

# Regulation of the Legal Profession in France: Overview

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A Q&A guide to the regulation of the legal profession in France.

The Q&A gives a high level overview of the key practical issues including required qualifications for both domestic and foreign legal professionals working in a jurisdiction; common legal professional structures; national regulators, legal professional insurance and client protection; confidentiality and legal professional privilege; legal fees and fee regulation; client money; and notaries.

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## Introduction to the Regulatory Framework

1. How many categories of lawyer are there in your jurisdiction?

In France, there is one main category of lawyer (*avocat*). *Avocats* (referred to in this chapter as lawyers) are outside counsel, advising clients on all legal matters and representing them before courts or other dispute resolution bodies (arbitration, mediation and so on). It is a regulated profession with specific ethical rules and controlled by a professional body.

In-house lawyers as such do not exist in France (*see Question 30*).

Some lawyers can, after obtaining a specific qualification, appear before the Supreme Courts (Council of State (*Conseil d'Etat*) and the Court of Cassation (*Cour de Cassation*)).

Specialists in intellectual property (IP) law can, after sitting a professional test and subject to certain conditions of qualification and experience, assist and represent clients on IP matters before the French National Institute of Intellectual Property (INPI) and the European Patent Office (EPO).

Other regulated professions provide legal assistance on specific matters, such as:

- Bailiffs who have exclusive jurisdiction to enforce court decisions and serve legal acts.
- Notaries, invested with the power to authenticate acts.

Both are public officers who are subject to the rules of their own professional bodies.

2. What stages of legal education must be completed to qualify as a lawyer in your jurisdiction?

Two routes are available to qualify as a lawyer in France, educational and professional.

### **Educational Route**

The most common path is the educational one. Law students sit the Bar exam at the end of a Master's degree. To register for the Bar exam, the candidate must hold at least a Master's degree in law (a four-year degree in law or equivalent qualification) and enrol in an Institute of Judicial Studies (*Institut d'études judiciaires*) (IEJ) attached to universities.

Students must sit two state exams, an entrance examination and a final examination.

The entrance examination can only be attempted three times. Most candidates attend a preparatory school for this exam (with private or public entities organising specific classes and mock exams).

Once the candidate has successfully passed the entrance exam, they must enrol in a Bar School (*Ecole des Avocats*) (EDA) and complete an 18-month training period. There are 15 EDAs in France.

The 18 months are divided into three periods:

- Six months of classes provided by the EDA dedicated to acquiring the fundamentals and practical aspects of practising law (a part-time internship during this period can be done simultaneously).
- Six months of internship dedicated to an individual educational project. This internship is not carried out at a law firm, but at a governmental or non-governmental institution, private company, international organisation or court, in France or abroad.
- Six months of internship at a law firm in France.

At the end of this 18-month period, the trainee lawyer must sit the final examination to obtain the Certificate of Aptitude for the Legal Profession (*Certificat d'aptitude à la profession d'avocat*) (CAPA).

## Professional Route

Another way to qualify is by choosing the professional route. Candidates holding specific diplomas can join an EDA without sitting the entrance examination (for example, PhD students), or even qualify as a lawyer without joining an EDA but by directly sitting the final exam. By this route, law professors, magistrates, lawyers before Supreme Courts and qualified judges can apply to be admitted to the French Bar under certain conditions.

Some legal professions can also apply to be admitted to the French Bar after a few years of practice in law, after sitting a simple test on professional ethics. This is the case for IP counsel, court clerks, bailiffs and notaries after five years of practice, and high-ranking civil servants, assistants to MPs and in-house counsel after eight years of practice.

3. What are the requirements to obtain a practising certificate/licence? How often must this be renewed?

Once candidates have obtained the final exam or equivalent, they must take an oath before the Court of Appeal and register with the Bar association of their choice to practise as a lawyer. A candidate can only take the oath if they have signed a contract with a law firm and meet the applicable ethical conditions.

The certificate/licence to practise does not need to be renewed in France. However, lawyers are subject to continuing legal education. In particular, they are required to complete 20 hours of continuing legal education per year of practice, including at least ten hours of ethics courses in the first two years.

4. Are there any limitations on lawyers advising throughout your jurisdiction?

Lawyers can advise, represent their clients and conduct cases in court throughout the French territory without any limitations in terms of geographical area or expertise.

However, if cases are brought before a court outside the district of the lawyer's relevant Bar, the clients must appoint a local counsel admitted to the local Bar of the relevant court (*postulation*). The local counsel (lawyer of record) (*avocat postulant*) only handles the procedural aspects of the case while the initial lawyer chosen by the client remains responsible for drafting submissions and presenting the case before the court.

In addition, lawyers can only present matters before first instance and appellate courts. Only lawyers specifically admitted to the French Supreme Courts Bar (*Avocats aux Conseils*) can represent clients before these courts.

Finally, lawyers can advise on any legal matter addressed to them. However, they can only be referred to as a "specialist" if they obtain a certificate of specialisation (*certificat de spécialisation*).

5. Are there any written codes of conduct or handbooks, or rules and/or principles that lawyers are required to abide by?

The profession is regulated by the National Internal Regulation (*Règlement Intérieur National*) (RIN).

Some Bar associations have adopted additional rules. For example, the Paris Bar has its own internal rules combining the RIN with other provisions.

These rules and regulations lay down the ethical rules applicable to lawyers, their general obligations and the disciplinary powers of the Bar associations.

The Code of Conduct for European Lawyers, which applies to cross-border activities within the EU, was incorporated into the RIN and therefore applies to all lawyers.

Any infringement of the above rules can lead to disciplinary action (*see Question 16*).

6. What are the key rules governing the legal profession in the jurisdiction?

The key rules governing the profession are set out in Article 1 of the RIN:

- The essential principles of the profession guide the lawyer's behaviour in all circumstances.
- A lawyer must perform their duties with dignity, conscience, independence, probity, and humanity, in accordance with the terms of their oath.
- In carrying out professional activities, they must also respect the principles of:
  - honour;
  - loyalty;
  - equality and non-discrimination;
  - selflessness;
  - fellowship;
  - sensitivity;
  - moderation; and
  - courtesy.
- They must demonstrate competence, dedication, diligence and prudence towards their clients.

7. Who has the right to conduct litigation in court, and who has rights of audience?

## Right to Conduct Litigation

Every qualified lawyer has the right to conduct litigation before all French first-instance and appellate courts. However, only qualified Supreme Courts lawyers have the right to conduct litigation before those courts (*see Question 4*).

## Rights of Audience

In a limited number of cases, the parties are allowed to conduct litigation themselves and do not have to be represented by a lawyer. For example, companies can represent themselves before the first instance commercial court for disputes valued at less than EUR10,000.

Similarly, representation by a lawyer is not mandatory before the first instance labour court.

Parties can also seek non-legal representation (by a family member or any other representative).

In addition, bailiffs also hold a right of audience in specific matters where they can act as their client's representative.

## Professional Structures

8. How are law firms in your jurisdiction usually organised?

Law firms can be organised in seven different forms:

- Professional Partnership (*Société Civile Professionnelle*) (SCP).
- Independent Professional Company (*Société d'Exercice Libéral*) (SEL).
- Lawyers' Joint Venture (*Société En Participation*) (SEP).
- Independent Professional Holding Company (*Société de Participation Financière de Professions Libérales*) (SPFPL).
- Limited Professional Liability Association of Avocats (*Association d'Avocats à Responsabilité Professionnelle Individuelle*) (AARPI).
- Multi-Professional Practice (*Société Pluriprofessionnel d'Exercice*) (SPE).
- Ordinary Partnership (*Société d'Exercice de Droit Commun*) (SEDC).

Most law firms are structured either as an SEP or an AARPI.

9. Are multi-disciplinary practices (MDPs) allowed in your jurisdiction?

Since Law No. 2015-990 of 6 August 2015 for growth, activity and equality of economic opportunities (Macron Law) was enacted, different legal professionals have been able to form a single practice called a *Société Pluriprofessionnelle d'Exercice* (SPE). However, this set-up is not very common in France.

The different branches of the legal profession that are allowed to practise together include:

- Lawyers.
- Supreme Court lawyers.
- Bailiffs.
- Notaries.
- Court-appointed representatives and administrators.
- IP counsel.

Certified accountants and auctioneers are also allowed to join an SPE.

10. Are community and/or alternative legal service providers common? If so, to what restrictions are they subject, if any?

## Community Legal Service Providers

Legal services are most commonly provided by lawyers.

There are, in addition, certain community legal service providers that offer free legal services in France:

- Multiple associations provide information on the rights of consumers, for foreigners and so on.
- Professional unions provide legal guidance on labour law.
- The Houses of Justice and Law (*Maisons de Justice et du Droit*) are local establishments that provide information on legal rights and procedures and assistance in implementing certain amicable dispute resolution methods.
- Legal advice centres are available in French courts and local Bar associations. These centres are usually run by lay people who organise meetings between individuals and volunteer lawyers, public notaries and bailiffs.
- Legal clinics created by universities (like the Paris Bar School) also offer free legal assistance to individuals.

Although these entities offer legal services, they do not hold a mandate to act on behalf of a client before courts.

## Alternative Legal Service Providers

There are no specific restrictions that apply to outsourcing legal services.

Corporations, either through their legal department or law firms, increasingly resort to Alternative Legal Service Providers (ALSPs) for litigation and investigation support, legal research, document review, eDiscovery and regulatory risk and compliance. ALSP solutions can take the form of a search engine that the client uses directly (for example, legal research and document review) or services provided by companies specialising in ALSP for a particular case (for example, regulatory risk and compliance).

Companies providing ALSP solutions are not entitled to represent clients before courts or to deliver specific legal advice.

11. Are there any restrictions on self-employed lawyers providing legal services on a freelance basis?

There are no restrictions on self-employed lawyers providing legal services on a freelance basis.

12. Do restrictions apply to lawyers qualified outside your jurisdiction/law firms established in another country practicing in your jurisdiction?

Lawyers qualified outside France can practise in France under certain conditions that depend on whether they are qualified inside or outside the EU.

## Temporary Services

EU lawyers who are fully qualified in their own countries are allowed to practise in France under their own titles and to represent their clients in court. EU lawyers can provide temporary legal services in France, without any restrictions. After three years of regular practice in France, they can apply for the title of *avocat* in France and register with a French Bar association.

Lawyers qualified outside an EU member state (foreign lawyers) can provide, under their own titles, temporary legal services in France. Those services include legal

advice in international law and in the domestic law of their home country. This ability is granted by the National Bar Association (*Conseil National des Barreaux - CNB*) provided that the foreign lawyer fulfils specific requirements (for example, of morality and insurance).

This authorisation can be granted on a temporary (for one year) or a permanent basis. Once authorised by the CNB to practise in this capacity, the foreign lawyer must contact their local French Bar association to request registration on the list of foreign legal consultants.

## **Registration**

EU lawyers and foreign lawyers who wish to practise in France must file an application before the CNB to register with the local Bar association of the district in which they decide to settle.

## **Bar Admittance**

EU lawyers must prove that they meet the conditions to be a lawyer in another member state, the European Economic Area (EEA) or the Swiss Confederation, or that they are a lawyer registered with a Bar association in one of these states.

Foreign lawyers must prove that they are registered with a foreign Bar association on the date of submission of their application and that their state of origin allows French lawyers to practise their profession under reciprocal conditions.

Since 2009, under a mutual recognition arrangement with Québec, the applicant must have obtained either an LLB in law or any equivalent degree in Quebec, or have a licence to practise law in Québec, or be registered with the Québec Bar Association as a practising lawyer and show that their activity is covered by professional liability insurance at least equal to that in force for French lawyers.

## **Legal Education, Workplace Training and Qualifying Tests**

EU and foreign applicants for French Bar enrolment must submit an official request to the CNB. It then has two months (for foreign lawyers) or three months (for EU lawyers) to approve the application and authorise the candidate to sit a specific legal exam.

EU lawyers can apply to be admitted to the French Bar after sitting an exam in French law including between one and four tests, determined by the CNB after analysis of the candidate's higher education and professional experience.

Regardless of the candidate's professional experience or qualifications, foreign lawyers must sit the same exam in French law consisting of two written tests and two oral tests.

Under a mutual recognition arrangement, applicants from Quebec are only required to sit a single 15-minute oral test on the French Bar rules and ethics.

**Both** types of lawyers are exempt from the Bar School's 18-month training period.

## Local Description

After registering with a French local Bar association, foreign lawyers can practise in France as lawyers.

Foreign lawyers who choose not to apply to be admitted to the French Bar or who fail at the required exam can only advise on the law of their country as foreign legal consultants. In this respect, they must register to be included on the list of foreign legal consultants with the French local Bar of their choice once authorised by the CNB to practise in this capacity.

## Client Protection

13. Is there a national regulator of the legal profession? In a federal jurisdiction, which body regulates the legal profession in the individual states?

The CNB is the regulatory authority for French lawyers. It represents the entire profession in France and abroad and unifies the rules and practices of the profession through published standards in the *Legal Official Journal*.

In addition, each local Bar association represents, defends and regulates its members. Local Bar associations have the power to draw up internal regulations to be followed by their members, but this normative value is secondary to that of the CNB.

There are 164 Bar associations in France. The Paris Bar Association is the largest in terms of members (about 32,000 lawyers among the 70,000 registered in France).

Each local Bar association is organised in a Bar Council (*Conseil de l'Ordre*), which includes elected lawyers presided over by a President of the Bar (*Bâtonnier*) and, if necessary, a Vice President (*Vice-Bâtonnier*), both elected by the lawyers registered with that Bar. All the presidents together form an association (*Conférence des Bâtonniers*) and gather to study and give opinions on all questions likely to interest the legal profession.

14. Is there a register of qualified lawyers and, if so, how can it be accessed?

Each local Bar association holds a register of its members.

The website of the *CNB* provides a consolidated list of all French lawyers and offers a search tool by name, Bar, city, specialised field of law and language.

15. Is membership of a national Bar association, law society or similar mandatory?

Every lawyer must register with their local Bar association. Registration with one of the 164 local Bar associations is mandatory.

16. Is there an independent disciplinary tribunal, and what disciplinary powers do the relevant regulatory bodies have? What sanctions are available?

Lawyers must follow a set of ethical rules. Any breach of these rules can be punished by the disciplinary authorities of the profession.

## **The Competent Authorities**

The Disciplinary Councils (*juridictions disciplinaires*) are established within the jurisdiction of each Court of Appeal and deal with misconduct and offences committed by the lawyers registered with the local Bars within the jurisdiction of that Court of Appeal.

A Disciplinary Council is presided over by a President or Vice-President and composed of representatives from the Bar Councils within the jurisdiction of the Court of Appeal, former representatives of the Bar Councils and/or former Presidents.

As an exception, the Bar Council of the Paris Bar sits as the Disciplinary Commission of the Paris Bar and is competent to deal with any infringements committed by the lawyers registered with the Paris Bar.

The President is involved in the disciplinary procedure as the prosecuting authority.

## Disciplinary Sanctions

The disciplinary sanctions that can be passed include:

- A warning.
- A reprimand.
- A temporary ban of no more than three years, possibly suspended. The lawyer must refrain from all professional acts and cannot mention their professional title or participate in the activities of the professional bodies to which they belong.
- Removal from the local Bar register or withdrawal of honorary status. A lawyer ceases to belong to their Bar association (and therefore cannot practise as a lawyer) and cannot register with any other local Bar association.
- Prohibition from practising the profession (criminal sanction). When provided for by law, a crime or offence can be punished by the additional penalty of prohibition from practising a professional activity (for example, extortion, fraud, money laundering, embezzlement, forgery).

17. Is indemnity insurance mandatory for practising lawyers? If so, what is the minimum level of cover required and are there any mandatory terms?

Under French law, indemnity insurance is mandatory for practising lawyers and a condition for being registered with a Bar association.

Each local Bar association takes out a collective insurance policy for all its members, which includes:

- Professional indemnity insurance that covers any errors, omissions or negligence committed by a lawyer in the normal course of their duties. The level of cover is EUR4 million per claim. Additional coverage can be individually bought by lawyers from their local Bar association.
- Insurance guaranteeing the representation of a client's funds in the event that a lawyer is unable to hand over or return to its recipient the funds entrusted to them in the context of their professional practice.

Insurance coverage is paid by lawyers' contributions to their local Bar associations.

18. What are the rules on conflicts of interest?

Rules on conflicts of interest are contained in Article 4.1 of the RIN as follows:

- A lawyer must not act as counsel, representative or defence lawyer for more than one client in the same matter if there is a conflict between the interests of the clients or, unless the parties agree, if there is a serious risk of a conflict.
- Unless the parties have agreed otherwise in writing, a lawyer must refrain from dealing with the affairs of all clients concerned where a conflict of interest arises, where there is a risk of a breach of professional secrecy or where there may no longer be complete independence.
- A lawyer cannot take on work for a new client if the confidential information given by a former client might be breached, or if the lawyer's knowledge of the former client's affairs would favour the new client.
- Where lawyers are members of one or more practice structures or facilities, the provisions of the above bullet points apply to them as a whole and to all of their members.
- The same rules apply between the associate lawyer, for their personal files, and the lawyer or the practice structure with which they work.

Article 4.2 of the RIN sets out the situations in which conflicts of interest can arise, including:

- **Advising:** if the lawyer cannot fulfil the duty of giving full, fair and unreserved information to clients without jeopardising the interests of one or more parties, either through the:
  - analysis of the situation at stake;
  - use of the legal means recommended; or
  - achievement of the result sought.
- **Representing and defending:** if assisting several parties would lead the lawyer to adopt a different defence from the one which they would have adopted had they been entrusted with the interests of only one party.

The above circumstances can occur at the time of referral or can arise at any time during the retainer. A serious risk of conflict of interest arises when a

foreseeable change or development makes the lawyer fear the existence of one of the difficulties referred to above.

19. What actions must a lawyer take when a conflict arises?

Where a conflict arises, a lawyer must waive all mandates concerned and refer the case to someone else.

Where a conflict of interest arises during legal proceedings, lawyers must remove themselves from the case or be removed (*récusé*) by the client if they consider that there is a conflict of interest between the client and them.

If a conflict arises in court, the lawyer risks disciplinary sanctions (violation of the principles of prudence, loyalty and honesty). However, no ordinal or judicial authority can remove a lawyer from a case. The President of the Bar has the right and duty to recommend to a lawyer not to present a case or file submissions, but they cannot forbid the lawyer from trying the case and cannot remove them from the case *ex officio*.

20. When can a lawyer represent more than one client in a transaction? Can a lawyer act for either of the clients between whom a conflict arises?

A lawyer can assist one or more parties to draft a transaction (Article 7.1, RIN).

A lawyer can act as sole drafter and counsel for all parties. However, they cannot act or defend the validity, performance or interpretation of the drafting, unless the draft is challenged by a third party. A lawyer who has acted as sole drafter without being counsel for all the parties, or who has participated in its drafting without being the sole drafter, can act or defend the validity, performance or interpretation of the drafting in question. The lawyer should, however, withdraw their assistance if there is a risk that they will become a witness for one or other of the parties, that their professional responsibility can be called into question or that confidentiality may be breached (Article 7.3, RIN).

In other non-litigation proceedings, a lawyer can be appointed by opposing sides (for example, mediation, contractual divorce). However, if these amicable proceedings

evolve into litigation proceedings, the lawyer who assisted both parties will not be able to represent either party (except where both parties give their express consent).

21. To whom should complaints about lawyers' professional conduct be made?

Complaints against lawyers must be sent to the President of the Bar of the lawyer against whom the complaint is directed. The President can be sent a complaint by a client, a fellow lawyer or the prosecutor at the Court of Appeal of the Bar where the lawyer is registered.

In a conflict between two lawyers, the President of the Bar is the only competent authority to arbitrate a:

- Conflict between lawyers in the course of their professional practice.
- Dispute arising from an employment or collaboration contract.
- Dispute over fees or a dispute over the return of documents.

In conflicts between lawyers from several member states, the Council of Bars and Law Societies of Europe (*Conseil des barreaux européens*) (CCBE) will seek an amicable solution.

22. Can lawyers/law firms hold client files, money or property in the event of a dispute about their retainer or fees?

If there are difficulties in recovering fees, lawyers have no guarantee of payment after the provision of their services because:

- The retention of files is strictly forbidden (Article 9.2, RIN). A lawyer is in breach of the principle of loyalty and can risk disciplinary sanctions if they refuse to return their client's files.
- Lawyers must transfer their client's property, whether tangible or not, to the succeeding lawyer (or to the client directly), and to transfer the money held on the client's account in any given situation.

- Lawyers cannot retain on their own authority as fees, a sum that has been given to them by a client for the benefit of a third party, without having received the agreement of that client.

The lawyer to whom the case is referred has a duty to enquire about the sums still owed to the previous lawyer and to endeavour to obtain payment. The new lawyer must inform the President of the Bar if they receive a payment from the client while sums remain due to their predecessor.

## Client Engagement

23. What do client engagement communications typically include? Are there any mandatory provisions that must be included? Are there separate provisions for litigation and non-litigation (transaction or advisory) matters?

Under the Macron Law (*see Question 9*), client engagement communications notably include a fee agreement (*convention d'honoraires*). Any service provided by a lawyer, regardless of its subject matter (litigation or non-litigation), must be preceded by a written agreement from both parties on legal fees.

The form of this agreement is relatively free, but typically includes provisions on the:

- Services provided by the lawyer.
- Fees (including the fee calculation method (hourly rate or global amount), the amount of any fixed fees and of the complementary fees if applicable).
- Taxes.
- Mediation procedure.
- Legal remedies.
- Billing procedure.
- General data protection regulation.

These agreements are designed to provide the client with a clear view of its legal expenses. Throughout the case, lawyers must provide regular information on the ongoing legal fees.

24. Does a legal professional have any on-going obligations in relation to the client?

Lawyers must always comply with the principles of the profession set out in Article 1 of the RIN as mentioned in Question 6.

In addition, lawyers have an ongoing obligation of professional secrecy towards their client, even after they cease to act as a legal representative.

Lawyers also have an ongoing duty to advise their client. In judicial matters, lawyers have a duty to provide preliminary information (for example, risks involved, concerns about the chances of success of a claim) and throughout the procedure (for example, strategy to be adopted, time period to appeal). When drafting documents, this duty to advise is reinforced: a lawyer drafting a document must ensure the formal validity and effectiveness of that document.

25. Can a legal professional refuse to accept a client instruction or cease to act, and in what circumstances?

Lawyers can refuse to carry out a client's instructions or cease to act in some cases.

If a lawyer has reason to suspect that a legal transaction seeks or may result in the commission of an offence, they must immediately try to dissuade the client from going ahead. If the lawyer fails to do so, they must withdraw from the case (Article 1.5, RIN).

The RIN also provides for a "conscience clause". A lawyer working at a law firm can ask the person with whom they are collaborating to be released from an assignment if they consider it contrary to their conscience/personal beliefs or likely to affect their independence (Article 14.3, RIN).

More generally, lawyers can refuse client instructions that could lead to an act that does not meet their ethical obligations and could lead to disciplinary sanctions. Lawyers can also refuse to act against legal advice to avoid being subsequently held professionally liable.

However, this withdrawal must meet certain conditions. Lawyers must notify their clients of the decision within a reasonable timeframe to ensure that the client's interests are protected and/or so that the client can find a substitute if needed. Where legal representation in court is compulsory, a lawyer can only cease to represent the client when the new lawyer takes over the case, to guarantee the client's right to a defence.

26. Do clients have direct access to all lawyers working on their matter?

Nothing prevents clients from having direct access to all lawyers working on their matter.

## **Confidentiality and Legal Professional Privilege**

27. Are lawyers bound by client confidentiality rules?

The professional secrecy of lawyers means a strict prohibition against disclosing any client information. It is of public order, general, absolute and unlimited in time (Article 2.1, RIN).

Professional secrecy covers all matters, whether in advice or litigation, and for any form of information (material or not) (Article 2.2, RIN).

It covers all situations and acts relating to the activities of lawyers, as well as all the confidences received from clients or third parties in relation to the case.

Violation of professional secrecy is severely punished in France and a lawyer will face both criminal and disciplinary sanctions (Article 226-13, French Criminal Code; Articles 183 and 184, Decree No. 91-1197 of 27 November 1991).

28. Are there any exceptions to the client confidentiality rules?

There are very few exceptions, all provided by law. These include:

- Lawyers can breach secrecy if it is strictly necessary for their own defence before any court.
- In the area of anti-money laundering, lawyers must report suspicions (*declaration de soupçons*) to the President of their Bar (*see Question 34*).
- French law permits searches, phone tapping and seizure of correspondence between lawyers and their clients when they are likely to establish proof of the lawyer's involvement in an offence. These acts are carried out on an exceptional basis, strictly regulated and under the control of the President of the Bar.

The President acts as a filter between compliance with professional secrecy and the legal and personal obligations of lawyers.

The law does not require lawyers to report a crime. The non-reporting of a crime is not punishable for persons bound by professional secrecy (Article 434-1, French Criminal Code).

29. Are communications with lawyers protected from disclosure (that is, privileged) in judicial or other proceedings?

Any verbal or written exchange between lawyers and clients are covered by confidentiality, both in judicial and non-judicial proceedings (Article 3.1, RIN). This is an extended principle that covers emails, text messages, facsimiles and telephone correspondence, as well as their attachments.

Communications between lawyers, regardless of the format, are also covered by confidentiality and cannot under any circumstances be produced in court, nor be the subject of a confidentiality waiver (Article 3.1, RIN).

The only communications between lawyers that are not covered by professional secrecy are those marked as "official", equivalent to a procedural document, or that do not refer to any previous confidential writing, statement or material (Article 3.2, RIN).

All judges, and particularly the investigating judge, must comply with the confidentiality of communications and remove a document covered by confidentiality from the proceedings. The confidentiality of communications survives the death of the sender or recipient.

Confidentiality of communications can be lifted in certain cases:

- Confidentiality cannot be imposed on a client (for example, a client can use against its lawyer a communication sent by the lawyer or decide to produce in court a communication exchanged with its lawyers).
- Communications sent or copied to a recipient who is not bound by professional secrecy are not covered by confidentiality.

30. Do in-house lawyers have the same legal professional privilege protection as lawyers in private practice?

In-house lawyers do not exist as such in France. In-house counsel (*juristes*) are employees providing legal assistance to the company they work for. They do not have the same legal professional privilege protection as external lawyers since they do not enjoy the same independence. The regime applicable to French in-house counsel is similar to that which applies to EU in-house counsel in competition matters (*Akzo Nobel Chemicals Ltd v European Commission*) (C-550/07).

Creating a separate class of in-house lawyer has been a recurring theme for many years in France and led to the drafting of a report by MP Gauvain in June 2019 on "restoring the sovereignty of France and Europe and protecting our companies from extraterritorial laws and measures" (*Gauvain Report*) (in French only).

The Gauvain Report noted that, among the major economic states, France is currently one of the only countries where the legal opinions of its in-house counsel are not protected, which results in French companies being vulnerable to extra-territorial administrative and judicial proceedings.

The Gauvain Report suggested protecting the internal legal opinions of companies. To this end, the report recommended creating an official status of in-house lawyer (*avocat en entreprise*). A proposed Bill (No. 4091) intended to create in-house lawyer status, with communications and opinions protected by legal privilege, was withdrawn in March 2021 due to strong opposition from representatives of the legal profession.

According to the *Estates General of the justice system working group's report published on 8 July 2022* and in particular *its annex 15 on commercial and economic justice*, the French legal system should offer better protection to internal legal opinions of companies. The idea would be to ensure that these legal opinions remain confidential, which would prevent them from being used in judicial proceedings.

## Fees

31. How are legal fees regulated? Is there a tariff system?

There is no regulation or tariff system for legal fees. Fees are freely fixed subject to the client's agreement. A written fee agreement is mandatory (*see Question 23 and Question 32*) and must accord with lawyers' ethical principles.

Several methods of determination for fees are commonly used, including:

- Flat rate (fixed amount).
- Task-based fee.
- Time-based fee (hourly rate).
- Complementary result fee based on the outcome of the procedure.

The RIN provides elements of reference to set legal fees, such as the time spent on the case and the qualifications, seniority and experience or specialisation of the lawyer (*Article 11.2, RIN*).

The only prohibition is an agreement in which a lawyer is paid only if they succeed (*Article 11.3, RIN*). A complementary fee for results is allowed.

32. What types of fee agreements are most commonly used for litigation and non-litigation matters? What formal requirements exist for fee agreements?

See *Question 23* and *Question 31*

## Client Money

### 33. How is the holding of client funds regulated?

Lawyers are prohibited from handling their client's monies directly through their own bank account (for example, to pay their opponent). When they need to handle monies, they must go through an independent fund set up by their Bar association.

Each local Bar has an autonomous fund to deal with its members' monetary deposits, declared as an association and existing under its responsibility. These funds are called lawyers' pecuniary payment funds (*caisses de règlement pécuniaires des avocats*) (CARPA) and are used to regulate every client's transfer of funds to its lawyers (except for the payment of fees).

Every law firm has a CARPA account. For each new case, a sub-account is created on behalf of the client and any fund transfer (from or to the client) must transit through the CARPA sub-account.

The use of the CARPA is mandatory. Lawyers are prohibited from receiving a power of attorney to handle the funds deposited in an account opened in the name of their client (or a third party) other than a CARPA account. It provides security and control over the client's funds and guarantees efficient transfers.

### 34. Are there rules on money laundering affecting the legal profession? Is there any overriding body in your jurisdiction that provides anti-money laundering (AML) supervision in the legal sector?

Lawyers have a twofold obligation in the anti-money laundering (AML) process:

- To report suspicions (*declaration de soupçons*) to the President of their Bar for it to inform Tracfin, a French intelligence service responsible for AML.
- To respond to requests for information sent by Tracfin.

This obligation to report suspicions requires lawyers to spontaneously report when, in the course of their professional activity, they participate in the following acts in the name of, or on behalf of, their client:

- Any financial or real estate transaction.
- Acting as trustees.
- Assisting their client in certain operations (for example, purchase and sale of real estate and business assets, opening bank accounts, organising the

contributions necessary for the creation of companies, constituting or managing endowment funds).

CARPAs, on the other hand, have a duty to ensure that a movement of funds through their intermediary is not a money-laundering operation. For this purpose, CARPAs are entitled to question a lawyer about the nature of a transaction, the identity of the client and the origin of the funds used.

Since December 2016, Tracfin can request information from CARPAs about the amount, origin and destination of funds, bills or securities deposited by lawyers, the identity of the lawyer concerned and an indication of the nature of the case that it has registered. CARPAs' answers to these information requests must go through the Bar President before being forwarded to Tracfin.

Under Order No. 2020-115 of 12 February 2020 transposing the Fifth Anti-money Laundering Directive ((EU) 2018/843), CARPAs have the same obligation to report suspicions as lawyers.

## Notaries

35. Are notaries required for share purchases or transfers, real estate purchases or leases, or company formation?

Notaries must intervene in real estate transactions, prenuptial agreements, divorces and inheritance procedures.

Their intervention is frequent but optional for leases, company formations, share purchases or transfers. As ministerial officers, their assistance may be useful to secure the authenticity of an act.

36. Are notary fees fixed or a percentage of the transaction value?

Notary fees include:

- Taxes (around 80% of the fees) the notary collects for the state and local authorities on behalf of their client. They vary according to the nature of the act and the nature of the property.
- Disbursements (10% of the costs) paid by the notary on behalf of their client and used to remunerate various parties involved and/or to pay for the cost of the various documents, as well as to pay for exceptional costs incurred at the client's request (for example, certain travel costs).
- The notary's remuneration (10% of the costs) (salary, remuneration (*émoluments*), fees).

The notary's remuneration is strictly regulated for specific acts (real estate purchases, inheritance matters, prenuptial agreements, donations) and determined at their own convenience for other acts (legal drafting of a corporation statute and so on). It is typically a percentage of the transaction value.

37. Can notaries work within law firms?

Notaries can work in notary offices, which are organised as Professional Partnership (*Société Civile Professionnelle*) (SCP), Independent Professional Company (*Société d'Exercice Libéral*) (SEL) or Ordinary Partnership (*Société d'Exercice de Droit Commun*) (SEDC).

They can also work within law firms structured as a multi-professional practice (*see Question 9*) but this type of practice is uncommon for notaries who favour a practice in notary offices.

38. Is there a national regulatory body for notaries?

Since 1945, the profession has been regulated by the Superior Council of Notaries (*Conseil Supérieur du Notariat*), which represents and regulates the whole profession.

In addition, local councils and chambers ensure the efficiency of notaries' representation at a local level. Those chambers and councils have disciplinary powers.

Their organisation is similar to that of lawyers.

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