to nationals of the European Union and to foreigners living in France.

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

- 7.1 In most cases, foreign seafarers will not get the benefit of legal aid to instruct a lawyer. In civil matters, foreign seafarers will not be authorized to ask for a legal aid lawyer.

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- 7.2 To qualify for legal aid the seafarer must: have French nationality; be a national of the European Union; or be a resident alien normally and regularly in France.
- 7.3 However, legal aid may be granted to alien seafarers illegally or not ordinarily resident in France, if:
- .1 they are minors, assisted witnesses, indicted, accused, charged, convicted,
  - .2 plaintiffs, or foreigners when they are presented to the judge while they are
  - .3 detained or in the waiting area;
  - .4 certain procedures for entry, residence and expulsion are applicable; or
  - .5 procedures for refusal of residence are applicable in cases of particular interest.
  - .6 Furthermore, the law sets a resource limit in order to qualify for legal aid. In 2010, the resource limit could not be higher than: EUR 915 per month for full legal aid; and EUR 1,372 per month for partial legal aid.

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

- 8.1 Some free legal advice may be obtained at the following websites:
- .1 <http://www.justice.gouv.fr> (website in French) or <http://www.legifrance.gouv.fr> (website in French). Here there are some translations in English of the criminal code and of the criminal procedural code. But these translations are not always updated.
  - .2 L'observatoire des droits des marins : [www.obs-droits-marins.fr](http://www.obs-droits-marins.fr) (website in French)
  - .3 Maison des Sciences de l'Homme "Ange Guépin"  
5, allée Jacques Berque  
BP 12105 44021 NANTES Cedex 1 – France  
Tel : 33(0)2.40.48.39.59  
Fax : 33(0)2.40.48.39.98  
[v.aubert@obs-droits-marins.fr](mailto:v.aubert@obs-droits-marins.fr)

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

- 9.1 A seafarer can sue his lawyer.

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

- 10.1 If a seafarer wants to complain about his lawyer:

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- .1 the complaint can be referred to the Chairman of the Bar Association by a simple letter explaining the disagreement and including the lawyer's contact details;
  - .2 after having received both the lawyer and the client's comments, the Chairman or his delegate will examine the claim and will give a written answer;
  - .3 if the Chairman notices any failure by the lawyer to comply with his ethical obligations, he will decide whether or not it is appropriate to initiate disciplinary proceedings against him, since lawyers are subject to a strict code of conduct.
- 10.2 If the seafarer's complaint concerns his lawyer's compensation, a specific procedure is provided by the texts regulating the legal profession (namely, art. 174 of Decree no. 91-1197 of 27 November 1991):
- .1 the complaint is dealt with after the relationship between the seafarer and his lawyer is terminated; and
  - .2 the seafarer should refer his complaint to the Chairman of the Bar Association who, after cross-examination, examination of the supporting documents of both sides and of the work carried out by the lawyer, will rule by way of an arbitration procedure for fee disputes.
- 10.3 The decision of the Chairman may be subject to appeal before the First President of the local Court of Appeal.

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

- 11.1 The right of a seafarer to freely select his lawyer is a fundamental principle. The seafarer can thus discharge his lawyer at any time, subject to the payment of the lawyer's compensation in relation to the work already carried out.
- 11.2 However, in case of disagreement on compensation or because of special circumstances (such as an urgent hearing or a short time bar), the Chairman of the Bar Association may allow the new lawyer to act immediately on behalf of the seafarer, even if the compensation of the previous lawyer has not been entirely paid. It should be noted that this does not exempt the seafarer from paying the compensation of his previous lawyer.

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11.3 Possible difficulties in relation with the return of the case documents must be referred to the Chairman of the Bar Association who will settle them in accordance with the procedure applicable to disputes as to fees.

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

12.1 Foreign nationals who pursue claims before French courts are treated no differently from French nationals.

12.2 Because foreigner seafarers are treated no differently, they will face the same difficulties as French seafarers, such as, the length of the proceedings; and the costs of the proceedings.

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