

MEXICO

National aspects

Title Nine, Chapter I, Article 210-211 of the Federal Penal Code states the type of crimes relating to the disclosure of secrets criminalizes the disclosure of professional secrets. It is important to highlight that Article 210 of the above Code establishes the offense of disclosure of a secret or reserved communication that has been made known or received for the purposes of employment, work or post, without establishing a specific capacity in the active subject of the offense, i.e., there is no requirement for the person who discloses the secret to be an attorney. However, Article 211 provides for aggravating circumstances in the case of the disclosure of a secret by a person providing professional services or where the secret or published material is industrial in nature, a legal assumption that may cover the advice of an attorney or lawyer, with respect to subjects such as patent applications or registration of industrial designs, which, as may be appreciated, are industrial elements. Additionally, there is specific regulation for each state of the country.

Each federative entity has powers to legislate on professions issues, which in most cases reproduce article 36 of the Law of Professions of the capital; also, in criminal matters they reproduce the Federal Penal Law.

The Mexican law provides for a legal privilege for professionals without distinguishing between professionals, attorneys or patent advisors. The Law regulating Article 5 of the Mexican Constitution concerning the discharge of professions in the Federal District, which is published in the Federation Official Gazette on May 26, 1945, states in Article 36:

“Article 36.- Any professional person shall be obliged to main strict confidentiality regarding the subjects entrusted to him or her by his or her clients, with the exception of the reports stipulated by the respective laws.”

Cross-border aspects

As regards regional practice, there is no bi- or multilateral treaty to which Mexico is party, which would incorporate the scenario of client-attorney privilege. For that reason the legislation of each country in which a relationship exists between clients and their patent advisors shall apply.