Analysis of the 2003 Draft Law on Advocacy and Advocates Activity of the Republic of Armenia

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AND ADVOCATES ACTIVITY OF THE REPUBLIC OF
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Analysis of the 2003 Draft Law on Advocacy and Advocates’ Activity of the Republic of Armenia
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Analysis of the 2003 Draft Law on Advocacy and Advocates’ Activity of the Republic of Armenia

I. Introduction

This assessment analyzes the Draft Law on Advocacy and Advocates’ Activity of the Republic of Armenia, which, if adopted, will replace the 1998 Law on Advocate Activity. The assessment attempts to identify positive attributes of the proposed legislation as well as to draw attention to aspects that are contrary to international principles or that could undermine the independence and effectiveness of the legal profession in Armenia. The recommendations contained in this assessment are offered in the spirit of cooperation and collaboration toward supporting the rule of law in Armenia.

The assessment findings rest on a number of sources, including past and current legal practice in the Republic of Armenia as well as comparative legal practices and traditions. However, particular emphasis has been placed on assessing the Draft Law against international standards for the organization and functioning of the legal profession. These standards are embodied in the United Nations Basic Principles on the Role of Lawyers and the Council of Europe’s (CoE) Recommendation on the Freedom of Exercise of the Profession of Lawyer. In addition, the assessment also draws on standards identified in the Code of Conduct for Lawyers in the European Union promulgated by the Council of the Bars and Law Societies of the European Union (CCBE).

The United Nations General Assembly endorsed the Basic Principles on the Role of Lawyers in 1990, which sets forth minimum standards that countries should consider when developing legislative and administrative frameworks for the establishment, organization, and operation of the legal profession. It was drafted to assist states in promoting and ensuring the proper role for lawyers in a democratic society. In doing so, the UN Basic Principles reaffirms various rights and principles enshrined in the Universal Declaration of Human Rights (UHDR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR). These include effective access to justice, assistance of competent legal counsel, as well as the right to a fair and public hearing by an independent tribunal established according to law.

The Council of Europe took account of the UN Basic Principles when it developed similar standards for the legal profession in its Recommendation on the Freedom of Exercise of the Profession of Lawyer [Rec(2000)21]. This document, adopted by the CoE Committee of Ministers in 2000, demonstrates the emergence of a European-wide consensus around the notion that lawyers play an essential role in democratic societies based on the rule of law. Within the Council of Europe,

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1 ABA/CEELI would like to acknowledge the efforts of the authors of this assessment: Andrew Solomon, Associate Director of CEELI’s Legislative Assistance and Research Program and co-coordinator of CEELI’s Legal Profession Reform Index (LPRI); Cristina Turturica, CEELI Legislative Fellow and LPRI team member; and Claude Zullo, CEELI Associate Country Director for the Caucasus and LPRI co-coordinator. CEELI would also like to thank CCBE members Mr. David Keating and Ms. Olga Zhukovska for their valuable comments and the CCBE for its willingness to collaborate on this assessment. Finally, CEELI would also like to thank CEELI its staff members former Armenia Country Director Heidi Silvey and Armenia staff attorneys Narine gasparyan and Suzie Simonyan for their contributions to the assessment.
it is readily agreed that one of the fundamental elements in the rule of law is a well-trained and independent legal profession that is accessible to society as a whole.

Although they are not legally binding, the UN Basic Principles and the CoE Recommendation nevertheless articulate and emphasize standards for the legal profession, which all Member States should “[respect] and [take] into account … within the framework of their national legislation and practice.” Both the UN Basic Principles and the CoE Recommendation provide standards in such areas as access to lawyers and legal services, lawyer qualification and training, duties and responsibilities of lawyers, professional guarantees for lawyers, establishment and function of professional associations, and disciplinary proceedings.

The CCBE’s Code of Conduct for Lawyers in the European Union is another source of standards that should be consulted when developing frameworks for regulating the legal profession. The CCBE represents European bar associations and law societies in the European Union, European Economic Area, and other international organizations. It is comprised of delegations from bar associations of 18 countries, including both EU and EU accession states. Many emerging democracies in central Europe have observer status within the CCBE as well. One of the CCBE’s primary objectives is to harmonize, coordinate, and develop the legal profession in Europe. It has pursued this objective by adopting the Code of Conduct. The Code is intended to be binding on all lawyers in CCBE Member States, including those from both the EU and other European countries that have CCBE observer status.

II. General Assessment

The Draft Law on Advocacy and Advocates Activity of the Republic of Armenia provides an adequate framework for the practice of law and the development of an independent legal profession in Armenia. In its current form, the Draft Law improves upon the existing version of the law in a variety of areas that are essential for effective and efficient legal representation. At the same time, however, certain provisions in the Draft Law could erode the quality of legal services by weakening standards for admission into the profession and undermining the ethical conduct of advocates. These shortcomings could also allow state authorities to infringe upon the independence of the profession as well as the rights of individual advocates seeking to defend their clients. The assessment team would like to highlight a number of key aspects of the Draft Law that illustrate these general conclusions:

- Articles 3, 36, and 37 provide an adequate basis for ensuring the independence of advocates vis-à-vis the state and for protecting basic freedoms and guarantees to practice the profession freely. At the same time, the drafters are encouraged to insert language that protects lawyers providing state-funded legal assistance from any state pressures or interference. The drafters are also strongly encouraged to reconsider the inclusion of Ministry of Justice representatives in the proposed Qualification Committee under the Chamber of Advocates.

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2 See the Preamble to the UN Basic Principles on the Role of Lawyers.
The Draft Law adequately addresses the matter of attorney-client confidentiality in Article 21 and appropriately recognizes limitations on this right. The drafters could however more clearly state whether this right is vested with the advocate, the client, or both.

Given the increasing globalization of the legal profession and regional integration, provisions in Article 18 that address the extent to which foreign advocates may practice in Armenia is welcome. The drafters should however insert provisions in the Draft Law that spell out the criteria and procedures for foreign lawyers to practice in Armenia.

The Draft Law should explicitly state to which body the funds are transferred, for which types of legal services they are to transfer funds, and the amount to be transferred. In this last issue, the drafters should also attempt to strike a balance between the Chamber's need for operational funds and the burden imposed on advocates.

Another important issue not addressed by the Draft Law is the need for obligatory indemnity insurance for advocates. The drafters are strongly encouraged to insert language in the law requiring professional indemnity insurance.

The inclusion of a qualifying examination in Article 23 is also an important step toward enhancing the reputation of the profession; however, the drafters are strongly advised either to remove the oral interview from the examination process or to insert provisions that ensure the integrity of the examination process. More generally, the drafters are strongly advised to elaborate more precise procedural parameters for the entire examination process and to remove the Ministry of Justice’s presence from the proposed Qualification Commission.

The requirement in Article 26 for special licenses for advocates to practice before Armenia's high courts is consistent with international legal practices; however, the drafters are strongly advised not to limit the number of special licenses.

The provision for the termination of advocate licenses as stated in Article 32 generally comports with internationally accepted legal practices; however, the drafters are encouraged to consider extending the period during which advocates may appeal a decision to terminate his or her license, to specify the court to which appeals can be made, and to suspend, rather than terminate, an advocate’s license when s/he assumes a position of state service. Moreover, the drafters should specify the cases in which a special license can be terminated and possibly be reinstated.

Chapter two of the Draft Law address many of the appropriate roles and characteristics that a bar association should assume, including establishing professional standards, promoting the interests and independence of the profession, and providing educational and other opportunities. The drafters should however insert more specific language about the composition and functions of the Board of the Chamber of Advocates and the Chamber’s committees. Moreover, the drafters are strongly encouraged to add language that guarantees a system of democratic governance in the Chamber’s bylaws; that removes government funding for the Chamber except for providing legal aid; that prohibits the Chamber from
engaging in quasi-law firm activities; and that creates equity among Armenia’s two existing advocate unions.

- While the importance of an ethics framework within the Draft Law should be acknowledged, the drafters are strongly urged to articulate only guiding principles for the content of a code of conduct and disciplinary code. These include conflict of interest, disciplinary proceedings, statute of limitations on disciplinary actions, disciplinary penalties, and encouragement for advocates.

III. Professional Freedoms and Guarantees

A. Independence of the Legal Profession

An independent legal profession is a central pillar to the rule of law and essential to a democratic society. Independent lawyers (advocates) are an indispensable means by which individuals gain access to the justice system, protect their fundamental rights, obtain remedies when these rights have been infringed upon, as well as resolve disputes with other members of society and with the state. Not only should the law enshrine the independence of the profession, but advocates should also enjoy professional freedoms and guarantees that enable them to practice law freely. Moreover, advocates should be free from improper interference, intimidation, or sanction when acting in accordance with standards of the profession. Professional freedoms and guarantees like these are important in many emerging democracies, especially considering the historical relationship between advocates and state authorities under the communist system, which sought to regulate advocate activity in such a way that marginalized their role in the defense of their clients and the administration of justice.

The Armenian Draft Law on Advocacy and Advocates’ Activities provides an adequate basis for the independence of advocates vis-à-vis the state and sets forth basic freedoms and guarantees that can strengthen the ability of Armenian advocates to practice freely. Article 3, for example, expressly states that advocates are independent from government authorities. It also recognizes that the profession is self-regulating. Moreover, Article 36 also recognizes that advocates are independent and, at the same time, prohibits state authorities, political parties, mass media, and others from interfering with their professional activities. These provisions are in keeping with Principle 16 of the UN Basic Principles on the Role of Lawyers, which speaks to the guarantees for the functioning of lawyers. If implemented properly, the Draft Law’s provisions will be critical to establishing a strong and self-governing profession that is independent from any external (including political) influences.

Article 37 of the Draft Law obligates state authorities to protect advocates who have been threatened in the course of performing their professional duties. In addition, pursuant to Article 36, advocates in Armenia enjoy immunity from liability and prosecution for actions taken and statements made in accordance with the law while acting in a professional capacity. This protection has the potential to shield lawyers from defending themselves against spurious claims and complies with principle 20 of the UN Basic Principles on the Role of Lawyers.

The freedoms and guarantees that are found within Articles 3, 36, and 37 strengthen the profession in its relationship with the state. However, the drafters should consider inserting a provision in the Draft Law specifying that advocates participating in state-funded legal assistance
programs shall remain free from any state pressure or interference. This will ensure that the Article 3 obligation of state authorities to provide funding for advocates rendering free legal assistance will not be used as a pretext for the state to exert control over the legal profession, which must remain independent at all times and under all circumstances. Similarly, the drafters should reconsider the inclusion of the Ministry of Justice representatives in the proposed Qualification Commission, as this may potentially undermine the independence of advocates (see the section on the Qualifying Commission under part V.A of this assessment for further comments on this matter).

In addition, it is conceivable that advocates would not be comfortable with the measures state authorities find necessary to protect those advocates who are threatened by violent action, as stipulated by Article 37. As currently drafted, this provision appears to leave no opportunity for advocates to either request or decline protection measures. The drafters may wish to consider the implications of making state authorities responsible for providing security to advocates, without providing greater clarity and setting forth checks on possible abuse.

**B. Advocate Secret (Attorney-Client Confidentiality)**

The confidentiality of professional communications between advocates and their clients is one of the foundations of the right to legal representation. Confidentiality of communications encourages clients to share information with their advocate, information that advocates need in order to represent their clients more effectively and to provide quality legal consultations. Not only should advocates have a professional duty to respect the confidentiality of communications, but state authorities should also be obliged to respect the confidentiality of written, oral, and electronic communications between advocates and their clients. Without a guarantee of confidentiality, it is more difficult for advocates to fulfill their duties and more likely that individuals will be denied access to justice. Therefore, state authorities should provide the widest possible scope of protection to attorney-client communications. Similarly, advocates should enjoy some form of protection in the event state authorities conduct investigations involving the search and seizure of information thought to be in an advocate’s possession.

Article 21 of the Draft Law adequately addresses the confidential nature of information communicated to advocates by their clients. It provides that this information, as well as other evidence obtained by the advocate, is also considered confidential and referred to as the advocate secret. It therefore appears that the drafters have elected to construe the issue of confidentiality as a right or guarantee enjoyed by the advocate, rather than a right enjoyed by the client. On the other hand, Article 21 seems to suggest that the client also enjoys a right to confidentiality because it mandates client consent before advocates may disclose otherwise confidential information. Given this ambiguity, the drafters may wish to consider identifying the nature of the advocate’s secret. For instance, is it a right enjoyed by the advocate, the client, or both? Moreover, is the advocate bound by a duty, owed to the client, not to disclose confidential information? The Draft Law on Advocates could benefit from language that makes these points much clearer.

The Draft Law recognizes that attorney-client confidentiality is not absolute. Limitations on attorney-client confidentiality are acceptable. Those set forth in Article 21, such as client consent and illegal activity and threats to bodily harm, generally comport with the approach taken in many legal traditions. In the United States, for instance, the ABA Model Rules of Professional Conduct cite six instances in which a lawyer may reveal information relating to the representation of a client:
1. To prevent reasonably certain death or substantial bodily harm;

2. To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services;

3. To prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services;

4. To secure legal advice about the lawyer’s compliance with the Rules of Professional Conduct;

5. To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyers’ representation of the client; or

6. To comply with other law or a court order.

In France, there are legislative provisions pertaining to both confidentiality of communications among advocates, and confidentiality of communications between advocates and their clients. While all oral and written communications between advocates are intrinsically confidential, there are the following three exceptions to this rule in France:

1. A letter whose purpose is deemed to be made in lieu of a judicial formality, provided that it is marked “official” or “non-confidential”;

2. A letter which express an offer to enter into an agreement, made on behalf of a client upon the latter’s instructions, and which is marked “official” or “non-confidential” may be disclosed;

3. Letters between lawyers which express an agreement between lawyers on behalf of their clients, upon instruction to do so, can be disclosed provided that they are marked “official” or “non-confidential.”

There are a number of other exceptions or limitations to attorney-client confidentiality the drafters may wish to consider, including money laundering, corruption, national security, terrorism, and cases of fraud being committed in court. However, if these types of provisions are included, the drafters should include more details about the nature and scope of attorney-client confidentiality under these exceptions to confidentiality. For example, national security and terrorism can be construed very broadly; therefore, defining these types of exceptions are strongly recommended if they are to be included in the Draft Law’s language. Consideration should also be given to confidentiality exceptions when a court has lawfully ordered disclosures and when a client and an advocate agreed to waive confidentiality in writing.
In addition to listing exemptions to the lawyer-client confidentiality, the drafters may wish to consider addressing whether advocates have an affirmative duty to reveal confidential information or whether they simply have the discretion to do so in the cases enumerated by Article 37. Moreover, the drafters should also consider including a provision requiring that advocates’ interns and assistants be subject to the same confidentiality requirement as the advocates. Advocate interns and assistants should also benefit from guarantees not to be interrogated as witnesses based on information that s/he learned in his/her capacity. For example, in the United States, it is common practice to have non-lawyer employees, such as paralegals and interns sign a confidentiality statement upon join an attorney’s office. In Switzerland, lawyers are required by law to manage their office in such a way that confidentiality is secured. In Germany, the rules relating to professional secrecy apply to any person who due to his/her professional status became the recipient of confidential information. Finally, Article 27 (2) of the Russian Law on Advocates’ Activity and Advocacy also requires advocates’ assistants to maintain the confidentiality of advocate’s secret.

IV. Conditions and Standards of Practice

A. Advocate Activities

Article 5 and Article 18 of the Draft Law address advocates’ activities in Armenia. Both articles indicate that advocates provide legal assistance in the form of consultation, representation, and defense. The general approach taken in Article 5 is complemented by Article 18, which sets forth in greater detail the specific types of legal assistance that advocates are authorized to provide, and identifies the types of clients that advocates may represent. For instance, according to Article 18, advocates may provide legal assistance in matters involving civil, criminal, administrative, commercial, and tax law. It also provides advocates with the right to offer other types of legal assistance not prohibited by law.

Beyond these key areas, the drafters may wish to consider expanding the scope of advocacy beyond just rendering of legal services. For instance, the drafters may decide to include a provision stipulating that advocates should help promote the rule of law in society and that they shall have the right to advocate for developments that enhance the enactment of, adherence to, and respect for human rights and other standards generally accepted in the international legal community. Although Article 12(9) of the Draft Law mentions that the Board of the Chamber of Advocates must come up with proposals to improve the laws and other legal acts, the drafters should consider adding provisions that motivate and encourage individual members of the profession to do the same. For example, the UN Principles call on lawyers to “[protect] the rights of their clients and [promote] the cause of justice, [and] … to uphold human rights and fundamental freedoms recognized by national and international law.” The CoE Recommendation on the profession of lawyer, which expressly mentions that “[b]ar associations or other professional lawyers' associations … [should] promote and support law reform and discussion on existing and proposed legislation.”

An issue of concern, mainly from potential clients’ perspective, is the provision of Article 18 (first full paragraph after the list of permissible advocate activities) that appears to limit organizations, government, and local government bodies, which have in house legal counsel, from

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3 See Principle 14 of the UN Basic Principles on the Role of Lawyers.
4 See Principle V.4.d of the CoE Recommendation on the freedom of exercise of the profession of lawyer.
using the services of an outside attorney in civil procedures and procedures on administrative offences. For example, the English language version of the provision might be construed as a limitation on organization’s use of outside legal counsels. The drafters are therefore encouraged to clarify the provision whether governmental bodies, business, and other organizations may use advocates unless they decide to use the services of their own in-house counsel.

**B. Incompatible Activities**

Article 18 briefly touches on the issue of incompatible activities. It prohibits advocates from engaging in paid activities, except for academic, pedagogical, and other creative activities. Restrictions on certain activities by advocates may be reasonable, especially those that could lead to a conflict of interests with their clients or otherwise negatively affect the ability of advocates to provide competent legal services to their clients. Similar restrictions are found in other European legislation. In Finland, for example, an advocate cannot carry out services for somebody in a manner that can endanger his/her professional independence. If a Finnish advocate begins an employment relationship of this kind, s/he must immediately request the consent of the Board of the Finnish Bar Association. In France, an advocate is prohibited from becoming involved in any business activities or transactions, whether carried out directly or indirectly. For instance, it is forbidden for a French advocate to become involved, even temporarily, in the business activities of his or her spouse or to become an employee, partner, manager, or director of any private company or partnership other than a law firm, unless that company has the sole purpose of managing advocate’s activity or family interests. Similar provisions prohibiting advocate’s involvement in commercial or paid activities in the public and private sectors are included in the legislation of Italy, Greece, and Luxembourg.

On the other hand, however, many countries that have similar provisions on the subject of incompatible activities are gradually removing them, because so many lawyers are in breach of these regulations. Moreover, it is not uncommon in many jurisdictions for advocates to have other remunerated activity. For example, France passed legislation in 1990 that authorized advocates with seven or more years of practice to become members of the supervisory body of a special class of limited liability companies. In Greece, although lawyers cannot be managers, managing directors, or representatives of any commercial corporation, they can be presidents or board members of a company or a limited liability corporation or economic advisors to a corporation. In the latter instance, a permit of the board of directors of the relevant lawyers’ association is needed.

Taking into consideration the above-mentioned developments in some of Western European countries, the drafter may wish to allow advocates to engage in certain types of paid activities, but at the same time mandating the development of a rigorous disciplinary process to address advocates who use their affiliation with a company or entity in a manner contrary to the ethics of the profession.

**C. Foreign Lawyers**

In addition, Article 18 addresses the extent to which foreign advocates may practice in Armenia, an important issue given increasing globalization of the legal profession and regional integration. With the exception of prohibiting foreign advocates from providing legal assistance on matters related to national security, from participating in free legal assistance programs, from training assistants and interns, and from being elected to bodies of the advocates’ chamber, this
The provision apparently vests foreign advocates with the same rights enjoyed by Armenian advocates to practice law. This assessment views the provision as a positive element of the Draft Law.

The Draft Law briefly refers to the role of the Chamber of Advocates in including foreign lawyers on the List of Practicing advocates in Article 29, but it otherwise omits any mention over the application process and the academic and professional criteria for admitting a foreign lawyer to practice. The drafters may therefore wish to consider giving greater attention to outlining the criteria and procedures for admitting foreign lawyers to practice in Armenia. Chief among these criteria should be possession of a diploma from an accredited or otherwise authorized law school, membership in a foreign bar association, and sufficient knowledge of Armenian law (see the section on professional experience on under part V.A of this assessment).

D. Payment for Advocates' Services

1. Pro Bono Work

Article 6 of the Draft Law addresses payment for advocates’ services. It provides that an “advocate’s activity is a paid activity,” implying that an advocate should always be remunerated for his/her services either by the clients or, if the services are offered as a part of legal aid schemes, by the state. The drafters may wish to replace this somewhat categorical provision with one stating “advocates are entitled to compensation for their services.” Otherwise, this might call into question the ability of lawyers to provide pro-bono services (i.e. legal services offered at no fee to persons of limited means or to organizations in matters designed to address the needs of indigent persons).

The drafters should include a provision in Article 6 establishing that advocates may also offer pro-bono services. In some countries, such as the United States, pro-bono work is one of the ethical obligations of a lawyer. Self-employed, junior advocates may also perform pro-bono work in order to establish a professional reputation and to develop a client base. The concept of “pro-bono” services is embedded in the United States legal system, where lawyers are encouraged to render at least 50 hours of free services per year. This is an excellent opportunity for the legal profession to participate, free of charge, in helping indigent persons gain access to justice, which will help increase public trust in the legal profession. Therefore, the drafters should consider adding language to Article 6 that permits pro-bono legal assistance, provided that the advocate and client so agree in writing and provided that the advocate remains under the same ethical obligations as if s/he were being remunerated for the work performed. This would actually formalize the situation in Armenia, where, due to the economic climate, many advocates, especially those outside Yerevan, offer many of their services pro-bono and often times do not charge for consultations, but only for representation.

2. Advocates’ Fees

Although the Draft Law stipulates that the amount and procedure of remuneration for advocate’s activity shall be indicated in a written contract signed according to the Civil Procedure Code between the advocate and the client, the drafters should insert language that stipulates that the

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5 This statement is based on the preliminary findings of the Legal Profession Reform Index (LPRI) implemented by the CEELI in Armenia in October 2003.
fees charged by advocates should be reasonable. Article 3.4 of the CCBE Code explicitly requires lawyers to disclose fully the fees charged to clients and to charge fees that are fair and reasonable.

In order to ensure that lawyers’ fees are kept reasonable, several western European countries provide guidelines on fees charged by advocates. Austria, for example, has instituted a tariff for attorneys’ fees, and the Austrian National Bar Association has issued the Autonomous Guidelines for Attorneys’ Fees, which provides standards for what shall be considered “fair and reasonable” fees. The rates charged by advocates depend on the time consumed, the difficulty of the case, and the value of the matter. The lawyer and the client may also agree on an hourly rate. In Belgium, although attorneys have statutory discretion to fix their fees, the Belgian Orders of Advocates is entitled to issue regulations concerning advocates’ fees and has the right to reduce those fees that do not satisfy the test of “just moderation.” The Brussels Bar has issued several regulations regarding fees, including a scale of fees. In France, however, fees are generally agreed between the lawyer and the client according to the principles of free competition, and no fee scale exists.

If the drafters prefer to introduce the concept of a fee tariff or schedule for advocate services in the Draft Law, they should also consider inserting language that mandates the Armenian Chamber of Advocates develop such guidelines.

3. Speculative Fees

An issue not addressed by the Draft Law is whether advocates are allowed to charge some form of speculative or contingent fee, payable only upon winning a case or the occurrence of some other contingency. There are arguments for and against allowing contingent fees. The main issue here is that the drafters should decide whether they want to allow these types of fees or not and to insert language into the Draft Law accordingly.

In many European countries, among which Austria, Belgium, France, Portugal, and the Netherlands, contingency fee agreements or pactum de quota litis are prohibited. Such contingency fees have been traditionally prohibited because they could encourage lawyers to refuse to settle cases in the hope of winning large awards at trials or refuse to assist clients with a lesser chance of success at trial. Article 3.3 of the CCBE Code of Conduct prohibits lawyers from entering into agreements with clients in which clients, before their matter is resolved, undertake to pay a share of the result of the case, either as a sum of money or as a benefit achieved by the client after the matter has been resolved.

On the other hand, speculative fees enable people who cannot afford up-front payments and who are ineligible to receive legal aid to obtain legal services. In Finland, for example, under certain conditions, advocates may charge a fee that represents a specified share of the clients’ benefit resulting from an assignment or may charge a special commission when the desired result is reached. In the United States, contingency fees are allowed, except in criminal cases and domestic relations matters, in which payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. The American Bar Association’s Model Rules of Professional Conduct (Rule 1.5) recommends contingent fees be agreed to in writing between the client and lawyer and that the agreement state the method used to determine the fee. Methods can include the lawyer receiving a percentage or percentages in the event of a settlement, trial, or appeal. The written agreement should also specify whether litigation and other expenses are
to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated.

4. **Legal Aid**

Another area the drafters should reconsider is the manner in which compensation for state-appointed advocates should be calculated. Article 6 states that advocates’ hourly remuneration for legal aid cases shall be equivalent to the hourly rate of prosecutors. This comports with international legal practices in criminal cases. However, it is not clear how remunerations for lawyers representing clients in civil cases should be calculated where no prosecutor is present. Admittedly, determining appropriate remuneration is difficult; therefore the drafters are encouraged to consult with Armenia’s advocate unions on the matter.

In addition to remuneration, the drafters may want to reconsider how legal aid funds are dispersed. That is, whether funds are disbursed to the association, so that it can select an advocate to perform the work or the court appoints the advocate, and the association pays the advocate. In the United States, the judge has the constitutional duty not only to protect a criminal defendant’s right to a fair trial, but also to appoint competent counsel for an indigent defendant. While the appointment of competent counsel is carried out by an arm of the court composed of qualified practitioners who evaluate their peers and set criteria for those wishing to undertake such assignments, the final judgment as to the suitability of each individual appointment rests with the judge. In the United Kingdom and Poland, courts have similar authority to appoint competent counsels as the courts in the United States. In Czech Republic and Romania, however, defendants are referred to local bar associations, which select and appoint the lawyers. In Australia, South Africa, the Netherlands, and Scotland, there are special governmental agencies staffed with government attorneys who represent indigent defendants; in certain cases, these agencies may also use private attorneys.

5. **Other**

The provisions of Article 6 requiring advocates to transfer a portion of their remuneration (supposedly) to the Chamber of Advocates are ambiguous and confusing. First, the Draft Law does not explicitly specify where advocates should transfer their funds. Although from the context of Article 6 one could infer that the funds should be transferred to the Chamber of Advocates, the Draft Law fails to explicitly state so. Second, it is unclear whether the Draft Law requires advocates to transfer a portion of remuneration received from their private activity only, legal aid services only, or both. Third, the Draft Law should specify the exact amount or percentage of remuneration that advocates need to transfer to the Chamber of Advocates for operating expenses. Fourth, the three categories of operating expenses in Article 6 are too broad. The drafters should provide more detail which types of operating expenses the advocates’ transfer will cover.

Alternatively, the drafters may want to substitute the current language of Article 6 with a provision requiring advocates to pay membership dues to the Chamber of Advocates, instead of transferring a portion of their remuneration to the latter. In its bylaws, the Chamber of Advocates may set the exact dues and spell out the exact purposes for which such dues will be used.
The drafters should also attempt to strike a balance between the Chamber’s need to collect money for its operation, and the size of the membership fees. It is important that membership fees do not discourage or even prohibit less wealthy or junior advocates from joining the Chamber of Advocates. One method, for instance, may be that Associations’ bylaws fully or partially exempt new advocates qualified within last five years from payment of membership fees. The bylaws may also allow applications for exemption to be considered confidentially on a case-by-case basis for members who have been accepted into the profession more than five years ago, but who are unable to afford such fees.

E. Advocate Liability

In situations where an advocate’s mistake or negligent conduct causes loss to a client, insurance may be the only compensation available to the client if the advocate does not have sufficient assets to meet a judgment against him or her. Lawyers who hold professional indemnity insurance are protected against personal liability for dispensing incorrect legal advice or for failing to proffer legal advice when required. Professional indemnity insurance for lawyers is mandatory in most countries of Western Europe and in the United States.

In France, an advocate must have professional liability insurance at all times. It is the responsibility of the French Bar to ensure that all members are covered through a basic insurance policy covering all advocates individually, although the individual lawyers may take out additional insurance for more complete coverage. German lawyers are required to obtain a minimum of EUR 255,000 (approximately AMD 171 million) professional liability insurance, and the lawyers’ limitation of liability must be agreed in writing with the client. Finally, Article 19 of the Russian Law on Advocates’ Activity and Advocacy also requires advocates to insure themselves against material liability, which arises when advocates breach the agreement to offer legal services concluded with the client.

The Draft Law does not address the need for obligatory indemnity insurance for advocates. The drafters are therefore strongly encouraged to insert language requiring compulsory professional indemnity insurance, even if only a minimum level of coverage is provided. Article 3.9 of the CCBE Code of Conduct focuses on the different aspects of professional indemnity insurance, and the drafters may wish to consider introducing similar provisions in the Draft Law. At the same time, it must be recognized that Armenia’s insurance market is in its developmental stages and may not be able to support indemnity insurance fully. Therefore, the drafters may want to consider mandating minimum amounts of insurance initially and raising the level of mandatory insurance in the future, or they could set a later target date for the insurance requirement to commence.

F. Miscellaneous Issues

Several other issues pertaining to the regulation of legal services should be addressed by the Draft Law. First, the drafters should consider including provisions regulating the handling of client funds, when advocates, in the course of their practice, come into possession of such funds. Article 3.8 of the CCBE Code contains detailed provisions on this matter, which should prove useful for the drafters. It provides, for instance, that lawyers hold clients’ funds in a bank account or in an institution that is subject to the supervision of a public authority; that lawyers maintain full and accurate records, which show all the dealings with the clients’ funds; and that funds be paid to clients
immediately or on such conditions as the clients authorize. Including similar provisions in the Draft Law will establish a clear understanding of Armenian advocates’ obligations and responsibilities when handling clients’ money. This will also help clients to know their rights when entrusting a lawyer with their funds.

Second, another issue addressed in Article 5.4 of the CCBE Code, but not addressed in the Draft Law is the issue of referral fees. The CCBE code stipulates that lawyers may not demand or accept from other lawyers or any other person fees, commissions, or compensation for referring or recommending the lawyer to a client. Lawyers also must not pay anyone any compensation as a consideration for referring a client. The same approach exists in France, where lawyers are neither allowed to agree to pay referral fees to each other, nor are they allowed to agree to fee-sharing agreements with professionals other than advocates. Regardless whether the drafters decide to adopt similar standards as above, they should address this issue in the language of the Draft Law simply to clarify if client referrals or similar compensation are permissible.

Third, the drafters should consider eliminating the provision from Article 18 that requires advocates to wear official uniforms during court hearings. Requiring advocates to wear uniforms will force them to incur additional costs, which may end up being quite significant. In addition, carrying the uniforms around from one court to another may also be quite burdensome for advocates, who, unlike judges who wear robes but sit in just one court, need to litigate in sometimes different courts during the same day. Practicalities aside, uniforms historically have been used to vest the persons wearing them with status and to emphasize their belonging to a certain system, usually to the state-run system. Thus, judges wear uniforms as a symbol of state justice. In Soviet times, prosecutors also wore uniforms, which symbolized the authority that the state vested in them to represent and protect its interests. Advocates main mission is to defend individual rights and interests vis-à-vis the state. By not wearing uniforms during court hearings, advocates in fact stand out as not belonging to the state-run system, but instead being the defenders of the civilian laypersons. An alternative could be to require advocates to wear professional business attire during court hearings. In either case, before requiring advocates to wear uniforms during court hearings, the drafters should consult with practicing advocates.

V. Qualification for and Admission to the Profession

Because of the highly technical nature of practicing law and its far-reaching implications for citizens who are not adequately represented, training and licensing of lawyers is an area that requires thoughtful regulation. The practice of law is an increasingly complex profession, one that requires a set of specialized skills, including a solid theoretical understanding of substantive areas of law as well as practical skills in lawyering and advocacy. Moreover, the manner in which lawyers are licensed, included in the registry of lawyers, or otherwise authorized to practice law, is fundamental to the independence of the profession. The body overseeing this process in Armenia will be in a position to shape the development of the profession and how it is viewed by the state and society.

A. Professional Qualifications

1. Legal Education

Article 23 of the Draft Law complies with international standards in that it mandates that advocate licenses be issued only to persons who have “higher legal education or a law degree.”
However, the drafters should consider adding language that clarifies the distinctions between a law degree and “higher legal education.” For instance, defining higher legal education as a bachelor’s degree or a master’s degree in law from a recognized or accredited university would add clarity to this section. In addition, if any other qualifications, such as a doctorate degree would satisfy Article 23, then these should be stated expressly in the definition of “higher legal education.” This would help clarify matters for foreign advocates who seek to practice in Armenia.

The drafters should also consider including language specifying that Armenian applicants for advocate licenses have a higher legal education from accredited academic institutions as opposed to licensed institutions, as the current Law on Advocate Activity provides. The benefits of such requirement would be twofold: 1) Armenian law schools are currently undergoing an accreditation process. Adding accreditation provisions to the Draft Law will support this process by providing a strong incentive to law schools to seek accreditation and, in the process, to better the quality of offered studies; 2) under-qualified or poorly-trained individuals will be barred from entering the profession of advocate.

A number of countries link accreditation to the ability to practice law. For example, Article 9 of the Law on Advocate’s Activity and Advocacy of the Russian Federation explicitly requires that advocates have a law degree from a state-accredited academic institution. In the United States, graduates from ABA-accredited law programs receive important benefits compared to graduates from non-accredited programs. For example, those graduates are allowed to sit for the bar examination in every jurisdiction in the United States. Graduates from non-accredited law schools, on the other hand, may only sit for the bar examination in the jurisdictions where these non-accredited law schools are located, and only if the jurisdiction permits this. More generally, the majority of courts rely on the ABA accreditation of a law school to determine whether the graduates’ legal education requirement for admission to the bar has been satisfied.

### 2. Qualifying Examination/Commission

The inclusion of a qualification examination, as envisioned in Article 23, is a welcomed element of the Draft Law. A fair, rigorous, and transparent examination should contribute to enhancing advocates’ knowledge of the law, which should instill greater public confidence in the profession. It is also in keeping with the spirit of Principle 9 of the UN Basic Principles, which states that, “[g]overnments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training.”

At the same time, the drafters should consider several modifications to the language of Article 23 as it relates to the examination process. First, unless there is a compelling reason to include an oral interview, the drafters are strongly advised to eliminate this element from the examination process. Particularly worrisome is the lack of a non-transparent and unregulated process for oral interviews in the Draft Law, which could present opportunities for corruption or political litmus tests. In the United States, the bar examination consists solely of a written examination. There is a character fitness interview; however, this is to ensure that all persons who pass the bar examination are aware and promise to avoid ethical concerns (e.g., conflict of interest).

If the drafters decide to include an interview as part of the qualification process, then, at a minimum, appropriate language should be inserted to ensure that the process is transparent, uniform
in application (that is, all applicants are asked the same types of questions), and the results are appealable before an impartial body. Moreover, language should be inserted that clearly specifies the procedure for carrying out interviews. For example, the drafters should include provisions as to the length of the interview process, the types of questions that should be asked, how many officials from the Qualification Committee would be present at the interview, etc. Finally, the drafters should insert language that distinguishes what complementary functions the oral interview will fulfill vis-à-vis the written examination.

Second, following from the recommendations above, the drafters are strongly advised to elaborate procedural parameters for the entire examination process. For example, the drafters may want to include language that specifies the type of written examination that will be given (multiple choice versus essay), the need for the creation of a process that ensures the integrity of the examination, and the establishment of an appeals process for those who contest the results of their examination outcome. These types of recommendations are based on CEELI’s first-hand experience from Georgia’s recent implementation of its first bar examination in November 2003.

In addition to the qualification examination process, the drafters are strongly advised to reconsider the composition of the Qualification Commission. Article 14 of the Draft Law stipulates that two representatives from the Ministry of Justice sit on the Committee. Inclusion of representatives from the Ministry could undermine the independence of the Committee and hence the independence of advocates. In the United States, for example, bar examinations are typically administered by an independent state office of bar admissions, and licensed attorneys are engaged by the state bar to grade examinations. Attorneys who grade examinations do so without knowing the identity of the test-takers.

3. Professional Experience

The requirement in Article 23 that advocates also possess a minimum level of experience is also welcomed for the same reasons as stated in the section on the qualifying examination. Simply knowing the provisions of the law are not enough to ensure the competence of advocates. Understanding the nuances of the law and practical lawyering skills, such as client interviewing, negotiation, contract drafting, and oral pleading can only be sharpened through practice. Requiring practicing advocates to have at least two years employment experience in a legal position is a reasonable length of time. In Italy, for example, before an aspiring lawyer may sit for the Bar exam, s/he must undergo a practical training for at least two years. In the Netherlands, advocates are required to undergo a three-year apprenticeship with a law firm before s/he becomes a full-fledged advocate. In Denmark, lawyers are required to complete a three-year practical training either as an advocate’s apprentice or through employment with courts, the prosecutors’ office or the police before practicing law as an advocate.

At the same time, the drafters may want to reconsider those “legal positions” that qualify as appropriate training for entry into the profession of advocate. For example, Armenian judges and law professors, although possessing valuable professional skills, may still have limited interviewing, negotiation, contract drafting, and oral pleading skills. Therefore, the drafters may wish to consider introducing a requirement that aspiring advocates undergo a practical apprenticeship with an advocate’s office as a prerequisite for obtaining an advocate license. The above-mentioned examples from Western European countries strongly support such a development. While such apprenticeship
would be mandatory for all aspiring advocates, those with at least two years experience in legal positions may be required to undergo a shorter apprenticeship than those without such experience.

The drafters should also consider adding language that clarifies whether professional experience can be obtained outside of Armenia. Specifically, the drafters should consider adding language in Article 23 that states whether experience obtained in another jurisdiction is satisfactory. If not, it would mean that foreign lawyers would have to undertake a further two years of training, which may discourage foreign lawyers and foreign law firms from practicing in Armenia. It is also unclear whether foreign advocates need to sit for a qualification examination in order to obtain an Armenian license, or they will be allowed to practice based on their foreign license. As mentioned above on pages 8-9 of this assessment, the drafters should consider specifying the steps a foreign advocate must take to be allowed to practice in Armenia. While Article 18 of the Draft Law provides that a foreign advocate shall practice advocate’s activity pursuant to the order set forth in the Draft Law, it does not mention anything about the procedure of licensing foreign advocates.

In addition to the requirements of a legal education, passage of a qualification examination, and professional experience, the drafters should consider adding a provision in the Draft Law that requires an assessment of the applicant’s good character prior to his/her admission to the profession. Article 18 does require advocates to have high moral qualities; however, the provision is too vague. Character requirements exist in common law countries, and in some civil law countries such as Poland. The requirement set forth in Article 28 (3) that an advocate must not have been convicted of intentional crime, may not suffice for one’s complete personal and professional profile. If for instance, an aspiring advocate has been subject to a disciplinary reprimand in his previous professional capacity, that is information that the Qualification Committee should consider before issuing a license.

B. Admission Procedures

As has already been stated in several parts of this assessment, the Draft Law contains a number of stringent qualifications provisions that should redound to the benefit of the profession of advocates. At the same time, however, there are several provisions on admission to the profession that the drafters should reconsider or clarify in the text of the law.

First, Article 24 of the Draft Law does not establish the exact grounds for rejecting a candidate’s application for a license; rather, these grounds are to be established by the yet-to-be-drafted charter of the Chamber of Advocates. Outlining provisions for rejecting an application within the framework of the Draft Law will help ensure the transparency and predictability of the application process. The Russian Law on Advocates’ Activity and Advocacy may serve as a good example in this regard. Article 12 of the Russian law states that “the Qualification Committee must not refuse to grant the status of advocate to a person who has successfully passed the qualification examination, unless circumstances that make the person ineligible to take the examination have been discovered after he/she took the examination.” This provision provides a more certain and clearer framework for licensing advocates than the current provisions of Article 24 of the Armenia Draft Law.

Second, it is unclear why, after passing the qualification examination and receiving an advocate’s license, an advocate needs to further apply for being included into a List of Practicing
Advocates. It seems logical that after passing the qualification examination, the licensed advocate should automatically be entered into the List. In other words, the Chamber of Advocates should simply be performing a ministerial function in this regard.

Third, the language of paragraph 9 of Article 23 is confusing. It is not clear why a person who has been practicing as an advocate for at least two years may need to apply for an advocate license. If the drafters had in mind persons who practiced law as advocates in a country other than Armenia (i.e. foreign advocates), the language in this section should be revised accordingly.

C. Special Licenses

Many legal systems, both civil law and common law, require some type of licensing in order to practice before constitutional or supreme courts. In France, there are two categories of lawyers that have a monopoly of representing clients before the Courts of Appeal and the two highest courts of France, the Court of Cassation and the Conseil d'Etat (the highest administrative court). These are the avoues pres les Cours d'Appel, who conduct the procedural stages of litigation in the Courts of Appeal, and the oral pleadings. The avocats aux Conseils are public officers and have a monopoly to plead before the Cour de Cassation and the Conseil d'Etat. In the United States, lawyers who practice before federal appellate courts and the Supreme Court are required to be admitted to practice; however, this process is solely ministerial in nature.

Thus, in establishing this provision in Article 26 of the Draft Law on Advocates and Advocates’ Activity, Armenia is consistent with internationally existent legal practices. However, the Draft Law does not expressly state that the purpose of the Special License is to enable advocates to practice before the Court of Cassation. The drafters should consider inserting language that clarifies the purpose of the Special License.

Moreover, the drafters are strongly encouraged not to limit the number of special licenses granted to advocates. Taking into consideration that there currently are approximately 500 practicing advocates in a country of approximately 3 million inhabitants, limiting the number of advocates allowed to practice before the country’s highest court could very well undermine the principles of access to justice stated in the UN Basic Principles and the CoE Recommendation. For example, UN Principle 2 states that “[g]overnments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction …” Limiting the number of advocates with special licenses would create a situation of artificial scarcity, which would likely drive up the price of hiring qualified advocates and thus significantly impede the public’s effective and equal access to advocates.

D. Termination of Licenses

The provisions for the termination of an advocates license as stated in Article 32 of the Draft Law generally comport with internationally accepted legal practices. In Finland, for example, an advocate’s license is terminated either if the advocates resign themselves, do intentional wrong, or behave dishonestly in their professional capacity. In the United States, the court may disbar lawyers for certain kinds of misconduct. However, the drafters should consider amending the language in the Draft Law as it pertains to several key issues. First, the period during which an advocate may appeal a decision to terminate his or her license should be extended from one month (as is currently
envisaged in paragraph 5 of Article 32) to a longer timeframe given the logistical difficulties advocates in areas outside of Yerevan may face. Furthermore, the appeal period should be subject to extension, if the advocate can demonstrate reasonable grounds for failing to appeal within the requisite period.

Second, the drafters are strongly advised to insert language into the Draft Law that specifies the court to which the application for review is to be made, the grounds on which review may be sought, and remedies that the court may grant, such as a request to the Chamber of Advocates to reconsider the decision, quashing of the decision, or an order to grant a license. In addition, Article 32 should also state whether an advocate who has had his or her advocate’s license terminated can reapply for a new license and, if so, whether any period of time must elapse before the advocate is entitled to do so.

Third, there is concern about the provision in Article 32 whereby an advocate’s license is automatically terminated when s/he accepts a position in state service. This seems to be equating state service to the other stated grounds for disbarment, such as lacking dispositive capacity, being convicted of an intentional crime, and engaging in unprofessional conduct. It is a rather heavy-handed and arbitrary approach, akin to the weighty state oversight the legislation is designed to circumvent. The drafter should consider inserting language that states that an advocate’s license will be suspended and automatically reinstated after leaving state service.

Fourth, the drafters should specify all cases in which a special license will be terminated under Article 33, rather than ambiguously stating “a Special License can also be terminated in other cases provided by law.” Moreover, it is also not clear what Article 33(3) means, or what the annual report mentioned therein is. The annual report is not mentioned elsewhere in the Draft Law, and it is not clear what kind of information the report should include. Recognizing a report to be unsatisfactory is a subjective standard and at a minimum should be subject to court appeal. Termination of special licenses is a quasi-judicial act and should, as is the case with termination of a regular advocate’s license, be subject to appeal to a court. The drafters may wish to consider whether the Court of Cassation should be consulted in cases involving Article 33. Holders of special licenses are officers of the court, and the court may wish to give its views on the termination of a special license.

Finally, when a special license is terminated at the same time as an advocate’s license, the advocate has a right to appeal based on Article 32. But there will be cases when the special license is terminated and not the advocate’s license. In those cases, Article 33 should provide the right to appeal. The Article should also state whether an advocate who has had his or her special license terminated could subsequently be considered for a new advocate’s license or special license and, if so, whether any period of time must elapse before an advocate becomes eligible to apply for such licenses.

E. Continuing Legal Education

Article 35 of the Draft Law requires that advocates continually improve their knowledge and competence, while Article 12(14) makes the Board of the Chamber of Advocates responsible for organizing professional training of advocates. Inclusion of language of this sort is welcomed. Indeed, provision of Continuing Legal Education (CLE) for advocates is explicitly mentioned in the CoE’s
Recommendation: “Legal education, including programmes of continuing education, should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect and promote the rights and interests of their clients and support the proper administration of justice.” Moreover, many Western European countries and the United States require lawyers to attend mandatory CLE courses.

At the same time, the drafters should make the obligations under Article 35 more specific in order to allow proper compliance by the advocate or monitoring by the association. For example, the provision might be amended to require an advocate to undertake a specific number of CLE hours each year, with an obligation to report completion of this requirement to the association. In the United States, for example, many state bar associations require lawyers to submit a CLE credit form or demonstrate other proof that minimum CLE requirements were met. CLE courses are also usually approved by a state bar association.

F. Other

Under Article 24, an advocate’s license would be issued with no time limit. Compliance with CLE requirements and other duties of an ongoing nature will be difficult for the Chamber to monitor unless the association periodically reviews each advocate’s status at regular intervals. This would not necessarily involve every advocate having to satisfy the initial licensing requirement again, but could merely amount to a reporting obligation as to the progress made in areas such as continuing legal education. Reporting obligations of this nature are required in many jurisdictions and should be considered in Armenia as well.

Finally, there is also concern with the opening phrase of Article 23 that “[an] advocate license may be given...” It seems to suggest that a person who meets the requiring qualifications may still be denied the license. That presents a potential situation in which the association will be accused of favoritism or prejudice by granting some licenses but denying others. The drafters should consider restating the opening phrase with the words “[an] advocate license shall be given...”

VI. Professional Associations

UN Principles and the CoE Recommendation cover four main themes as they relate to associations of lawyers. First, both documents address the need for professional associations of lawyers to be self-governing, democratic, and independent from state authorities. Second, both discuss the need for professional associations of lawyers to promote the interests and independence of the profession actively, establish professional standards, and provide educational and other opportunities to their members. Third, the UN Basic Principles encourage professional associations of lawyers to support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights. Lastly, the CoE Recommendation calls on professional associations of lawyers to be actively involved in the country’s law reform process.

Chapter Two of the Draft Law primarily addresses the organization and role of Armenia’s proposed association of lawyers. To a large extent, the drafters do a fine job of including provisions in this chapter that address the above-mentioned themes. Article 7 clearly defines the Chamber’s tasks in protecting the interests of its members, its role in training and educating members, and
ensuring that members follow the provisions of a professional code of conduct and bylaws of the Chamber. Article 12, in general, appropriately addresses the role of the bodies of the Chamber of Advocates. Of particular note are provisions in Article 12 to form a qualification committee, to develop a code of conduct, to maintain and publicize lists of practicing advocates, and to come up with proposals on improvements in laws and other legal acts. If carried out properly, these activities will help advance the rule of law in Armenia and improve the ability and professionalism of Armenia’s advocates, which can only serve to enhance public perceptions of the profession. At the same time, the drafters are strongly urged to consider several recommendations that can help strengthen the future Chamber of Advocates.

First, the drafters should consider inserting specific language that defines the composition and functions of the Board of the Chamber of Advocates and each Chamber’s committees. For example, the drafters have done a fine job of defining the function of the Board of the Chamber of Advocates; however, they should also consider adding language that defines how many members the Board, the Disciplinary Committee, and the Oversight Committee should have, as was done with the Qualification Committee. In addition, the drafters should insert language that elaborates what functions the Oversight Committee should fulfill. Alternatively, the drafters could insert language in the Draft Law that requires these issues to be addressed by the bylaws of the new Chamber of Advocates, while at the same time providing general guidance on these matters.

Second, the drafters are strongly encouraged to consider adding language that guarantees some system of democratic governance is established in the bylaws of the Chamber of Advocates. UN Principle 24 specifically states that “… [t]he executive body of the professional associations shall be elected by its members …” In light of this declaration, the drafters should consider specific language that mandates the need for regularly scheduled election of the Chamber’s leadership and reference the need for procedural safeguards in this regard. Mention is made of electing the chairman of the Chamber of Advocates; however, language about the need for regularly scheduled election of the chairman and other leadership posts should also be considered. Moreover, democratic principles should be extended to making changes in the Chamber’s bylaws.

Third, the drafters are encouraged to clarify item 10 under the Article 12, which calls on the Board of the Chamber of Advocates to prepare and submit requests for funding to the government. It appears from the language that the Armenian government is supposed to contribute to the viability of the new Chamber of Advocates. Given Armenia’s current economic situation, it is understandable that this type of provision should be included; however, the drafters and more importantly Armenia’s advocate unions should consider the effect government funding will likely have on the independence of the profession. One solution might be to provide government funding for a limited period of time, after which the Chamber of Advocates would be required to be self-sustaining. If this item refers solely to funding for costs associated with the provision of legal aid, then the language in the Draft Law should be inserted to reflect this.

Fourth, there are several provisions within the Draft Law that could enable the Chamber to take on a quasi-law firm role. For example, Article 7 refers to the role of the Chamber of Advocate in “creat[ing] conditions for professional activities for their members.” Moreover, the ambiguous provision in Article 6 about transferring part of their remuneration to the Chamber of Advocates may also support this type of role. While having the Chamber of Advocates play this role may add
an element of sustainability for the organization, it can at the same time dampen the development of law firms and other types of law practices. In addition, this can also serve to undermine the independence of lawyers. This type of role is in contradistinction to other public services, such as representing the interests of advocates and the public, providing continuing legal education, and enforcing disciplinary rules, that are mentioned in the Draft Law. An independent advocates’ union should function as a non-profit association, rather than as a law firm or legal service center in competition with other lawyers. Individual advocates belonging to that association remain free to compete with each other in providing quality legal assistance. In short, the drafters are strongly encouraged to consider adding language that expressly prohibits the Chamber of Advocates from engaging in activities more appropriate of law firms, partnerships, and solo law practices.

Fifth, it is unclear why the drafters should designate the Chamber of Advocates as the legal successor of the Union of Advocates of the Republic of Armenia (UARA) in Article 42. Although UARA was designated as the legal successor to the earlier Collegium of Advocates of the Republic of Armenia in the 1998 Law on Advocate Activity and as the only union providing advocates to represent indigent criminal defenders, these do not appear to have accorded UARA preferential status over to International Union of Advocates (IUA) in the process of creation of the new Chamber of Advocates. Moreover, this provision will likely complicate the transition to a single advocates’ union. Out of considerations of equity and simplicity, the drafters are strongly encouraged to mandate a foundational congress of advocates that will give both UARA and the IUA equal say in the formation of the new Chamber. Moreover, the drafters should consider allowing both UARA and IUA to continue to exist as separate entities until the new Chamber of Advocates is established by the proposed foundational congress of advocates.

Finally, the Draft Law should clearly indicate whether the liabilities and obligations of the UARA and IUA will become those of the new Chamber of Advocates, and how such transfer will take place.

VII. Professional Conduct

International standards for the profession of lawyer cover three main issues as they relate to professional conduct. First, the UN Basic Principles on the Role of Lawyers and the CoE Recommendations on the Freedom of Exercise of the Profession of Lawyer recognize that codes and standards of professional ethics and conduct should be established for and adhered to by lawyers. Second, both the UN Principles and the CoE Recommendations acknowledge that lawyers should be subject to disciplinary proceedings and sanctions for violating standards and rules of the profession. Third, both international standards recognize the need for fairness and impartiality in disciplinary hearings, with the CoE addressing the need for proportionality in determining sanctions. Chapter 7 of the Draft Law addresses all three of these issues in varying degrees as well as “encouragement” for advocates.

A. Ethics Framework

Article 35 of the Draft Law consists of a wide range of provisions relating to ethical obligations, limitations on an advocate’s conduct, and advocates’ rights. In a broad sense, the drafters should be commended for acknowledging the importance of such issues and for including them in the Draft Law. At the same time, the Draft Law represents a piecemeal approach to
establishing ethical principles, which may create serious difficulties for drafting a comprehensive code of professional conduct, particularly in a civil law country such as Armenia, where statutory provisions are preeminent and cannot be modified or amended by any body other than parliament. For example, if, as the draft proposes, conflicts of interest are absolutely banned, then the association may not be able to include in its code of professional conduct a provision that exempts conflicts when a fully advised client executes a written waiver. The specific grant of authority to create a code of professional conduct as articulated in Article 12(3) may not adequately address this problem.

Rather than seeking to hammer out specifics of ethics matters in the Draft Law, the drafters should articulate guiding principles for the content of the code of conduct and to establish a timeframe for its completion. For example, the drafters could specify that the code of conduct address such general issues as independence, confidentiality, limitations of advocate liability, and incompatible occupations, as well as issues related to relations with clients, the courts, and other advocates. Based on the above recommendation, it would be advisable to move the specific ethical provisions outlined in the Draft Law to the future code of professional conduct and disciplinary code. Finally, the drafters may want to reference that the code of conduct comport with internationally accepted ethics principles as set out in such documents as the CCBE’s Code of Conduct for lawyers.

In light of the above recommendations, this assessment addresses several issues within the Draft Law related to professional conduct that are directly relevant to any future code of conduct and disciplinary code. These include conflicts of interest, disciplinary proceedings, the statute of limitations on disciplinary matters, and encouragement for advocates. To be clear, a number of issues are highlighted in sections VII.2-7 of this assessment that should be addressed, but if adopted, these recommendations should be applied to a future Code of Conduct and Disciplinary Code for advocates, which should be drafted and implemented as soon as practicable.

B. Conflicts of Interest

Article 35 prohibits an advocate from conducting himself or herself contrary to the client’s interests, including by acting as an advocate in cases in which s/he has already been involved in another capacity and acting for clients whose interests conflict. However, these articles make only limited provision for the right of a previous client to waive a conflict between his or her interests and those of the advocate’s present client. Beyond this, there are no other provisions dealing with waiver of conflict. The right of a present client to waive a conflict of interest should be added to Article 35, with the stipulation that the advocate must have disclosed the full extent of the conflict to the client and obtained the written consent of the client to continue acting.

In addition, the Draft Law does not mention whether any ethical restrictions apply to advocates who receive information from other advocates with whom they have had a professional relationship. In many jurisdictions, any information given to one member of a law firm is imputed to all members of that firm. This situation would probably be covered by the general admonition in Article 35 not to act in conflict with a client’s interests. However, this example demonstrates the need for waiver provisions, as conflicts of this nature are quite a common occurrence in large law firms.
C. Disciplinary Proceedings

Article 39, which deals with disciplinary measures against advocates, generally comports with international standards in this area. For example, the Draft Law references liability for actions that run counter to the code of conduct and the bylaws of the Chamber of Advocates, the need to immediately notify an advocate of pending disciplinary action, and the ability of advocates to appeal a Disciplinary Committee decision. Yet there are several areas, however, where the drafters could strengthen disciplinary provisions.

First, the drafters should consider adding additional information about what the triggering mechanism is for launching a disciplinary action. For example, language should be added as to whom can initiate a complaint against an advocate, who should provide the written report, and the type of matters that must be addressed in the report. It is also not clear whether the report has the legal status of a complaint. In the interests of procedural fairness to an advocate facing disciplinary sanctions, further attention needs to be given to the precise content of this report. Disciplinary action should only occur where grounds for disciplinary liability under the Draft Law or other legislation exist and are sufficiently outlined in detail in the report. A copy of the report containing the alleged violations should be given to the advocate, so that s/he has the information necessary to respond to the allegations.

Second, it is not clear if a disciplinary complaint is made publicly available and, if so, at what stage does the complaint become publicly available. Clearly, the general public should have access to information that will help them determine if an advocate is following professional guidelines. At the same time, this should be balanced against an advocate’s right to protect his or her reputation. The American Bar Association, for example, has recommended that disciplinary proceedings be open to the public after probable cause of misconduct has been established. In contrast, however, some European bar associations view such proceedings as confidential. Publication of all results, whether in favor or against an advocate, is recommended because it leads to greater transparency of the disciplinary committee’s procedures. If no penalty were applied, the advocate should have his or her name cleared publicly. If a penalty was applied, the public has the right to be notified of the identity of the advocate involved and the penalty applied, especially if that advocate is permanently prohibited from practicing law. Publication of disciplinary decisions may also serve as a deterrent to violating ethical obligations and as an incentive to the disciplinary committee to render consistent findings.

Third, the courts should, if no appeal is brought, be notified of the outcome. As the courts become more independent, the highest court might be given the power to formally approve the outcome of the disciplinary proceedings. Advocates are officers of the court and should be sanctioned by the court. Future judicial involvement in the process would also give disciplinary proceedings a judicial imprimatur, so that there could be no public perception of partiality such as is possible when a bar association has sole responsibility to discipline its members.

Fourth, Article 39 does not give any indication of the procedure to be followed at the disciplinary hearing or the rights the charged advocate has at a hearing. As a matter of justice, a charged advocate should have the right to be present at the hearing rather than merely being invited. The last clause of Article 39 should be revised to indicate that the advocate’s “absence”—rather than
“presence”—shall not hinder anyone from applying for a disciplinary penalty against the charged advocate.

Fifth, the charged advocate should have more than the mere right to participate and make remarks. A decision on a disciplinary matter can result in termination of the advocate’s license. The advocate should have every possible opportunity to receive a full and fair hearing. He or she should have the right to have counsel present, the right to call witnesses and introduce evidence, and the right to cross-examine witnesses. As the hearing is not a judicial proceeding, one would not expect the usual rules of evidence applied in court to be followed. However, the body hearing the complaint should at least be obliged to exclude unfair material, such as hearsay evidence, that would be inadmissible in court.

Sixth, it is not clear what body has the authority to conduct the disciplinary hearing, although presumably it is the Disciplinary Committee referred to in Article 40. This should be clarified in Article 39. In addition, the number of members, the quorum for proceedings, the qualification of members, the manner in which members are selected to serve on the committee, and the length of their service on the committee are all matters, all matters that should be clarified in the bylaws or in a disciplinary code.

Finally, the Draft Law does not state whether other advocates who are aware of ethical violations committed by their colleagues are ethically obliged to notify the association. In the interests of enhancing the reputation of the legal profession, it is recommended that such an ethical duty be imposed upon all advocates. In any event, it is often in the best interests of an advocate who has evidence of violations committed by a colleague to bring that evidence to the attention of authorities in order to avoid any implication in the matter.

**D. Statute of Limitations**

The drafters should consider extending the statute of limitations on disciplinary actions beyond a three-month period as stated in paragraph six of Article 39. The American Bar Association, for example, has recommended that there be no statute of limitations on disciplinary actions. The reason for this recommendation is that the ABA feels that the “conduct of a lawyer, no matter when it has occurred, is always relevant to the question of fitness of practice.” However, the drafters might want to consider possible exceptions to this rule, especially in very complex cases, in which serious charges against the advocate are at stake and which the association can demonstrate that it had reasonable grounds for failing to initiate disciplinary proceedings within the time limit. The time limit should be realistic, given the resources available and the nature of the proceedings expected to be encountered. Although there should be an emphasis on fairness to the advocate, it should never be forgotten that it is in the public interest to ensure that all complaints are fully investigated.

**E. Disciplinary Penalties**

While Article 40 allows advocates to appeal imposed penalties, one month seems too short a period to undertake an appeal given that the advocate may need to take legal advice on the matter.

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The drafters are therefore encouraged to extend the time available for appeals and to include language that grants the possibility of extension of the time if the advocate has reasonable grounds for failing to appeal within the time limit. In addition, there is no indication in Article 40 as to whether the advocate must have specific grounds in order to appeal to the courts. Finally, there is no indication of which court will hear the appeal and whether the appeal is to be heard de novo. These matters should be clarified within the framework of a disciplinary code (which may form part of a code of conduct).

F. Encouragement for Advocates

The drafters need to reconsider the inclusion of Article 38 in the Draft Law. This provision was probably inserted with the intent to create incentives for lawyers along the lines of a Soviet gramota for meritorious service; however, the vague language used in the law could provide an opportunity for abuse and corruption. At a minimum, the drafters should define when and why these sorts of encouragements are used, should establish strict limits on the amount of awards, and should explain what constitutes an appropriate present and an announcement of gratitude. The drafters are also strongly encouraged to strike the notion of dismissing a disciplinary action as an “encouragement.” This could fundamentally undermine the development and purpose of a professional code of conduct, professional ethics, and instilling a sense of professional duties in advocates.
Appendix A

U.N. Basic Principles on the Role of Lawyers
Basic Principles on the Role of Lawyers


Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their
task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.

4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.
Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

   (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

   (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

   (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

**Freedom of expression and association**

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

**Professional associations of lawyers**

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.
Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.
Appendix B

Council of Europe Recommendation on the Freedom of Exercise of the Profession of Lawyer

(Committee of Ministers, October 25, 2000)
The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the provisions of the European Convention on Human Rights;

Having regard to the United Nations Basic Principles on the Role of Lawyers, endorsed by the General Assembly of the United Nations in December 1990;

Having regard to Recommendation No. R (94) 12 on the independence, efficiency and role of judges, adopted by the Committee of Ministers of the Council of Europe on 13 October 1994;

Underlining the fundamental role that lawyers and professional associations of lawyers also play in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the freedom of exercise of the profession of lawyer in order to strengthen the rule of law, in which lawyers take part, in particular in the role of defending individual freedoms;

Conscious of the need for a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, from any quarter or for any reason;

Aware of the desirability of ensuring a proper exercise of lawyers' responsibilities and, in particular, of the need for lawyers to receive sufficient training and to find a proper balance between their duties towards the courts and those towards their clients;

Considering that access to justice may require persons in an economically weak position to obtain the services of lawyers,

Recommends the governments of member states to take or reinforce, as the case may be, all measures they consider necessary with a view to the implementation of the principles contained in this recommendation.

For the purpose of this recommendation, "lawyer" means a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters.
Principle I - General principles on the freedom of exercise of the profession of lawyer

1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.

2. Decisions concerning the authorisation to practice as a lawyer or to accede to this profession, should be taken by an independent body. Such decisions, whether or not they are taken by an independent body, should be subject to a review by an independent and impartial judicial authority.

3. Lawyers should enjoy freedom of belief, expression, movement, association and assembly, and, in particular, should have the right to take part in public discussions on matters concerning the law and the administration of justice and to suggest legislative reforms.

4. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.

5. Lawyers should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.

6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the rule of law.

7. Lawyers should not be refused access to a court before which they are qualified to appear and should have access to all relevant files when defending the rights and interests of their clients in accordance with their professional standards.

8. All lawyers acting in the same case should be accorded equal respect by the court.

Principle II - Legal education, training and entry into the legal profession

1. Legal education, entry into and continued exercise of the legal profession should not be denied in particular by reason of sex or sexual preference, race, colour, religion, political or other opinion, ethnic or social origin, membership of a national minority, property, birth or physical disability.

2. All necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers.

3. Legal education, including programmes of continuing education, should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect,
protect and promote the rights and interests of their clients and support the proper administration of justice.

**Principle III - Role and duty of lawyers**

1. Bar associations or other lawyers’ professional associations should draw up professional standards and codes of conduct and should ensure that, in defending the legitimate rights and interests of their clients, lawyers have a duty to act independently, diligently and fairly.

2. Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions.

3. The duties of lawyers towards their clients should include:
   a. advising them on their legal rights and obligations, as well as the likely outcome and consequences of the case, including financial costs;
   b. endeavouring first and foremost to resolve a case amicably;
   c. taking legal action to protect, respect and enforce the rights and interests of their clients;
   d. avoiding conflicts of interest;
   e. not taking up more work than they can reasonably manage.

4. Lawyers should respect the judiciary and carry out their duties towards the court in a manner consistent with domestic legal and other rules and professional standards. Any abstention by lawyers from their professional activities should avoid damage to the interests of clients or others who require their services.

**Principle IV - Access for all persons to lawyers**

1. All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers.

2. Lawyers should be encouraged to provide legal services to persons in an economically weak position.

3. Governments of member states should, where appropriate to ensure effective access to justice, ensure that effective legal services are available to persons in an economically weak position, in particular to persons deprived of their liberty.

4. Lawyers' duties towards their clients should not be affected by the fact that fees are paid wholly or in part from public funds.
Principle V - Associations

1. Lawyers should be allowed and encouraged to form and join professional local, national and international associations, which, either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.

2. Bar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public.

3. The role of Bar associations or other professional lawyers' associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected.

4. Bar associations or other professional lawyers' associations should be encouraged to ensure the independence of lawyers and, inter alia, to:
   
   a. promote and uphold the cause of justice, without fear;
   
   b. defend the role of lawyers in society and, in particular, to maintain their honour, dignity and integrity;
   
   c. promote the participation by lawyers in schemes to ensure the access to justice of persons in an economically weak position, in particular the provision of legal aid and advice;
   
   d. promote and support law reform and discussion on existing and proposed legislation;
   
   e. promote the welfare of members of the profession and assist them or their families if circumstances so require;
   
   f. co-operate with lawyers of other countries in order to promote the role of lawyers, in particular by considering the work of international organisations of lawyers and international intergovernmental and non-governmental organisations;
   
   g. promote the highest possible standards of competence of lawyers and maintain respect by lawyers for the standards of conduct and discipline.

5. Bar associations or other professional lawyers' associations should take any necessary action, including defending lawyers’ interests with the appropriate body, in case of:
   
   a. arrest or detention of a lawyer;
   
   b. any decision to take proceedings calling into question the integrity of a lawyer;
   
   c. any search of lawyers themselves or their property;
   
   d. any seizure of documents or materials in a lawyers' possession;
   
   e. publication of press reports which require action on behalf of lawyers.
Principle VI - Disciplinary proceedings

1. Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.

2. Bar associations or other lawyers’ professional associations should be responsible for or, where appropriate, be entitled to participate in the conduct of disciplinary proceedings concerning lawyers.

3. Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision.

4. The principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers.
Appendix C

CCBE Code of Conduct for Lawyers in the European Union
CCBE Code of Conduct for Lawyers in the European Union

1. PREAMBLE

1.1. The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client's cause but to be his adviser. A lawyer's function therefore lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

the client;
the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;
the legal profession in general and each fellow member of it in particular;
the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2. The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilized societies. The failure of the lawyer to observe these rules must in the last resort result in a disciplinary sanction.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application. The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3. The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the
difficulties which result from the application of “double deontology” as set out in Article 4 of the E.C. Directive 77/249 of 22nd March 1977.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code. After the rules in this Code have been adopted as enforceable rules in relation to his cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application Ratione Personae

The following rules shall apply to lawyers of the European Union and the European Economic Area as they are defined by the Directive 77/249 of 22nd March 1977.

1.5. Field of Application Ratione Materiae

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

(a) all professional contacts with lawyers of Member States other than his own;
(b) the professional activities of the lawyer in a Member State other than his own, whether or not the lawyer is physically present in that Member State.

1.6. Definitions

In these rules:

"Home Member State" means the Member State of the Bar or Law Society to which the lawyer belongs.
"Host Member State" means any other Member State where the lawyer carries on cross-border activities.
"Competent authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration
of discipline of lawyers.

2. GENERAL PRINCIPLES

2.1. Independence

2.1.1. The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.

2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3. Confidentiality

2.3.1. It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer. The lawyer’s obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3. The obligation of confidentiality is not limited in time.

2.3.4. A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

2.4. Respect for the Rules of Other Bars and Law Societies

Under the laws of the European Union and the European Economic Area a lawyer from another Member State may be bound to comply with the rules of the Bar or Law Society of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity. Member organisations of CCBE are obliged to deposit their codes of conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the
current code from the Secretariat.

2.5. Incompatible Occupations

2.5.1. In order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice a lawyer is excluded from some occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he wished to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6. Personal Publicity

2.6.1. A lawyer is entitled to inform the public about his services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

2.7. The Client's Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer's Liability towards his Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his liabilities towards his client in accordance with rules of the Code of Conduct to which he is subject.

3. RELATIONS WITH CLIENTS

3.1. Acceptance and Termination of Instructions

3.1.1. A lawyer shall not handle a case for a party except on his instructions. He may, however, act in a case in which he has been instructed by another lawyer who himself acts for the party or where the case has been assigned to him by a competent body. The lawyer should make reasonable efforts to
ascertain the identity, competence and authority of the person or body who instructs him when the specific circumstances show that the identity, competence and authority are uncertain.

3.1.2. A lawyer shall advise and represent his client promptly, conscientiously and diligently. He shall undertake personal responsibility for the discharge of the instructions given to him. He shall keep his client informed as to the progress of the matter entrusted to him.

3.1.3. A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it. A lawyer shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work.

3.1.4. A lawyer shall not be entitled to exercise his right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2. Conflict of Interest

3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

3.2.2. A lawyer must cease to act for both client when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3. Pactum de Quota Litis

3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

3.3.2. By «pactum de quota litis» is meant an agreement between a lawyer and his client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of competent authority having jurisdiction over the lawyer.

3.4. Regulation of Fees
3.4.1. A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable.

3.4.2. Subject to any proper agreement to the contrary between a lawyer and his client fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client.

3.5. Payment on Account

If a lawyer requires a payment on account of his fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved. Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6. Fee Sharing with Non-Lawyers

3.6.1. Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer’s heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer’s practice.

3.7. Cost Effective Resolution and Availability of Legal Aid

3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client’s dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform his client of the availability of legal aid where applicable.

3.8. Clients funds

3.8.1. When lawyers at any time in the course of their practice come into possession of funds on behalf of their clients or third parties (hereinafter called «client’s funds») it shall be obligatory:

3.8.1.1. That client’s funds shall always be held in an account of a bank or similar institution subject to supervision of Public Authority and that all clients’ funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.

3.8.1.2. That any account in which the client’s funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the lawyer.
3.8.1.3. That any account or accounts in which client’s funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the client’s funds held by the lawyer.

3.8.1.4. That all funds shall be paid to clients immediately or upon such conditions as the client may authorise.

3.8.1.5. That payments made from client’s funds on behalf of a client to any other person including:

a) payments made to or for one client from funds held for another client;
b) payment of the lawyer’s fees,

be prohibited except to the extent that they are permitted by law or are ordered by the court and have the express or implied authority of the client for whom the payment is being made.

3.8.1.6. That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his client’s funds and distinguishing client’s funds from other funds held by him.

3.8.1.7. That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyer’s client’s funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.

3.8.2. Subject as aftermentioned, and without prejudice to the rules set out in 3.8.1 above, a lawyer who holds client’s funds in the course of carrying on practice in any Member State must comply with the rules relating to holding and accounting for client’s funds which are applied by the competent authorities of the Home Member State.

3.8.3. A lawyer who carries on practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member State concerned comply with the requirements of the Host Member State to the exclusion of the requirements of the Home Member State. In that event he shall take reasonable steps to inform his clients that he complies with the requirements in force in the Host Member State.

3.9. Professional Indemnity Insurance

3.9.1. Lawyers shall be insured at all times against claims based on professional negligence of an extent which is reasonable having regard to the nature and extent of the risks which each lawyer may incur in his practice.

3.9.2. When a lawyer provides services or carries out practice in a Host Member State, the following shall apply:

3.9.2.1. The lawyer must comply with any Rules relating to his obligation to insure against his
professional liability as a lawyer which are in force in his Home Member State.

3.9.2.2. A lawyer who is obliged so to insure in his Home Member State and who provides services or carries out practice in any Host Member State shall use his best endeavours to obtain insurance cover on the basis required in his Home Member State extended to services which he provides or practice which he carries out in a Host Member State.

3.9.2.3. A lawyer who fails to obtain the extended insurance cover referred to in paragraph 3.9.2.2 above or who is not obliged so to insure in his Home Member State and who provides services or carries out practice in a Host Member State shall in so far as possible obtain insurance cover against his professional liability as a lawyer whilst acting for clients in that Host Member State on at least a basis equivalent to that required of lawyers in the Host Member State.

3.9.2.4. To the extent that a lawyer is unable to obtain the insurance cover required by the foregoing rules, he shall inform such of his clients as might be effected.

3.9.2.5. A lawyer who carries out practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with such insurance requirements as are in force in the Host Member State to the exclusion of the insurance requirements of the Home Member State. In this event he shall take reasonable steps to inform his clients that he is insured according to the requirements in force in the Host Member State.

4. RELATIONS WITH THE COURTS

4.1. Applicable Rules of Conduct in Court

A lawyer who appears, or takes part in a case before a court or tribunal in a Member State, must comply with the rules of conduct applied before that court or tribunal.

4.2. Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent by the other party’s lawyer.

4.3. Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of his client honourably and fearlessly without regard to his own interests or to any consequences to himself or to any other person.
4.4. False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5. Extension to Arbitrators Etc.

The rules governing a lawyer’s relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and cooperation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2. Co-operation Among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which he is not competent to undertake. He should in such case be prepared to help his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3. Correspondence Between Lawyers

5.3.1. If a lawyer sending a communication to a lawyer in another Member State wishes it remain confidential or without prejudice he should clearly express this intention when communicating the document.
5.3.2. If the recipient of the communication is unable to ensure its status as confidential or without prejudice he should return it to the sender without revealing the contents to others.

5.4. Referral Fees
5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to himself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6. (Deleted by decision of the CCBE Plenary Session in Dublin on December 6th, 2002)

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

5.8. Training Young Lawyers

In order to improve trust and co-operation amongst lawyers of different Member States for the clients' benefit there is a need to encourage a better knowledge of the laws and procedures in different Member States. Therefore, when considering the need for the profession to give good training to young lawyers, lawyers should take into account the need to give training to young lawyers from other Member States.

5.9. Disputes amongst Lawyers in Different Member States

5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct he shall draw the matter to the attention of his colleague.

5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.
Appendix D

Draft Law of the Republic of Armenia on Advocacy and Advocates’ Activity

Article 1. Subject Matter of the Law
This law prescribes the procedure for organizing and practicing advocacy and advocate’s activity in the Republic of Armenia.

Article 2. Legislation on Advocacy and Advocates' Activities
Legislation on advocacy and advocates' activities consists of the Constitution of the Republic of Armenia, the civil procedure and criminal procedure codes, this law and other legal acts.

The procedure for advocacy and advocates' activities set forth in this law is unified and mandatory for all advocates.

Article 3. Advocacy and the State
Advocacy is a professional association of advocates and, being an institution of civil society, it is not part of the system of government and local self-government bodies.

Advocacy is based on the principles of rule of law, independence, respect to rights and freedoms as well as honor and dignity of human beings and citizens, humanity, confidentiality, self-governance and equality of advocates.

In order to provide availability of legal assistance to the population and to promote advocate's activities, government bodies shall ensure guarantees for advocates' independence and provide funding for advocates rendering free legal assistance to citizens of the Republic of Armenia in cases prescribed by law. They also provide office space and means of communication to advocates' groups in case of necessity.

Article 4. Limitation of Use of Definitions in This Law
Use of the terms advocates' activities, advocacy, advocate, chamber of advocates and Board of Advocates' Chamber or use of word combinations with these terms is allowed only to advocates and to advocates' groups formed in accordance with this law.


**Article 5. Advocates' Activity**

Advocate's activity is a type of law-protecting activity.

Advocate’s activity is legal assistance based on professionalism, which is provided to individuals and legal entities (hereafter, clients) with the purpose of protecting their rights, freedoms and interests and ensuring availability of justice.

Advocate activity includes:

- Consultation, including studying the documents, preparing papers of legal nature and other documents;
- Representation;
- Defense. Only an advocate shall exercise defense prescribed by this Article.

The type of legal assistance which is provided by legal entities and people holding a position legal services, as well as by employees government and local self-government bodies is not considered advocate's activity.

**Article 6. Payment for Advocates' Activity**

Advocate's activity is a paid activity.

The amount and procedure of remuneration for advocate's activity shall be decided by the written contract signed according to the Civil Procedure Code of the Republic of Armenia between the advocate and the client.

In cases prescribed by law, free legal assistance shall be ensured by the state through the Chamber of Advocates of the Republic of Armenia.

Free legal services prescribed by this law shall be provided for criminal cases in the manner prescribed by the Criminal Procedure Code of the Republic of Armenia and to citizens who have submitted the following type of civil cases:

1. cases on salary and other type of payment equaled to salary and labor litigation;
2. cases on levying alimony;
3. cases on compensation of losses incurred upon mutilation or other types of damage to health or death of bread-winner of the family.

Free legal services shall be funded out of the state budget. The amount of money allocated to the Chamber of Advocates of the Republic of Armenia shall be determined by counting per hour payment rate to an advocate equal to that of a prosecutor.

Out of the received remuneration, the advocate shall transfer funds:

1. for general needs of the advocates' chamber pursuant to the procedure and in size prescribed by the advocates' chamber;
2. for paying the expenses of the advocates' chamber;
3. for other expenses related to practicing advocate's activities.
CHAPTER 2. Organization of Advocacy and Advocate's Activities

Article 7. Chamber of Advocates

Advocates' Chamber is an independent self-governing body, which shall be registered in the RA Court of Cassation and have a status of a legal entity.

Goals and objectives of the advocates' chamber are as follows:

1. create conditions for professional activities of their members;
2. protect rights and lawful interests of its members in their interrelation with government and local self-government bodies, organizations and in courts;
3. organize training and education of its members;
4. oversee that its members follow the requirements of the Code of Professional Conduct and the bylaws of the chamber;
5. take measures with the purpose of raising the reputation of an advocate;
6. ensure social security of its members and when needed provide assistance to them and their family members.
7. provide free legal assistance.

Chamber of advocates is a free and sovereign body and it shall enjoy all the rights envisaged for non-governmental organizations by law.

Chamber of advocates can cooperate with advocates' agencies of foreign countries and with international and non-governmental organizations.

Article 8. Foundation of an Advocates' Chamber

An advocates' chamber shall be created basing on this law and founded by the general meeting of advocates.

Article 9. Registration of the Advocates' Chamber

Chamber of Advocates shall be registered by the Chairman of the Court of Cassation.

Chamber of Advocates shall turn to the Court of Cassation with a request on registration no later than 30 days of the day of the founding meeting.

A Chamber of Advocates shall submit the following documents to the Court of Cassation for registration:

1. application letter;
2. minutes of the founding meeting;
3. founders' information;
4. four copies of the bylaws signed by the Chairman of Chamber of Advocates;
5. information of the members of the chamber's permanent governing body;
6. document indicating the place of functioning of the Chamber of Advocates and its address;
7. copies of licenses for advocates activities of founders, or certificates on results of qualification examinations;
8. receipt of payment of state registration fee.

Within thirty days after receiving necessary documents the Chairman of the Court of Cassation shall consider and make a decision on registration of the Chamber of Advocates. Chamber of Advocates shall be recognized as registered if its application is not rejected during the defined time period.

Within three days after expiration of the deadline established for registration, the Chairman of the Court of Cassation shall submit to the Chamber of Advocates a certificate on registration or the copy of his/her decision on rejection of registration. Such decision shall contain grounds for rejection.

Chamber of Advocates acquires a status of legal entity from the moment of its registration. Any changes to the bylaws of the Chamber of Advocates shall become effective only after registration in the manner prescribed by this Law.

The Code of the Chamber of Advocates shall be registered, and changes made to that Code shall become effective in the same manner as prescribed by this law for registration and changes to the bylaws of the Chamber of Advocates.

**Article 10. Bodies of the Chamber of Advocates**

The following are the bodies of the Chamber of Advocates:

1. General Meeting of the Chamber of Advocates;
2. Board of the Chamber of Advocates;
3. Disciplinary Committee of the Chamber of Advocates;
4. Qualification Committee of the Chamber of Advocates;
5. Oversight Committee of the Chamber of Advocates.

Powers of the bodies of the Chamber of Advocates shall be defined by the bylaws of the Chamber of Advocates.

**Article 11. General Assembly of the Chamber of Advocates**

General Assembly of the Chamber of Advocates shall:

1. adopt the bylaws of the Chamber of Advocates;
2. elect a chairman of the Chamber of Advocates;
3. form the Board of the Chamber of Advocates;
4. form the Disciplinary Committee of the Chamber of Advocates;
5. form the Oversight Committee of the Chamber of Advocates;
6. take a decision on issuing special licenses.

**Article 12. Board of the Chamber of Advocates**

The Board of the Chamber of Advocates:

1. considers issues related to ensuring proper functioning of the Chamber of Advocates;
2. forms the Qualification Committee;
3. develops and approves the Code of Conduct for the Chamber of Advocates;
4. takes a decision on including the name of an advocate into the list of practicing advocates;
5. maintains and publicizes the list of practicing advocates;
6. considers and takes a decision on issuing a license (except for a special license) for advocate's activities to a candidate;
7. takes a decision on recognizing an advocate's license ineffective, following the procedure set forth in article 32 of this law;
8. takes a decision on suspending an advocate's license, following the procedure set forth in article 34 of this law;
9. comes up with proposals on improvement of laws and other legal acts;
10. prepares and submits to the government in prescribed manner request for funding of the Chamber of Advocates;
11. approves the staff of the Chamber of Advocates;
12. appoints and dismisses head of the staff of the Chamber of Advocates;
13. approves job descriptions of the staff of the Chamber of Advocates;
14. organizes professional training of advocates;
15. carries out other powers prescribed by the law.

**Article 13. Disciplinary Committee of the Chamber of Advocates**

Disciplinary Committee of the Chamber of Advocates;

1. Institutes a disciplinary action against an advocate;
2. gives a conclusion on assigning a disciplinary penalty for an advocate;
3. gives a conclusion on recognizing an advocate's license ineffective.

**Article 14. Qualification Commission of the Chamber of Advocates**

Qualification Commission of the Chamber of Advocates is created with the purpose of giving qualification examinations to persons willing to receive licenses for advocate's activity.
Qualification Commission is formed by the Board of Advocates of the Republic of Armenia, for the term of 2 years. It consists of 13 members and has the following representation norms:

1. 7 advocates from the Chamber of Advocates of the Republic of Armenia who have at least 5 years' experience;
   Advocates shall be included in the Qualification Commission at the decision of the board of the Chamber of Advocates.
2. 2 representatives from the Ministry of Justice of the Republic of Armenia, upon submission from the RA Minister of Justice;
3. 2 academician-lawyers from relevant research institutes, upon submission from their supervisors;
4. 1 judge from the Court of Cassation of the Republic of Armenia upon recommendation of the Chairman of the Court of Cassation of the Republic of Armenia;
5. 1 judge from the Economic Court of the Republic of Armenia upon recommendation of the Chairman of the Economic Court of the Republic of Armenia.

Judges shall be included into the Qualification Commission with the decision of the Board of Court Chairmen.

Chairman of the Board of advocates' chamber shall become Chairman of the Qualification Commission by virtue of his office.

Qualification Commission shall be considered eligible to make decisions with presence of at least two thirds of all the members described in this article. Sessions of the Qualification Commission shall be convened by the Chairman of the Qualification Commission upon necessity, but no less than 4 times a year. The sessions shall be of legal power if no less than two thirds of all members of the Qualification Commission are present.

Decisions on giving examinations to persons willing to receive licenses for advocate's activity shall be adopted by majority vote of the number of members of the Qualification Commission present at the session through voting with open ballots. Form of the ballot shall be determined by the permanent supreme body of the chamber of Advocates of the Republic of Armenia. Minutes of the Qualification Commission session shall be signed by all Qualification Commission members, irrespective of the standing of each of the members during the voting. Ballots and written tests shall be attached to the minutes and kept in the files of Chamber of Advocates for three years. The decision of Qualification Commission shall be announced to the candidate immediately after the voting.

Advocates member to the Qualification Commission can combine work in the Qualification Commission with advocate's activity, in the meantime receiving a salary for work in the Qualification Commission which shall be determined by the chamber of advocates.

**Article 15. Oversight Committee of the Chamber of Advocates**

Powers of the Oversight Committee of the Chamber of Advocates shall be established in the bylaws if the Chamber of Advocates.
Article 16. Property of the Chamber of Advocates

Property of the Chamber of Advocates originates from transfers made by advocates for general needs of the chamber, from grants given by individuals and legal entities, as well as from charity and other sources not prohibited by law, following the order set forth by RA legislation.

General needs of the Chamber of Advocates include payment of remuneration to member advocates, payment of expenses related to their work in the chamber, as well as payment of salaries of the staff of the advocates' chamber.

Article 17. Public Organizations of Advocates

Advocates have the right to create public organizations of advocates or be member of a public organization of advocates, pursuant to the legislation of the Republic of Armenia.

Public organizations of advocates shall not conduct functions of the chamber of advocates or their bodies as provided by this law.

CHAPTER 3. The Advocate, His/Her Activity

Article 18. The Advocate

Advocate is the person who has obtained an advocate’s license in the manner prescribed by this law, who is a member of the advocates' chamber, who took an oath of an advocate of the Republic of Armenia and who has high moral qualities. An advocate is an independent consultant on legal issues.

An advocate shall not engage in other paid activities, except for academic, pedagogical and other creative activities.

In rendering legal assistance, an advocate:

1. Provides consulting and documents related to legal issues both in oral and written form;
2. prepares applications, complaints, motions and other documents of legal nature;
3. participates in civil procedure as representative of the client;
4. participates in criminal procedure or cases on administrative offense as representative or defender of the client;
5. participates in hearings of cases in arbitrage courts and other bodies for solving arguments, as representative of the client;
6. represents the interests of the client in government and local self-government bodies, in public and other organizations;
7. represents the interests of the client in government bodies, courts and law-enforcement bodies of foreign countries, in international judicial instances, in NGOs of foreign countries and, unless otherwise provided by the legislation of the foreign country, charter documents of international judicial bodies and international organizations or by the international agreements of the Republic of Armenia.
8. participates in execution phase, as well as in the period of serving criminal punishment, as representative of the client;

9. represents the client in taxation relations.

The advocate has the right to render other types of legal assistance not prohibited by law. In civil procedures and procedures on administrative offenses only advocates can represent organizations, government and local government bodies, except for cases when those functions are performed by people on staff of such organizations, government and local government bodies, unless otherwise prescribed by law.

An advocate shall put his signature and seal to applications and other documents prepared by him.

An advocate shall wear an official uniform during a court hearing.

The type of the official uniform will be determined by the chamber of advocates.

An advocate's identification shall be the advocate's professional ID issued by the chamber of advocates.

An advocate shall train his/her assistants and interns.

A foreign advocate shall practice advocates' activity in the Republic of Armenia pursuant to the order set forth by this law, unless otherwise prescribed by international agreements of the Republic of Armenia.

A foreign advocate cannot provide legal assistance within the territory of the Republic of Armenia on issues related to state secrets of the Republic of Armenia.

Foreign advocates cannot:

1. be elected as bodies of advocates' chamber;

2. train their assistants and interns;

3. provide legal assistance within the free legal assistance projects organized by the chamber of advocates.

**Article 19. Advocate's Assistant**

An advocate has the right to have an assistant of assistants. People with higher legal, incomplete higher legal or secondary school education can become advocate's assistant except for people described in article 28 of this law.

An advocate's assistant cannot practice advocate's activity.

An advocate's assistant shall not publicize advocate's confidential information.

An advocate's assistant shall be employed basing on an employment contract made with the advocates' firm which employs the advocate.

An advocate's assistant's identification shall be the determined by an advocate's assistant's ID.
Foreign citizens can also become an advocate's assistant if they meet the requirements set forth in part 1 of this article.

**Article 20. Advocate's Intern**

An advocate having advocate's experience of no less than 5 years has the right to have interns. People with higher legal education can become advocate's intern except for people described in article 28 of this law.

An advocate's intern shall carry out his activity guided by the advocate, performing the advocate's assignments. An advocate's intern shall not practice advocate's activity independently.

An advocate's intern can replace the advocate basing on an authorization issued by the advocate in all cases, except for advocates holding a special license and registered with the Court of Cassation.

An advocate's intern shall not publicize advocate's secret.

An advocate's intern shall be employed basing on an employment contract made with the advocates' firm which employs the advocate.

An advocate's intern's identification shall be the determined by an advocate's intern's ID.

Foreign citizens can also become an advocate's intern if they meet the requirements set forth in part 1 of this article.

**Article 21. Advocate Secret (Confidentiality)**

The information confidentially provided to an advocate by the client, as well as the information and evidence obtained by an advocate independently in the course of his/her advocate activity and not known by the public, shall be considered as advocate secret.

An advocate cannot be interrogated as a witness on information of which he/she disposed while being requested to render legal assistance or while rendering legal assistance.

An advocate shall have the right to disclose advocate secret if:

1. the client consent is available;
2. in the advocate's opinion, non-disclosure of the secret may result in such illegal actions which can entail death of a person, severe bodily damage, big scale property damage;
3. it is necessary for supporting the claims in a dispute arisen between the advocate and the client, or for advocate's defense.

The obligation to preserve the advocate secret shall not be limited in time.

**Article 22. Organizational-Legal Forms of Advocates' Activity**

For organization of their activity, advocates can choose any of the organizational-legal forms of activity provided by law.
CHAPTER 4. Licensing of the Advocate Activity

Article 23. Requirements for Receiving Advocate License

Advocate license may be given to the person who:

1. has higher legal education or a law degree, who also has two years' employment experience in a legal position;

2. has passed qualification examination and has received a relevant certificate.

For obtaining a license for advocates' activities, the advocate shall pass an examination with a curriculum determined by the chamber of advocates and for obtaining a special license the advocate shall pass an examination with special curriculum. Board of the Chamber of Advocates shall determine rules for giving and taking the examination. Only a citizen of the Republic of Armenia can get a special license.

In order to get a license for advocate's activity, the candidate shall submit to the Qualification Committee a copy of an identification document, CV, copy of employment record book or other document certifying that he/she worked in a legal profession, a document certifying that he/she has a legal higher education or a law degree, along with an application and other documents required by legislation on advocacy and advocate's activities.

In case of necessity, Qualification Committee shall make a check within 2 months period to verify the papers and data submitted by the candidate.

Qualification examination consists of a written test and an oral interview.


Candidates failing the qualification examination will have the right to reapply after one year. Number of attempts to pass the exam is not limited.

Examinations shall be held once every three months.

Employment experience in a legal position required for getting a license for advocate's activity includes employment as a:

1. judge;
2. in a position in government or local self-government bodies requiring higher legal education;
3. in a position in legal services of organizations requiring higher legal education;
4. as an advocate;
5. as an advocate's assistant;
6. as a notary;
7. as a law professor in high school, university or in a post-graduate educational institution;
8. in a position in research institutes requiring higher legal education.

**Article 24. The Procedure of Issuing Advocate License**

In order to receive an advocate license, a candidate shall submit to the advocates' chamber an application requesting to get a membership of the chamber of advocates, and a copy of the certificate issued by the qualification committee.

The application shall not be rejected on the basis of nationality, sex, language, religion, and political or other opinions, social origin, property or any other condition.

The application of the candidate shall be considered and a decision shall be made within a month's period.

An application can be turned down in cases prescribed by the charter of the chamber.

Rejection of an application can be appealed in court within a month's period.

In case of rejection of the appeal, the candidate can submit a new application after 2 years from the date of issuance of the rejection.

A member receiving membership of the chamber shall get a license with chamber's seal and with signature of the chairman within 5 days.

The license shall be issued for life [with no time limit].

**Article 25. Procedure for Issuing a Special License**

In order to receive a special license, an advocate shall submit to the advocates' chamber an application requesting to get a special license and a copy of the relevant certificate issued by the qualification committee.

Special license can be given by the advocates' chamber to the three advocates with the biggest number of votes determined at the General Meeting, basing on the results of a secret ballot voting.

The chamber of advocates can issue no more than three special licenses a year for a term of 5 years.

A special license shall be issued after summarizing the results of voting of the general assembly, within 5 days.

**Article 26. Registration of an Advocate with Special License with the Court of Cassation**

Within five days after submitting the Special License along with a note certifying payment of state duties to the Court of Cassation, an advocate with a Special License shall be registered by the Chairman of the Court of Cassation.

An advocate holding a Special License may begin to exercise his/her powers upon registration.
Article 27. Advocate's Oath

A candidate who receives a special license shall take an oath in front of the chairman of the chamber of advocates within a months' period after passing the exam and with the following content:

"I solemnly swear to honestly and conscientiously perform advocate's duties, to keep advocate's secret and to protect clients rights, freedoms and interests guiding myself by the RA Constitution, RA laws and the Code of Advocates' Conduct".

An advocate shall hold his/her hand on the book of the Constitution of the Republic of Armenia while taking the oath.

The text of the oath shall be signed by the advocate and the chairman of the chamber of advocates.

Article 28. Limitations of Advocate's Activities

A person may not be an advocate if:

1. he/she was recognized by court decision fully or partially disabled;
2. he/she was convicted of intentional crime, and the conviction has not been canceled or waived;
3. he/she is in state service.

Article 29. Including into the List of Practicing Advocates

Within 14 days of receipt of the application of a person holding a license for advocate's activity, the Board of Advocates' Chamber of the Republic of Armenia shall make a decision on including him/her into the List of Practicing Advocates.

Within 14 days of the day of such a decision, the Chairman of the Court of Cassation of the Republic of Armenia shall be notified in written on the fact of adding the advocate's name to the List of Practicing Advocates.

In case an advocate is not entered into the List of Practicing Advocates within the term set forth in this article, he/she is entitled to appeal in court within 14 days of the expiration day for entering his/her name into the List.

Within 14 days of receipt of application of an advocate from a foreign country who is authorized to practice advocate's activity in his/her country, the Board of Advocates' Chamber of the Republic of Armenia shall make a decision on including him/her into the List of Practicing Advocates.

Article 30. Removal from the List of Practicing Advocates

At the decision of the Board of Advocates' Chamber of the Republic of Armenia an advocate shall be removed from the List of Practicing Advocates if:

1. he/she submitted a written application requesting to remove his/her name from the List of Practicing Advocates;
2. his/her license is terminated for reasons provided in article 32 of this law;

3. authorization of a foreign advocate for advocate's activity in his country has been terminated.

**Article 31. Publication of the List of Practicing Advocates**

The Board of Advocates' Chamber of the Republic of Armenia shall publish the List of Practicing Advocates and changes to that List.

**CHAPTER 5. Termination and Suspension of an Advocate License**

**Article 32. Termination of an Advocate License**

An advocate license shall be terminated when:

1. the advocate requests the Chamber of Advocates in written form to terminate the license;

2. the license was obtained with violations of the requirements of law;

3. circumstances described in article 28 of this law are in place;

4. an advocate conducted such a deed, which is a ground for termination of a license pursuant to the Code of Advocate’s Professional Conduct.

5. for 2 or more times during 1 year, failed to perform his professional duties towards a client or decisions of the chamber of advocates within the chamber’s jurisdiction;

6. was subjected to disciplinary action within one year's period;

7. died, or a court decision on recognizing him dead entered into legal force.

An advocate's license shall be terminated also in cases when it is discovered that the data submitted to Qualification Commission under part 2 of article 23 of this law where not true.

A license shall be terminated by the Board of the Chamber of Advocates through recognizing it ineffective.

In cases prescribed by Items 4 and 5 of this Article, an advocate’s license shall be recognized as ineffective by the Chamber of advocates on the basis of a recommendation made by the Disciplinary Committee of the Chamber of Advocates.

Decision on terminating an advocate's license may be appealed in court within one month's period.

A foreign advocate cannot practice advocate's activities in the Republic of Armenia in cases when his authorization for practicing advocate's activity has been terminated in the country where he got the authorization.

**Article 33. Termination of a Special License**

A Special License shall be terminated when:

1. an advocate submits a written application requesting to terminate the Special License;
2. circumstances described in article 32 of this law are in place;
3. General Meeting of the Chamber of Advocates recognizes the annual report of the advocate holding a Special License unsatisfactory;
4. the period for which the Special License was issued has expired;
5. the advocate loses citizenship of the Republic of Armenia.

A Special License can be terminated also in other cases provided by law.

**Article 34. Suspension of an Advocate’s License and a Special License**

An advocate’s license and a Special License is suspended if an advocate:

1. has been elected to an elected position of state service or a community leader (for the term of being in office);
2. has been drafted for military service (for the period of the service);
3. unable to fulfill his/her professional duties for health reasons for over 1 year, if he/she has relevant documents (to prove that);
4. has been recognized as missing for unknown reasons pursuant to a procedure prescribed by law;

In case the court makes a decision on taking obligatory medical measures in respect to an advocate, the Board can suspend the advocate's license.

Suspension of advocate's license shall ensue suspension of guarantees applied towards that advocate under this law.

A license and a special license shall be suspended by the chairman of the chamber of advocates.

An advocate shall notify about circumstances described in the first part of this article to the chairman of the chamber of advocates within ten days’ period.

Upon elimination of circumstances described in the first part of this article, the advocate's license shall be recovered by a decision made by the chairman of the advocates' chamber based on an application of the advocate whose license had been suspended. A decision rejecting recovery of an advocate's license can be appealed in court.

**CHAPTER 6. The Advocate's Status**

**Article 35. Rights and Obligations of an Advocate**

Powers of an advocate participating in civil and criminal procedures as well as in cases of administrative offenses as representative or defender of a client shall be determined by relevant legal procedural legislation of the Republic of Armenia and by this law.

An advocate has the right to:
1. represent or defend individuals or legal entities following the order set by civil or criminal procedure codes, as well as represent interests of clients in government and local self-government bodies, in NGOs and other organizations;

2. acquire and present evidence following the procedure prescribed by law;

3. apply to government and local self-government bodies and organizations to get documents and information necessary for rendering legal assistance. The named bodies and organizations shall provide required documents or their ratified copies to the advocate following the procedure provided by law.

4. interview people, with their consent, who supposedly possess information related to the case on which the advocate is providing legal assistance;

5. engage experts by a contract to provide expertise on issues related to the case on which legal assistance is being rendered.

Have meetings with the clients without obstacles and in conditions of confidentiality, including cases when the client is in detention, without limitation of number or duration of meetings;

Preserve information (including by means of technical equipment) of the case on which legal assistance is being rendered, keeping state secrets and other secrets protected by law.

An advocate holding a Special License shall have the right to appeal court decisions, judgments, sentences that have entered into lawful force and to participate at the hearing of the case he/she brought to the Court of Cassation.

For the purpose of appealing court decisions, judgments and sentences that have entered into lawful force, an advocate holding a Special License shall have the right to study any case file in the court.

An advocate shall:

1. conscientiously and honestly protect the interests of a client by all means not prohibited by laws of the Republic of Armenia;

2. suggest the client solving the dispute in a peaceful manner as a priority way of solution;

3. follow the requirements of this law, the Code of Professional Conduct for an Advocate and bylaws of the chamber of advocates;

4. not reveal advocate's secret, except for cases provided by this law;

5. continually improve his/her knowledge and competence;

6. transfer money at the expense of received remuneration for the needs of the chamber of advocates, following the procedure and in size determined by the chamber;

7. not to take any action conflicting with the interests of a client, not to take any line without agreeing with the client, except for cases when the advocate is sure of false self-incrimination by the client, in which case, irrespective of the client's position, he/she shall not admit the client's crime and his/her connection with the crime;

8. not to take up more work than he/she can reasonably carry out.

An advocate shall not render legal assistance if:
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1. the issue of a client who applied for legal assistance is apparently of illegal nature;
2. he/she has his/her own interest in the object of the contract made with the client, which conflicts with the client's interest;
3. he/she has 2 or more clients in the same case, with conflicting interests;
4. he/she has been involved in the given case as a judge, prosecuting attorney, investigator, employee of the investigating body, expert or witness, as well as in case if he/she is an official who was authorized to make a decision within the scope of interests of the client;
5. he/she has kinship or family ties with the official who was engaged or is engaged in the proceedings of the given case;
6. he/she represents a client whose interests are adverse to another client’s interests;
7. that the advocate represented in the past, unless the former client gives written consent;

An advocate shall not:
1. make a statement about guilt of a client in case the latter denies it;
2. disclose information acquired from a client while rendering legal assistance to him/her without the client's consent;

An advocate shall not secretly cooperate with operative-investigation bodies.

An advocate shall cease rendering legal assistance to 2 or more persons in case there is a conflict between their interests.

An advocate has a right to renounce the assumed obligations only in cases prescribed by this law or by the contract signed with the client.

A client has a right at any time to stop using an advocate’s service, compensating for legal assistance that has already been rendered.

When renouncing assumed obligations, the advocate shall notify the client in advance, before leaving the client, to allow reasonable time for the client to find a new advocate; the advocate shall also return to the client relevant documents of the case that he/she possesses.

An advocate has other rights and obligations provided by law.

Article 36. Guarantees for Advocate’s Activity

The advocate shall be independent in his/her activities and submit only to the RA Constitution, Laws, Code of Advocate’s Professional Conduct and bylaws of the advocate’s chamber.

Any interference of national or local self-governing authorities, the officials thereof, political parties, non-governmental organizations or mass media with the professional activity of an advocate shall be prohibited.

An advocate shall be provided an opportunity to have individual, unhampered, confidential communication and consultation with his/her clients.

An advocate shall not be prosecuted or subjected to liability for any action performed in accordance with the law, the Code of Advocate's Professional Conduct, and bylaws of the
chamber of advocates, including expression of his/her opinion in court, law-enforcement or other agencies, in the process of conscientious performance of his/her professional duties. The above-described limitations shall not extend over civil-legal liabilities towards a client provided by this law.

**Article 37. Legal Protection of an Advocate**

An advocate, members of his/her family and their property are under government protection. Authorized state agencies shall undertake all necessary measures, prescribed by the law, to protect an advocate, if, in connection with performance of his/her professional duties, an advocate or members of his/her family have been threatened by any violent action against his/her and his/her family members’ life, by destruction of property or any other unlawful action.

When arresting an advocate, the body conducting such arrest shall immediately inform the chamber of advocates about it.

Criminal prosecution against an advocate holding a special license can be initiated only by the RA Prosecutor General.

**CHAPTER 7. Types of Encouragement for Advocates and Disciplinary Liability of Advocates**

**Article 38. Types of Encouragement for Advocates**

The following types of encouragement of advocates can be used:

1. announcement of gratitude;
2. one-time money award;
3. award (a present);
4. dismissing a disciplinary action.

Other types of encouragement for advocates prescribed by law can be used.

Types of encouragement for advocates provided by the first part of this article shall be used at the decision of the Board of the advocates' chamber, and at the recommendation of Chairman or the Board of the Chamber of Advocates.

**Article 39. Disciplinary Liability of an Advocate**

An advocate is subject to disciplinary liability for breaking the requirements of this law, the Code of Advocate's Professional Conduct, or bylaws of the chamber of advocates and for failing to perform or improperly performing his/her professional duties.

A disciplinary action against an advocate can be instituted by the disciplinary committee of the chamber of advocates. A disciplinary action against an advocate can be initiated only on the basis of written reports. Reports without signature and without mentioned address are not subject to checking.
The advocate shall immediately be notified of the decision on initiating a disciplinary action against him/her.

Disciplinary action shall be initiated in case grounds for disciplinary liability exist and within 10 days of receipt of the written report.

Disciplinary action cannot be initiated against an advocate and an initiated action shall be dismissed if the time period set for enforcing disciplinary liability against the advocate has expired.

Disciplinary action cannot be enforced against an advocate if three months have passed from the date of discovery of the violation.

If a decision has been made to reject the initiation of a criminal prosecution or to cease criminal proceedings against an advocate, and if features of disciplinary offense are found in the actions of the violating advocate, the advocate shall be subjected to disciplinary liability within 2 months of the day of making the decision on rejection of criminal prosecution or cessation of criminal prosecution.

A proceeding of a disciplinary action shall not exceed the period of one month, including making the decision.

**Article 40. Disciplinary Penalties**

The disciplinary committee can assign one of the following penalties to an advocate pronounced guilty of a disciplinary violation:

1. warning;
2. reprimand;
3. severe reprimand;
4. penalty
5. recognizing advocate's license ineffective and removal from the advocates' chamber.

A penalty cannot exceed 100 minimal salaries. The penalty shall be paid to the chamber of advocates.

When determining disciplinary penalty, severity and repeatedness of the action, as well as incurred damage shall be taken into account.

Penalty assigned to an advocate may be appealed in court of law, within one month from the day of assignment of the penalty.

The Board of chamber of advocates or the court can invalidate the decision of the disciplinary action and assign the disciplinary committee to start a new check into the case.

In case of warning and reprimand, a disciplinary penalty shall be effective for 1 year, in case of a penalty – for 3 years, in case of removal from the chamber of advocates – for 5 years, starting from the date of the final decision on disciplinary penalty.
Disciplinary penalties of advocates described in the first part of this article shall be enforced at the decision of the Board of the Chamber of Advocates, basing on the conclusion of the Disciplinary Committee of the Chamber of Advocates.

CHAPTER 8. Transitional and Final Provisions

Article 41. Enactment of This Law

This law enters into force on the next day of official publication.

From the moment of enactment of this law, “The Republic of Armenia Law on Advocate's Activity” enacted on September 1, 1998, as well as “The Law on Approving the Regulation Document of the Advocacy Service of the Soviet Republic of Armenia” enacted on November 13, 1980 shall be considered invalid.

Article 42. Formation of the Chamber of Advocates

Chamber of Advocates of the Republic of Armenia is the legal successor of the Union of Advocates of the Republic of Armenia.

Other advocates' unions operating in the Republic of Armenia shall reorganize and join the Union of Advocates of the Republic of Armenia within 2 months, following the order set forth in Article 63 of the RA Civil Code.

Union of Advocates of the Republic of Armenia and its bodies shall continue functioning within their former authorities and ensure functioning of advocate's activities in Armenia pursuant to this law.

Authorities of advocates included in other advocates' unions operating in the Republic of Armenia shall continue until those other unions join the Union of Advocates of the Republic of Armenia following the procedure prescribed by this law, within the period of time set by this law for replacing licenses issued by the other unions.

The Chamber of Advocates of the Republic of Armenia

Article 43. Legal Status of Advocates Holding Licenses Before This Law Enters Into Force

In reorganizing other unions operating in the Republic of Armenia through merging into the Union of Advocates of the Republic of Armenia, those other unions shall be considered as reorganized and merged upon registration of the Act on terminating the activities of those unions at the Court of Cassation of the Republic of Armenia.

Within 15 days after registration of termination of operation of those unions at the RA Court of Cassation, the Union of Advocates of the Republic of Armenia (UARA) shall automatically replace licenses of advocates of reorganized unions who become members of UARA with licenses of Chamber of Advocates of the Republic of Armenia.

The property and resources of the unions that joined the Chamber of Advocates of the Republic of Armenia shall be transferred to the RA Chamber of Advocate's ownership for free, following the procedure established by law.

Upon completion of the phase of reorganizing other unions operating in the Republic of Armenia through merging into the Union of Advocates of the Republic of Armenia, General Assembly of the Chamber of Advocates of the Republic of Armenia shall adopt the Charter of the Chamber of Advocates of the RA; the Board of the Chamber of Advocates of the RA shall approve the amendments to the Code of Advocates' Conduct and form the Qualification Committee.