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Foreign Lawyers in France and New York

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Three years ago France adopted rules to regulate the practice of foreign lawyers, and last year New York State adopted rules for the licensing of legal consultants from foreign countries. The following discussion examines and compares certain features of these new rules.

I. France[1]

Background

The inscription in *Madame Bovary* to Flaubert's lawyer pays tribute not to his sound advice but to his "magnificent pleading," his "eloquence" and "devotion." Historically, the *avocat* was a courtroom advocate. Until 1954, he was required to be a single practitioner, and counseling in France on business and tax law was done in major part by unregulated practitioners who were not *avocats*. Since then, *avocats* have been permitted to associate in films and have become increasingly involved in legal counseling.

In 1972, the separate profession of legal counseling was officially recognized in France—as a result of Law No. 71-1130, enacted on the last day of 1971. It provides for three categories of lawyers. First, there is the *avocat,* who has a monopoly of practice before the most important courts, who is authorized to give legal advice, and who is governed by an independent bar.[2] Second, there is the *notaire,* who has a monopoly of conveyancing, estate work and the execution of certain formal instruments, and who is governed in part by an independent professional association and in part by the Ministry of Justice. Third, there is the *conseil juridique* (legal counsellor), who is authorized to give legal advice

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[1]The author is grateful for the comments of Richard H. Moore, Member of the New York and Connecticut Bars and Member of the Governing Council of the French National Association of *Conseils Juridiques.*

[2]In 1972, professional specialists for particular kinds of court work, the avoué and agréé, were merged into the profession of *avocat*.

and to prepare legal instruments, and who is governed by the Ministry of Justice; he is not accorded a monopoly of any aspect of the practice of law.

Outside these three categories, there are advisors who do not qualify as *avocats, notaires* or *conseils juridiques* but who are nevertheless permitted to give legal advice and to prepare legal instruments; they may neither call themselves by, nor use a title susceptible of confusion with, any of the foregoing titles. These advisors include house counsel, labor union or trade association lawyers, real estate agents, accountants and other unregistered practitioners.

Foreign Lawyers in France

For years Paris has been a major international legal center where many foreign lawyers and law firms have offices. Not only has France traditionally welcomed foreigners who might enhance her prestige and influence, but also (as mentioned above) legal counseling as such was until recently an unregulated profession in France. On the other hand, admission to the French Bar, that is, admission to practice as an *avocat*, has been and remains restricted to French nationals.[3] Similarly, only Frenchmen can be appointed as *notaires*. Thus, at present as in the past, a foreign lawyer in France can practice only as a legal counsellor.

French Law No. 71-1130 and the implementing decrees and circulars published in 1972 contain several provisions which are pertinent to the regulation of a foreign lawyer's practice.[4] The effect of these provisions is to create five different levels of treatment for foreign lawyers and law firms, based on the countries they come from and whether or not they were practicing in France prior to July 1, 1971. These five levels of treatment subsume different groups of foreign lawyers and law firms as outlined below.

1. The same treatment accorded to a French *conseil juridique* will be accorded to these foreign individuals and firms if they qualify as *conseils juridiques*:

- an individual lawyer who is either a national of one of the other Member States of the European Community[5] or a national of a country that accords reciprocal treatment to French lawyers;
- an individual foreign lawyer of any nationality who was practicing in France prior to July 1, 1971;
- a law firm which is from either another Member State of the European Community or a country according reciprocal treatment to French lawyers and which was practicing in France prior to July 1, 1971.

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[3]Recent decisions of the European Court of Justice may require France to permit nationals of other Member States of the European Community to gain admission to the French Bar. See esp. Reyners v. Belgium, Case 2/74 (June 21, 1974).

[4]See esp. Title II, Chapter I of the Law and Title IV, Chapter I, Section III of Decree No. 72-670 of July 13, 1972. See generally *Professions Judiciaries et Juridiques—Réforme*, Brochure No. 1388, Journaux Officiels (Paris 1972).

[5]Belgium, Denmark, Germany (West), Ireland, Italy, Luxembourg, Netherlands, United Kingdom.

2. Until December 31, 1976, the same treatment accorded to a French *conseil juridique* will be accorded to foreign law firms which are neither from Member States of the European Community nor from countries according reciprocal treatment to French lawyers if these firms were practicing in France prior to July 1, 1971 and if they qualify as *conseils juridiques*. After December 31, 1976, in its discretion the French Government may limit these firms' activities in France to a legal counseling practice involving principally foreign and international law.

3. The foreign individual lawyer who qualifies as a *conseil juridique*, but who was not practicing in France prior to July 1, 1971 and who is not a national of a Member State of the European Community or a national of a country according reciprocal treatment to French lawyers, is authorized to engage in France only in a legal counseling practice involving principally foreign and international law.

4. The foreign law firm which was not practicing in France prior to July 1, 1971 (even if it is from a Member State of the European Community or from a country according reciprocal treatment to French lawyers) cannot, as a foreign firm, qualify as a *counseil juridique*, because, after that date, the only firms that can register as *counseils juridiques* are French professional companies all of whose members, within and outside France, qualify as *conseils juridiques*.

5. The right not to register as a *conseil juridique*, but to give legal advice and prepare legal instruments in France under a legitimate foreign legal title, is available to:

- an individual lawyer who was practicing in France prior to July 1, 1971, or who is either a national of another Member State of the European Community or a national of a country that accords reciprocal treatment to French lawyers;
- a law firm which is from either another Member State of the European Community or from a country according reciprocal treatment to French lawyers.[6]

Qualification as a Conseil Juridique

To register as a *conseil juridique* in France, a foreign lawyer must have graduated from a recognized law school (ordinarily, a diploma from a law school accredited in the United States will be recognized in France as equivalent to a diploma from a French law school), and the foreign lawyer must have practiced for a total of at least three years of which 18 months must have been practice in France with a qualified *conseil juridique*. An office within the Ministry of Justice investigates the professional qualifications of the applicant, requires satisfactory evidence of his good character, and looks into his financial and general background. A foreign firm registering as a *conseil juridique* must supply additional information, and all of its members in France must register as

[6]It should also be noted that the Bars of Paris and England have been considering an agreement which would permit English solicitors to practice in Paris in association with *avocats*.

conseils juridiques. (Only foreign firms which were practicing in France prior to July 1, 1971 can, as firms, register as *conseils juridiques.*) Each *conseil juridique* is required to carry malpractice insurance and is further required to provide a guaranty in an approved form in an amount not less than the amount of any clients' funds from time to time in the custody of the *conseil juridique.*

Reciprocity; Advising on French Law

For a lawyer or firm from a country which, like the United States, is not a Member State of the European Community, it is important to determine whether that country accords reciprocal treatment to French lawyers. Under Law 71-1130, reciprocal treatment exists if that country permits French lawyers to conduct there the same legal practice that lawyers from that country propose to conduct in France. More concretely, reciprocal treatment exists if the foreign country permits a French lawyer to conduct in that country the practice which a French *conseil juridique* is authorized to conduct in France. Hence, a French layer in that country, to be considered to receive reciprocal treatment, must be permitted to render legal advice and, generally, to prepare legal instruments, but may be prohibited from practicing in the more important courts and from engaging in the type of activity associated with French notarial practice (*e.g.*, conveyancing and estate work).

A key aspect of reciprocal treatment is freedom to advise on the law of the host country. If a legal counselor in France is from a country which is deemed to accord reciprocal treatment to French lawyers, then, under Law 71-1130, he is free to advise on French law; more precisely, his practice is not required to involve principally foreign and international law. Although the reasoning is circular, it follows that, for a country to be deemed to accord reciprocal treatment to French lawyers in that country, it must not require their practice to involve principally foreign and international law, and must permit them to advise on the law of the host country. In this connection, it is important to note that a foreign national or firm registered as a *conseil juridique* in France is free to associate with, and to employ, *conseils juridiques* of French nationality. Presumably, therefore, reciprocal treatment by a foreign host country would include the right of French lawyers there to associate themselves with, and to employ, local lawyers of the host country.

II. New York State

Background

The State of New York has for many years permitted a lawyer who is from another jurisdiction in the United States, or from a foreign country "whose jurisprudence is based upon the principles of the English Common Law," to apply for admission to practice as a full-fledged member of the New York Bar

without taking its bar examination.[7] Such an applicant must have been admitted in the highest court in the other jurisdiction and, while so admitted, must have practiced for at least five years. He must be over 26 years old and, before applying for admission, must have been an actual resident of New York for at least six months.

Until recently, all applicants for admission to the New York Bar were required to be United States citizens. This requirement was completely eliminated in New York on October 12, 1973, as a result of the decision of the United States Supreme Court in the *Griffiths* case that, under the Federal Constitution, a state may not deny admission to the bar solely on grounds of citizenship.[8] Accordingly, a foreign citizen residing in New York is entitled to seek admission to the New York Bar on an equal footing with United States citizens, either by passing New York's bar examination or by complying with the requirements for admission without examination.

It should also be noted that several foreign law firms, without seeking admission to the New York Bar, have been able to establish offices in New York for the limited purpose of giving advice to local lawyers (lawyers in private practice and lawyers in the legal departments of corporations) but not to the general public.

New Provisions for Legal Consultants

The New York Assembly, by a vote of 130 to 10 on March 6, 1974, and the New York Senate, by a vote of 41 to 15 on April 2, 1974, passed a bill to add a new subdivision 6 to Section 53 of the New York Judiciary Law. It was signed by the Governor on April 23, 1974.

Section 53(6) authorizes the New York Court of Appeals to adopt "rules for the licensing, as a legal consultant, without examination and without regard to citizenship, of a person admitted to practice in a foreign country as an attorney or counselor or the equivalent." It provides that the licensed legal consultant "shall not practice in the courts of the state but may render legal services in the state within limitations prescribed in rules adopted by the court of appeals." And it subjects the licensed legal consultant to various statutory provisions, including disciplinary provisions, applicable to members of the Bar.

On June 6, 1974, the Court of Appeals adopted Rules for the Licensing of Legal Consultants, designated as Part 521 of the Court's Rules. They include a general regulation on eligibility for licensing as a legal consultant (Section 521.1), requirements of proof of eligibility (Section 521.2), limitations on the

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[7]Section 520.8, Rules of the New York Court of Appeals for the Admission of Attorneys and Counselors at Law.

[8]*In re Griffiths*, 413 U.S. 717 (June 25, 1973).

permitted scope of practice (Section 521.3), and disciplinary provisions (Section 521.4).

To be eligible for licensing as a legal consultant, an applicant must have been admitted to practice in a foreign country as an attorney or counselor at law or the equivalent and, while so admitted, must have practiced for at least five of the seven years immediately preceding his application. He must meet the requirements of good moral character and general fitness required for a member of the New York Bar, and he must be over 26 years old. At the time of his application, he must be an actual resident of New York, but no period of prior residence is required.

A licensed legal consultant is authorized to render legal services in New York subject only to the specific limitations set forth in Section 53(6) of the Judiciary Law and Part 521 of the Rules of the Court of Appeals. He may not practice in the courts of New York; prepare instruments affecting title to real estate located in the United States; prepare instruments for the disposition on death of property located in and owned by a resident of the United States or relating to the administration of a decedent's estate in the United States; or prepare instruments in respect of the marital relations of, or the custody of a child of, a United States resident.

Under the Rules of the Court of Appeals, a licensed legal consultant may not render professional legal advice on the law of New York or the United States "except on the basis of advice from a person duly qualified and entitled" to give advice in New York on such law. He may not hold himself out as a member of the New York Bar. The titles which he may use in New York are limited to "legal consultant" and his authorized title and firm name in the foreign country of his admission to practice; he may use any of these titles but only in conjunction with the name of such foreign country.

He is subject to discipline as though he were a member of the Bar and is required to agree to observe the Code of Professional Responsibility of the New York State Bar Association to the extent applicable to the legal services which he is authorized to render. He must appoint a clerk of the Appellate Division as his agent for service of process. He may be required by rules of the Appellate Division to provide an undertaking or evidence of professional liability insurance; under the Appellate Division rules adopted in December 1974 and January 1975,[9] he is simply required, before receiving custody of clients' funds, to provide an undertaking in approved form in an amount not less than the amount of such funds.

Reciprocity; Advising on American Law

New York has not included a reciprocity requirement in its rules governing

[9]See, *e.g.*, Part 610, Rules of the Appellate Division of the Supreme Court, First Department.

legal consultants. Hence, the New York rules do not discriminate on the basis of the rules enforced in foreign countries regulating the practice of New York lawyers who are established there. This approach is consistent with the absence in New York of a reciprocity requirement affecting applicants from other American or Common Law jurisdictions who seek to become members of the New York Bar without taking an examination.

Under the New York rules, the legal consultant is free to advise his clients on their legal problems without regard to the nationality of the relevant law or laws. Advice given by a legal consultant on New York law or United States law must, however, be based on advice from another lawyer (not another legal consultant) who is "duly qualified and entitled" to render such advice in New York. Generally, this provision would mean that the advice given by a legal consultant to his clients on New York and Federal law must be based on advice obtained by him from a member of the New York Bar.

The New York rules leave the licensed legal consultant free to associate himself with, or to employ, members of the New York Bar. Accordingly, a legal consultant might choose to enter into appropriate arrangements with qualified members of the New York Bar in order to obtain advice on New York and United States law on a regular and continuing basis.

III. Summary and Analysis

Status of Foreign Lawyers

Registering legal counselors from foreign countries fits rather readily into the French legal system, for legal counseling and the preparation of legal instruments have never been part of the monopoly of the French Bar, and legal counselors from foreign countries have been established in Paris over a long period of time. In New York, furnishing professional legal advice traditionally fell within the monopoly conferred by statute upon members of the bar, and the recent creation of the profession of licensed legal consultant, that is, the authorization of a limited legal practice that excludes practicing in the courts of the state, was a legislative and judicial innovation.

These developments in both jurisdictions have simply been examples of accommodating the regulation of the legal profession to the realities of modern practice, which has increasingly crossed national boundaries.[10] France, in adopting rules for French and foreign *conseils juridiques*, has officially regulated the profession of legal counseling. In New York, this process of accommodation—limited to qualified lawyers from other countries—has

[10]"Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce." From Canon 8 of The Lawyer's Code of Professional Responsibility as approved by the American Bar Association and adopted by the New York State Bar Association.

formally recognized that a legal practice need not involve appearances in court and is often exclusively concerned with the giving of advice and the preparation of legal instruments.

France has retained its nationality requirement for members of the bar and for *notaires*: only French citizens are eligible for admission to these professions. While recent interpretations of the Treaty of Rome by the European Court of Justice suggest that France may be required to extend eligibility for admission to the bar to all qualified nationals of Member States of the European Community, this liberalization would not benefit citizens of other countries such as the United States.

In the United States, because certain protections of the Federal Constitution have been extended by the Supreme Court to all resident aliens, admission to the bar may not, as already noted, be denied solely on grounds of citizenship. Consequently, a person who is not an American citizen, but who meets the educational and professional requirements for membership in the bar, can be admitted to the full range of legal practice in the United States.

Reciprocity; Advising on Local Law

The right of a foreigner to practice as a *conseil juridique* in France may be qualified by statutory requirements of reciprocity. The foreign *conseil juridique* may find his practice limited principally to foreign and international law if he does not come from a country which, in the eyes of France, accords reciprocal treatment to French lawyers (and if he is not from a Member State of the European Community). Thus, although French policy is generally favorable to foreigners acting as legal counselors, it is to a significant extent affected by the policies which other countries choose to apply to Frenchmen.

In contrast, New York has no reciprocity requirement. Rather, it has determined that the public interest is served by permitting qualified legal consultants from other countries to carry on a counseling practice in New York, and has not conditioned the application of this policy on regulations adopted by other countries. Conceivably, however, New York might in the future adopt a reciprocity requirement if it felt that its policy was being abused.[11]

Subject only to the limitation (mentioned above) which may flow from a failure to meet the reciprocity requirements imposed by French law, France permits a foreign *conseil juridique* to advise his clients on the laws of France. In this connection, he is free, if he chooses, to associate himself with and to employ lawyers of French nationality.

In New York, the licensed legal consultant is authorized to advise his clients on the law of New York and of the United States, but he must himself first

[11] *Cf.* the last paragraph of the Chief Justice's dissent in the *Griffiths* case, suggesting that states might legitimately insist on reciprocal treatment by other countries. 413 U.S. 717 at 733.

obtain advice on such law from another lawyer (not a legal consultant). In this connection, the licensed legal consultant in New York, like the foreign *conseil juridique* in France, is free to associate himself with and to employ local lawyers.

As already indicated, the relaxation of prior restrictions on the activity of foreign lawyers has been largely a response to the needs of modern practice. Frequently, the Foreign lawyer's client will be a business or institution seeking advice on complex transactions which are not susceptible of neat compartmentalization into discrete questions governed by the respective laws of particular jurisdictions. The client will need complete advice cutting across the laws of several jurisdictions, not advice fragmented piecemeal along lines irrelevant to a transaction viewed as a whole. It will be the lawyer's task, not the client's, to sort out and synthesize any issues of applicable law. To advise a client in effective, functional terms concerning integrated transactions, the lawyer must not be hedged in by artificial boundaries derived from notions of applicable law.

The basic regulatory objective is to try to provide safeguards against lawyers giving uninformed advice in *any* legal area. This problem is broader and more fundamental than mere concern with defining a local professional monopoly in terms of who can advise on local law. Indeed, focussing on this narrow concern tends to concentrate attention on local professional prerogatives rather than on the protection of clients against poor advice.

Both France and New York have adopted standards which can be administered to restrict the right of establishment to experienced and responsible lawyers from other countries. New York, moreover, requires the licensed legal consultant to agree to observe its Code of Professional Responsibility, which in pertinent part states that

> A lawyer shall not handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.[12]

Responsible lawyers, in the interest of their own reputations as well as in the interest of their clients, always obtain expert assistance before rendering advice concerning an unfamiliar area of the law. And, of course, a lawyer will frequently practice not as an individual practitioner but as a member of a law firm in order to obtain, from within and without the firm, a wide scope of professional expertise, and to organize and share it in an efficient and effective manner.

Foreign law firms are permitted to give legal advice and to prepare legal instruments in both France and New York. In France, however, foreign law

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[12]Disciplinary Rule 6-101, The Lawyer's Code of Professional Responsibility. This rule applies to members of the Bar of New York and other American jurisdictions.

firms (as distinguished from individual lawyers) seeking to register themselves as *conseils juridiques* must have been practicing there prior to July 1, 1971 (although firms from other Member States of the European Community and from countries deemed to accord reciprocity to French lawyers may establish themselves in France after that date, so long as they do not use the title of *conseil juridique*). In New York, where practice by firms has long been common, the right of a foreign firm to open an office when resident members of the firm are licensed as legal consultants is implicit in the provision, set forth in the Rules of the Court of Appeals, authorizing a licensed legal consultant to use his "firm name" as a title in the conduct of his practice.