

SEAFARER SUBJECT GUIDE

USING LAWYERS IN SINGAPORE

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

1. What is the structure of the legal profession?

- 1.1 The legal profession in Singapore is a fused profession. That means that there is no division between lawyers who attend court and those who do not attend court. All qualified lawyers in Singapore are therefore entitled to attend court as an advocate as well as to practice law and give legal advice as a solicitor. For this reason, all qualified lawyers are advocates and solicitors. Lawyers can appear in any of the courts.
- 1.2 The courts are divided into two main divisions. The first division comprises the subordinate courts of Singapore, which consists of the Magistrates' Courts and the District Courts. In general, cases where the claim does not exceed SGD60,000 are filed in the Magistrates Courts; and cases where the claim does not exceed SGD250,000 are filed in the District Court. The subordinate courts also include the Juvenile Court, the Coroner's Court and the Small Claims Tribunal. All other cases are to be filed in the High Court as discussed below.
- 1.3 The second division comprises the Supreme Court of Singapore, which consists of the High Court and the Court of Appeal. Certain claims are to be filed in the High Court. For example, all claims coming within the High Court (Admiralty Jurisdiction) Act are to be filed in the High Court in Singapore. Section 3 (1) (n) of the Act provides that the High Court has jurisdiction to hear any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Act (Cap. 179) is recoverable as wages or in the Court and in the manner in which wages may be recovered. The Singapore Court of Appeal is the highest Court in Singapore. Appeals to the Privy Council of the United Kingdom have been abolished.

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1.4 In certain cases, the President of Singapore has the power to grant clemency on the advice of the Government for cases such as the otherwise mandatory death penalty for drug trafficking or murder.

2. How is the legal profession regulated?

2.1 A person may only practice as an advocate and solicitor in Singapore if his name is on the roll and he has in force a practicing certificate. In general, the standard of law enforcement and legal practice is very high. There are few, if any, cases of persons practising law without a practice certificate.

2.2 Lawyers are regulated by the Legal Profession Act and the Law Society of Singapore, which also issues its own practice directions and rulings. There is also subsidiary legislation, for example, the Legal Profession (Professional Conduct) Rules, the Legal Profession (Publicity) Rules 1998 and also legislation relating to solicitor's accounts. In addition, the Supreme Court and subordinate courts also issue their own practice directions.

2.3 A seafarer dissatisfied with the legal services he has received is entitled to file a complaint with the Law Society, which may result in investigation and disciplinary proceedings that may ultimately lead to the lawyer being struck off the rolls of the court.

3. How can a seafarer find a lawyer?

3.1 The website of the Law Society of Singapore (www.lawsociety.org.sg) (website in English) provides useful information on engaging a lawyer.

3.2 The internet also has sources of information on lawyers in Singapore and these include the following:

- .1 Legal 500 at www.legal500.com (website in English)
- .2 Chambers and Partners at www.chambersandpartners.com (website in English)
- .3 Martindale at www.martindale.com (website in English)
- .4 HG Global Legal Resources at <http://www.hg.org/services.html> (website in English)

3.3 The Singapore Maritime Officers' Union ('SMOU') (www.smou.org.sg) (website in English) may provide aid and support to a seafarer. Seafarers stranded in Singapore

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due, for example, to the arrest of the vessel, frequently approach the SMOU for assistance.

- 3.4 Common seafarers' claims are those related to their wages and employment or injuries suffered in the course of employment on board a ship. Occasionally, seafarers may also face criminal prosecution or investigations in relation, for example, to immigration issues; customs issues such as smuggling; theft or robbery or assault and battery; and drug offences such as possession or trafficking, having sailed into Singapore waters unaware of the offences under Singapore law or the severity of the punishments. Seafarers may also face prosecution for negligent navigation or oil pollution in the event of a collision or other casualty within Singapore waters.
- 3.5 All lawyers in Singapore are entitled to provide legal advice on all areas of the law, including maritime law and criminal law. However, some lawyers and law firms have gained a reputation in maritime and criminal law related issues and in such cases it is suggested that seafarers should consider instructing one of these specialists firms in the event that they encounter such an issue.

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

- 4.1 It is usual for a law firm to ask a seafarer to sign an engagement letter setting out the terms of engagement between the lawyer and the seafarer, which includes the charges and the manner in which they are levied.
- 4.2 Lawyers and seafarers are free to agree to such terms that are relevant and necessary for the engagement of the lawyer. The engagement letter may be a lengthy document with many terms.
- 4.3 While not exhaustive, the following is a list of items that a lawyer would usually specify and which the seafarer should consider in the engagement letter: (a) the contact details of the seafarer as well as the lawyer, including postal and email addresses, and telephone numbers; (b) the scope of the services and the work to be performed; (c) the charges and fees that the lawyer is going to raise; (d) the services and work to be included and excluded; (e) the requests, if any, for deposits and how the deposits are to be used; (f) the payment of local taxes, if any; (g) the procedure for termination of instructions; and (h) the terms governing the return of funds to the seafarer by the law firm.

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

- 5.1 Fees in Singapore are not regulated. In general, charges of lawyers consist of two main components: professional charges, and expenses/disbursements.
- 5.2 Professional charges refer to the cost of the lawyer's services in performing legal work, such as, providing legal advice, reviewing documents, conducting or attending meetings, writing correspondence, or attending court. Lawyers usually charge by the hour for professional charges unless there is an agreement for the work to be done for a fixed fee. Lawyers are however not allowed to charge on a contingency basis, that is, to charge only when they win a case or to charge a percentage of the sum recovered. This is illegal under Singapore law.
- 5.3 Expenses or disbursements refer, for example, to the costs of transport lawyers to meetings or to court, fees paid to the court for the filing of documents, and photocopying charges.
- 5.4 Seafarers are entitled to ask for an itemised bill and a time sheet setting out the work done and the time taken for each item of work, so that the charges can be easily calculated and checked, unless there is an agreement to charge a fixed fee for the work done.

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

- 6.1 There is a criminal legal aid scheme, which is managed by the Law Society of Singapore. Information on the scheme is available on the website of the Law Society of Singapore. Seafarer applicants are not restricted to Singapore citizens or permanent residents, since foreigner seafarers may also apply for legal aid. There is a means test to assess an application for legal aid. As at 1 October 2012, for an individual, the income maximum limit is SGD1,300; for a family it is SGD1,700 plus SGD160 per child. In other words, where the applicant is an individual and he makes more than SGD1,300, he would not qualify for the scheme but the application may be granted if all other circumstances are considered. The scheme is however limited to non-capital offences.
- 6.2 For capital offences, there is an assigned counsel scheme which is administered by the Supreme Court of Singapore. Information on this scheme can be found on the Supreme Court of Singapore website under the Legal Assistance Scheme for Capital Offences ('LASCO').

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

- 7.1 In order to obtain legal aid in a civil case under the Legal Aid and Advice Act the applicant has to be a Singapore citizen or permanent resident and would also have to satisfy a means and merits test. Therefore, if the seafarer is a foreigner, that is, not a Singapore citizen or a permanent resident, legal aid in a civil case will not be available.

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

- 8.1 There is no other free legal advice or legal representation available. However, a seafarer may himself directly obtain a final decision on certain disputes without the costs of a lawyer and without any other apparent costs.
- 8.2 Under section 59(1) of the Merchant Shipping Act 19 of 1995 any dispute of whatever nature between a seafarer and the person employing the seafarer may be submitted directly by the seafarer to the Director of Marine for decision. If the dispute relates to an amount for wages exceeding SGD5,000, the dispute can, if all parties agree, be submitted to the Director of Marine. The decision of the Director of Marine in respect of a dispute submitted to him is final, and conclusive of the rights of the seafarers.
- 8.3 However, if the Director of Marine is of the opinion that the seafarer's dispute ought to be decided by a court of law, the Director of Marine may refuse to decide it.

9. Can a seafarer sue his lawyer?

- 9.1 It is possible for a seafarer (just like any person who engages a lawyer) to sue his lawyer. Whether there is a valid basis for a claim would depend on the facts of the case. An example, of a possibly valid basis, would include the failure of a lawyer to file a claim within the time permitted by law, so that the claim becomes time barred. Here, depending on the facts, the lawyer may be held liable for failing to file the claim within time, resulting in the seafarer not being able to enforce his claim.
- 9.2 Cases where seafarers have sued their lawyers are however very rare, since there does not appear to have been such a reported claim. Standards of legal practice are high, the nature of the seafarers' claim, usually for wages and repatriation, are usually not complicated, and the court is generally sympathetic to claims by seafarers, unless there is evidence that the claim is exorbitant or not supportable by evidence.

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10. How can a seafarer complain about his lawyer?

10.1 If the seafarer is dissatisfied with his lawyer's services, the seafarer may refer the complaint to the Law Society of Singapore.

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 retain documents in his possession relating to the matter while there is still money owing to him for fees and disbursements. However, the new lawyer and the previous lawyer may enter into arrangements whereby the new lawyer agrees to lien the documents on behalf of the previous lawyer.

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

12. Is a foreign seafarer treated differently?

12.1 Foreign seafarers can expect to receive the same treatment before the courts and by lawyers in Singapore as any other litigant or party coming before the court. They do not face prejudice or persecution.

12.2 The Rules of the Singapore Court do, however, provide that where the claimant is a foreigner, (which would include both a foreign individual as well as a foreign company), the claimant may have to give security for costs, but this is entirely at the discretion of the court and where the claimant is a seafarer, the court usually does not order the seafarer to give security for costs.

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