

The Carpa, a universal concept for a regulated profession

I. The context

States are confronted with the paradox of the battle they are conducting against money laundering, which is corrupting economies, while observing democratic rules and public liberties.

To this end, States are progressively reinforcing their laws in the area of prevention of money laundering, by taking part in the process of controlling various professions.

Thus, in a world-wide context, European Directives combating money laundering extend to the legal professions, including

attorneys, the obligation to declare any suspicions they have for a determined perimeter of their activities.

Taking into account the clear contradictions raised by the requirements, on the one hand, of the battle against laundering and, on the other, the protection of an attorney's professional secrecy with regard to his client, which is an essential principle in democratic countries, the Carpa (Caisse de règlements par les avocats (fund for payments by attorneys) is a solution that reconciles that which cannot be reconciled.

II. The concept of the Carpa

The Carpa is a concept based on the following principles:

- being adapted to a regulated profession, such as the profession of attorney, in compliance with its specificities,
- remaining under the responsibility of a professional or State body if no Bar exists,
- being mandatory for professionals,
- defining the legal rules for the profession and practical, clear and operational practices,
- ensuring a control accompanied by gradual sanctions that are adapted in the case of violation or breach.

The concept of the Carpa may be transposed and adapted for any country that desires it.

III. The role of the Carpa

The Carpa receives all of the flows of funds handled by attorneys in connection with their professional activity.

Thus, each attorney must be able to justify, by means of an act, all sums that he deposits with the Carpa.

The Carpa ensures the coherency of the operation, both by the origin of the funds and their destination, and by the existence of the legal or judicial connection between the act and the financial operation.

The control may be set above a threshold, organised by way of sampling, but systematic for any operation coming from or destined for a third country other than where the attorney practices.

In summary, the movement of money must be able to answer the following questions:

- From whom?
- For whom?
- Why?

Any refusal by an attorney to reply to such questions or any anomaly in the transmitted information will lead the Carpa, following initial verifications, to submit the matter to the ethical authority of the country which, in taking the case, investigates and makes the most appropriate decisions vis a vis the concerned professional.

IV. The relation of the Carpa with financial institutions

The Carpa is neither a bank nor a financial establishment.

For the deposit of funds received from attorneys on behalf of their clients, the Carpa opens a bank account in a financial establishment, which is the only account into which the funds are deposited.

Consequently, the Carpa controls presented in this document are specific to the profession of attorney and are not substituted for those performed by banks in connection with the combat against money laundering.

V. The accounting organization of the Carpa

Each attorney or structure through which attorneys practice, has one account only opened in the accounting of the Carpa.

This account is divided for accounting purposes into as many files as there are cases for which the attorney has received funds in the interest of his clients.

In order to suitably ensure this management and compliance with the regulatory provisions attached to the funds operations carried out by attorneys, the Carpa is equipped with adapted computer software enabling it to implement alerts and automated verifications.

The Carpa thus organizes the keeping of the accounting of the funds of attorneys' clients and ensures the individualized management of cases, thereby avoiding any amalgamation or off-setting of the funds that have been received.

VI. The connection between the attorney and the Carpa

As soon as he begins his professional practice, an attorney has a Carpa account.

The attorney deposits all the funds that he receives from his clients with the Carpa when they are associated with a professional act.

The funds are accompanied by a document enabling the case to be identified.

If a bank transfer is involved, the attorney communicates the particulars of the Carpa account and the references of the case to his client (or the opposing party).

If the client has no means of payment other than cash, he goes to the bank, which carries out the verifications of the deposit and the identity of the client under the conditions provided for by the laws applicable to banks concerning the prevention of money laundering in the country.

The funds are credited to an intermediary account and are not transferred to the Carpa bank account until the consent of the competent Carpa manager is received. The said manager shall have verified, vis a vis the attorney, the reason for the cash deposit.

The Carpa carries out the controls imposed on it by the regulations of the country of adoption. Even if the attorney remains the manager of his file, the Carpa may, nevertheless, block any operation for which it does not have sufficient justification.

In the difficulties persists, the Carpa will submit the matter to the authority entrusted with ensuring compliance by the attorney with ethics and discipline.

After the controls have been carried out the Carpa will issue payment in favor of the beneficiaries covered by the act associated with the deposit of the funds.

The attorney remains the principal for the transmission of the funds and maintains the signature of the means of payment issued by the Carpa if a check or its equivalent is involved.

VII. Security for the attorney's client

The Carpa concept allows for conciliating observance of laws connected to the fight against money laundering and the specific obligations of attorneys, such as observance of professional secrecy. It also, however, offers security for the client.

The client knows that all deposits of funds that it remits to its attorney are credited to an individualized account opened in the name of its case in the Carpa's accounting.

The Carpa takes out sufficient insurance in order to guarantee against any possible bankruptcy; the mutual nature of the system enables the cost of the corresponding premium to be decreased in significant proportions.

The controls carried out during the time in which the funds are deposited with the Carpa ensure the effective payment of the sums involved and therefore guarantee that the payment that is also issued under its control is firm and final, subject to the laws of the adopting country.

Clients, whether debtors or creditors, can be certain that the details of their bank accounts are not communicated to the other party.

The Carpa may, nevertheless, be subject to precise interrogations by police or judicial authorities concerning files cited by name in strict compliance with the law governing the rules applicable to the profession of attorney.

VIII. The Carpa and freedom of establishment

In today's globalized economy, the adoption of a "Carpa" mechanism by the vast majority of countries would secure financial flows between attorneys and the beneficiaries that they represent. The institution of a Carpa ensures that financial flows may be traced.

The cross-border institution of the Carpa system is clearly a means of promoting activities of attorneys by thus enabling them to justify secured, controlled and efficient means of transfer, whilst maintaining their professional prerogatives.

IX. Remuneration of the funds deposited with the Carpa

The sums deposited with the Carpa do not stay in their account for more than a few days.

A client is remunerated only in the event that the funds remain deposited for a long period of time. Accordingly, apart from in special situations where the amount of the deposit is particularly high and the funds remain on deposit with the Carpa for several weeks, no remuneration is due unless there exists a legal obligation in the country of adoption.

X. Financing of the Carpa

The system self-finances its operating costs due to the remuneration of the deposited funds; the individual remuneration of such funds is low, but due to the mass they constitute the receipt of the financial proceeds is sufficient to cover charges.

The financial proceeds received overall may even provide income that may be used for the benefit of the person subject to law and in the general interest of the profession of attorney, the justice system, its actions, as well as its promotion.

XI. The control of the Carpa

The level of control is determined by the country of adoption and the contingencies of the local Bar.

Whether this be the ethical and disciplinary authority of the profession of the adopting country, a national audit commission, judicial authorities, or even outside professionals such as a statutory auditor, all levels may be considered.

In addition to the permanent controls that the data processing system enables to be automated to a great extent, a periodically established operating report allows for ensuring compliance by the Carpa with the rules imposed on it and the procedures that it must implement; this report may be addressed to the highest authorities of the adopting country.

XII. Adapted management tools

The experience acquired in France during fifty years of existence, then the generalization of Carpas to all of the Bars, has allowed for designing tools, in particular data processing tools, for the management and control of the Carpas, which are effective and adapted, and which take into account the specificities of the profession of attorney, and its requirements for security and efficiency in its relations with clients.

In this very specific area the technical skills that have been acquired are precious and enable other developments to be made for the benefit of attorneys.

XIII. Possibilities of related services

The qualities of the Carpa system that have been recognized by the public authorities enable additional missions to be entrusted to the profession of attorney, with the consent of the representative bodies of such profession, such as in the area of financial escrow or management of legal aid.

The Carpa : a triple winner

- States are ensured of the implementation of procedures and controls that are adapted to a regulated profession in the combat against laundering,
- clients are guaranteed for the money that they remit to their attorney,
- attorneys and their representative bodies are ensured that professional secrecy is protected, that professional ethics are complied with and independence is protected.

The Carpa concept is an integral part of the vigilance mechanisms intended to combat money laundering.

Its adoption should enable the profession of attorney to benefit from a presumption of legality.

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