

Confidentiality of Communication between Clients and their Patent Advisors

Hong Kong (China)

There is currently no qualification requirement for patent advisors or patent agents in Hong Kong, China. However, pursuant to section 140(4) of the Patents Ordinance (Cap. 514), the Registrar must refuse to recognize a person who neither resides nor has a place of business in Hong Kong, China. The Registrar may also refuse to recognize a person as an agent in respect of any business under certain circumstances, such as where the person has been convicted of a criminal offence, or where the person has been struck off the roll of barristers or solicitors (section 85(7) of the Patents (General) Rules (Cap. 514C)).

The government of Hong Kong, China has decided to develop a full-fledged regulatory regime on patent agent services in the long run, which has to be achieved in stages. As part of the interim measures, the use in business, trade or profession of titles or descriptions such as “registered patent agent”, “certified patent agent”, “registered patent attorney” and “certified patent attorney” is prohibited in Hong Kong, China. On the other hand, the use of a title or description that solely relates to a person’s qualification for lawful provision of patent agency services in a jurisdiction outside Hong Kong, China is permissible (see section 144A of the Patents Ordinance).

By practice, it is not uncommon that solicitors are retained as patent agents in Hong Kong, China.

Duty of confidence and privileged communication

The right of Hong Kong residents to have confidential legal advice is enshrined in Article 35 of the Basic Law of Hong Kong, China. However, there are no statutory provisions under the Patents Ordinance regarding the confidentiality of communications between clients and their patent advisors/agents.

Communications between clients and their patent advisors who are solicitors may qualify as confidential information according to common law and the Hong Kong Solicitors’ Guide to Professional Conduct.