

(Ver15)

**Questionnaire concerning Client privilege
(APAA Group Name: Sri Lanka)**

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Part 1 (As for qualification for patent professionals):

1. Questionnaire 1-1

Concerning the qualifications for patent professionals*1:

Note*1: A patent professional is admitted for and able to professionally work for at least one of the following practices. In this case, "patents" include utility models.

- practicing patent prosecution before the Patent Office (including any Office administering patent filing, prosecution and/or registration); [I]
- opinion preparation concerning patent actions; [II]
- representation in patent infringement litigations; [III]
- representation in patent nullity procedures or litigations; [IV] and
- foreign patent filing and prosecution practices (such as evaluation of patentability of a foreign application, preparing a patent document to be sent to a foreign associate, and sending technical comments to the foreign associate in response to an Office Action) [V]

In your country, what kinds or types of patent professionals (e.g., patent agents, patent attorneys, attorneys at law, etc.) are admitted for conducting professional work relating to practicing patent prosecution before the Patent Office, opinion preparation concerning patent cases, patent infringement litigations, patent nullity procedures or litigations, and foreign patent filing and prosecution practices? If there are plural kinds or types of patent professionals who are admitted for such professional work, please specify them. In such a case, please indicate the kinds or types of patent professionals and the title names in Table 1 below, by reference to the related law or rule stipulating such patent professionals.

Table 1:

Kinds or types of patent professionals	Title name of patent professional in your country	Related law or rule*2 stipulating the patent professionals
Lawyer*3 patent professionals	<p>[II] Attorney-at-Law who is registered as a Registered Agent in terms of the Intellectual Property Act in order to act as an Agent for an applicant for the purposes of the Intellectual Property Act.</p> <p>[III] Any person but this would usually be an Attorney-at-Law</p> <p>[III] and [IV] Attorney-at-Law (in regard to advising and assisting clients in Court in litigation as per Rule 70 of the Rules of the Supreme Court Relating To The Admissions, Enrolment and Removal of Attorneys-at-Law)</p> <p>[V] Any person</p>	<p>The Constitution and sections 71(1)(c) and 175 of the Intellectual Property Act No. 36 of 2003 and the regulations thereunder</p> <p>Rule 70 of the Supreme Court Rules Relating To The Admissions, Enrolment and Removal of Attorneys-at-Law read with Article 136 of the Constitution.</p>
Non-lawyer patent professionals	<p>[I] Registered intellectual property agent who may or may not be an Attorney-at-Law</p> <p>[II] Any person.</p> <p>[III] and [IV] A litigant personally or by a recognized agent (in regard to litigation as per sections 24 and 25 of the Civil Procedure Code)</p> <p>[V] Any person</p>	<p>Section 175 of the Intellectual Property Act and regulations thereunder</p> <p>Sections 24 and 25 of the Civil Procedure Code</p>

Note (*2): If the professionals are stipulated only in an internal rule of a related organization to which the patent professionals belong, please reproduce the content of such internal rule. In the following, when the law or rule is referred to, please also understand that "law" and "rule" include internal rules if there is any internal rule of a certain organization governing the patent professionals.

Note (*3): "Lawyers" refers to persons licensed to practice law, including attorneys at law, solicitors, barristers, and the like. Please specify the title name in the table. Hereinafter, "Lawyer patent professionals" will be simply referred to as "Lawyers."

[Contents of the law/rule]

Article 136 of the Constitution provides that the Chief Justice with any the Judges of the Supreme Court nominated by him may.....make rules regulating generally the practice and procedure of the Court including the admission, enrolment, suspension and removal of Attorneys-at-Law and the Rules of conduct and etiquette for such Attorneys-at-Law

Section 71(1)(c) of the Intellectual Property Act provides that where an applicant's ordinary residence or principal place of business is outside Sri Lanka he shall be represented by an agent resident in Sri Lanka whose name and address shall be given in the application and the application shall be accompanied by a power of attorney granted to such agent by the applicant.

Section 175 of the Intellectual Property Act No. 36 of 2003 provides that an Agent referred to in the Act means an agent registered under the provisions of the Act or in accordance with any regulation made thereunder.

Any person registered as an agent under the Intellectual Property Act is declared to have the authority and to be competent to act as an agent under the Act.

A person may be admitted and registered as an agent if he:-

- a) is a citizen of Sri Lanka and is ordinarily resident in Sri Lanka; and
- b) (i) is an Attorney-at-Law of the Supreme Court of Sri Lanka; or
(ii) is a person possessing the qualifications prescribed for an agent; and
- c) pays the prescribed fee.

The Intellectual Property Regulations prescribe the requisite qualifications.

Rule 70 of the Supreme Court Rules of 1978 provides that:

No person who has not been duly admitted and enrolled as an Attorney-at-law or who has been suspended from practice or removed from office after having been so admitted and enrolled shall be allowed to assist and advise clients or to appear, plead or act for or on behalf of clients in any court or other institution established by law for the administration of justice.

Rule 70 of the said Rules provides that no person who has not been duly admitted and enrolled as an Attorney-at-Law.....shall be allowed to assists and advise clients or to appear, plead or act for or on behalf of clients in any Court or other institution established by law for the administration of justice.

Section 24 of the Civil Procedure Code provides as follows:

Any appearance, application or act in or to any court, required or authorized by law to be made or done by a party to an action or appeal in such court, except only such appearances, applications, or acts as by any law for the time being in force only attorneys-at-law are authorized to make or do, and except when by any such law otherwise expressly provided, may be made or done by the party in person, or by his recognized agent, or by a registered attorney duly appointed by the party or such agent to act on behalf of such party:

Provided that any such appearance shall be made by the party in person, if the court so directs. An attorney-at-law instructed by a registered attorney for this purpose, represents the registered attorney in court.

Section 25 of the Civil Procedure Code provides that:

The recognized agents of parties by whom such appearances and applications may be made or acts may be done are:-

- (a) the Attorney-General, on behalf of the State in respect of any court; who is also authorized to depute his power of appointing a registered attorney on behalf of the State in respect to any court to any person by a written document to be signed by the Attorney-General, and to be filed in that court;
- (b) persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done, authorizing them to make such appearances and applications, and to do such acts on behalf of such parties; which power, or a copy thereof certified by a registered attorney or notary shall be filed in court
- (c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done, in matters connected with such trade or business only, where no other agent is expressly authorized to make such appearances and applications and do such acts

2. Questionnaire 1-2 (scope of patent related practices or work for which patent professionals are admitted):

- (1) Questions are raised about the following kinds of professional work.
 - practicing patent prosecution before the Patent Office;
 - opinion preparation concerning patent cases;
 - representation in patent infringement litigations;
 - representation in patent nullity procedures or litigations; and

- foreign patent filing and prosecution practices.

If there are plural kinds or types of professionals, then please indicate the kinds of professional work admitted for in relation to the kinds or types of patent professionals shown in Table 2 as follows, by reference to the related law or rule stipulating the patent professionals. Please explain such kind or type of patent professionals and classify them into lawyers and non-lawyer patent professionals.

Table 2:

Scope of professional work admitted for:	Lawyers (yes or no)	Non-lawyer patent professionals*4 (yes or no)
i) Patent prosecution practice before the Patent Office	Yes (provided such Attorney-at-Law is registered as a registered agent in terms of section 175 of the Intellectual Property Act)	Yes (provided such person is registered as a registered agent in terms of section 175 of the Intellectual Property Act)
ii) Opinion preparation concerning patent cases	Yes	Yes
iii) Representation in patent infringement litigations	Yes (in so far as advising and assisting in Court is concerned only Attorneys-at-Law may do so)	Yes if a recognized agent (or the party may represent himself)
iv) Representation in patent nullity procedures or litigations	Yes (in so far as advising and assisting in Court is concerned only Attorneys-at-Law may do so)	Yes if a recognized agent (or the party may represent himself)
v) Foreign patent filing and prosecution practices	Yes	Yes

Note (*4): If there are plural kinds or types of non-lawyer patent professionals (such as a patent agent, Benrishi, etc), then please indicate the scope of professional work, respectively. The above is also applied to the following questions below.

(2) In the scope of the professional work as listed in Questionnaire 2(1) above, what professional work can be conducted only by the patent professionals (i.e. if a non-qualified person works for compensation, he or she would be punished)?

Table 3:

Scope of professional work admitted for:	Lawyers (yes or no)	Non-lawyer patent professionals*4 (yes or no)
i) Patent prosecution practice before the Patent Office	Yes (provided such Attorney-at-Law is registered as a registered agent in terms of section 175 of the Intellectual Property Act)	Yes (provided such person is registered as a registered agent in terms of section 175 of the Intellectual Property Act)
ii) Opinion preparation concerning patent cases	Yes	Yes
iii) Representation in patent infringement litigations	Yes (in so far as advising and assisting in Court is concerned only Attorneys-at-Law may do so)	Yes if a recognized agent (or the party may represent himself)
iv) Representation in patent nullity procedures or litigations	Yes (in so far as advising and assisting in Court is concerned only Attorneys-at-Law may do so)	Yes if a recognized agent (or the party may represent himself)
v) Foreign patent filing and prosecution practices	Yes	Yes

3. Questionnaire 1-3 (the conditions under which a person may act as a patent professional):

(1) What are the conditions under which a person may act as a patent professional for the above scope of work? Please answer the following sub-questions.

(i) Whether or not a qualification test is required? If so, please indicate the law or rule stipulating the qualification test. If there are plural kinds or types of patent professionals required to take the qualification test, then please answer the questions, respectively. In such a case, please explain which kind or type of patent professionals is required to take a qualification test in Table 4 below, by specifying the kind or type of the patent professionals in Table 4 as follows, and by reference to the related law or rule stipulating the qualification test.

Regulation 58(1) of Part V of the Intellectual Property Regulations provides that subject to section 175 of the Act, a person shall be qualified to be registered as an Agent if such person is an Attorney-at-Law of the Supreme Court of Sri Lanka; or

- 1) has passed the examination as specified hereinafter; and
- 2) has been successful at the interview conducted by the Director-General.

Attorneys-at-Law need not sit a qualification test to be registered as registered agents under and in terms of section 175 of the Intellectual Property Act.

The Regulations provide further:

- that the Director General of Intellectual Property may conduct an examination on his own or with the assistance of the Sri Lanka Law College or the Sri Lanka Institute of Development Administration, as and when he considers necessary, for the admission and registration of Agents:

- persons who

- (a) have passed the GCE (A.L.) Examination in four subjects (old syllabus) and 3 subjects (new syllabus) at not more than two sittings;
 - (b) have credit passes at G.C.E. (O.L.) in English and Sinhala or Tamil as a subject; and
 - (c) who are not less than 18 years of age;
- are qualified to apply for examination;

- the examination will have 2 papers on the following subjects:

- (i) Intellectual Property Law
- (ii) Administration of Intellectual Property and International Conventions

The Regulations prescribe in further detail the syllabus and structure of the papers and also prescribe that certain categories of persons such as persons adjudged to be of unsound mind, insolvent or bankrupt or convicted of a crime are not eligible to be registered

Table 4:

Kind or type of patent professionals	Title name of patent professional in your county	Is qualification test required? (yes or no)	Related law or rule stipulating the qualification test, if any
Lawyers	Attorney-at-Law (who has been registered as registered agent in terms of section 175 of the Intellectual Property Act); there is no official title, but such Attorney-at-Law could be referred to as an Agent.	No.	See answers above.
Non-lawyer patent professionals	There is no official title but such person could be referred to as an Agent.	Yes.	See answers above.

(ii) If a qualification test is required, please briefly answer the following a) to c) and fill in Table 5 below. Also, please indicate the related law and rule stipulating the following items:

- a) How many subjects are covered?
- b) What kinds of subjects are covered?
- c) Is an interview needed?

Table 5:

Kind or type of patent professionals	How many subjects are covered?	What kinds of subjects are covered?	Is an interview needed?	Related law or rule, if any
Lawyers	NA			
Non-lawyer patent professionals	2	Intellectual Property Law Administration of Intellectual Property Law and International Conventions	Yes	Regulation 58 of the Intellectual Property Regulations.

The Syllabus, as prescribed by the Intellectual Property regulations, is as follows:

(1) Intellectual Property Law

The candidates will be tested on their knowledge on the principles of Intellectual Property Law as provided in the Intellectual Property Act No. 36 of 2003. This 3 hour paper contains 12 questions and the candidates are required to answer 8 questions. One answer carries a maximum of 12.5 marks and the total marks is 100. The pass mark is 45.

(2) Administration of Intellectual Property and International Conventions.

The paper will consist of two parts – (a) and (b)

(a) Administration of Intellectual Property:

The candidates will be tested on their knowledge on the regulations made under the Intellectual Property Law, the preparations and prosecution of applications relating to trademarks, patents and industrial designs, integrated circuits etc., the functions, duties and responsibilities of Agent and work practices in the Intellectual Property Office

(b) International Conventions:

The candidates will be tested on their knowledge on international conventions on intellectual property administered by the WIPO and the UPOV Convention and the TRIPS Agreement and their application to Sri Lanka. This three hour paper contains 12 questions and the candidates are required to answer 8 questions. It is necessary to choose a minimum of two questions from each part. One answer carries a maximum of 12.5 marks and total mark is 100. The pass mark is 45.

(iii) Does the test cover a code of conduct or vocational ethics? NO

If the answer is yes, please refer to the law or rule stipulating a code of conduct or vocational ethics.

With regard to the interview the Regulation provides that those who have passed the examination shall be interviewed by the Director General. At the interview the Director General is required to examine the required qualifications of the candidate for the examination and whether the candidate is a fit and proper person to function as a registered Agent. The Director General is also required to satisfy himself about the good character and behavior of the candidate, his leadership qualities and communication skills.

Table 6:

Kind or type of patent professionals	Is a code of conduct or vocational ethics included as a subject? (yes or no)	Related law or rule, if any
Lawyers	NA	
Non-lawyer patent professionals	NO	

(iv) Is practical training required before taking the test?

If the answer is yes, how long a term of training is required?

In this case, please refer to the law or article stipulating this point.

NO – however, as noted above, the syllabus for one of topics for examination includes “work practices in the Intellectual Property Office”.

Table 7:

Kind or type of patent professionals	Is practical training required? (yes or no)	How long?	Law and/or rule basis
Lawyers	NA		
Non-lawyer patent professionals	NO		

- (2) Concerning how to govern, control, administrate or maintain the qualification of patent professionals:
Is there any organization governing, controlling, administrating or maintaining the qualification of the patent professionals?

(Answer here: Yes or No)

If the answer is yes, please answer the following sub-questions.

- a) Which organization governs, controls, administrates or maintains the qualification of the patent professionals?
- b) Whether or not the organization has been established so that the members of the organization can professionally represent their clients?

Table 8:

Kind or type of patent professionals	Sub-question a) above	Sub-question b) above	Law and/or rule basis
Lawyers	Yes (in so far as the registration of such a lawyer as a registered Agent is concerned). The relevant authority is the Director-General of Intellectual Property.		
Non-lawyer patent professionals	Yes (in so far as registration of such person as a registered Agent is concerned). The relevant authority is the Director-General of Intellectual Property.		

(3) As for the conditions for maintaining the qualification:

Please answer the following sub-questions:

(i) Are patent professionals required to complete an obligatory subject or lecture (such as code of conduct or vocational ethics, and lectures on practice change or law amendment) in order for him/her to maintain the qualification for the professional work?

(Answer here: Yes or No) NO

(ii) If yes in Item (i), please answer whether or not a code of conduct or vocational ethics is included as the obligatory subject?

Table 9:

Kind or type of patent professionals	Code of conduct or vocational ethics (yes or no)	Law and/or rule basis
Lawyers	NO (in so far as registration of such person as a registered Agent is concerned). However it should be noted that all Attorneys-at-Law are governed by the Supreme Court (Conduct of ad Etiquette for Attorneys-at-Law) Rules (commonly referred to as the Rules of Professional Ethics).	
Non-lawyer patent professionals	NO	

4. Questionnaire1-4 (concerning the penalty when patent professionals do not meet the conditions for being admitted for the professional work):

(1) Is there any criminal penalty imposed when a patent professional releases or divulges confidential information obtained from his or her client, without any justifiable reason?

(Answer here: Yes or No) NO

If the answer is yes in item (1), please give the following information in Table 10 below.

(i) Which law or rule governs such penalty?

(ii) Amount of fine, if any

(iii) Term for imprisonment, if any

Table 10

Kind or Type of patent professionals	Information i) above	Criminal Penalty	
		Amount of fine (ii)	Term for imprisonment (iii)
Lawyers			
Non-lawyer patent professionals			

(2) Is there any penalty imposed when a patent professional has become unsuitable for being admitted for the professional work (for example, he or she has failed to meet the conditions for the qualification (for example, he or she violates the Association laws or rules, damages the order or reputation of the association or misbehaves in a manner impairing his/her or its own dignity) after he or she

has become qualified)?

(Answer here: Yes or No) NO. However in the case of Attorneys-at-Law a duty of confidentiality is owned by an Attorney-at-Law to his or her client in terms of the applicable Rules of Professional Ethics. Any breach of such duty could result in the Attorney-at-Law being removed from the roll of Attorneys-at-Law.

If the answer is yes in item (2), please give the following information in Table 11 below.

- (a) Which law or rule governs such penalty?
- (b) Disciplinary action, if any
- (c) Suspension of professional work, if any
- (d) Deprivation of the qualification, if any
- (e) Other penalty, if any

Table 11

Kind or Type of patent professionals	Information (a) above	Penalty			
		Disciplinary action (b)	Suspension of professional work (c)	Deprivation of the qualification (d)	Other penalty (e)
Lawyers	The Constitution and Supreme Court Rules Relating To The Admissions, Enrolment and Removal of Attorneys-at-Law read with Article 136 of the Constitution.				
Non-lawyer patent professionals					
			19		

DRAFT VERSION 1

Part 2 (As for Client privilege or professional secrecy):

Before raising the following questions, it would be useful to comment on some points concerning the terminology used in the following questions, in order to avoid any possible confusion derived from any possible misunderstanding of the terminology.

General concept:

1. Client privilege is the right of a client not to have to disclose information (communications and/or documents*) which would otherwise have been required. In common law countries, client privilege may allow a client or a patent professional to keep communications and/or documents secret and to be silent on certain issues under a discovery system.
2. In the following questions, the term "a discovery system" means a system comparable to the discovery system employed in the U.S. litigation procedure. The discovery procedure is the procedure for collecting evidence before a trial in the U.S. The discovery procedure is stipulated in the Federal Rules of Civil Procedure: Rule 26 (FRCP R26).

Note*: Communication takes place usually in the form of letters. Here, "documents" do not include communication documents. The scope of documents stipulated in the Federal Rules of Civil Procedure: Rule 34 (FRCP R34) may include writings (such as work products and expert opinions), drawings, graphs, charts, photographs and the like.

3. In civil law countries, professional secrecy may allow a patent professional or a client not to disclose confidential communications or not to produce confidential documents, such confidential communications and/or documents having taken between the patent professional and his or her client or prepared thereby.

1. Questionnaire 2-1

- (1) If your country is a common law country, please fill in Table 11 below, taking the following questions into consideration.
 - (i) Is there any discovery system corresponding to that employed in the U.S. ? Generally NO though the Civil Procedure Code does provide for a system of interrogatories.

(Answer here: Yes or No)

(ii) If yes, please answer the following a) to c).

(a) In the discovery procedure, can patent professionals be immune from testimony or document production (such as "work product"*5) before the courts?

Note*5 "Work product" is the term used in the U.S. discovery procedure and means the document or tangible thing which has been prepared by a lawyer in anticipation of litigation or for trial by or for another party or its representative (FRCP R. 26(b)(3)(A))

In the case of patent professionals who are Attorneys-at-Law, section 126 of the Evidence Ordinance (subject to certain exceptions) provides that no Attorney-at-Law shall be permitted (unless the client consents)

- to disclose (in legal proceedings) any communication made to him in the course and for the purpose of his employment as such Attorney-at-Law by or on behalf of his client, or
- to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or
- to disclose any advice given by him to his client in the course of and for the purpose of such employment

(b) If the answer is yes, what kinds of communications and/or documents are covered?

See the answer given above.

(c) Is there any difference between immunity as to technical advice and immunity as to legal advice? If yes, please explain the difference.

Probably yes if it falls within the above definitions.

Table 12

Common law countries		
Discovery system	Yes	No
What is protected from disclosure: Communication/documents?	<p>In the case of an Attorney-at-Law, section 126 of the Evidence Ordinance (subject to certain exceptions) provides that no Attorney-at-Law shall be permitted (unless the client consents)</p> <ul style="list-style-type: none"> - to disclose (in legal proceedings) any communication made to him in the course and for the purpose of his employment as such Attorney-at-Law by or on behalf of his client, or - to state the contents or conditions of any document with which he has become acquainted in the course and for the 	

	<p style="text-align: center;">purpose of his professional employment, or</p> <ul style="list-style-type: none"> - to disclose any advice given by him to his client in the course of and for the purpose of such employment <p>In the case of a client section 129 of the Evidence Ordinance provides that no one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court to be necessary to be known in order to explain any evidence which he has given but no others.</p>	
<p>What kinds of communications are protected?</p>	<p>[Attorneys-at-Law]</p>	

	“any communication made to [the Attorney-at-Law] in the course and for the purpose of his employment as such Attorney-at-Law by or on behalf of his client”	
What kinds of documents are protected?	[Attorneys-at-Law] “the contents or conditions of any document with which he has become acquainted in the course and for the purpose of [the Attorney-at-Law’s] professional employment”	
Is legal advice protectable?	Yes.	
Is technical advice protectable?	Probably yes if it falls within the above definitions.	
Difference if any between legal advice and technical advice	There is no express distinction so it would be open to argument as to whether or not technical advice would be protectable.	

It should be noted that in terms of section 128 of the Evidence Ordinance, if a party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126 of the Ordinance (referred to above), and if any party to a suit or proceeding calls any such attorney-at-law or notary as a witness, he shall be deemed to have consented to such disclosure only if he questions such attorney-at-law or notary on matters which but for such questions, he would not be at liberty to disclose. The term “legal professional advisor” is not defined in section 129

of the Evidence Ordinance. A registered agent who is not an Attorney-at-Law, has authority to and is competent to act as an agent in terms of the Intellectual Property Act. It is open to some debate whether a registered agent who is not at Attorney-at-Law would fall within the meaning of the said term “legal professional advisor”.

It should be noted that in terms of the applicable Rules of Professional Ethics (The Supreme Court (Conduct of and Etiquette For Attorneys-at-Law) Rules) an Attorney-at-Law owes a duty of confidentiality to his or her client. Rule 31 of the said Rules provides that an Attorney-at-Law shall keep in strict confidence all information whether oral or documentary acquired by him from or on behalf of his client in any matter in respect of and concerning the business and affairs of the client. The ethical rule of confidentiality applied in situations other than those where information is sought from the attorney through compulsion of law or otherwise and is wider than the evidentiary rule and applies without regard to the nature and source of the information or to the fact that others may share the knowledge.

- (2) If your country is a civil law country, please fill in Table 13 below, taking the following questions into consideration.
- (i) Is professional secrecy protectable?
(Answer here: Yes or No)

 - (ii) If yes, please answer the following questions a) to c).
 - (a) Does a patent professional have to testify or produce documents before the courts?
 - (b) If the answer is yes, what kinds of communications and/or documents are covered?
 - (c) Is there any difference between technical advice and legal advice as to professional secrecy? If yes, please explain the difference.

Table 13

Civil law countries		
Is professional secrecy protectable?		
What is protected from disclosure: Communications/documents?		
What kinds of communications are protected?		
What kinds of documents are protected?		
Is legal advice protectable?		
Is technical advice protectable?		
Difference if any between legal advice and technical advice		

(3) As for treatment of foreign patent professionals in common law countries:

(i) In your country, is there any law or rule to provide the same privilege as provided to domestic patent professionals to foreign patent professionals?

(Answer here: Yes or No) NO

(ii) If the answer is yes, then please explain the content of the law or rule.

Table 14: Common law countries (answer in yes or no):

	Non-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Client privilege	No	Yes (as defined above)		No	If the reference to an “Attorney-at-Law” in section 126 of the Evidence Ordinance is interpreted to mean an Attorney-at-Law qualified in Sri Lanka, NO
Communication	No	Yes (as defined above)		NO	If the reference to an “Attorney-at-Law” in section 126 of the Evidence Ordinance is interpreted to mean an Attorney-at-Law qualified in Sri Lanka, NO.

Document	No	Yes (as defined above)		No	If the reference to an “Attorney-at-Law” in section 126 of the Evidence Ordinance is interpreted to mean an Attorney-at-Law qualified in Sri Lanka, NO.
Legal advice	Possibly yes	Yes		Possibly yes	
Technical advice	No	Yes (if it falls within the definitions of communications referred to above)		No	If the reference to an “Attorney-at-Law” in section 126 of the Evidence Ordinance is interpreted to mean an Attorney-at-Law qualified in Sri Lanka, NO.

[Contents of the law/rule]

(4) As for treatment of foreign patent professionals in civil law countries:

(i) In your country, is there any law or rule to provide the same professional secrecy as provided to domestic patent professionals to foreign patent professionals?

(Answer here: Yes or No)

(ii) If the answer is yes, then please explain or exemplify the content of the law or rule.

Table 15: Civil law countries (answer in yes or no):

	Non-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Professional secrecy					
Communication					
Work product					
Legal advice					
Technical advice					

DRAFT VERSION 1

[Contents of the law/rule]

2. Questionnaire 2-2

Please give the following information on your country concerning the cases where Client Privilege or professional secrecy was an issue (including past cases). Specifically, please briefly explain the following points as shown in Tables 16 and 17.

- (1) Cases where Client Privilege or professional secrecy was accepted or recognized in your country.
- (2) Cases where Client Privilege or professional secrecy was denied in your country.

In the local case of *Anon 1839* reported in Marshall's Judgments of the Supreme Court at page 139 it was held that lawyers were not allowed to give evidence of any communication which may have been made to them in their professional capacity by their clients. This, it was said, was not the privilege of the counsel but of the client, and never ceases, except by the client himself or his successors in title waiving it. It extends to all communications, whether in the progress of the suit or otherwise, made to a lawyer in his professional character; but otherwise, that is if the witness had not been employed as a lawyer in the particular business forming the subject of the inquiry, communications, even though made confidentially, are not privileged, because they were not made to him as the retained counsel of the party, in which character alone the obligation to secrecy exists. So, he may be examined as to a fact which he knew before he was retained or which came to his knowledge without him being entrusted with it as legal adviser or where he has made himself a party to the transaction. The communication must be made in a professional capacity (and not for instance as a friend) and must be of a confidential character if it is to be regarded as a privileged communication.

To waive the privilege, the client must show a clear intention to forego it with full knowledge of his rights. When applicable, an attorney must claim the privilege on behalf of a former client unless he shows that it has been waived. The attorney should advise the client of the privilege in time so that the client may assert it if he does not intend to waive it.

Table 16: Common law countries:

Client Privilege	Non-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Accepted		Yes (an Attorney-at-Law in Sri Lanka in so far as the Attorney-at-Law is concerned).	Yes in so far as any confidential communication between him and his legal professional adviser is concerned unless he offers himself as a witness and subject to the provisions contained in section 128 of		

			the Evidence Ordinance.		
Denied					

Table 17: Civil law countries:

Professional secrecy	Non-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Accepted					
Denied					

End