

Confidentiality of Communication between Clients and their Patent Advisors

Thailand

Origin of the professional secrecy obligation, its coverage

The Lawyers Act B.E. 2528 (A.D. 1985) defines a lawyer as “a person who has been registered as a lawyer, and a license has been issued to him or her by the Law Society of Thailand.” As a member of the Law Society of Thailand, a lawyer (member) must abide by the code of ethics, called the Regulations of the Law Society of Thailand on Lawyer’s Ethics B.E. 2529 (A.D. 1986), which is overseen and supervised by the Committee on Professional Ethics. The types of professional and ethical conduct described include a prohibition from revealing client’s secrets.

Professionals bound by the secrecy obligation

In relation to this paper, registered lawyers are bound by the secrecy obligation but this may also include medical doctors and notaries, and patent agents. The Criminal Code of Thailand prescribes that whoever knows or acquires a private secret of another person by reason of his or her functions as a competent official or his or her profession, including an advocate or lawyer, or by reason of being an assistant in such a profession, and who discloses such a private secret, shall be punished with imprisonment or with a fine, or with both. This provision would therefore require that patent agents have an obligation to maintain the secrecy of confidential client information and confidential communications with their clients.

Kind of information/communication covered by secrecy obligation

The scope of the secrecy obligation is broad and covers all communications between an attorney and his or her client (or an assistant to the attorney and his or her client) that contain a private secret disclosed in conjunction with the execution of professional duties. Similarly, such communications made between a patent agent and his or her clients are also covered by the secrecy obligation. Whether the professional secrecy obligation could prevent communications containing such secret information from being disclosed to the court is not known.

Exceptions and limitations to the professional secrecy obligation/availability of forced disclosure

Exceptions may apply in the event of fraud or criminal activities.

Consequences of the loss of confidentiality and penalties for unauthorized disclosure

A breach of confidentiality constitutes professional misconduct. If any lawyer violates any of the regulations, it may result in any of three types of penalties: probation, suspension of practice not exceeding three years, or deletion of the name from the register. This applies to patent attorneys who are also registered lawyers.

The Council of the Law Society under Section 28 of the Lawyers Act B.E. 2528 (A.D. 1985), has issued the Rules on Lawyer Ethics as follows:

“Article 4: Any lawyer who violates or does not comply with any of the Rules hereinafter shall be deemed guilty of misbehavior.

“Article 11: Disclosure of a client secret obtained while a lawyer acts on behalf of a client is prohibited unless the client consents or a [Thai] court orders the disclosure.”

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Requirements/qualifications for patent advisors

Under the Patents Act and the Ministerial Regulations, a patent agent must hold a bachelor's degree, must have attended a training program and must have completed a course on Patent Agent arranged by the Department of Intellectual Property.

Cross-border aspects

Treatment of foreign patent advisors

It is not clear whether attorneys registered in foreign countries may be able to prevent professional secrecy information from being disclosed to Thai courts.

Summary

Thailand's Criminal Code imposes broad secrecy obligations on professionals and this applies equally to patent agents. Any breach of the secrecy obligations may cause the professional to face criminal prosecution and compensation claims from clients. At the same time, it is not clear whether professionals who are not registered in Thailand can also prevent disclosure of secret information obtained through their professional duties in court proceedings.