

Appendix

National laws and related information regarding the study on the categories of professionals who enjoy protection against forcible disclosure of confidential communications between clients and their patent advisors in court proceedings under national/regional laws

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Algeria

1. In Algeria, the confidentiality of communications between a client and their advisor, be it a lawyer or an industrial property advisor (agent), is protected by legislation. This principle of confidentiality allows clients to receive advice in absolute secrecy, ensuring the protection of sensitive information. In the field of patents, secrecy is particularly important for protecting inventions before they are officially filed. Although they are not lawyers, patent advisors are required to honor this confidentiality. There are exceptions to confidentiality, in particular when complying with legal requirements or in the context of judicial proceedings. However, the confidentiality of exchanges between a client and their patent advisor is generally considered essential for protecting the client's industrial property rights.¹

2. There is, however, no specific protection, in the national law, against the forcible disclosure of confidential communications between clients and their patent counsel in court proceedings².

Australia

3. In Australia, protection against forcible disclosure of confidential communications between clients and their patent advisors in court proceedings is known as Client-Attorney Privilege (CAP). CAP is essential to ensuring that clients can receive high-quality IP advice.³

4. The law governing legal privilege in Australia is a combination of the common law and Evidence Act that apply in Federal, State and Territory jurisdictions.⁴

5. Section 118 of the Evidence Act 1995 (Commonwealth) governs the client legal privilege applicable to confidential communication between a client and a lawyer, the terms "client" and "lawyer" being defined in the Act.

According to Section 117, lawyer means:

- (a) an Australian lawyer; and
- (b) an Australian-registered foreign lawyer; and
- (c) an overseas-registered foreign lawyer or a natural person who, under the law of a foreign country, is permitted to engage in legal practice in that country; and
- (d) an employee or agent of a lawyer referred to in paragraph (a), (b) or (c).

An Australian lawyer means a person who is admitted to the legal profession by a Supreme Court of a State or Territory of Australia, under a law of that State or Territory.

6. Patent attorney privilege in Australia is granted by status. The national law expressly extends a statutory privilege to certain communications and records made between clients and patent attorneys. Section 200 of the Australian Patents Act 1990 (Cth) protects communications between a registered patent attorney and a client made for the dominant purpose of the attorney providing intellectual property advice, as well as certain records or documents made for

¹ See information provided by Algeria at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_algeria.pdf.

² See inputs received from Algeria in response to C.9304.

³ See inputs received from Australia in response to C.9304.

⁴ See information provided by Australia at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-australia_2.pdf.

that purpose and places such communications on the same footing as communications protected by legal privilege.

Section 200 of the Patent Act on privileges states:

(1) A registered patent attorney:

(a) is entitled to prepare all documents, transact all business and conduct all proceedings for the purposes of this Act; and

b) has such other rights and privileges as are prescribed.

(2) A communication made for the dominant purpose of a registered patent attorney providing intellectual property advice to a client is privileged in the same way, and to the same extent, as a communication made for the dominant purpose of a legal practitioner providing legal advice to a client.

(2A) A record or document made for the dominant purpose of a registered patent attorney providing intellectual property advice to a client is privileged in the same way, and to the same extent, as a record or document made for the dominant purpose of a legal practitioner providing legal advice to a client.

(2B) A reference in subsection (2) or (2A) to a registered patent attorney includes a reference to an individual authorised to do patents work under a law of another country or region, to the extent to which the individual is authorised to provide intellectual property advice of the kind provided.

(2C) Intellectual property advice means advice in relation to:

(a) patents; or

(b) trade marks; or

(c) designs; or

(d) plant breeder's rights; or

(e) any related matters.

(3) Nothing in this section authorises a registered patent attorney to prepare a document to be issued from or filed in a court or to transact business, or conduct proceedings, in a court.

7. This provision is applicable to communications with Australian patent attorneys and foreign patent attorneys that comply with the provision of Section 200(2B) of the Patent Act (Cth).

8. In addition, Section 198 of the Australian Patents Act 1990 (Cth) governs the registration of patent attorneys. It provides that a Register of Patent Attorneys be kept and sets the legal framework for qualified professionals to be officially recognized and authorized to practice patent law in Australia.

Section 198 states:

(1) A Register of Patent Attorneys is to be kept by the Designated Manager. Note: Designated Manager is defined by section 200A.

(2) The Register of Patent Attorneys may be kept wholly or partly by use of a computer.

(3) If the Register of Patent Attorneys is kept wholly or partly by use of a computer, references in this Act to an entry in the Register of Patent Attorneys are to be read as including references to a record of particulars kept by use of the computer and comprising the Register of Patent Attorneys or part of the Register of Patent Attorneys.

Registration of individuals

(4) The Designated Manager must register as a patent attorney an individual who:

(b) holds such qualifications as are specified in, or ascertained in accordance with, the regulations; and

(c) has been employed as prescribed for not less than the prescribed period; and

(d) is of good fame, integrity and character; and

(e) has not been convicted of a prescribed offence during the previous 5 years; and

(f) is not under sentence of imprisonment for a prescribed offence; and

(g) meets any other requirements prescribed by the regulations.

The registration is to consist of entering the individual's name in the Register of Patent Attorneys.

(5) A qualification specified in, or ascertained in accordance with, regulations made for the purposes of paragraph (4)(b) may consist of passing an examination conducted by the Board. This subsection does not limit paragraph (4)(b).

(6) Paragraphs (4)(e) and (f) do not limit paragraph (4)(d).

(7) A reference in this section to conviction of an offence includes a reference to:

(a) the making of an order under section 19B of the Crimes Act 1914 in relation to the offence; or

(b) the making of an order under a corresponding provision of a law of:

(i) a State; or

(ii) a Territory; or

(iii) New Zealand; in relation to the offence.

Registration of companies

(9) The Designated Manager must register as a patent attorney a company that:

(a) has at least one patent attorney director; and

(b) has given the Designated Manager written notice in the approved form of its intention to act as a patent attorney; and

(c) meets the requirements (if any) prescribed by the regulations.

The registration is to consist of entering the company's name in the Register of Patent Attorneys.

(10) A company registered as a patent attorney is an incorporated patent attorney.

(11) A patent attorney director of a company is an individual who is both:

(a) a registered patent attorney; and

(b) a validly appointed director of the company. New Zealand

(12) It is immaterial whether a matter mentioned in:

(a) paragraph (4)(b), (c), (d), (e), (f) or (g); or

(b) subsection (5); or

(c) paragraph (9)(a), (b) or (c); or

(d) paragraph (11)(b); concerns something that happened in New Zealand.

Related Information

9. Section 200 was amended by the Intellectual Property Laws Amendment (Raising the Bar) Act 2012 (Cth) to expressly extend privilege to an individual authorized to do patents work under a law of another country or region, to the extent to which the individual is authorized to provide intellectual property advice of the kind provided. Subsection 200(2B) provides that references to a 'registered patent attorney' under the rest of section 200 'includes a reference to an individual authorised to do patents work under a law of another country or region, to the extent to which the individual is authorised to provide intellectual property advice of the kind provided.', broadening the scope of categories of professionals who have protection against forcible disclosure of confidential communications.⁵

10. Prior to 2012 amendments, the Federal Court of Australia had found that the earlier version of section 200 confined the privilege provided by the statute 'to communications with patent attorneys registered as such in Australia'.⁶

11. Since this amendment, the Federal Court found in *Australian Mud Co Pty Ltd v Coretell Pty Ltd* [2014] FCA 200⁷ confirmed that section 200 "protects communications between a patent attorney and his or her client which are made for the dominant purpose of providing intellectual property advice to the client to the same extent as such communications would be protected if they were between a legal practitioner and his or her client".⁸

Czech Republic

12. In the Czech Republic, patent attorneys and lawyers are authorized to represent clients in patent matters before the courts. These professionals are bound by a duty of confidentiality regarding any information they learn in the course of performing their professional activities.⁹

13. In the case of lawyers, their duties arising from client attorney privilege are regulated by Section 21 of the Act on the Legal Profession (Act No 85/1996, Coll., as amended).

⁵ See inputs received from Australia in response to C.9304.

⁶ *Ibid.*

⁷ *Australian Mud Company Pty Ltd v Coretell Pty Ltd* [2014] FCA 200 at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2014/200.html>.

⁸ *Ibid.*

⁹ See inputs received from the Czech Republic in response to C.9304.

Section 21 of the Act on the Legal Profession states:

- (1) A lawyer is obliged to maintain confidentiality regarding all facts which they have learned in connection with the provision of legal services.
- (2) A lawyer may be released from the duty of confidentiality only by the client, and after the client's death or dissolution by the client's legal successor; if the client has multiple legal successors, the lawyer may be released from the duty of confidentiality only with the unanimous consent of all legal successors. The release of the lawyer from the duty of confidentiality by the client or their legal successor(s) must be made in writing and must be addressed to the lawyer; in court proceedings, this may also be done orally for the record. Even then, the lawyer is obliged to maintain confidentiality if, from the circumstances of the case, it is evident that the client or their legal successor(s) released the lawyer from this duty under duress or in distress.
- (3) A lawyer is not bound by the duty of confidentiality toward a person entrusted with carrying out individual acts of legal services, provided that this person is themselves obliged to maintain confidentiality.
- (4) A lawyer is not bound by the duty of confidentiality when providing information and fulfilling obligations under Sections 52h and 52i, and to the extent necessary for court or other proceedings in which the subject of the proceedings is a dispute between the lawyer and the client or the client's legal successor(s); the lawyer is also not bound by the duty of confidentiality in proceedings under Section 55, in proceedings concerning a complaint against a decision of the Bar, or in cassation proceedings against a court decision on such complaint under a special legal regulation, as well as in proceedings in matters specified in Section 55b to the extent necessary to protect the lawyer's rights or legally protected interests as a lawyer.
- (5) The duty of confidentiality does not affect the lawyer's obligations as a tax entity under special regulations on the administration of taxes and fees; however, even in such cases, the lawyer must maintain confidentiality regarding the nature of the matter in which legal services were or are being provided.
- (6) A lawyer may not invoke the duty of confidentiality in disciplinary proceedings, nor toward a lawyer authorized by the chair of the chair of the Supervisory Board to carry out preparatory steps to verify whether a disciplinary offence has occurred (Section 33(3)). A lawyer may not invoke the duty of confidentiality when fulfilling obligations under the law on certain measures against the legalization of proceeds of crime and the financing of terrorism, nor toward a representative of the Bar when carrying out actions under paragraph 10. A lawyer may not invoke the duty of confidentiality when providing information to the tax administrator while fulfilling obligations imposed on the lawyer as an obligated person under the law on certain measures against the legalization of proceeds of crime and the financing of terrorism pursuant to the Tax Code.
- (7) The duty of confidentiality is not affected by the statutory obligation to prevent the commission of a criminal offence.
- (8) The duty of confidentiality continues even after the lawyer has been removed from the list of lawyers.
- (9) The duty of confidentiality as set out in paragraphs 1 to 8 applies similarly to:
 - (a) employees of a lawyer or of a company or foreign company, as well as other people who participate with the lawyer or within the company or foreign company in providing legal services,

(b) members of the Bar's bodies and its employees, as well as all persons participating in administrative proceedings under Section 55 or in disciplinary proceedings, including lawyers authorized by the chair of the Supervisory Board to carry out preparatory steps to verify whether a disciplinary offence has occurred (Section 33(3)).

(10) Members of the Bar's bodies, its employees, and lawyers authorized by the chair of the Supervisory Board to carry out preparatory steps to verify whether a disciplinary offence has occurred are not bound by the duty of confidentiality under paragraph 9 to the extent necessary for court proceedings in matters referred to in paragraph 4, in the part of the sentence following the semicolon. Members of the Bar's bodies and its employees are also not bound by the duty of confidentiality to the extent necessary for fulfilling the information obligations under Sections 10(2) – (4), 35d, and 35r (1), (2), and (4).

14. In the case of in-house lawyers working for the public administration who are not subject to the Civil Service Act, their duties are also governed, in relation to their employer, by the Labour Code (Act No 262/2006 Coll., as amended).

Section 303 (2) (b) states:

Employees in administrative authorities are obliged to maintain confidentiality about facts they learn in the course of their employment and which, in the employer's interest, may not be disclosed to other persons; this does not apply if they have been released from this obligation by the statutory body or by a manager authorized by that body, unless a special legal regulation provides otherwise.

15. For lawyers subject to the Civil Service Act who are also authorized to represent the IPO CZ in legal disputes, their duties are stipulated in Section 77(1)(g) of Act No 262/2006 Coll., as amended (Civil Service Act).

Section 77(1)(g) states:

The obligation to maintain confidentiality about facts learned in the course of a duty that, in the interest of the service authority, may not be disclosed to other persons; this does not apply if the employee has been released from this obligation. The obligation to maintain confidentiality arising for the civil servant from another law is not affected.

16. In the case of patent attorneys, according to Act No 417/2004 Coll., on Patent Attorneys, as amended, only registered patent attorneys are authorized to perform services of patent attorneys on the territory of the Czech Republic. The confidentiality of communication between clients and their patent attorneys is regulated in Section 36 of this Act as one of patent attorneys duties.¹⁰

17. Section 36 of the Act on Patent Attorneys states:

(1) The patent attorney is obliged to maintain confidence on all facts about which he learnt in connection with provision of the services of a patent attorney. He may be relieved from this duty only on the basis of a statement written by the client and after the client's death or dissolution by his legal successor.

(2) The duty of confidentiality applies also to those deleted from the List or those whose performance of activity was suspended.

¹⁰ See information provided by the Czech Republic available at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_czech_republic.pdf.

(3) The patent attorney is not obliged to maintain confidentiality in relation to the person he has authorized to make the individual acts of the services of a patent attorney, in case this person is himself obliged to maintain confidentiality.

(4) The patent attorney is not bound by the duty of confidentiality to the extent necessary for hearing at a court or another body, in case the subject of the hearing is a dispute between the patent attorney and the client or his legal successor; the patent attorney is also not bound by the duty of confidentiality in the disciplinary proceedings. The patent attorney may not invoke the duty of confidentiality in disciplinary proceedings also against the chairman and members of the supervisory committee who inquire into the disciplinary misconduct of the patent attorney.

(5) The duty of confidentiality similarly applies to

(a) the persons employed in labour or another similar relation by the patent attorney or the society

(b) the members of bodies of the Chamber (of Patent Attorneys of the Czech Republic) and its employees, as well as to all persons who participate in the disciplinary proceedings, including the chairman and members of the supervisory committee authorized to prepare the acts for the disciplinary proceedings and for inquiry whether a disciplinary misconduct took place; this does not apply to action at a court in the mentioned cases.

18. Section 49 of the Act on Patent Attorneys provides for disciplinary sanctions in case of violation of these obligations.

Ecuador

19. The protection of confidential communications is a right, not a discretionary privilege, protected by the constitutional framework and organic laws.¹¹ While Ecuadorian law does not appear to contain a specific provision establishing protection against forcible disclosure of confidential communications between clients and their patent advisors, such communications may fall within the scope of general provisions concerning professional secrecy and testimonial evidence. The protection available depends, inter alia, on the professional status of the advisor, the existence of an applicable duty of secrecy and the form of disclosure sought.

20. Article 20 of the Constitution of the Republic of Ecuador guarantees the confidentiality of personal information and the right to professional secrecy and states that:

The State shall guarantee the conscience clause for all persons, professional secrecy and the confidentiality of the sources of those who inform, issue their opinions through the media or other forms of communication or who work in any communication activity.

21. In addition, several provisions governing professional secrecy and procedural disclosure are relevant to the protection of confidential communications between clients and their patent advisors against forcible disclosure.

22. The Organic Judicial Function Code sets out the principles of good faith, procedural loyalty and professional secrecy, and recognizes professional secrecy as both a right and a duty of counsels.

Article 26 states:

¹¹ See inputs received from Ecuador in response to C.9304.

In judicial proceedings, judges shall require the parties and their counsel to conduct themselves in a manner that is based on mutual respect and ethical engagement, it being their duty to act in good faith and with loyalty. Distorted evidence, any form of abuse of rights and the use of contrivances and bad-faith practices to unduly delay the progress of the litigation shall be specifically sanctioned.

Any party to the proceedings or counsel for the respondent who misleads the judge shall be sanctioned.

23. Further, article 335 imposes a secrecy obligation on counsels representing clients in proceedings and prohibits the disclosure of clients' secrets, documents or instructions.¹²

24. The General Organic Procedural Code (COGEP), which governs judicial proceedings in all matters other than constitutional, electoral and criminal matters, provides for protection of professional secrecy in the context of testimonial evidence. Article 175 of the COGEP regulates testimony and allows witnesses to refuse to answer where doing so would violate a duty of confidentiality or secrecy by virtue of their status, office, employment, profession, trade or from an express provision of the law. Accordingly, professionals, including legal or technical advisors, may be protected against compelled disclosure through testimony to the extent that the information sought is covered by an applicable duty of confidentiality or secrecy.¹³

25. Breach of duty of secrecy is addressed in the Comprehensive Organic Criminal Code. In particular, article 269 penalizes counsel, defense counsel or prosecutor who, in the course of a trial, disclose their client's secrets to the opposing party. in the course of a trial.¹⁴

Egypt

26. In Egypt, the protection of confidential communications between clients and their patent advisors against forcible disclosure derives from various provisions.¹⁵

27. Regarding lawyers, Article 65 of the Advocacy Law No. 17 of 1983 provides that a lawyer must refrain from testifying about facts and information learned in the course of professional practice, where the person who disclosed the information requests confidentiality, unless the information was disclosed with the intent to commit a felony or misdemeanor.

28. In addition, Article 79 of the same law imposes a duty of confidentiality on lawyers, requiring them to keep information disclosed by a client confidential, unless disclosure is requested by the client for the purpose of defending her/his interest in a litigation.

29. Law No. 23 of 1951 on Practicing the Profession of Patent Agents regulates the registration and obligations of Egyptian patent agents.¹⁶

¹² See information provided by Ecuador available at: <https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-ecuador.pdf>.

¹³ Article 178 of the COGEP also regulates the procedural framework within which testimony is given (see inputs received from Ecuador in response to C.9304).

¹⁴ See information provided by Ecuador available at: <https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-ecuador.pdf>.

¹⁵ See inputs received from Egypt in response to C.9304 and information provided by Egypt available at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_egypt.pdf.

¹⁶ See inputs received from Egypt in response to C.9304, noting also that Law No. 23 of 1951 applies to Egyptians patent agents. In particular article 1 of Law No. 23 of 1951 states that: "No one may practice the profession of a patent agent unless his name is registered in the register of patent agents at the Ministry of Commerce and Industry. The register is divided into different tables according to the type of academic qualification. In the context of this law, a patent agent means anyone who represents others before the official authorities at the Ministry of Commerce and Industry".

30. In civil or commercial proceedings, Article 66 of the Evidence in Civil and Commercial Matters Law No. 25 of 1968 regulates the right not to disclose confidential information obtained in the exercise of a profession. Article 66 applies broadly to lawyers, agents, doctors and other persons, allowing them to refrain from disclosing facts or information obtained through their profession or occupation, even after their service or professional status has ended, subject to the exceptions provided by law. The professionals concerned must, however, testify whenever requested to do so by the person who confided it to them, provided that this does not prejudice the provisions of the laws pertaining to them.

31. Both Advocacy Law No.17 of 1983 and Law No. 23 of 1951 on Practicing the Profession of Patent Agents provide for disciplinary measures in respect of breaches of the professional obligations applicable to lawyers and patent agents, respectively.

El Salvador

32. In El Salvador, parties must be represented by licensed attorneys in court proceedings and confidential communications with their clients benefit from protection against forcible disclosure.¹⁷

33. Article 24 of the Code of Judicial Ethics of El Salvador, as issued by the Supreme Court of Justice, recognizes professional secrecy as a principle that safeguards the rights of the parties regarding information in court proceedings.

Article 24 states that:

Professional secrecy is based on safeguarding the rights of the parties and their relatives against the misuse of information obtained by the judge in the performance of his or her duties.

34. The duty of confidentiality and professional secrecy extends not only to institutionalized media, but also to the strictly private sphere.

France

35. In France, lawyers and industrial property attorneys (*conseils en propriété industrielle*) benefit from protection against forcible disclosure of confidential communications through statutory rules of professional secrecy. Article 66-5 of Law No. 71-1130 of December 31, 1971 reforming certain judicial and legal professions, applies to lawyers, while Article L.422-11 of the Intellectual Property Code (CPI) establishes professional secrecy for industrial property attorneys.¹⁸

Article 66-5 of Law No. 71-1130 states that¹⁹:

In all matters, whether with regard to advisory activity or litigation, legal advice sent by a lawyer to his or her client or intended for the client, correspondence exchanged between the client and his or her lawyer, between the lawyer and his or her colleagues – with the exception, in the latter case, of correspondence marked ‘official’ – notes from meetings, and, more generally, all documents in the case file are covered by professional secrecy.

These provisions do not preclude, as of the conclusion of a fiduciary contract, the application to the lawyer acting as a fiduciary of the regulations specific to that activity,

¹⁷ See inputs received from El Salvador in response to C.9304.

¹⁸ See inputs received from France in response to C.9304.

¹⁹ This framework is supplemented, in particular, by Articles 4 and 5 of Decree No. 2023-552 of 30 June 2023 and Articles 2 and 2bis of the National Rules of Procedure (RIN) for the legal profession.

except for correspondence not marked 'official' sent to that lawyer by a colleague unaware that the lawyer is acting in that capacity.

This article does not preclude a lawyer's obligation to disclose the contracts referred to in Article L. 222-7 of the Sports Code and the contract under which he is appointed to represent one of the parties involved in the conclusion of one of these contracts to the delegated sports federations and, where applicable, to the professional leagues they have established, under the conditions set forth in Article L. 222-18 of the same Code.

36. It is to be noted, however, that according to the case law of the Court of Cassation, only lawyer-client documents related to legal proceedings or sanctions fall under the 'exercise of the rights of the defense' and are exempt from seizure. Audit or compliance advice, even when informed by criminal considerations, remain subject to seizure.²⁰

37. A similar statutory rule of professional secrecy applies to industrial property attorneys (*conseils en propriété industrielle*) under Article L.422-11 of the Intellectual Property Code (CPI).²¹

Article L. 422-11 states that:

In all matters and for all services mentioned in Article L. 422-1, the industrial property attorney shall maintain professional secrecy. This confidentiality extends to consultations addressed to or intended for their client, to professional correspondence exchanged with their client, a colleague, or a lawyer – with the exception, for the latter, of correspondence marked 'official' – to meeting notes, and, more generally, to all documents in the file.

38. In a decision of November 24, 2015, the Paris Court of Appeal confirmed the scope of this professional secrecy, considering that a letter sent by an industrial property attorney to the opposing party's lawyer was covered by professional secrecy and could not be produced in the proceedings.²²

39. Article 226-13 of the Penal Code provides penalties for the disclosure of information covered by professional secrecy. It provides that the disclosure of secret information by a person entrusted with it by virtue of their status or profession, or because of a temporary function or mission, is punishable by one year's imprisonment and a fine of 15,000 euros.²³

40. Law No. 2026-122 of February 23, 2026 regarding the confidentiality of consultations with in-house counsel has introduced a new Article 58-1 (the effective date of which will be set by decree) into Law No. 71-1130 of December 31, 1971 creating a specific regime protecting certain legal consultations prepared by in-house counsel subject to defined conditions and exceptions. Under this article, a legal consultation drafted by an in-house lawyer (or, at their request and under their supervision, by a member of their team under their authority) must be considered confidential provided the following conditions are met:

- the in-house counsel or the member of their team under their authority holds a master's degree in law or an equivalent French or foreign degree;

²⁰ See inputs received from France in response to C.9304.

²¹ *Ibid.* See also Article R. 422-54 2° of the CPI that also covers the professional secrecy and indicates that the *conseils en propriété industrielle* must "[...] 2° Maintains professional secrecy: this secrecy extends in particular to the advice he provides to his client, to the professional correspondence exchanged, as well as to all documents prepared for this purpose [...]."

²² *Ibid.*

²³ Disciplinary actions may also be taken against professionals in breach of an obligation of confidentiality (Art. 1.4 of the RIN for lawyers; Art. 22 of the internal regulations of the CNCPI for IPAs).

- the in-house counsel can demonstrate that they have completed training in ethical standards;
- the legal advice is intended exclusively for certain corporate bodies;
- the legal advice consists of a personalized intellectual service aimed at providing an opinion based on the application of an article of law;
- the legal advice is marked as “confidential – legal advice – in-house counsel” and is identified by the author as such and filed separately in the company’s records.

41. Where these conditions are met, the consultation may not, in principle, be subject to seizure or to an order to hand it over to a third party, including a French or foreign administrative authority, in the context of civil, commercial or administrative proceedings. Confidentiality is, however, not enforceable against the supervisory powers of the European Union authorities, nor in the context of criminal or tax proceedings.

Georgia

42. In Georgia, confidentiality of communications between clients and patent advisors are regulated by the law of Georgia on Advocates and the Law of Georgia on Patent Attorneys.

43. Article 7 of the Law of Georgia on Advocates establishes the obligation of an advocate to preserve professional secrecy without limitation in time and prohibits disclosure of information obtained from a client or related to the client’s case without the client’s consent. This obligation extends to all confidential information, including, where requested, the identity of the client. Disclosure is allowed only in cases expressly provided by law, including with the client’s consent or where necessary for the protection of the advocate’s or client’s interests. Furthermore, Article 8 establishes rules on professional independence and conflict of interest, ensuring that the conduct of the advocate does not prejudice the interests of the client.²⁴

44. Patent attorneys are subject to specific statutory rules of professional confidentiality. Under Article 3 of the Law of Georgia on Patent Attorneys, a patent attorney is obliged to protect professional secrecy without limitation in time and shall not disclose information received from a client or otherwise obtained in the course of professional activity without the client’s consent, except in cases provided by law. Disclosure without the client’s consent is permitted only in specified circumstances, including where necessary for the patent attorney’s defense, in disputes concerning professional fees, or where the confidential information contains elements of a criminal offense.²⁵

Japan

45. Although Japan does not have a discovery system comparable to that of common law jurisdictions, confidential communications are protected through statutory duties of professional secrecy, complemented by procedural rules permitting lawyers and patent attorneys to refuse testimony and, in specified circumstances, the production of documents containing confidential professional information.

46. Specifically, Article 23 of the Attorney Act provides that an attorney, including a former attorney, has both the right and the duty to maintain confidentiality concerning facts learned in the course of performing professional duties, unless otherwise provided by law.²⁶

²⁴ See inputs received from Georgia in response to C.9304.

²⁵ *Ibid.*

²⁶ See inputs received from Japan in response to C.9304.

47. Article 30 of the Patent Attorney Act requires a patent attorney, including a former patent attorney, not to disclose or misappropriate without justifiable grounds secrets learned in the course of professional activities.²⁷

48. Article 197(1)(ii) of the Code of Civil Procedure provides the right to specified professionals, expressly including attorneys-at-law (and foreign lawyers registered in Japan) and patent attorneys, to refuse to testify concerning facts learned in the course of their professional duties that are to remain confidential. The right also applies to persons who formerly belonged to one of the professions specified in that provision. However, under Article 197(2) of the Code of Civil Procedure, the right to refuse to testify does not apply where the witness has been released from the duty of confidentiality. Accordingly, lawyers and patent attorneys who have been released from their professional secrecy obligation may not rely on Article 197(1)(ii) to refuse to testify concerning the information concerned.

49. Further, Article 220(iv) of the Code of Civil Procedure provides corresponding right to refuse the production of certain documents. According to this article, the person in possession of a document that details facts referred to in Article 197(1)(ii) or a matter involving a technical or professional secret under Article 197(1)(iii) may refuse to produce such a document. The person in possession of the document may be the professional covered by the secrecy obligation, a client of such a professional or any third party.

50. Sanctions and remedies for breaches of professional confidentiality are also provided for under various provisions of Japanese law.²⁸

Republic of Moldova

51. In the Republic of Moldova lawyers and patent attorneys are subject to an obligation of professional secrecy.

52. Article 55 of Law No. 1260 on the Legal Profession, provides that a lawyer may not disclose confidential information communicated to them in the course of providing legal assistance and transmit to third parties documents connected with the mandate — without the client's consent —.²⁹ The obligation to maintain professional secrecy is unlimited in time. In addition, duty of professional secrecy is further detailed in the Statute of the Legal Profession, which sets out the scope and practical implications of professional secrecy, including safeguards concerning confidential communications and professional documents.³⁰

53. The professional activities of authorized intellectual property attorneys in the Republic of Moldova are governed by the Regulations approved by Decision No. 541 of July 18, 2011, on the Activity of the Authorized Intellectual Property Attorneys (as amended up to Decision No. 714 of July 18, 2018). The Regulations establish rules governing the exercise of the profession, including professional conduct, competence, conflicts of interest, and professional secrecy and confidentiality.

54. In particular, paragraphs 13 to 17 of the Decision establish the confidentiality regime applicable to authorized IP attorneys. Paragraph 13 requires the authorized IP attorney to maintain the confidentiality of information obtained directly or indirectly from the client, whether the information is directly related or not to service provided and prohibits disclosure during or

²⁷ *Ibid.*

²⁸ See information provided by Japan at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_japan.pdf. In particular, Article 80 of Patent Attorney Act provides for penalties for violation of the duty of professional secrecy by patent attorneys, while 134 of the Penal Code provides for criminal penalties for the unauthorized disclosure of professional secrets by, inter alia, lawyers and defense counsel.

²⁹ Article 55 Law No. 1260 of July 19, 2002 on the Legal Profession.

³⁰ Article 58 Statute No. SUA0/2011 of January 29, 2011 on the Legal profession.

after the mandate without the client's express consent. Paragraph 14 states that the right and obligation to maintain confidentiality apply to information acquired in the exercise of the profession and continue after completion of the mandate, subject to exceptions expressly provided by law. Paragraph 15 applies the duty of confidentiality to documents received from clients and paragraph 16 requires the attorney to ensure that persons employed or engaged by the attorney also preserve confidentiality.³¹

Paragraphs 13 to 17 state that:

13. The authorized representative is obliged to maintain the confidentiality of any data, including personal data, and information that becomes known to him directly or indirectly from his client, whether directly related or not to the commitment assumed. He may not disclose this information either during the engagement or after its termination without the express consent of his client.

14. The right and obligation to maintain confidentiality apply to all information acquired in the course of the exercise of the profession and must be respected even after the settlement of the engagement, except in cases expressly provided for by law.

15. The authorized representative may not transmit to third parties any document received from his client, such as, for example, documents, files in printed or electronic format, samples and models, without the client's consent.

16. The obligation of confidentiality implies an active role of the authorized representative in ensuring that this confidentiality is maintained, including by the persons he employs for the purpose of fulfilling a specific engagement or for the purpose of carrying out his professional activity in general.

17. Between jointly represented clients, the confidentiality rule does not apply, unless the parties decide otherwise.

Republic of Slovakia

55. In Slovakia, the duty of professional secrecy applicable to attorneys at law and patent-representatives are regulated under the respective professional legislations.

56. Under Section 23 of the Act No. 586/2003 Coll. On Advocacy, attorneys-at-law are subject to a duty of professional secrecy covering all facts learned in connection with the practice of law. The client may release the attorney from the duty of confidentiality.³²

57. Section 18 of Act No. 344/2004 Coll. on Patent Agents (as amended up to Act No. 177/2018 Coll) provides that a patent attorney must maintain secrecy concerning all facts learned in connection with the provision of patent-representatives services. Only the client may release the patent-representative from this obligation; after the client's death or dissolution, this may be done by the client's legal successor. The duty of professional secrecy continues even after the representative ceases to practice.³³

³¹ See inputs received from the Republic of Moldova in response to C.9304.

³² See inputs received from the Republic of Slovakia in response to C.9304.

³³ *Ibid.*

Spain

58. In Spain, there is no single set of regulations governing the protection of confidential communications between clients and their patent advisors in court proceedings. Instead, the regulations are contained in different rules depending on the professional category.³⁴

59. In Spain, lawyers (*abogados*) are defined as professionals who have obtained an official university degree and are registered with a bar association as practicing attorneys. They are subject to a comprehensive regime of professional secrecy under Articles 21 to 24 of the Royal Decree 135/2021 of March 2 approving the General Statute of the Spanish Bar. Duty of professional secrecy is based on the trust and confidentiality of the relationship between lawyers and their clients. Lawyers are bound by professional secrecy regarding all facts or information of which they become aware in the course of their professional practice, and they cannot be compelled to testify about this information. This right and duty cover all facts, communications, data, information, documents and proposals that they have learned, issued or received as a legal professional in the course of their practice. The duty of professional secrecy is not time limited and shall remain even after the provision of services to the client has ceased. Professional secrecy does not however extend to activities unrelated to the lawyer's professional practice, in particular, to communications, writings and documents in which the lawyer acts under a representative mandate from the client and expressly indicates that he/she is acting in that capacity. Lawyers are released from the duty of professional secrecy in respect of matters that exclusively concern or relate to the client, provided that the client has expressly authorized their disclosure. The duty of professional secrecy is subject to exceptions provided for by law. Further, Article 16 of Organic Law No. 5/2024 of November 11, 2024 on the Right of Defense reinforced the protection of lawyers' professional secrecy. It provides that communications between a legal professional and their clients are confidential and expressly recognizes, as an effect of professional secrecy, in particular, the inviolability and secrecy of documents and communications related to the exercise of defense duties and the exemption from giving evidence before any authority or jurisdiction concerning facts, documents or information learned in the course of professional activities, subject to exceptions provided by law.³⁵

60. The duty of professional secrecy applies also to collaborators, associates, staff and other persons assisting a lawyer in the exercise of their professional practice. The lawyer is responsible for ensuring such secrecy.³⁶

61. Regarding corporate or in-house lawyers, it is to be noted that the duty of professional secrecy recognized in Article 21 of the General Statute of the Spanish Bar is applicable to legal professionals. Article 39 of the General Statute recognizes practice under an employment relationship as a form of practice of the legal profession. Accordingly, the duty of professional secrecy is not, as such, limited to lawyers practicing in a particular organizational form and also applies to lawyers practicing in-house under an employment relationship.³⁷

62. Industrial property agents are persons legally authorized to represent parties before the Spanish and Trademark Office (OEPM). They benefit from a specific statutory confidentiality regime under Law No. 24/2015 of July 24, 2015, on Patents (as amended by Law No. 6/2018 of July 3, 2018). In particular, Article 176(5) of the Law on Patents provides that industrial property agents are required to maintain confidentiality regarding matters entrusted to them and are

³⁴ See inputs received from Spain in response to C.9304.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.* See Article 39 of the General Statute: "The legal profession may also be practiced as an employee in the capacity of corporate counsel under a standard employment relationship, through a written employment contract that respects the freedom, independence and professional secrecy essential to the practice of the profession and must specify whether the practice is exclusive".

entitled to refuse to disclose communications exchanged with their clients or third parties regarding proceedings conducted before OEPM. It further indicates that the duty of confidentiality applies to any communication or documents relating to, in particular, the assessment of the patentability of an invention, the preparation or processing of an application for a patent, any opinion regarding the validity, scope of protection or infringement of the subject matter of a patent, as well as of a patent application. Additionally, the confidentiality of communications extends to interested parties representing their clients before the Office and who are not industrial property agents in accordance with Article 176(6) of the Law on Patents.³⁸

63. The Law No. 1/2000 on Civil Procedure (LEC) is also relevant because it establishes the general rules governing civil proceedings before Spanish courts, including the taking of evidence. It contains provisions relevant to the safeguarding of professional secrecy obligations during the taking of evidence. This includes the possibility for certain witnesses to refuse to testify when legal duties of confidentiality apply.³⁹

64. The Penal Code (Organic Law No. 10/1995 of November 23, 1995, as amended up to Organic Law No. 2/2019 of March 1, 2019) provides penalties where a professional discloses another person's secrets in breach of a professional obligation of confidentiality.⁴⁰

65. Article 283 bis (b) of the LEC establishes the court's duty to give full effect to the applicable rules of confidentiality regarding attorney-client communications, including those pertaining to the duty of confidentiality in actions for damages arising from violations of competition law.

66. In addition, Act 1/2019 on Trade Secrets establishes a specific system for the protection of confidential business information during judicial proceedings. The Act imposes confidentiality obligations on parties, attorneys, representatives, court personnel, witnesses, experts, and other people who gain access to protected information and authorizes courts to adopt measures necessary to preserve its secrecy.⁴¹

Sweden

67. Under Swedish law, protection against forcible disclosure of confidential communications between clients and their patent advisors in court proceedings depends on the professional status of the advisor. Sweden does not operate with a broad, unified concept of client-attorney privilege. Instead, protection is based on statutory duties of confidentiality combined with procedural rules limiting the ability of courts to compel testimony.⁴²

68. In Sweden, lawyers who are members of the Swedish Bar Association and practice under the professional title *Advokat* are subject to professional secrecy and benefit from strong procedural safeguards against compelled disclosure. In particular, Chapter 8, Section 4 of the Code of Judicial Procedure (1942:740) establishes a professional duty of secrecy applicable to members of the Swedish Bar Association. This duty is also regulated in the Charter of the Swedish Bar Association (that constitutes the Association's governing instrument). Chapter 36, Section 5 of the Code of Judicial Procedure safeguards professional secrecy against compelled testimony. Lawyers may, in principle, be examined as witnesses concerning matters entrusted to them or learned in the exercise of their profession only where permitted by law or with the consent of the person for whose benefit the duty of confidentiality applies.⁴³

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² See inputs received from Sweden in response to C.9304.

⁴³ *Ibid.*

69. Authorized patent attorneys are subject to a statutory duty of confidentiality under Swedish law. Section 6 of the Act on Authorization of Patent Attorneys (2010:1052), imposes a duty of confidentiality on information obtained in the course of their professional practice. They may not disclose or use this information (unless authorized by the client). They must ensure that their assistants observe a corresponding duty of confidentiality. Further, in court proceedings they are subject to Chapter 36, Section 5 of the Code of Judicial Procedure preventing them from being compelled to testify about confidential information entrusted to them in their professional capacity regarding matters of patent law. Matters of patent law are defined under Section 2, first paragraph, of the Act on Authorization of Patent Attorneys.⁴⁴

70. The protection afforded by Chapter 36, Section 5 of the Code of Judicial Procedure to lawyers and authorized patent attorneys is complemented by safeguards against the seizure of documents under Chapter 27, Section 2 of the Code. In addition, Chapter 38, Section 2 of the Code regulates the production of documents as evidence and contains safeguards relating to information covered by the restrictions on witness testimony under Chapter 36, Section 5 of the Code.⁴⁵

71. Only authorized patent attorneys enjoy the statutory protection described above. Persons providing patent advice without being formally authorized under the Swedish system do not enjoy the corresponding statutory protection against forcible disclosure of their confidential communications in court proceedings. They are bound by contractual confidentiality obligations, but such obligations do not in themselves prevent them from the duty to give evidence that applies to authorized patent attorneys.⁴⁶

Switzerland

72. In Switzerland, attorneys, patent attorneys and to a limited extent in-house advisors enjoy legal protection against forcible disclosure.

73. Lawyers admitted to the bar in Switzerland enjoy protection against forcible disclosure of confidential communications in civil, criminal and administrative proceedings. The Swiss Civil Procedure Code (CPC) contains general rules on the taking of evidence and expressly addresses confidential communications between clients and their lawyers. While parties and third persons are generally required to cooperate, Article 160(1)(b) CPC, expressly excludes from the general duty to produce documents correspondence between a party or a third party and a lawyer who is entitled to act as a professional representative. In criminal proceedings, in accordance with Article 171 of the Swiss Criminal Procedure Code, lawyers have a right to refuse to testify, in relation to confidential matters that have been confided to them or come to their knowledge in the course of their professional work. This also applies to assistants of lawyers. The right is subject to specified exceptions, including certain reporting obligations and release from professional secrecy. In federal administrative proceedings, Article 13 of the Federal Act on Administrative Procedure contains a general duty on parties to cooperate in establishing the facts of the case. However, according to Article 13.1bis the cooperation obligation does not extend to the handover of items and documents relating communications between a party and his or her lawyer authorized to represent clients before the Swiss courts in accordance with the Lawyers Act of 23 June 2000.⁴⁷

⁴⁴ *Ibid.* Under Section 2 first paragraph, of the Act on Authorization of Patent Attorneys, matters on patent law concerns the patentability of an invention, an application for a patent and other proceedings regarding patents before an authority or organization, the validity of a patent, the scope of protection of a patent or a patent application, patent infringement, and entitlement to a patent or a patent application, and preparations for and representation in court in patent law cases and matters.

⁴⁵ See inputs received from Sweden in response to C.9304/*ibid.*

⁴⁶ *Ibid.*

⁴⁷ See inputs received from Switzerland in response to C.9304.

74. Under Article 10 of the Federal Act of March 20, 2009 on Patent Attorneys, patent attorneys are obliged, without limitation in time, to maintain confidentiality concerning all secrets that are entrusted to them in their professional capacity or which come to their knowledge in the course of their professional activities. They must also ensure that persons assisting them maintain professional confidentiality. This article is applicable only to patent attorneys within the meaning Article 2 of the Federal Act of March 20, 2009 on Patent Attorneys that defines under which conditions the title “patent attorney” (or “Patentanwältin” or “Patentanwalt”, “conseil en brevets” or “consulente in brevetti”) may be used in Switzerland.⁴⁸ Article 160(1)(b) CPC, expressly exclude from the general duty to produce documents correspondence between a party or a third party and a patent attorney within the meaning of Article 2 of the Patent Attorney Act. Article 171 of the Swiss Criminal Procedure Code also applies to patent attorneys.⁴⁹

75. The Swiss Criminal Code contains penalties for breaches of professional secrecy by lawyers and patent attorneys.⁵⁰

76. In-house advisors (employed within companies who hold a cantonal licence to practice law or fulfil the professional requirements for practicing law in their country of origin) enjoy privilege only in civil proceedings in accordance with Article 167a of the Swiss Civil Procedure Code.

[End of the Appendix]

⁴⁸ See information provided by Switzerland available at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_switzerland.pdf. Article 2 of the Federal Act of March 20, 2009 on Patent Attorneys states that must possess a recognized higher education qualification in natural sciences or engineering; have passed the Swiss Federal Patent Attorney Examination or a recognized foreign patent attorney examination; have completed practical training; possess an address for service in Switzerland and be registered in the Patent Attorney Register.

⁴⁹ See inputs received from Switzerland in response to C.9304.

⁵⁰ See information provided by Switzerland available at: https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_switzerland.pdf.