

## Confidentiality of Communication between Clients and their Patent Advisors

### Pakistan

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. Please note that there are no provisions of professional confidentiality or privilege in Pakistan in the Patent Ordinance, 2000. The act which deals with such provisions is the Qanun-e- Shahadat (198a).

The relevant section i.e. Article 9 is quoted below:

“No *advocate* shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate by or on behalf of his client, or to state the contents or condition 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 and for the purpose of such employment: Provided that nothing in this Article shall protect from disclosure -1. any such communication made in furtherance of any illegal purpose; or 2. any fact observed by any advocate, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether the attention of such advocate was or was not directed to such fact by or on behalf of his client.”

Broadly speaking, Pakistani law confers attorney-client privilege upon certain communication/information in two situations:

- a. communications "advocate" and with an
- b. communications with a "legal adviser."

In Pakistan, an "*advocate*" is defined as a lawyer who is registered with a bar council. The law prevents an advocate from disclosing or stating any communication, document or advice that the former has received from, become acquainted with or given to his client during the course of and for the purpose of his employment/engagement as such, unless the client expressly consents otherwise. This obligation continues even after the engagement/employment ceases. However, there are limitations on the extent of this privilege as it does not extend to: (1) any such communications made in furtherance of any illegal purpose, and (2) any fact observed by an advocate, in the course of his employment/engagement as such, showing that any crime or fraud has been committed since the commencement of his employment/engagement, whether his attention was or was not directed to such fraud by or on behalf of his client.

The term "*legal adviser*" is broader than the term "advocate" as it may include any professionally qualified lawyer even if he is not registered with Bar Council. Under Pakistani law, a client may not be compelled to disclose to the Court or any judicial authority any confidential communication that took place between him and his legal adviser. However, where such a client offers himself as a witness he may be compelled to disclose only such communications as may appear [to the court necessary in order to explain any evidence which he has given.

When the in-house counsel is an "advocate," professional communications between him and his client would be protected under both the above-mentioned types of privileges. In the

event that the in-house counsel is not an advocate, then only the second category of the attorney-client privilege, as mentioned above, may be conferred upon communications/information passed between the counsel and his client. It is necessary that the communications must have been made in the course of and for the purpose of professional engagement/employment. Also, the privilege extends only to those communications which are confidential and circumstances have to be examined in order to see whether the presumption of confidentiality has been raised or not.

Pakistani law in this area is developing and, therefore, whether attorney-client privilege regarding any connection/information can be invoked requires a contextual examination.