

The drafting professions: notaries, lawyers, in-house counsel

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Legal drafting is the first profession of language. In Geneva it is carried out by three professions. Notaries, organised on the model of the Latin notariat, execute authentic instruments in French: deeds of sale of real property, incorporations of companies, inheritance agreements, authentic wills, deeds of foundation, powers of attorney intended for use abroad.¹ A Geneva authentic instrument circulates throughout the French-speaking world without translation and enjoys, in civil-law countries, a probative force that a private deed does not have. For a family from French-speaking Africa or the Maghreb organising its succession, the Geneva notary is a natural counterpart, whose language and categories are its own.

Lawyers form the second drafting profession. The Geneva bar has several thousand registered members, a significant proportion of whom practise in business law, banking and financial law, tax law and estate planning.² They draft asset management agreements, articles of association, foundation and trust regulations, shareholders' agreements, trading and financing contracts, in French for the French-speaking clientele and in English for the international clientele. Bilingual drafting has become the norm in the large firms, where a single file contains a shareholders' agreement in English, articles of association in French and a fiduciary agreement in English governed by a foreign law.

In-house counsel, employed by banks, trading houses, insurers and service companies, form the third profession. They draft general terms and conditions, client information documents, internal procedures and routine contracts. The Financial Services Act imposes on providers information duties whose form and language must be comprehensible to the client, which leads Geneva institutions to keep their documentation in French and English, and sometimes in other languages depending on the

clientele.³ The quality of this drafting determines the relationship with the client and the institution's position in the event of a dispute.

What these three professions share is a requirement of precision. Legal French has resources of its own: a syntax that clearly distinguishes condition, consequence and exception; a vocabulary fixed by centuries of legal scholarship; established formulae whose meaning is settled. These resources form a capital that is lost if drafting aligns itself with English templates translated word for word, with their long sentences and redundant definitions. The best Geneva drafters know how to write in French a contract that fits into ten pages what an Anglo-Saxon template spreads over forty, without any loss of legal certainty.

Key points. Notaries, lawyers and in-house counsel draft in French for the French-speaking clientele and in English for the international clientele. Legal French offers a precision and concision that constitute capital for the financial centre, provided that drafting does not shrink into the translation of Anglo-Saxon templates.

1 Notes

1. Geneva Law on the Notariat (Loi sur le notariat, LNot, rsGE E 6 05) of 25 November 1988, in force since 21 January 1989 (silgeneve.ch): notaries are public officers appointed by the Council of State after a traineeship of four years and three months including periods at the land registry, the commercial registry and the Tribunal de protection de l'adulte et de l'enfant, and after an examination (Art. 41); incompatibility with the functions of member of the Council of State, lawyer, magistrate and salaried civil servant (Art. 4); prohibition of trade and financial speculation; disciplinary supervision by a commission of seven members (elected magistrates and notaries); professional secrecy, duty to advise and annual audit of the accounts. ↩
2. Ordre des avocats de Genève, "L'Ordre des avocats de Genève en bref" (December 2022, odage.ch): more than 2,000 members in more than 400 firms, 42 languages represented; Swiss Bar Association (sav-fsa.ch): 1,233 members in 2014, that is more than 60 per cent of the lawyers entered in the cantonal register. ↩

3. Art. 40 para. 2 of the Financial Services Act (FinSA; SR 950.1) (droit-bilingue.ch): the information in the prospectus “must be provided in an official language of the Confederation or in English”; Art. 89 of the Financial Services Ordinance (FinSO; SR 950.11): the key information document is drawn up “in an official language”, “in English” or “in the language of correspondence with the retail client”, while that of collective investment schemes must be made available at least in an official language or in English; Art. 60 FinSA: the key information document sets out “the essential information enabling investors to make an informed investment decision” (name and issuer of the instrument, type and characteristics, risk and return profile with the maximum possible loss, costs, minimum holding period and tradability); Art. 62 FinSA: the producer regularly reviews this information and updates it in the event of significant changes. ↩

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