

SEAFARER SUBJECT GUIDE

USING LAWYERS IN CHINA

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

1. What is the structure of the legal profession?

- 1.1 Lawyers work in firms as partners or as normal practice lawyers. The firms are part of a local lawyers association. Lawyers are specialists in court procedure and evidence, and in conducting advocacy in court.
- 1.2 When in need of legal assistance, seafarers should engage a lawyer on their own behalf. Lawyers can advise on any legal matter, including criminal and civil matters. They can appear in all levels of court, including the Lower People's Courts (district court), Intermediate People's Court (city court), Senior People's Court (provincial court) and the Supreme People's Court of The People's Republic of China.
- 1.3 The language of the courts and of court documents is Chinese. All documents in foreign languages must be translated into Chinese by qualified translation companies and sealed with their company stamps before submission to the courts.
- 1.4 For civil cases, the level of jurisdiction for a court of first instance varies, but is subject to the claims and the local economic situation. For criminal cases, less serious offences are dealt with by the lower court, and more serious offences (in which the criminal may be sentenced to life imprisonment or death) are dealt with by the Intermediate People's Court. Appeals are dealt with at the higher level court for second (final) instance.

2. How is the legal profession regulated?

- 2.1 Lawyers are regulated by the Lawyers Association of China (<http://www.acla.org.cn>). All lawyers must be registered with the local provincial justice administration and they are bound by strict professional rules and institutions such as Administrative Measures for Practice by Lawyers and Measures for Penalizing Illegal Acts of Lawyers and Law Firms, which if not complied with may result in disciplinary enquiry and being struck off the roll of lawyers.

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3. How can a seafarer find a lawyer?

- 3.1 General advice on appointing a lawyer is available from the Lawyers Association of China or its local branch established in any Chinese city. Lawyers who specialise in maritime law and related fields can also be found at the China Maritime Law Association (<http://www.cmla.org.cn/>)(website in Chinese).
- 3.2 Seafarers with claims or problems arising from their employment on board ship, or with a dispute against their employer in respect of wages, should consider instructing a specialist maritime law firm.
- 3.3 If a seafarer faces an investigation by the police or another authorised department concerning a marine accident or incident, he should appoint a criminal lawyer. Certain specialist maritime law firms have suitably qualified criminal lawyers in their firms.
- 3.4 A seafarer's trade union might be able to recommend a suitable lawyer, or the union may appoint a lawyer on behalf of the seafarer. If the incident concerns the operation of a ship, the ship owner's lawyer may be able to represent the seafarer, provided there is no conflict of interest.

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

- 4.1 When accepting instructions from a seafarer, lawyers should set out their terms of engagement in a formal letter, known as a 'letter of engagement,' which specifies the standard terms and conditions which will regulate the professional arrangement between the seafarer and the lawyer.
- 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 or a normal practice lawyer in the firm) of the lawyer(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 the 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.

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

- 5.1 Lawyers normally charge 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 the seniority of the lawyer(s) working for the seafarer, the type and location of the law firm, and the complexity and value of the dispute or the claim. In addition, lawyers will charge for any disbursements they incur on behalf of the seafarer, such as the court fees and the fees of any other professional advisors they may instruct, such as medical experts in personal injury claims.
- 5.2 According to the Measures for the Administration of Lawyers' Service Charges, government guide prices and market-regulated prices apply to lawyers' service charges. The benchmark prices and floating range of the government guiding prices are determined by the competent price authorities of each province, autonomous regions and municipalities directly under the central government together with judicial administrative authorities at the same level. When determining lawyers' service charges, governments take into full account the local economic development level, social affordability and long-term development of the legal profession. Lawyers' service charges are determined according to the average social costs compensated for lawyers' services plus reasonable profits and statutory taxes. Market-regulated lawyers' service charges are determined by law firms and clients through consultation.
- 5.3 The following major factors must be taken into account when consulting about lawyers' service charges: (a) working time; (b) complexity of the legal case; (c) the client's ability to pay; (d) risks and liabilities that the lawyers might assume; and (e) the lawyers' social reputation and professional level.
- 5.4 Lawyers may enter into contingency fee arrangements with seafarers. A lawyer may, if he is of the opinion that there are reasonable prospects of success in the proceedings, enter into an agreement with a seafarer in which it is agreed that he will not be entitled to any fees unless the seafarer is successful to the extent set out in the agreement and that he will be entitled to fees equal to or higher than his normal fees if the seafarer is successful. Generally speaking, the highest amount of any contingency fees is no more than 30% of the contractual amount. Contingency fees do not include costs. A contingency fee agreement must be in writing.
- 5.5 A lawyer may offer the seafarer a fixed fee arrangement, which is generally offered if the matter is relatively simple or routine.

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

6.1 A seafarer may have the right to free independent legal advice (legal aid), regardless of his nationality, if he is detained by the police in connection with a suspected offence and cannot afford legal representation. If he is subsequently charged with an offence, he may qualify for legal aid in relation to the costs of his defence in the criminal trial after application to the local district justice department for such legal aid and approval according to the provisions of the Law of Criminal Procedure of the People's Republic of China, and Regulations on Legal Aid.

6.2 Article 34 of the Criminal Procedure Law of the People's Republic of China stipulates that: 'in the case that a criminal suspect or defendant has not engaged a defender due to financial difficulties or other reasons, the criminal suspect or defendant himself/herself or his/her close relatives may file an application with a legal aid agency which may designate a lawyer as his/her defender where the application satisfies the conditions for legal aid services'.

6.3 Article 11 of the Regulations on Legal Aid stipulates that:

'any citizen may apply to a legal aid institution for legal aid if, in criminal proceedings, there is one of the following circumstances:

(1) where a lawyer is not appointed because of economic difficulty after a criminal suspect is interrogated by the investigative organ for the first time or from the day on which compulsory measures are adopted against him;

(2) where, in a case of public prosecution, the victim and his legal representative or near relatives have not yet entrusted an agent ad litem because of economic difficulty from the day on which the case is transferred for examination before prosecution; or

(3) where, in a case of private prosecution, the private prosecutor and his legal representative have not yet entrusted an agent ad litem because of economic difficulty from the day on which the case is accepted by the people's court.'

6.4 Article 12 states that:

'if a case is brought in court by the public prosecutor and the defendant has not yet entrusted anyone to be his defender due to economic difficulty or other reasons, the legal aid institution shall provide legal aid when the people's court designates a defense for the defendant.'

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If the defendant is blind, deaf, mute or a minor and has not yet entrusted a defender, or the defendant may be sentenced to death penalty and has not yet entrusted anyone to be his defender, the legal aid institution shall provide legal aid without examining the economic status of the defendant when the people's court designates a defence for the defendant.'

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

7.1 A seafarer may have the right to legal aid in a civil case according to the provisions of the Regulations on Legal Aid. According to article 10 of Regulations on Legal Aid, any citizen may apply to the legal aid institution for legal aid for the following matters requiring agency if he fails to entrust an agent for reasons of economic difficulty:

- '(1) claim for state compensation according to law;
- (2) claim for social insurance benefits or minimum subsistence allowances;
- (3) claim for allowances for bereft families and social relief;
- (4) claim for payment of maintenance for a parent, child, spouse, or any other dependent;
- (5) claim for wages or salary; and
- (6) claim for civil rights and interests arising from acts of justice and courage.'

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

8.1 A seafarer also may obtain free legal aid and/or advice in other kinds of legal procedures or arbitration on the basis of the above mentioned Regulations on Legal Aid.

9. Can a seafarer sue his lawyer?

9.1 A seafarer may sue his lawyer if the lawyer displayed gross ineptitude and gross negligence in failing, for example, to pursue the proceedings on behalf of the seafarer in a timely manner.

10. How can a seafarer complain about his lawyer?

10.1 The letter of engagement should provide details of what the seafarer may do if he is dissatisfied with the progress of his case or with the service he is receiving from his lawyer. All law firms are required to have a procedure for dealing with complaints promptly, fairly, openly and effectively as stipulated in the Code of Conduct for Lawyers Practice (Trial) issued by the Lawyers Association of China, which states:

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'Article 27 - The practice of lawyers shall be managed and supervised by law firms.

Article 41 - Lawyers shall accept the solution provided by their law firm when disputes arise between lawyers and their clients.

Article 44 - Law firms are obliged to set up rules and effective management measures to regulate their conduct of practice and supervise lawyers to conform with the Code of Conduct for Lawyers' Practice.'

10.2 The Law of China on Lawyers has similar provisions in article 23:

'A law firm shall establish sound systems for professional management, examination of conflicts of interests, management of charges and financial affairs, investigation into and handling of complaints, annual assessment, archive preservation, etc., and shall ensure that its lawyers observe professional ethics and discipline in their legal practice.'

10.3 If the seafarer is still dissatisfied after going through the lawyer's complaints procedure, the seafarer may refer the complaint to the local lawyers association or undertake litigation against the law firm according to the dispute resolution term of the letter of engagement. The lawyers association can also submit suggestions concerning punishment or the pursuit of legal remedies to competent institutions if the conduct of the lawyer violates the Code of Conduct for Lawyers Practice or other laws and may be punished by the judicial administrative department or pursued for legal liability by the relevant judicial department according to the Code of Conduct for Lawyers Practice.

10.4 There are no particular rules of procedure in complaining to the authority, but the seafarer can directly submit his complaint against the lawyer or the law firm to either the local lawyers association or the local justice bureau, both of which have complaint departments which may accept, investigate and resolve disputes between lawyers and the seafarer. Provisions on lawyers' misbehavior that constitute a violation of the laws and regulations (and their related penalties), can be found in the Law of China on Lawyers, from articles 47 to 55.

11. How can a seafarer change his lawyer?

11.1 A seafarer may terminate the services of his lawyer at any time and appoint a new lawyer. The seafarer's previous lawyer will, however, be entitled to hold on to

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documents in his possession relating to the matter while there is still money owing to him for fees and disbursements.

- 11.2 Seafarers should bear in mind that changing lawyers could involve delays and additional expenses, especially if the seafarer's case is at an advanced stage, as the new lawyers will need to read the documents and familiarise themselves with the case.

12. Is a foreign seafarer treated differently?

- 12.1 Foreign seafarers who pursue civil claims or who face criminal prosecution in Chinese courts are not treated differently to Chinese nationals.

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