

**CARPA
and
THE PREVENTION OF MONEY LAUNDERING**

I.- Presentation of Carpa :

Until 1954, the handling of funds was carried out by "avoués" i.e. approximately, solicitors , in order to leave barristers free from accounting concerns and to be able to fully concentrate on their defence work.

However, post-war constraints and development aimed at exempting certain jurisdictions from having recourse to "avoués" led barristers to become involved in it.

Handling funds on behalf of other persons requires procedures and rules, the taking out of insurance and the implementation of inspection and audits of the accounts concerned.

The decree of April 10, 1954 laid down the bases for money handling by barristers. It was amended by Decree n° 56-1232 of November 30, 1956, which entrusted the President of the Bar with checking and auditing these accounts. For this purpose the State Prosecutor received an annual report.

Article 48 of said decree stipulated as follows : “ the internal regulations (of the Bar) may authorise barristers, where they legally represent the parties, without the intervention of an "avoué", to carry out only those financial payments directly related to the proceedings of which they are in charge ”.

The abovementioned decree also stated that the barrister, making use of the authorisation granted under the internal rules and regulations, must have a bank or post-office account opened in his/her name, to be used solely for professional operations.

These provisions led some member of the Paris bar, who had become aware of the importance of facilitating the handling of money by barristers, to examine the possibility of a system allowing for

- representation of the money with respect to the client, in particular through the taking out of all requisite insurance,
- the absence of supplementary constraints on firms,
- reflection on the possibilities of investing the volume of funds thus constituted,

- the implementation of services for clients, the justice system and/or in favour of the community,
- ways and means of checking money deposited, thus ensuring inspection of the regularity of operations carried out through personalisation on a case by case basis, given concrete shape by the opening of an account in the name of each barrister, who would be delegated by the President of the Bar to pay out sums of money corresponding to the amounts held on the sub-account.

This was how the idea of setting up a Fund having a separate legal status from the Bar came into being.

In 1957, the "Caisse des règlements pécuniaires des avocats à la Cour d'appel de Paris" (CARPA) - Fund for financial payments by Paris Appeal Court barristers - was set up.

Act n° 71-1130 of December 31, 1971, promulgating the merger of the professions of barrister and "avoué" working with the "Tribunaux de Grande Instance" - High Courts - accelerated the development of the Carpa funds.

The enforcement decree of August 25, 1972, provided for the manner in which the Carpa funds would function, but left barristers with the possibility, through the article known as " 42 ", of not adhering to them, thus keeping the possibility of opening a specific account in their own name in the accounts of a bank, in accordance with terms and conditions similar to those provided for in the decree of November 30, 1956.

Numerous Bars decided to set up a Carpa fund, and convened in a liaison committee which became the "Union nationale des caisses d'avocats" - the National Union of barristers' funds - a forum for discussion and exchange of experience, and representation before the public authorities, in particular to propose the repeal, a few years later, of " article 42 " which opened up possibilities for indiscretion in the personal management of money belonging to third parties by certain barristers.

Act n° 85-99 of January 25, 1985, and its enforcement decree of March 13, 1986, gave official recognition to Carpa, while repealing article 42 and inserting three articles, still topical, which strengthened its role.

Article 36 : The Carpa fund provided for under article 53 of the Act of December 31, 1971 abovementioned shall be set up pursuant to a decision of the Bar Council, or, where the Fund is common to several Bars, by a joint decision of the Bar Councils and the Bars in question.

Article 40 : Money, bills and/or securities as mentioned in article 36, received by barristers, shall be deposited on an account opened in the name of the "Caisse des règlements pécuniaires des avocats" [Fund for financial payments by barristers] opened in the accounts of a bank or the "Caisse des Dépôts et Consignations" bank.

Entries concerning each barrister's business shall be set out in an individual sub-account.

Article 41 : Barristers may only carry out financial payments as mentioned in article 36 through the Fund provided for in the same article.

The fundamental principles had been laid down, and these innovatory articles brought satisfaction, except for one or two provisions.

Act n° 90-1259 of December 31, 1990, amending the Act of December 31, 1971 creating the new profession of barrister, pursuant to the merger of the professions of barrister and "conseil juridique" - legal adviser - maintained article 53-9.

Its enforcement decree of November 27, 1991 did not bring about any great changes with respect to existing legislation.

However pursuant to a misappropriation of funds in 1994, the profession proposed an amendment to the decree of November 27, 1991, to strengthen inspection and audit, in particular :

- by setting up *prior* inspection,
- by setting up a Carpa inspection and audit Committee,
- by defining a specific assignment to be entrusted to auditors,
- by completing the provisions of the decree by an order specifying the practical terms and conditions for the operation of Carpa,
- by allowing the Carpa inspection and audit Committee to lay down standards,
- by setting up a body of inspectors.

These provisions, made official by Decree n° 96-610 and its enforcement order of July 5, 1996, attained their goal, as a significant fall in claim rates was recorded.

Today, Carpa can be presented as a tool allowing for the representation of funds handled by a barrister, through the setting up of a satisfactory inspection system by means of, on the one hand computer audits and on the other, audits, of the documents used in each one of them.

Thus it may be a solution to the problem posed in the context of the prevention of money laundering.

II. Carpa and the prevention of money laundering operations :

Under article 53-9 of the abovementioned Act, barristers must deposit funds, bills or securities they receive for their clients' accounts.

Article 240 of Decree n° 91-1197 of November 27, 1991, amended, provides that “ *Funds, bills and/or securities as mentioned in article 53-9 of the Act of December 31, 1971 abovementioned, received by barristers, shall be deposited on an account opened in the name of the "Caisse des règlements pécuniaires des avocats" [Fund for financial payments by barristers] opened in the accounts of a bank or the "Caisse des Dépôts et Consignations" bank.*

Article 240-1 of the abovementioned decree specifies that “ *Entries concerning the business of each barrister are set out in an individual account opened in his/her name.*

Each individual account is itself broken down into as many sub-accounts as there are business matters handled by the barrister.

Any movement of funds between sub-accounts is forbidden, except with the special, prior, authorisation of the President of the Fund, setting out the reasons.

No sub-account shall show a debit balance ”.

Article 241 of said decree completes as follows, stating that “ *no funds may be withdrawn from the account mentioned in article 240-1 without prior inspection and audit by the "Caisse des règlements pécuniaires des avocats", carried out in accordance with the terms and conditions set out and defined in the order mentioned in article 241-1.*

No deduction of fees in favour of the barrister may be made without the client's written prior permission ”.

The order of July 5, 1996 which appeared on the same day as the amending decree of November 27, 1991 states in its article 8, that “ *Carpa must be in a position to inspect and audit, in particular during the operation abovementioned in article 241 of the decree of November 27, 1991, the following items i.e.*

- 1. the bank and accounting position of the business matters sub-accounts,*
- 2. the name and nature of the business matters,*
- 3. the origin of the funds credited on the business matters sub-accounts,*
- 4. the identities of the beneficiaries of payments,*
- 5. business matters where the amount of the credits is higher than the insurance ceiling covering representation of the funds,*
- 6. supporting proof of the link between the financial payments made by barristers and legal or judicial acts accomplished by the latter when carrying out their professional duties,*
- 7. the absence of movement on a business matter sub-account ”.*

All of these items constitute an operating process allowing the President of the Bar, the President of the Carpa, or their delegates, to check the lawful origin of the funds, while

leaving the barrister in full control of his/her files, and any initiatives to be taken, in particular with regard to payments (because, under the provisions of article 11, he/she has power of signature for his/her individual sub-accounts in his/her capacity of attorney of the President of Carpa).

In fact, the Bar can, at any time, order inspection and audit, or obtain any relevant document allowing it to check that the operation is above board or moreover, to order any enquiry which may be deemed necessary, in the circumstances under ordinal inspection rules and case-law.

A. Points 1, 5 and 7 of article 8 of the abovementioned order :

These arise directly from computing.

B. Points 2 and 4 of article 8 of the abovementioned order :

The name and nature of the business matters, and the identify of the beneficiary (ies), by means of the information shown on the list which is forwarded to Carpa, make it possible to,

- enter the business matter in the computing system,
- ensure that other business matters have not already been entered under the same name
- check the nature of the business matters thus making it possible, with respect to the barrister's specialisation and/or the type of business usually handled, to detect any difficulties, if the case arises.

During inspection and audit of firms' accounts, the President of the Bar's delegates may carry out any cross-referencing they see fit.

C. Point 3 of article 8 of the abovementioned order :

Several hypotheses may arise concerning the origin of funds.

Cheques or bank transfers on the territory of Metropolitan France :

If deposits are made by means of cheques drawn on a banking institution resident in France, it may be deemed that the provisions of the Tracfin Act, binding on banks, have allowed for checking of the funds upstream.

Concerning transfers, if they are made from an institution resident in France, the same provisions as those set out above may be deemed apply.

This does not mean that inspection and audits may not be carried out on a discretionary basis.

“ Outside ” cheques or transfers :

In this case, it is necessary to carry out an in-depth investigation for each one of the files.

It has been stipulated to the presidents of the Bar and of Carpa that they must take all steps they see fit to check the origins of the funds, and the link with the business matter opened by the barrister ; all information must be systematically communicated to check the lawful origin of the funds.

Deposit of cash :

Article 230 of the abovementioned decree provides that barristers can only handle funds in cash for up to 1,000 FF., and that, consequently, they cannot receive sums greater than that amount.

For deposits of a greater amount which can only be carried out with respect to the managing bank by the debtor client, the Carpa Inspection and Audit Commission states that a special account must be opened.

These amounts cannot only be accepted by the banking institution after agreement by the President of the Bar, and after investigations have been carried out to ensure the lawful nature of the funds deposited.

The deposit is then debited by transfer from the special account to the funds-handling account, in order to comply with the regulatory provisions set out earlier.

D. Point 6 of article 8 of the abovementioned order :

Justification of the financial payment with respect to the legal act must be determined by the measures specific to each Bar.

This may mean systematic inspection and audit beyond a certain amount, or by spot checks, or where suspicion exists with respect to the operation.

III. What tools are used for what inspections ?

Processing of operations for the handling of funds require specific computer tools.

This may mean :

- either, a software developed by one or several Carpa funds,
- or a tool made available to them by their banking institution,
- or, for 160 Carpa funds, the software which Unca has taken over, for follow-up purposes, developing it since 1996, in order to implement the computer-language translation of the regulatory provisions arising from the abovementioned decree and order, and to facilitate maintenance and assistance to the Carpa funds.

The latter software is in the process of being reconstituted for the purpose of incorporating new standards in the computing field, and using the various channels of communication necessary for exchange, while setting up, in the long term, an expert system which will make it possible to detect, with even greater efficiency, using a body of information, any difficulties which may be encountered.

Although it plays a vital role, the computer tool must be completed by warnings given to the personnel of Carpa and investigations which may be carried out by the Presidents of the Bar, and Carpa, or their delegates informed, in particular by Unca, of schemes imagined by people who wish to carry out money laundering.

Article 17-9 of the Act of December 31, 1971, provides for inspection and auditing of the accounts of lawyers' firms.

With respect to this point, those delegated to carry out these inspection and audit procedures undertake to ensure that the money-handling operations carried out by barristers are properly accomplished.

Almost all of the Bars have implemented edition of the letter-cheque by Carpa's computer system, over and above prior inspection and audit of the file.

This procedure possesses the following advantages i.e.

- facilitating the follow-up of the payment schedule by the barrister, making it possible, on expiry of the successful conclusion time-limit provided for under the abovementioned decree, to make available to the beneficiaries funds which are now available. Thus any fraudulent use of a cheque book which may be in the possession of an indiscreet barrister is avoided,
- ensuring the beneficiaries a guarantee that funds represented by Carpa cheques are covered. Indeed, a circular dated July 28, 1978, from the French Tax Authority, has granted them the status of certified cheques,

- guaranteeing the value-of the cheque which, after expiry of the successful conclusion time-limit, cannot be refused, in accordance with the agreements accepted by the banks (cf. above).

This guarantee is practically unique in France.

Thus, the creditor is sure of being paid, and no refusal whatsoever of funds deposited by the debtor may be asserted against him/her.

Furthermore, the unavailability time-limit means, if necessary, that the investigations and audits requested can be carried out.

IV. What are the client's guarantees ?

Statutory and regulatory measures provide for the taking out of a policy “ *in favour of whomsoever is concerned* ”.

The amendments made under the Decree of July 5, 1996, and the negotiation of a group contract to which almost all of the Carpa funds adhere, has led to a constant fall in claims.

Whereas the number of barristers has more than doubled since the merger arising from the Act of December 31, 1991 (barristers, former legal advisers) the claim rate has been divided by five, that is to say, a ratio of 1 to 10.

Premiums have been brought down from 2,500 FF.. per barrister for coverage most often limited to 5 or 10 million French Francs, to 1,080 FF., for 30 million FF./barrister/year/claim in 1998, to 900 FF.. in 1999, and, during the 2000 business year, new coverage should be implemented.

The client is thus uniformly covered for the entire territory by a policy taken out by each Carpa.

V. The role of the Commission in the inspection and audit of Carpa funds :

The decree of July 5, 1996, inserted an article 241-3 in the decree of November 27, 1991, setting up the Carpa inspection and audit Commission.

This Commission, made up of the President of the French National Council of Bars, the President of the Bar of barristers with the Appeal Court of Paris, the President of the Conference of Bar Presidents, the President of the National Union of barristers' funds, enjoys the widest powers, including that of sanction, to ensure the most efficient operation possible of the Carpa funds.

The Commission receives the special report drawn up by the auditors, as provided for under article 241-2.

This assignment consisting in the inspection and audit of procedures, entrusted to the auditors, makes it possible to detect any difficulties within the framework of the organisation which could lead either to malfunction, or to any shortcomings whatsoever.

After reading these reports and/or any other information they may obtain, the Commission may assign delegate barristers for the purpose of inspecting and auditing the Carpa funds, under article 241-4 of the abovementioned decree.

Thus, 51 inspections have already been carried out, and 37 supplementary ones will be during the 2000 business year.

The final report is forwarded to the State Prosecutor with the Appeal Court of the place where the Carpa fund has its registered office.

In the case of difficulty, suggestions may be sent to the President of the Bar or indeed injunctions, and, in the case of default on the part of the management bodies, or absence of the means stipulated under article 237-1 of the abovementioned decree, the decision to place the fund in receivership may be decided ; this was the case during the 1999 business year for one Carpa fund ; three others were required to merge with another fund. These mergers are in force today.

VI. Promotion of the Carpa' funds :

Pursuant to decree n° 96-478 of May 31, 1996, the quantity surveyor profession set up, a few years ago, a similar system, with a National fund.

The barrister profession and its technical body, the "Union nationale des caisses d'avocats" - the national union of barristers' funds - wish to make foreign Bars and the European, indeed world-wide, institutions aware of the Carpa concept, and its contribution to security.

Various assignments have been set up with European Bars to present the system ; some of them wish to implement it over the years 2000/2001.

The desire to assist them with the implementation of a system, taking account of local legislation, their organisation, and the functioning of financial operations, should be confirmed.

Members of the DG XV of the Council of Europe have participated in the general meeting of Unca which convened in June 1999, during which representatives of the Minister

of Justice, Keeper of the Seals, were present, to remind those present of all of the work accomplished by the Carpa in France funds, and the role which they could play in the future.

The representatives of the Council of Europe expressed their interest in the presentation which was given, and the idea that the Carpa system could be promoted within the European Union, within the framework of the announced extension of Directive 91/308/EEC of the Council, of June 10, 1991, concerning the prevention of the use of the financial system for money-laundering purposes.

The procedures set out and described above demonstrate the early awareness on the part of the barrister profession of the necessity for inspection and audit procedures of operations carried out by its members which, today, are capable of ensuring, under the same conditions, prevention of money-laundering operations.

Taking account of the fact that barristers belong to the professions, and of their obligation to abide by professional confidentiality, which is a guarantee of democracy, it has been shown that the Carpa system can provide a satisfactory response to requirements expressed in this area.

For this purpose, the decree of July 5, 1996, and its enforcement decree, provide concrete solutions, which are easy to implement, and which ensure full guarantees.