



**THE FRENCH LEGAL PROFESSION:
AN OVERVIEW FOR FOREIGN COLLEAGUES**
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The French legal system is based, like many others in Europe, on Roman law, on the respect for the rule of law and on due process, but more to the point, it is based on the Civil Code, drafted in part by Napoleon, enacted in 1804, which had a tremendous impact both in France and internationally, and was adopted almost without changes by many countries throughout the world.

The impact of the Civil Code separated France and most of continental Europe from the Common Law legal system used at the time in England and in the newly independent United States of America.

This translates into less reliance on caselaw, no straight precedent rule, and to simplify matters, no need in contracts for providing for every single occurrence, which means that a standard agreement might well be ten or twenty pages long instead of one or two hundred pages or more as those commonly used in the U.S.

Moreover, the simplicity of the wording used in the Civil Code, and its international success and progeny, seem to have fostered in France a taste for statutes, most of which are codified in various Codes, such as the Code of Commerce, the Code of Civil Procedure, the Code of Public Procurements, the Code of Administrative Tribunals, the

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General Code of Territorial Collectivities, etc ... and the latest addition, the Code of Financial Markets.

This said, the specific features of the legal profession in France are the following:

The legal profession in France has traditionally been divided among various types of professionals, and it is only in the late eighties that the government acted to reduce the number of species of professionals licenced or authorized to render legal services in France.

The professionals involved include Notaries Public, "Avocats", "Avoués", "Huissiers", "Administrateurs Judiciaires", "Commissaires-Priseurs", "Conseils en Propriété Industrielle" (as these terms are defined herebelow). Moreover, and to a limited extent, accountants and "juristes d'entreprise" (in-house lawyers) are also authorized to practice law.

The Avocats are themselves a mixed breed. Before 1971, co-existed two types of Avocats, two types of Avoués, each with specialised activities, plus the "Agréés":

- the "Agréés" were lawyers specialising in litigation before the commercial courts, for the most part limiting themselves to acting as solicitors for the "Avocats à la Cour" (see herebelow), i.e. preparing court papers, lodging them with the commercial courts, and following-up the commercial procedures for them;
- the "Avocats à la Cour" also known as "Avocats au Barreau" (no meaningful difference here), who were for the most part acting as barristers do in England, i.e. litigating cases before courts of the first instance and courts of appeals, but also

- advising generally on all legal matters, but who, unlike barristers, had direct contacts with clients;
- the "Avocats au Conseil d'Etat et à la Cour de Cassation", who still exist today and who specialise in advising on and conducting litigation before the French Supreme Court ("Cour de Cassation") and before the French Superior Administrative Court ("Conseil d'Etat");
 - the "Avoués près le Tribunal de Grande Instance", who were solicitors preparing court papers for the Avocats à la Cour and lodging them with the civil courts of first instance, and for the most part, they were only receiving instructions from the Avocats à la Cour who had the contacts with the clients; and
 - the "Avoués près la Cour", who were solicitors doing before the courts of appeals exactly what the "Avoués près le Tribunal de Grande Instance" were doing before the lower courts.

After a limited reform resulting from the law of December 31, 1971, the professions of "Avoués près le Tribunal de Grande Instance" and of "Agréés" were merged with that of "Avocats à la Cour", i.e. the former Avocats à la Cour were now authorized to lodge themselves their court papers, and simultaneously, a new profession was created, that of "Conseils Juridiques", who were legal advisers not having rights of advocacy, and who could therefore only appear before courts where rights of advocacy were not required (such as commercial courts).

The regulatory framework has again been modified by two laws each dated December 31, 1990, which unified the professions of Avocats à la Cour and of Conseils Juridiques into a single profession, the practitioners of which are now uniformly known as "Avocats" ("à la Cour" or "au Barreau" indistinctly).

What remains from the former framework is that the Avocats must be admitted to practice by a court of appeals, and must have their legal domicile within the territorial reach of that court of appeals, they must be members of the Bar organised within the territorial reach of that court of appeals, they may advise in all legal matters and may appear before any jurisdiction or administrative agency having quasi-judicial authority, without any restriction.

The professions of Avoués près la Cour and Avocats au Conseil d'Etat et à la Cour de Cassation have not been included by the latest statutory change.

As mentioned above, law is also practiced in France by Notaries Public, who enjoy two legal monopolies: conveyancing, i.e. intervening in all sales and purchases of real estate located in France, and granting authenticity to all papers filed by or with them. They are able to advise generally in all matters, but for the most part, they still limit themselves to real estate conveyancing, wills and estates, and advising private clients on their patrimonial interests, often doing private client tax planning.

The "Huissiers" are bailiffs, i.e. officers appointed by the Justice Department for the service of Writs and for carrying out attachments, garnishments and other seizures. They may advise in all legal matters, but for the most part, they confine themselves to debt

collections. Some of them are also court officers ("Huissiers-Audienciers") and may be appointed as special masters.

The "Administrateurs Judiciaires" are court-appointed insolvency practitioners, who act either strictly as "Administrateurs Judiciaires", i.e. managing companies undergoing a reorganisation or a workout, or as "Représentant des Créanciers" who gather creditors' claims, or as "Mandataires-Liquidateurs", who are in charge of the winding-up of bankrupt companies, under the supervision of a judge.

The "Commissaires-Priseurs" are officers in charge of all auctions, which they conduct, and they also intervene in insolvency proceedings as appraisers.

The "Conseils en Propriété Industrielle" are regulated by the law N° 90-1052 of November 26, 1990 and by the Decree N° 92-360 of April 1, 1992. The members of this profession are patent and/or trademark attorneys specialising in the prosecution of patent, industrial designs, models and trademark applications.

Some of them, doing mostly trademark law, were also "Conseils Juridiques" before 1990 and have elected to become "Avocats" when the law of December 31, 1990 came into force.

They have thus had to renounce their former title of "Conseils en Propriété Industrielle" (the Avocats are not prevented from prosecuting trademark, design or model applications and a few were already doing so before 1990). It is anticipated that this profession will realign itself, the engineers remaining "Conseils en Propriété Industrielle" and concerning

themselves, for the most part, with patents, and the non-engineers migrating towards the Avocats.

The accountants ("Experts-comptables") have, since an ordinance dating back to 1945, the right to advise their existing clients, for whom they already do accounting work, in related legal matters, such as preparing tax filings and acting as company secretary in the handling of corporate minute books. In actual fact, there have been numerous instances of encroachments by accountants going beyond what is allowed to them, and there is a relentless pressure on the part of the accountants to see their restrictions waived or at least lessened.

The "juristes d'entreprise" are corporate or in-house lawyers who, apart from advising their corporations on the legal matters submitted to them, may also occasionally appear on behalf of their employers before jurisdictions which do not require a right of advocacy, e.g. quite often before labour courts.

The professional bodies regulating the above professions are:

- for the Notaries Public, the "Conseil Supérieur du Notariat", which is a national body, in each region, a "Conseil Régional des Notaires", and in each district ("département") a "Chambre Départementale des Notaires";
- for the Huissiers, the "Chambre Nationale des Huissiers de Justice" and in each region, a "Chambre Régionale des Huissiers de Justice";

- for the Commissaires-Priseurs, the "Chambre Nationale des Commissaires-Priseurs" and in each region, a "Chambre Régionale des Commissaires-Priseurs";
- for the Avoués, the "Chambre Nationale des Avoués" and for each Court of Appeals, a "Chambre de Discipline des Avoués";
- for the Conseils en Propriété Industrielle, the "Compagnie Nationale des Conseils en Propriété Industrielle";
- for the Avocats au Conseil d'Etat et à la Cour de Cassation, the "Ordre des Avocats au Conseil d'Etat et à la Cour de Cassation";
- for the Avocats, at the national level, the "Conseil National des Barreaux" (National Council of the Bars), and at the individual level, the Bars or "Ordres des Avocats".

The "juristes d'entreprise" are not self-regulated.

In the above introduction, an attempt was made to describe the complexity of the different forms of the practice of law in France, and this attempt was maybe too successful if the reader is under the impression that the legal profession is totally fragmented. In actual fact, the Avocats are by far the largest segment of this spectrum, and now number about 36,000 professionals, about half of whom practice in Paris and the balance in the provinces (which shows to what extent France still is an overly centralised country).

Given the numerical importance of the Avocats as compared to the other above-described professionals, our further developments shall be limited to them.

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PRACTICE STRUCTURES:

Since the coming into force of the two laws of December 31, 1990, the Avocats have a wide choice of practice structures, ranging from sole practitioner to partnerships, which shall be listed hereunder:

- **sole practitioner:** this being self-explanatory, does not require any particular comment. Most Avocats in France still practice in that way. However, it should be noted that being a sole practitioner does not imply that one cannot use the services of one or several assistants ("Avocats collaborateurs");

- **office sharing** ("cabinets groupés" and "société civile de moyens" or "SCM" in short): the Avocats having adopted any of the two above structures merely share expenses relating to office space and possibly law library, receptionist, switchboard operator, telephone, fax, photocopying equipment, word processing equipment, and the like. They do not share profits nor do they intermingle their clients. The difference between a cabinet groupé and a SCM is their tax status and the fact that in a cabinet groupé, one of the Avocats is the tenant (or the owner) of

the premises and the others his sub-tenants or lessees, as the case may be, whereas a SCM is often itself the tenant or owner;

- **Professional Corporations** come in many guises: "Sociétés Civiles", "Sociétés Civiles Professionnelles" (or "SCP" in short), "Sociétés Anonymes", "Sociétés à Responsabilité Limitée", "Sociétés en Participation", "Sociétés d'Exercice Libéral à Forme Anonyme" (or "SELAFA" in short), "Sociétés d'Exercice Libéral à Responsabilité Limitée" (or "SELARL" in short), "Sociétés d'Exercice Libéral à Commandite par Actions" (or "SELCA" in short), "Sociétés d'Exercice Libéral par Actions Simplifiée" (or "SELAS" in short) and even partnerships constituted under laws other than French law (which are called "groupements"). All these forms of professional corporations offer different variations of tax status and control of decision-making. Some of them, such as the SCP, offer the possibility of creating equity partners and non-equity partners.

- **"Associations"** are unincorporated partnerships, purely based on contractual arrangements, whereby the members of the Association agree to share profits according to a percentage scale;

Moreover, these practice structures may combine with some of the above other structures, not necessarily of the same kind, to create either one of the two following groupings:

- the "Groupement d'Intérêt Economique" (or "GIE" in short), which is an economic interest grouping not able to practice law in its own name, but capable of rendering services to its members and facilitating their respective practices;

- the "Groupement Européen d'Intérêt Economique" (or "GEIE" in short), which is a European economic interest grouping, identical to a GIE except that it must have members in more than one member-state of the European Community.

CAPACITIES, GENERAL:

The Avocat is an adviser and an advocate and may be an intermediary, a custodian, an arbitrator, a trustee, and much more. He cannot be the chairman or chief executive officer of any company or corporation.

As an adviser, the Avocat may issue opinions, may draft any contractual documents, and may participate in their negotiation.

As an advocate, the Avocat may represent a party in litigation as agent for service, and may present written and oral arguments to the court or to the arbitration tribunal, as the case may be, on behalf of that party.

As an intermediary, the Avocat acts as the agent of his client but the scope of the agency must be limited, and the Avocat cannot agree to become a de facto principal or manager of his client's business or finances.

As a custodian, the Avocat may receive funds, which must be deposited on a clients' account, and he must be able to account for them at all times. Moreover, he may be appointed custodian of documents which have to be kept in escrow.

As an arbitrator, the Avocat acts as a judge, i.e. must remain totally independent from the parties, and will ultimately be rendering an award enforceable under French law or, as the case may be, under any applicable international convention.

As a trustee, the Avocat, shall act in accordance with the laws which govern the trust, but he must ascertain for himself that the trust has a legitimate purpose.

As a lobbyist, the Avocat acts as the representative of his client vis à vis National or International Authorities, in which case he must disclose to such Authorities in which capacity he is acting and the identity of his clients.

It has been mentioned that an Avocat cannot be the chief executive officer of any company or corporation, but he may be a director ("administrateur") or a member (and even the chairman) of the supervisory board ("Conseil de Surveillance") of a "Société Anonyme".

There are also several restrictions on the Avocat who is holding a public position (e.g. an Avocat, who is a Member of Parliament, cannot act against the French State, any administration thereof, or against State-owned corporations).

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DUTIES, GENERAL BASIS:

The duties of an Avocat have evolved from custom to statute, most recently as a consequence of the provisions of the law N° 90-1259 of December 31, 1990, amending

the law N° 71-1130 of December 31, 1971, and of its implementing decree N° 91-1197 of November 27, 1991.

However, codes of practice and case law still play a large part in shaping the duties of the Avocat, and in this respect, the "Conseil National des Barreaux" (hereinafter referred to as the "CNB"), which is the national body instituted by the law N° 90-1259 of December 31, 1990 to oversee the local Bars, has been instrumental in ironing out the discrepancies among the various local codes of practice ("Règlements Intérieurs") enacted by the local Bars. Thanks to the CNB, the codes of practice have been harmonized and recently unified into one single code of practice, the "Règlement Intérieur Harmonisé". The ability of the CNB to issue compulsory ethical norms has been challenged in court and the cases are going to be ruled upon by the French Supreme Court.

It should be noted that many local Bars, including the largest by far, i.e. the Paris Bar, have already incorporated into their code the European code of practice adopted in Strasbourg in 1988 by the Council of the Bars of Europe ("CCBE"). No doubt that the provisions of the European code of practice, as amended, also influenced the contents of the codes of practice and had on them a harmonizing effect.

In short, the duties of an Avocat are to abide by the canons of the profession, i.e. to act with dignity, conscientiously, independently, and with humanity. More practically, his duties are to maintain and preserve the integrity of the confidentiality obligation that he has undertaken in his relationship with his client, to educate himself in the law, to keep informed of the developments of his sphere of interest in the law, and to refrain from accepting briefs or instructions from clients which are beyond the scope of his expertise,

which cannot be diligently carried out, or which are conflicting with some interests of which he is already in charge.

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STANDARDS:

Although the profession of Avocat strives to maintain the highest ethics, its standards as interpreted by case law are more relative than absolute.

In other words, there is no question of a guaranteed result, the Avocat is only under an obligation to use its best efforts to achieve the result best suited to the overall interests of his client.

The efforts should not merely be reasonable, but should be the best a competent lawyer is able to provide in like circumstances.

CIVIL AND ADMINISTRATIVE LIABILITIES:

Civil liabilities (general):

The basis for the civil liability of the Avocat lies in tort, and is statutory, insofar as it derives from the provisions of articles 1382 and 1383 of the French Civil Code, which read as follows:

"Article 1382. Any action whatsoever by someone, which causes to another any harm, obligates the person by the fault of whom it occurred, to repair it";

"Article 1383. Everyone is liable not only for any harm caused by his actions, but also by his negligence or imprudence".

It can readily be seen from the above texts that in order to collect under a civil liability claim against an Avocat, a three-part test should be met:

- i) the Avocat must have committed a fault (or must have been negligent),
- ii) a person with whom he is in a client-attorney relationship must have been harmed,
and
- iii) there must be a demonstrated causation link between the said fault and such harm.

The Claimants in such an action may either be the client, a former client, the client's shareholders, the directors of the client company, but not, absent any fraud in which the Avocat would have participated, the creditors of the client or its sub-contractors.

As provided by Article 26 of the Law N° 71-1130 of December 31, 1971, which states that "Civil liability actions against the Avocats shall follow ordinary procedural rules", the procedure in a civil liability action against an Avocat is initiated by the Claimants in a law court (to be specific, before the Tribunal de Grande Instance, which shall hear the case in chambers), and is independent of any disciplinary procedure which may be initiated by the Bar against the Avocat after the Claimants have notified the Bar of the conduct or misconduct of the Avocat.

The recoverable damages are ascertained by the judges in their discretion (Cour de Cassation, Civil Chambers, Ruling of May 23, 1911, Dalloz Périodique 1912.1.421). The amount awarded must reflect the monetary value of the harm suffered, irrespective of the seriousness of the fault committed (Cour de Cassation, 2nd Civil Chamber, Ruling of May 8, 1964, Juris-Classeur Périodique 1965.II 14140 and Revue Trimestrielle de Droit Civil 1965.137). In other words, no punitive damages may be awarded. Are recoverable all types of damages, i.e. moral or material harm (the latter including not only actual harm but also the loss of an anticipated gain or profit), as long as this harm is personal to the Claimant, directly linked to the fault committed and certain to have occurred or to occur.

Regarding the recovery of attorney's fees, it should be noted that in France, the winning party may shift the costs of the action to the losing party only to a certain extent. This extent is at the discretion of the judges.

Article 700 of the French Code of Civil Procedure provides that if so requested by one party, the judge may sentence the losing party to bear in whole or in part the costs which the winning party has incurred. However, "The judge takes into account fairness and the economical situation of the losing party".

In practice, judges are reluctant to award much in this respect, and it is extremely rare that the full amount of the fees incurred by the winning party is assessed, in the judgement, against the losing party. As a result, each party has basically to bear its own lawyers' fees when litigating in a French court.

Civil liabilities, specific:

- **On-going and one-off representations:** there are no significant differences in the analysis of the civil liability of an Avocat by a court if he is in an on-going relationship with a client or if it is a one-off representation. However, in an on-going relationship, the client and/or the Avocat shall probably rely on past conduct in like circumstances to prove what is acceptable behaviour on the part of the Avocat.
- **General advice v. Specialist advice:** Specialist advice is an old concept, but it has only been officially recognised by a Ministerial Decision of June 8, 1993, (published in the Official Journal of June 12, 1993, page 8407). True enough, the former "Conseils Juridiques" had the possibility of claiming specialised knowledge of tax law, labour and employment law, and corporate law, but the above Ministerial Decision has opened to the Avocats a wider spectrum of twelve additional legal areas in which to claim specialised knowledge. It is clear that claiming specialised knowledge may be as dangerous, if not more, as claiming to be able to render general advice to a client.

A glaring example is in the area of opinion letters, in which the Avocat is requested by his client to render an opinion on which a third party will be relying. Should the contents of the opinion so rendered be inaccurate, the client may suffer huge damages, such as the termination of loans, the waiver of insurance guaranties, etc., for which the lawyer could be held accountable.

- **Commercial transactions:** the Avocat is absolutely prevented from being the general agent of his client, i.e. any mission whereby he would act as an intermediary must have a limited scope and be defined beforehand. This is to

protect the integrity of the profession and to ensure that no action by an Avocat will turn him into a trader or a businessman, which would entail a number of consequences in France.

On the one hand, it may generally be said that the status of Avocat is incompatible with that of trader or businessman. On the other hand, this does not imply of course that the Avocat is prevented from advising on all legal aspects of the commercial transactions of his clients.

On the contrary, the Avocat must be able to advise in such matters, but not to a point where he would become the partner of his client in the contemplated commercial transaction, because he would then lose his independence. By retaining his independence, the Avocat is ensuring that the ultimate business judgment regarding the contemplated commercial transaction is exercised by his client, thus exonerating himself of any liability should the said transaction turn sour.

- **Agreements:** likewise, the Avocat may advise on all legal aspects of any agreement contemplated by his client. He may sign it on behalf of his client if he is specially empowered to do so by a power of attorney.

He may participate in the negotiation of the terms of the agreement on behalf of his client, provided that he has been careful in asking for and has received specific instructions from his client. The danger area lies in the circumstance when the Avocat is asked to draft the agreement. Most trades have their own technical

jargon and specialised trade terms, and quite often clauses of a particular nature which are not to be found in another trade.

This is obviously true of commodities trading, shipping, insurance, bank lending, etc., and an Avocat who has no experience in a particular trade would unnecessarily create for himself some contingent liability by accepting to draft an agreement in which, more likely than not, a few important clauses would be missing. This is even more so in the area of Mergers and Acquisitions, if the Avocat is entrusted, as is often the case, with the task of carrying out due diligence searches and verifications.

- **Regulatory compliance:** "No one is deemed to ignore the law", or so it is said in France, but there are so many laws and regulations being churned out by the legislators and the administration everyday that it has become quite impossible for the average person or businessman not to run afoul of the law.

Therefore, one sees a growing trend of asking the Avocat to conduct specialised audits, not necessarily linked with any Mergers and Acquisitions situation, to ascertain that, for instance, a company is in compliance with certain regulations (e.g. environmental audits, labour law audits, antitrust and competition law audits). Of course, the Avocat who undertakes such a mission must himself be quite sure of which relevant statutes are in force, or he may be held liable for any inaccurate and/or incomplete opinion he will eventually render.

- **Litigation conduct:** this is the area where case law is the most developed, because the Avocat was traditionally perceived as a litigator rather than the adviser he also was.

Most cases turn on the failure of an Avocat to have lodged pleadings with a Court or to have taken some action before some deadline, after which his client was barred from filing pleadings or from taking that action, thus in effect depriving his client of a chance of improving his position in the proceedings (e.g. Cour de Cassation, 1st Civil Chamber, Ruling of December 9, 1992).

It is therefore essential that the Avocat be very alert as to the developments in the case, making sure that he is complying not only with the general requirements of the Codes of Civil Procedure, Tax Procedure or Criminal Procedure, as the case may be, but also with those of the particular Court before which litigation is being conducted.

- **Administration** (company, trust): as already mentioned, an Avocat should not manage a company, but he may administer a trust as trustee. He can also be a member of the board of directors of a société anonyme (a corporation), or a member of its supervisory board ("conseil de surveillance"), including the position of chairman of the supervisory board. However, special care must be exercised by the Avocat in carrying out such duties, and a separate insurance cover is required.

Exercising such special care would for instance be mindful not to accept a power of attorney from the chairman of the board by which the Avocat would become

the de facto or acting chairman of the company. The Avocat who is appointed director or member of a supervisory board of a company must inform his Bar of same, and must already have some experience (Article 6 of the Law N°71-1130 of December 31, 1971, as amended by the Law N°90-1259 of December 31, 1990 provides that, unless the local Bar decides to shorten that period, the Avocat must have been admitted for seven years).

At the Paris Bar, an Avocat cannot accept the duties of chairman or of vice-chairman of the supervisory board of a company without the prior approval of the Bar.

The above restrictions do not apply to an Avocat who is also running a family business, or a company the sole purpose of which is to practice the legal profession.

- **Conflicts of interest, disclosure, withdrawal:** the Avocat must be sensitive to any appearance of conflicts of interest, be they actual or potential. As soon as there is a conflict between his clients in a given matter, he should cease representing more than one of them.

This rule also applies when there is a serious risk of conflict, unless all the clients concerned have been informed by the Avocat that he is advising them, and all the clients concerned have consented to such a situation.

The Avocat must also ascertain, when instructing a corresponding lawyer in a given matter on behalf of his client, that the corresponding lawyer has no conflict of interest of his own.

In litigation, the Avocat may withdraw if he feels he has to, provided that the client is informed with reasonable notice, so that his interests are not jeopardised, and that the continuity of the representation of the client is ensured vis à vis the Court.

Generally, non compliance with any rule governing conflicts of interest shall result in disciplinary sanctions against the infringing Avocat but not in any civil liability, unless harm and a causation link are proven.

- **Confidentiality:** the statutory basis for the confidentiality obligation of the Avocat used to be found in Article 378 of the French Criminal Code.

However, this text did not expressly refer to lawyers and gave rise to numerous interpretations which resulted in conflicting court decisions, some courts holding that the confidentiality obligation of the Avocat and the attorney-client privilege applied only in the case of litigation and not in the case of advice given in non-litigious matters, and some courts holding that they applied in all situations. The controversy has not yet been resolved despite two statutory changes:

On the one hand the Law N° 92-583 of July 22, 1992 created a new Criminal Code.

Its Article 226-13 states that "The divulgence of a secret information by a person to whom it has been confided ... pursuant to his profession ... shall be punished by one year in jail and a fine of FRF 100,000" (about € 15,245). On the other hand, Article 4 of the Law N° 93-2 of January 4, 1993 has modified the provisions of Article 66-5 of the Law N°71-1130 of December 31, 1971, which now states that "In all matters, the advice sent by an Avocat to his client or intended for the latter, and any correspondence between the client and his Avocat, is covered by professional secrecy". The combined effect of these statutory changes is that the Avocat may and should invoke the privilege in all circumstances to defend the interests of his client, and that were the Avocat to breach such secrecy obligation, criminal, and not only civil, sanctions could be imposed upon him.

The rationale behind the obligation and the privilege is of course that the general public should be trustful of Avocats insofar as secrets confided to an Avocat are kept in confidence.

- **Defenses, exclusions, time-bars:** the defense to a civil liability claim would be for an Avocat to prove that he committed no fault, or to prove that the client suffered no actual harm and will not suffer any harm, or to prove that if the client suffered actual or potential harm, it was not as a result of the Avocat's actions or omissions.

If none of the above defenses is available to the Avocat, he may rely on a partial defense of the client having contributed to the harm by his mistaken or ineffectual interpretation of the Avocat's advice. No exclusion or limitation of civil liability is possible, the Avocat being a professional fully liable vis-à-vis his clients for

any harmful consequences of the way he practices his profession. Until not long ago, the time-bar for a claim against an Avocat was the standard thirty years provided by Article 2262 of the Civil Code, but two statutory changes have drastically reduced this timespan:

For a claim involving the inability of an Avocat to return to the client original documents given to him in connection with a court case, the time-bar is now down to five years (Article 2276 of the Civil Code, as amended by the Law N° 71-538 of July 7, 1971).

For other claims against an Avocat based on their professional liability, the time-bar is ten years, running from the end of his mission (Article 2277-1 of the Civil Code, as introduced by Article 6 of the Law N° 89-906 of December 19, 1989), unless the former time-bar of thirty years would have been tolled earlier than ten years after the coming into force of the said Law N° 89-906 of December 19, 1989.

LIABILITY for partners, associates, staff, joint and several liability, new partner's exposure to liability arising from firm's prior acts, former partner's for subsequent liability.

The principle of vicarious liability applies to Avocats, and an Avocat is liable for the harm possibly caused by his associates and/or his staff.

Regarding partners in a law firm, i.e. all practice structures mentioned hereabove except those involving only office sharing, the principle is that of joint and several liability of all

partners. For instance, Article 16 of the Law N° 66-879 of November 29, 1966, as amended by the Law N° 90-1258 of December 31, 1990, provides that in a SCP the partners and the SCP itself are jointly and severally liable for any harmful consequences of the practice.

Regarding the exposure of new partners for the firm's prior acts and of former partners for the firm's acts subsequent to their departure, it is usually contractually regulated in the Articles of Association or partnership agreement of the law firm concerned, and generally in the sense of the new partners assuming no liability for the firm's prior acts and the former partners not being responsible for the firm's acts further to their departure.

INSURANCE: Availability of insurance coverage, scope, exclusions, limits, cost. Public policy against insuring of certain liabilities (e.g. punitive damages).

Insurance coverage is not only available, but it is compulsory for the Avocat, as a guarantee provided by operation of law to the general public (see Article 27 of the Law N° 71-1130 of December 31, 1971, as amended). The Bars have negotiated group insurance policies for their respective members, the Decree N° 91-1197 of November 27, 1991, which implements the above Law, having only set a minimum level of coverage, i.e. FRF 2,000,000 per year per Avocat insured. The Paris Bar, being by far the largest, with about 16,500 members, has effected insurance coverage which guarantees to the clients that if the Avocat is unable to account for funds which have been remitted to him, the amount of such funds shall be paid to the clients up to € 4,573,470 per claim.

If the Avocat has committed a fault or a professional negligence, resulting in harm to the client, the insurers of the Paris Bar shall pay up to an amount of € 3,811,225 per claim (the so-called "basic insurance")

However, additional coverage is available, and is not yet outrageously expensive, and it is not uncommon for large or for “boutique” law firms to subscribe additional coverage of up to € 26,678,578, thus bringing total coverage per claim up to € 30,489,803.

The cost of basic insurance is usually included in the annual dues to be paid by all practicing Avocats to the local Bar to which they belong (pursuant to the provisions of Article 15 of the Law N° 71-1130 of December 31, 1971, an Avocat must be a member of a Bar).

At the Paris Bar, for instance, this is so since 1972, and the insurance premium represents on average one third of the annual dues.

The cost of additional, voluntary, insurance varies according to the level of coverage sought (e.g. for € 11,433,676 in additional coverage, the premium is about € 457 per year per insured Avocat, and for € 26,678,578 in additional coverage, the premium is about € 1,067 per year per insured Avocat). In a law firm, the total premium would be equal to the number of partners multiplied by any of the above premium figures.

The following are excluded from professional liability insurance coverage: any activity of the Avocat as company director or in a capacity which he is prevented by law to assume (such as businessman), any wilful or intentional misconduct, any permanent activity of

