

Singapore

Introduction

In Singapore, the sources of law on the issue of privilege against disclosure are the Evidence Act, the Patents Act, and the common law.

As background, Singapore law recognizes a form of privilege known as “Legal Advice Privilege”. Under Legal Advice Privilege, communications for the purposes of obtaining legal advice are protected from disclosure. The main sources of Singapore law for Legal Advice Privilege are several provisions in the Evidence Act. Legal Advice Privilege is the first of the two components of Legal Professional Privilege that is recognized in Singapore.

The second of the two components of Legal Professional Privilege that is recognized in Singapore is “Litigation Privilege”. This form of privilege is intended to maintain the confidentiality of the strategy in litigation and preparation of the case. The main source of Singapore law for Litigation Privilege is the common law (Litigation Privilege has been explicitly recognized in past Singapore Supreme Court cases). Litigation Privilege overlaps with Legal Advice Privilege in respect of communications between a client and a lawyer concerning litigation. Therefore, advice given by the advocate and solicitor to his client in relation to court proceedings would be protected by both Legal Advice Privilege and Litigation Privilege.

In addition to the above, the Patents Act contains statutory provisions which accord privilege for proceedings before the Registrar of Patents, and which also accord privilege from disclosure for communications with registered patent agents and registered foreign patent agents.

Origin of privilege and its coverage

Singapore Evidence Act

The Evidence Act is the main source of law for Legal Advice Privilege.

Section 128(1) of the Evidence Act prohibits advocates and solicitors from doing any of the following except with the client’s express consent: (a) disclosing any communication made to him in the course and for the purpose of his employment as such advocate or solicitor by or on behalf of his client; (b) stating the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment; (c) disclosing any advice given by him to his client in the course and for the purpose of such employment.

Section 128A(1) of the Evidence Act prohibits legal counsel in entities (i.e. in-house counsel) from doing any of the following except with their entity’s express consent (a) disclosing any communication made to him in the course and for the purpose of his employment as such legal counsel; (b) stating the contents or condition of any

document with which he has become acquainted in the course and for the purpose of his employment as such legal counsel; (c) disclosing any legal advice given by him to the entity, or to any officer or employee of the entity, in the course and for the purpose of such employment. Under Section 128A(4) of the Evidence Act, where the legal counsel is employed by one of a number of corporations that are related to each other under section 6 of the Singapore Companies Act, Section 128A(1) of the Evidence Act applies in relation to the legal counsel and every corporation so related as if the legal counsel were also employed by each of the related corporations.

Under Section 129A of the Evidence Act, Sections 128 and 128A apply to interpreters and other persons who work under the supervision of legal professional advisors. Section 131(2) of the Evidence Act, discussed below, defines what a “legal professional advisor” is for Section 129A.

Section 131(1) of the Evidence Act provides that “[n]o one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.” Section 131(2) of the Singapore Evidence Act defines “legal professional adviser” as an advocate or solicitor; or in the case of any communication which has taken place between any officer or employee of an entity and a legal counsel employed, or deemed to be employed (under Section 128A(4) or (5)), by the entity in the course and for the purpose of seeking his legal advice as such legal counsel, that legal counsel.

Common law

The common law is the main source of law for Litigation Privilege.

Singapore Supreme Court cases which have recognized Litigation Privilege include the following: the Singapore High Court case of *Gelatissimo Ventures (S) Pte Ltd & Ors v Singapore Flyer Pte Ltd* [2010] 1 SLR 833 (“*Gelatissimo*”); and the Singapore Court of Appeal case of *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and Other Appeals* [2007] 2 SLR (R) 367 (“*Skandinaviska*”). Litigation Privilege covers not only communications between the lawyer and the client concerning litigation, it also covers information provided by a third party to the lawyer or client predominantly for the purposes of pending or anticipated court proceedings.

Singapore Patents Act

Section 94 of the Singapore Patents Act extends the rule of law which confers privilege from disclosure in legal proceedings in respect of communications made with an advocate and solicitor or a person acting on his behalf, or in relation to information obtained or supplied for submission to an advocate and solicitor or a person acting on his behalf, for the purpose of any pending or contemplated proceedings before a court in

Singapore, to communications so made for the purpose of any pending or contemplated proceedings before the Registrar of Patents under the Singapore Patents Act.

Section 95(1) of the Singapore Patents Act provides that communications (with respect to any matter relating to patents) between a person and a registered patent agent or a registered foreign patent agent, for the purposes of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing his patent agent or a registered foreign patent agent, is privileged from disclosure in legal proceedings in Singapore in the same way as a communication between a person and his solicitor or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a person seeks for the purpose of instructing his solicitor.

Professionals covered by privilege

The professionals covered by privilege, as seen from the Singapore Evidence Act provisions, the common law cases, and the Singapore Patents Act provisions described above, are advocates and solicitors, in-house counsel, interpreters and other persons who work under the supervision of legal professional advisors, Singapore registered patent agents and Singapore registered foreign patent agents.

Kind of information/communication covered by privilege

The kinds of information/communications that are covered by privilege can be seen in the explanation given above on the Singapore Evidence Act provisions, the common law cases and the Singapore Patents Act provisions.

Exceptions and limitations /availability of forced disclosure

Singapore Evidence Act Exceptions to Legal Advice Privilege

The following disclosures are not protected under Section 128 of the Evidence Act: (a) any communication made in furtherance of any illegal purpose; (b) any fact observed by any advocate or solicitor in the course of his employment showing that any crime or fraud has been committed since the commencement of his employment (Section 128(2) of the Evidence Act).

The following disclosures are not protected under Section 128A of the Evidence Act: (a) any communication made in furtherance of any illegal purpose; (b) any fact observed by any legal counsel in an entity in the course of his employment as such legal counsel showing that any crime or fraud has been committed since the commencement of his employment as such legal counsel; (c) any communication made to the legal counsel which was not made for the purpose of seeking his legal advice; and (d) any document which the legal counsel was made acquainted with otherwise than in the course of and for the purpose of seeking his legal advice (Section 128A(2) Evidence Act).

Section 131(1) of the Evidence Act does not apply when the client offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others (Section 131(1) of the Singapore Evidence Act).

Common law exceptions to Litigation Privilege

There is academic argument that there should be an exception in Singapore to Litigation Privilege for communications made in furtherance of any illegal purpose. However, there is no Singapore case on this issue yet.

Singapore Patents Act

There are no statutory exclusions to Sections 94 and 95 of the Patents Act.

Requirements/qualifications for registered patent agents and registered foreign patent agents

Under Rule 6 of the Patents (Patent Agents) Rules, an individual is entitled to be registered as a patent agent in Singapore if he fulfills the following requirements:

- (a) is resident in Singapore;
- (b) holds a university degree or equivalent qualification approved by the Registrar;
- (c) has passed the course specified in Part I of the Third Schedule;
- (d) has passed the examination specified in Part II of the Third Schedule; and
- (e) has completed internship in patent agency work under the supervision of a registered patent agent, or an individual registered as a patent agent or its equivalent in a country or territory, or by a patent office, specified in the Fourth Schedule, for - (i) a continuous period of at least 12 months; or (ii) a total period of at least 12 months within a continuous period of 24 months.

Under Rule 10A of the Patents (Patent Agents) Rules, an individual is eligible to apply for registration as a foreign patent agent in Singapore if -

- (a) he is resident in Singapore; and
- (b) he is registered as a patent agent or patent attorney with —
 - (i) any patent office (other than the Singapore Registry of Patents); or
 - (ii) any professional accreditation or regulatory body for patent agents or patent attorneys in any country or jurisdiction other than Singapore.

Summary

In Singapore, the sources of law on the issue of privilege against disclosure are the Evidence Act, the Patents Act, and the common law.

Legal Professional Privilege has two components – Legal Advice Privilege and Litigation Privilege.

The Evidence Act is the main source of law for Legal Advice Privilege. Under the Evidence Act, advocates and solicitors, and in-house counsel, are prohibited from disclosing communications made to them in the course of, and for the purpose of their employment, stating the contents of or condition of any document which they have become acquainted in the course of and for the purpose of their employment, and disclosing any legal advice given in the course of and for the purpose of such employment. These prohibitions also apply to interpreters as well as other persons who work under the supervision of such advocates and solicitors and in-house legal counsel.

The common law is the main source of law for Litigation Privilege. Singapore Supreme Court cases that have recognized Litigation privilege are the cases of *Gelatissimo* and *Skandinaviska*, both of which have been cited above.

The Patents Act extends the rule of law which confers privilege from disclosure in legal proceedings in respect of communications made with an advocate and solicitor, to communications so made for the purpose of any pending or contemplated proceedings before the Registrar of Patents under the Singapore Patents Act. It also provides that communications (with respect to any matter relating to patents) between a person and a registered patent agent or a registered foreign patent agent, for the purposes of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing his patent agent or a registered foreign patent agent, is privileged from disclosure in legal proceedings in Singapore.