



# **UIA In-House Counsel Commission**

## **Status of the In-house Counsel – Survey**

**(Survey conducted from March 2023  
to October 2024)**

**Date: December 7, 2024**

## **I. Introduction: Scope and goal of the Survey**

The UIA In-house Counsel Commission has carried out a survey in relation to the legal status of the inhouse counsel, in the period from March 2023 to May 2024 and then it has analyzed the data and compiled the present survey from May 2024 until October 2024.

The replies to the survey, which relate to the legal systems of 24 countries, have led to the drafting of the present report, which is structured as follows:

Section I: Introduction: Scope and goal of the survey

Section II: Executive summary

Section III: Questions addressed for the purpose of the survey

Section IV: Summarized survey country by country<sup>1</sup>

Section V: Complete survey country by country

The questions asked for the purpose of the survey mainly aim to determine whether in the surveyed legal systems lawyers working as inhouse counsel in companies are registered with the bar association and/or benefit from the legal privilege.

This survey also outlines whether and how the legal systems which admit the inhouse counsel to be members of the bar association and/or grant to them the legal privilege have addressed the questions and obstacles raised in those jurisdictions whose legal systems do not contemplate the foregoing.

The survey also addresses other relevant questions related to the status of the inhouse counsel, such as for example what are the rights and obligations of the inhouse counsel, whether he/she can represent his/her employer in court, which entity addresses disciplinary matters related to the inhouse counsel and whether the inhouse counsel belongs to the same social security and retirement plan system as the lawyer.

The wish of the UIA In-house Counsel Commission is that this survey will promote the advancement of the legal systems in those jurisdictions where the inhouse counsel - who has the bar association qualification - is not allowed by the law to be or remain member of the bar association and/or does not benefit from the legal privilege when providing legal advice to the company which employs him/her.

The UIA National Committees and Representatives, other members of the UIA as well as other lawyers and the Belgian Institute for Company Lawyers (*Institut des juristes d'entreprise/ Instituut voor bedrijfsjuristen*) have replied to the survey. We wish to thank all of them as well as the President of UIA and the UIA Center for their precious and valuable contributions and support to this work.

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<sup>1</sup> The answers to the survey provided in Section III of this report have been summarized and adapted to facilitate their reading. The complete unmodified answers can be found in Section V.

This survey contains answers up-to-date at the time when they have been provided (from March 2023 to May 2024) and may not reflect the most current legal and regulatory developments. It is intended to be a dynamic resource which may be updated to take into consideration further legal developments, contributions related to additional jurisdictions and/or by the UIA members and other addressees of the survey. Please do not hesitate to let the UIA Inhouse Counsel Commission know your proposed additional contributions and comments.

The views and summaries of laws and regulations included in this survey are the views of and summaries made by their contributing authors. The UIA and the contributing authors to this document do not guarantee the accuracy of its contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done in reliance of this document. This document and its content is a proprietary resource owned by UIA.

## II. Executive Summary

On the 24 countries surveyed, 14 countries allow the inhouse counsel to be members of the bar association and grant to them the legal privilege and 10 countries do not provide so.

Countries allowing the inhouse counsel to be members of the bar association and grant to them the legal privilege	Countries NOT allowing the inhouse counsel to be members of the bar association and NOT granting to them the legal privilege
Brazil, China, Germany, Hungary, Ireland, Japan, Mexico <sup>2</sup> , The Netherlands, Peru, Québec, Spain, England and Wales, Poland, Washington D.C. (USA)	Austria, Belgium (but see paragraph 2 below on the legal privilege of the inhouse counsel), Bulgaria, Czech Republic, UEMOA countries <sup>3</sup> , France, Guinea, Italy <sup>4</sup> , Sweden, Switzerland ((but see paragraph 2 below on the legal privilege of the inhouse counsel)

### 1. Synthesis related to the countries which allow the inhouse counsel to be members of the bar association and grant to them the legal privilege

#### Split between civil law and common law systems

Among the 14 countries which allow the inhouse counsel to be members of the bar association and to benefit from the legal privilege, 6 countries are members of the European Union.

Among the 14 countries which allow the inhouse counsel to be members of the bar association, the legal system split between civil law and common law systems is as follows:

- in the European Union, 5 countries (Germany, Hungary, the Netherlands, Spain and Poland) are civil law systems and 1 country (Ireland) is a common law legal system;
- Outside the European Union, 6 countries (Brazil, China, Japan, Mexico, Québec and Peru) are civil law systems and 2 are a common law system (England and Wales and Washington D.C.).

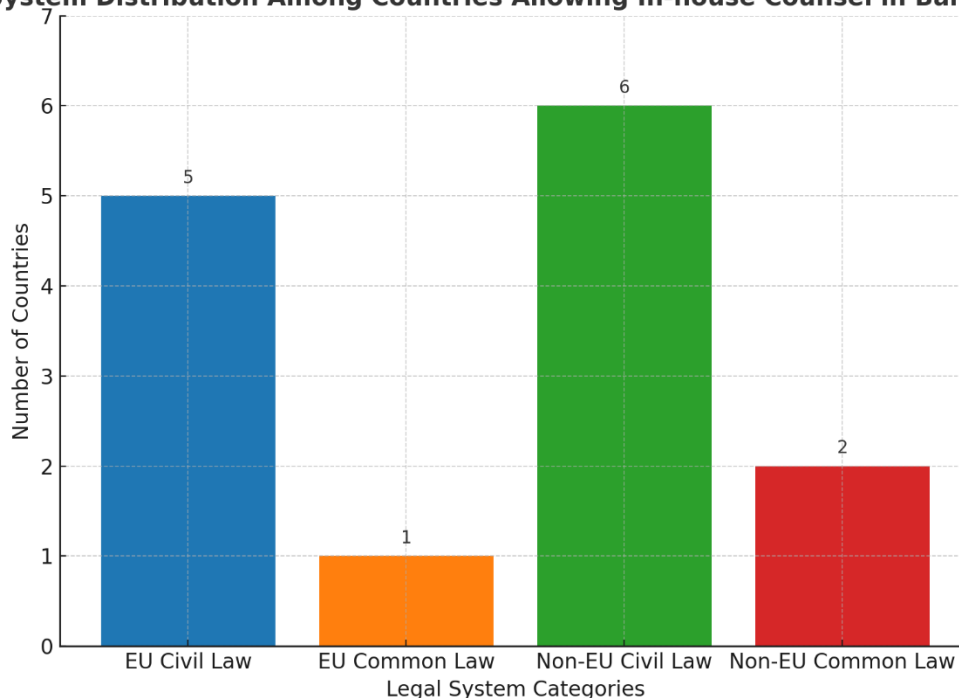
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<sup>2</sup> Please however refer to the specificities in Section IV.

<sup>3</sup> The UEMOA zone is the West African Economic and Monetary Union, which comprises 8 countries: Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal and Togo.

<sup>4</sup> Please however refer to the specificities described in Section IV related to Italy and the lawyers registered in the special list held by the Bar Association of lawyers working in public entities who have the same rights and obligations as the other lawyers, including legal privilege.

**Legal System Distribution Among Countries Allowing In-house Counsel in Bar Association**



#### Requirements of legal education and professional qualifications

With respect to the legal education and professional qualifications required by the 14 countries which allow the inhouse counsel to be members of the bar and benefit from the legal privilege, the majority of legal systems require that the inhouse counsel:

- has a law degree;
- has successfully passed the required legal professional exam to be admitted to the bar association;
- is registered in the bar association<sup>5</sup>.

Besides, in some of the 14 countries, a legal traineeship for given period of time is required before the lawyer can pass the required legal professional exam or can be registered in the bar association or receive the required license to practice as a lawyer.

#### Rights and obligations of the inhouse counsel – Disciplinary power

In the 14 countries, the rights and obligations of the inhouse lawyers are the same as those of the lawyers practicing in law firms (but see below with respect to some exceptions and specificities related to the legal privilege) except for:

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<sup>5</sup> However, in Mexico, lawyers, including inhouse counsel, need only to have a law school degree and to obtain a license from the Secretary of Public Education (SEP) to practice law nationwide. In Mexico, lawyers, including inhouse counsel, are not required to have a bar association membership or to pass a bar examination.

- China, where the inhouse counsel can represent in court only the entity for which he/she works;
- Germany, where the exemption from seizure only applies if the inhouse counsel is involved in typical legal tasks for his/her employer;
- Ireland, where the in-house solicitor with a “practicing certificate” from the Law society can provide its legal services only to his/her employer and barrister can represent in court their employer and provide it legal advice;
- Hungary, where the inhouse counsel cannot act as a defender in criminal proceedings and cannot act as an escrow agent. Besides, special regulations apply to the inhouse counsel in relation to disciplinary liability, the drafting of documents and the keeping of records.

The inhouse lawyers and the lawyers practicing in law firms are generally subject to the same professional rules, with some adaptations for the in-house counsel, and the same disciplinary powers in case of violation by the lawyer of such rules, except for Hungary, where there are special regulations which apply to the inhouse counsel in relation to disciplinary liability.

### Legal Privilege

Among the 14 national legal systems which allow the inhouse counsel to be members of the bar and benefit from the legal privilege, in the following countries the scope of the legal privilege suffers some exceptions or includes some specificities:

- In Germany, the duty of confidentiality under the employment contract and the legal privilege for inhouse lawyers run concurrently, however in criminal proceedings inhouse counsel are not entitled to refuse testimony in relation to information that became known to them in their capacity as in-house counsel and documents prepared by in-house lawyers do not enjoy the protection from seizure;
- In Japan, there is not a general legal privilege for lawyers and the legal privilege which apply also to inhouse counsel who are members of the bar association is limited to anti-trust investigations of the Fair Trade Commission of Japan;
- In Brazil, even the office or workspace of the inhouse counsel is covered by a principle of “inviolability”.

## **2. Countries which do not allow the inhouse counsel to be members of the bar association but grant them the legal privilege**

Among the 11 countries that do not allow the inhouse counsel to be members of the bar association, the following national legal systems grant to the inhouse counsel the legal privilege:

- Belgium allows the inhouse counsel to benefit from the legal privilege if he/she is member of the Institute of the Corporate Lawyers;

- Switzerland grants to inhouse counsel the legal privilege provided that he/she meets certain requirements. The legal privilege is limited to the right to refuse to collaborate and produce documents in civil proceedings;
- Italy allows the lawyers who are inhouse counsel in public entities to be members of a special list of the bar association. In such a case, they are subject to the same regulations applicable to the other lawyers members of the bar association and benefit from the legal privilege.

**3. Argument of the lack of independence based on which certain national legal systems do not allow inhouse counsel to be members of the bar and/or do not grant them the legal privilege. How certain national legal systems which allow the inhouse counsel to be members of the bar and/or grant them the legal privilege have addressed such argument**

The question of the independence of the inhouse counsel from his/her employer has been often core of the debate of the membership to the bar/ legal privilege of the inhouse counsel. It has been addressed from a legal, contractual or code of ethics perspective in different ways.

Theories retained in countries that do not let the legal counsel to be members of the bar and/or benefit from the legal privilege:

In Austria, Italy<sup>6</sup> and France, it is considered that the inhouse counsel lack of independence, as they are contractually bound to their (sole) client, i.e. their employer, and are integrated into the employer's organization. The employment relationship between the inhouse counsel and his/her employer is considered as an obstacle to the capacity of practicing independently their legal profession.

The following national regulations and/or professional code of ethics have addressed the topic of the independence of the inhouse counsel as follows:

National legal systems that allow the inhouse counsel to be member of the bar association:

- The German legislation stipulates that professional independence of the inhouse counsel must be guaranteed in the employment contract. In particular, it must be guaranteed that the inhouse counsel is not bound by instructions in this regard (§ 46 Abs. 3 BRAO).
- The Dutch legislation provides that the independency is an obligation imposed on the employer who must refrain from influencing the lawyer's professional conduct and cannot dismiss an employed lawyer due to differences in professional conduct. A professional charter is entered into between the in-house lawyer and his employer whereby the employer undertakes to comply with certain obligations which ensure the professional freedom and independence of the lawyer. Such contract, based on a standard template contract set forth

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<sup>6</sup> Except for the lawyers registered in the special list of lawyers held by the bar association who work in public entities.

in the Dutch Legal Profession Regulations, must be filed with the relevant Dutch Bar Association.

- The Irish legal system does not consider the argument of lack of independence as a difficulty for the in-house counsel to be members of the relevant bar association.

With respect to the legal privilege, the Irish case law recognizes that inhouse counsel often performs many functions for their clients, but underlines that independence is of paramount importance when assessing the appropriateness of an assertion of legal professional privilege.

The High Court case of F&C Reit Property Asset Management plc v Friends First Managed Pension Funds Ltd. [2017] IEHC 383 demonstrates that for legal professional privilege to apply, the Irish courts must be satisfied that an inhouse counsel was dispensing independent legal advice in his/her capacity as a professionally qualified lawyer, as distinct from dispensing general advice in his/her capacity as a ‘man of business’.

In that respect, the court formulated a test for determining whether legal professional privilege attached to inhouse counsel in Irish law as follows: “Does the evidence disclose that at the material time the person claiming legal professional privilege was in fact acting as an independent legal adviser to his employer? If the evidence discloses that he acted in such a capacity, then his communications are privileged. If, on the other hand, the evidence shows that he was acting as a principal rather than as a legal adviser, then the privilege may not attach”;

- The Spanish regulations provide that the employment contract entered into between the employer and the inhouse counsel must be formalized in writing and provide that the basic freedom, independence and professional secrecy for the practice of the legal profession must be respected and expressed if such practice is carried out on an exclusive basis with the employer.

National legal systems that do not allow the inhouse counsel to be member of the bar association but grant to it the legal privilege, under certain conditions:

- The Belgian legislation has addressed this question by including the intellectual independence of all inhouse counsel in the Code of Ethics of the company’s lawyers. Such code provides that the company lawyer has the duty to act in the public interest, to comply with the law and therefore will never advice against the law and he/she shall be intellectually independent. Even though the company lawyer, as an employee, works in a relationship of subordination, he or she remains intellectually independent in his/her work and in the legal advice he/she gives. Besides the violation of the code of ethics is subject to disciplinary sanctions.

To be noted, regarding the question of the independence of the inhouse counsel that some countries, such as Japan, Spain or Mexico, that have authorized inhouse counsel to be members of the bar association, the argument that inhouse counsel would lack independency by being



employed or serving the interest of a sole client has never even been raised as a concern neither in case law nor legal acts.

#### **4. Right of inhouse counsel not registered at the bar association to represent their employer in legal proceedings before courts**

While most legal systems forbid inhouse counsel not registered at their respective bar association to represent their employer in courts, apart from the jurisdiction in which legal representation is not mandatory, Bulgaria and Sweden, which do not allow inhouse counsel to be members of the bar, allow inhouse counsel to represent their employer in front of all courts.

However, the Swedish law provides that for serious crimes it is necessary to be represented by a member of the bar.

In Switzerland, the inhouse counsel - provided that he/she is duly authorized by his employer - is entitled to represent the latter before all courts, but he/she has the status of party to the legal proceeding. There is an exception for lawyers who are employed by a recognized public utility organization and that may be registered with the cantonal registry of lawyers. Once registered, they can represent their employer in court as long as this activity is limited to mandates strictly related to the purpose pursued by this organization.

#### **5. Legislative initiatives to improve the status of the inhouse counsel in the countries where the inhouse counsel is not allowed to be a member of the bar association/does not benefit from the legal privilege**

Among the 11 countries surveyed which do not allow inhouse counsel to be members of the bar and benefit from the legal privilege, in the following 2 countries there are pending legislative initiatives pertaining to the status of the inhouse counsel:

- In France a draft law was approved by the Parliament (“Assemblée Nationale”) on April 30, 2024, whereby the inhouse counsel would be granted the legal privilege, provided that he/she meets certain requirements, except in the tax and criminal law domain. However, the legal process for its enactment has been suspended;
- in Guinea an initiative is being initiated by the association of inhouse counsel “Cercle Droit et Conformité de Guinée (CDCG)” in order to draft a special law for the independency of inhouse counsel.

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### **III. Questions addressed for the purpose of the survey**

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.
2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?
  - a. If yes:
    - i. Please indicate the name and date of the applicable regulations allowing it,
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
    - iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
    - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
    - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.
3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?
  - a. If yes:
    - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register?
    - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
    - iv. Is the inhouse counsel subject to a code of ethics?

- v. Is there some kind of disciplinary body to enforce the code of ethics?
  - vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.
4. Can the inhouse counsel represent its employer in court and if so, before which courts?

#### 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

##### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

- f. What is the extent of the protection and what are the limits?
    - i. What type of documents are included?
    - ii. Can the lawyer refuse to testify in legal proceedings?
    - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
    - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
  - g. Please indicate the name and date of the applicable law providing for the legal privilege.
- 6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?
- 7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

#### **IV. Summarized survey country by country**

1. Austria
2. Belgium
3. Brazil
4. Bulgaria
5. China
6. Czech Republic
7. EUMOA countries
8. France
9. Germany
10. Guinea
11. Hungary
12. Ireland
13. Italy
14. Japan
15. Mexico
16. The Netherlands
17. Peru
18. Poland
19. Quebec
20. Spain
21. Switzerland
22. Sweden
23. England and Wales
24. Washington D.C. (USA)

## 1. Austria

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

No.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

No.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

According to Austrian law in-house counsels are not lawyers. In Austria, there is a legal requirement for representation in certain proceedings, distinguishing between absolute and relative legal representation. With absolute legal representation, it is mandatory to be represented by a lawyer. On the other hand, relative legal representation means that if one chooses to be represented, it must be done by a lawyer. Absolute legal representation is regulated in § 27 of the Austrian Code of Civil Procedure (ZPO), while relative legal representation is governed by § 29 (1) in conjunction with § 27 (2) of the Austrian ZPO.

Absolute legal representation is mandatory in district court proceedings when the dispute value exceeds 5,000 euros (in the case of "value-based jurisdiction" – "Wertzuständigkeit": meaning that a district court has jurisdiction because the dispute amount is equal to or less than 15,000 euros.), in first-instance proceedings before regional courts, and in appellate proceedings.

Relative legal representation is required in district court proceedings when the dispute value exceeds 5,000 euros (in the case of "Subject Matter Jurisdiction" – "Eigenzuständigkeit": meaning that a district court is competent based on the allocation according to the disputed subject matter.), in proceedings related to matters of marriage, in the case of proceedings before a requested/assigned judge, and in the so-called "personal exemption" according to § 28 of the Austrian ZPO. § 28 ZPO states that lawyers, notaries, individuals qualified to act as judges, and officials of the Financial Procuratorate who have passed the bar examination are not bound by the mandatory requirement of legal representation, but if they choose to be represented, it must be done by a lawyer.

In all other proceedings where neither absolute nor relative legal representation is required, one can be represented by virtually anyone, including an in-house counsel. Neither absolute nor relative legal representation is generally required in district court proceedings when the dispute value is below 5,000 euros.

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

No.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

Fundamentally, as a registered lawyer, it is only possible to work either independently or as an employee of a law firm. (This arises from the provisions of the Austrian Lawyers' Code.) However,

if a legal professional is employed by a company or a public entity (solely), there are issues with independence:

The Austrian legislator operated on the assumption of a self-employed lawyer who dealt with the legal matters of their client in an independent manner. This handling of external affairs requires a special level of trust - similar to the doctor-patient relationship. The modern in-house counsel lacks this element of independence, as they are contractually bound to their (sole) client and integrated into their organization; this means they are acting in their own interest, not in the interest of an external party. This is the reason why in-house counsels do not benefit from a legal privilege. (Source:<https://rdb.manz.at/document/rdb.tso.LIderstandard20102101?execution=e1s4&highlight=Unternehmensjurist+Rechtsanwalt>)

According to § 23 (2) of the Austrian Lawyers' Code, the following applies: Within their area of jurisdiction, the Bar Association is responsible for representing, promoting, and safeguarding the professional, social, and economic interests of the lawyers and legal trainees who are members of the Bar Association. It is also the responsibility of the Bar Association to particularly uphold the independence of the legal profession. Since in-house counsels generally do not meet this criterion of independence, they cannot become members of the Bar Association.

## 2. Belgium

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
No.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
Yes.

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.

Institut des juristes d'entreprise – Instituut voor bedrijfsjuristen. The Institute was incorporated by the Law of 1 March 2000 establishing an Institute of Company Lawyers (<https://ije.be/fr/>). The coordinated version in English is attached to this survey). It counts more than 2300 members.

Its General Secretary, Mr Simon Vander Putten, and its General Director, Mrs Julie Dutordoir, have kindly agreed to be interviewed for the purposes of this survey.

- ii. What are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register?

Membership for in-house counsels is optional, but an in-house counsel can only use the title “juriste d'entreprise”/ “bedrijfsjurist” (company lawyer) and have legal professional privilege if they are a member of the Institute:

Requirements :

- Belgian or foreign law degree.
- Have a contract of employment or civil service status with an employer operating in Belgium. As an exception, company lawyers who are directors in their organization and have self-employed status due to certain mandatory rules, can also be admitted.
- Work mainly in the field of law for an employer that has activities in Belgium (and not mainly for the clients of the employer), including other companies of the same group, or, if the employer is a federation, also for the members of the federation.
- Total intellectual independence. This is stipulated in the above-mentioned Law since 2023.

Membership is not exclusive in the sense, for instance, that the inhouse counsel can be a member of Institutes for inhouse counsels in other countries at the same time.

- iii. What are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?

Obligations:

- pay the membership fee (414 EUR/year).
- follow the code of ethics.
- follow ongoing training. The Institute offers free training to its members (webinars, lunch seminars, ...often lead by law firms) for which the members get educational credits.
- act with total intellectual independence



Rights:

- assistance and legal protection insurance in the event of difficulties with the employer (pressure, etc.)
- protected title (Unauthorized use of the title is punishable by criminal law)
- confidentiality of advice given to one's employer (legal professional privilege)
- benefit from the Institute's (free) training and networking opportunities

iv. Is the inhouse counsel subject to a code of ethics?

Yes : Deontologische Code de Déontologie (ije.be)

The company lawyer's Code of Ethics is based on 5 pillars:

- The company lawyer acts in the public interest. The Statute of the Company lawyer was created to allow companies, in the general interest, to obtain the best possible internal advice.
- The company lawyer explicitly undertakes to comply with the law. Therefore, he or she will never advise against the law.
- The company lawyer is intellectually independent. Even though the company lawyer, as an employee, works in a relationship of subordination, he or she remains intellectually independent in his/her work and in the legal advice he/she gives.
- The company lawyer practises a regulated profession and uses the protected title correctly, the title of "juriste d'entreprise" (French) or "bedrijfsjurist" (Dutch) is exclusively reserved to the members of the Institute of Company lawyers.
- The advice given by a company lawyer to his or her employer is confidential. This confidentiality is the necessary condition for the correct execution of the duty of company lawyer. The company lawyer can only properly fulfil his or her task as an independent advisor of the company if he or she can communicate his/her advice in confidence.

v. Is there some kind of disciplinary body to enforce the code of ethics?

Yes :

- Disciplinary Committee - (presided by magistrates appointed by royal decree and of which designated company lawyers are also part)
- Appeals Committee - (presided and seated by magistrates appointed by royal decree and of which designated company lawyers are also part)
- Cassation

vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Duty to exercise the profession of in-house lawyer with complete intellectual independence.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

No.

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

a. Is the privilege based in statute or regulation, or is it based in common law?

The Law of 1 March 2000 creating an Institute of Company Lawyers provides (art. 5) that legal advice given by a company lawyer, affiliated to the Institute of Company Lawyers, on behalf of his or her employer is confidential.

Confidentiality also covers correspondence relating to the request for an opinion, draft opinions and other preparatory documents.

Confidentiality covers advice given to the employer or the employer's holding company, the co-workers etc.

In-house counsel's opinions and related documents may not be consulted or copied by persons other than the addressee(s), nor may they be seized by the authorities or courts, for example in the course of a search. The in-house lawyer may not be obliged to answer questions concerning the content of his or her opinions or the facts communicated to him or her in this regard.

The confidentiality of in-house counsel's opinions is based on the fundamental rights enshrined in Articles 6 (right to legal assistance) and 8 (right to privacy) of the European Convention on Human Rights (ECHR).

In case of dawn raid, the President of the IBJ-IJE, or a person delegated by him or her, can go to the company to assist the company lawyer in the procedure if confidentiality is at stake.

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Yes. The law states : “Art. 5 Legal advice given by the company lawyer, for the benefit of his employer or, in the case referred to in Article 4, § 1/1, for the benefit of his principal and in the context of his legal advisory activity, are confidential. This confidentiality also covers internal correspondence containing the request for an opinion, internal correspondence exchanged concerning this request, draft opinions and internal documents drawn up in preparation for the opinion.”

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

No. Only legal advice is protected under the Law of 1 March 2000. If a company lawyer writes something else, there is no protection.

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

N/A

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

The inhouse lawyer must be a member of the Institute of Company lawyers.

The advice does not have to be marked "confidential", but this is recommended by the Institute. It is not always easy to mark it as such in practice because inhouse lawyers also advise on a lot of small topics during the day. The more delicate the information is, the more precautions the inhouse counsel should take.

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?  
Legal advice, internal correspondence containing the request for advice, internal correspondence exchanged concerning this request, draft advice and internal documents drawn up in preparation for the advice.
- ii. Can the lawyer refuse to testify in legal proceedings?  
The company lawyer cannot be obliged to answer questions about the content of his or her opinions or about the facts communicated to him or her in this context.
- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?  
All proceedings at Belgian level.  
Foreign authorities/ UE authorities currently do not recognize this privilege following European case law.
- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?  
Yes (same scope).
- g. Please indicate the name and date of the applicable law providing for the legal privilege.  
March 1<sup>st</sup> 2000 - Loi créant un Institut des juristes d'entreprise / Wet tot oprichting van een Instituut voor bedrijfsjuristen. It was explicitly confirmed by a modification made in 2023.
- 5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
No, new legal initiative at this moment. The above-mentioned law has been modernized in 2023 (through the Laws of 14 mars 2023 and 7 April 2023) to enshrine in law the developed jurisprudence and legal practice regarding confidentiality.

The Institute has lodged an appeal against the law transposing the "whistleblowers" directive, since it could affect the duty of confidentiality offered to company lawyers.

The Institute is often consulted by the Belgian authorities if new draft legislation may have an impact on confidentiality.

- 6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?  
The most important aspect in Belgium is that inhouse counsels have the option to adhere to a specific Institute of Company Lawyers as a member, which provides protection to them when exercising their legal profession.

Other items:

Confidentiality between company lawyers from different employers: Non-public information exchanged between in-house counsel is confidential, unless there is a unilateral declaration or agreement to the contrary in writing. (Code of Ethics, art. 11)

Confidentiality between a lawyer representing a counterparty of the employer, and a company lawyer : Both have to agree that their exchange will be confidential. This contractual basis is confirmed in a Protocol concluded between the Institute and the French- and German-speaking bar

associations of Belgium, but there is currently no such protocol with the Flemish bar association of Belgium, but the company lawyer and external lawyer can agree on such confidentiality.

The Institute aims to establish good relations with the Belgian bar associations in order to promote the collaboration between lawyers and company lawyers, so to avoid they are viewed as competitors. A joint seminar about the collaboration between lawyers and company lawyers is organized by the Institute and the Brussels bar associations on 22 March 2024.

### 3. Brazil

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

In the Brazilian Bar Association (Ordem dos Advogados do Brasil – OAB), there is no specific registry designated for in-house lawyers who work exclusively for a company as employees. In this regard, all lawyers, including those who work as in-house counsels, must be registered with the Brazilian Bar Association as regular lawyers and follow the same procedures as lawyers who practice law independently or in external law firms.

Therefore, there is no separate registry for in-house lawyers within the OAB, once they are considered regular lawyers and must comply with the requirements established by the Statute of the Legal Profession and the Brazilian Bar Association (Law no. 8.906/1994) and related regulations on law practice in Brazil.

Furthermore, lawyers working for public entities can be members of the Brazilian Bar Association as long as they consider the following circumstances:

1. Registration Requirements: Lawyers, whether working for public or private entities, must meet the registration requirements set by the OAB to become members. This typically includes holding a law degree from a recognized institution, passing the bar exam (Exame de Ordem), and meeting any other criteria established by the OAB.
2. Dedication to Public Employment: While lawyers working for public entities can be members of the OAB, they must ensure that their legal practice complies with the rules and regulations governing their public employment. This may include considerations related to exclusive dedication, conflicts of interest, and ethical standards.
3. Professional Ethics: Lawyers working for public entities must comply to the ethical standards established by the OAB, as well as any additional ethical guidelines or codes of conduct applicable to their public employment.

Moreover, lawyers employed by a public entity must observe articles 28 and 30 of Brazilian Law No. 8.906/1994 concerning the incompatibility, meaning the total prohibition, and the impediment, which is the partial prohibition of practicing law. These conditions can lead to the suspension of the filiation between lawyers in public entities and the Brazilian Bar Association.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? In the Brazilian Bar Association (Ordem dos Advogados do Brasil - OAB), there is no specific registry designated as the “Special In-House Counsel Register”, as may exist in other jurisdictions or legal systems. Within the OAB, in-house lawyers (lawyers who work exclusively for a company or organization as employees) undergo the same registration and admission process as lawyers who practice law independently or in external law firms.

Therefore, to practice as an in-house lawyer in Brazil, it is necessary to be duly enrolled in the OAB as a regular lawyer, fulfilling the requirements established by the Statute of the Legal Profession and the Brazilian Bar Association (Law No. 8,906/1994) and related regulations. There is no separate special registry for in-house lawyers within the OAB.

Nevertheless, it is important for in-house lawyers to comply with all ethical and professional obligations established by the OAB and to stay updated on any specific regulations related to the practice of in-house law in Brazil.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

Considering there is no distinction between in-house counsels and practicing lawyers, the employees enrolled in private companies can represent their employers before all courts. Since lawyers employed by public entities must observe certain requirements in order to represent, they must obey the criteria outlined in the article 28 of the Statute of the Legal Profession and the Brazilian Bar Association (Brazilian Law No. 8,906/1994) and compliance with public employment regulations ensuring that their legal practice complies with the rules and regulations governing their public employment, including any restrictions on outside legal work or conflicts of interest.

4. Legal Privilege

Whereas there is no distinction between in-house counsel and practicing lawyers in Brazil, the Statute of the Legal Profession and the Brazilian Bar Association (Law No. 8,906/1994) protects the confidentiality in its article 7, item II and article stating that the lawyer has the right of “the inviolability of their office or workplace, as well as their work instruments, written, electronic, telephone, and telematic correspondence, as long as they relate to the practice of law”. Additionally, the Code of Ethics of the Brazilian Bar Association (OAB) addresses the confidentiality as irrefragable in its articles 26, 35, 36 and 37, only violable with just cause, in cases of serious threat to the right to life and honor or involving self-defense. Lastly, article 154 of the Criminal Code (Law 2.848/1940) stipulates detention in case the disclosure of privileged information due to the professional the practice.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
No.

#### 4. Bulgaria

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

The regulations in Bulgaria's jurisdiction don't allow the inhouse counsels to be members of the Bar associations, as our Bar law prohibit lawyers to have labor employment contracts.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

The inhouse counsel can't be registered in a special in-house counsel register because this type of register does not exist in The Republic of Bulgaria.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

The inhouse counsel can represent its employer in all the courts in The Republic of Bulgaria.

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

The Bulgarian law, especially Labor code protects and establishes the principle of the confidentiality of the communications between the inhouse counsel and its employer. They can be settled in the internal rules of the Employee, as well as in the employee agreement.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

There are currently no pending draft laws proposed in relation to the inhouse counsels. Various professional NGOs are making efforts to improve their place in Bulgarian law, but to date the draft law for inhouse counsel has been rejected by the competent authorities.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

I hope in the near future the law of inhouse lawyers to take place In Bulgaria.

## 5. The People's Republic of China

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

Yes, for certain category, there are three types of legal professions in China:

- (i) Attorney
- (ii) Corporate lawyer (in practice working for big firms)

According to *Measures for the Administration of Corporate Lawyers*, corporate lawyer is “an employee who enters into a labor contract with a state-owned enterprise, receives a corporate lawyer certificate issued by the justice authority in accordance with the law, and engages in legal affairs work in the enterprise”.

- (iii) Legal Counsel

Corporate lawyers and attorneys shall pass the bar exam, and they can represent respectively their own company and clients before Chinese tribunals by abiding by professional rules.

Legal counsels do not need to pass the bar exam. They cannot represent their companies before tribunals.

An inhouse counsel can possibly be:

- 1) an employee of a company or a public entity (in this case, the employee shall not practice in the name of lawyer);
- 2) an attorney undertaking non-contentious legal consultant services (in this case, the attorney won't be “employed” but “authorized”); or
- 3) a corporate lawyer (only for public entities).

According to Ministry of Justice's data on May 17, 2018, there are 17 state-owned enterprises settled the position for corporate lawyer<sup>7</sup>.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it:

- Lawyers Law of the People's Republic of China (2017 Amendment), effective on Jan. 1<sup>st</sup>, 2018.
- Measures for the Administration of Corporate Lawyers, effective on Jan 1st, 2019 (hereinafter referred to as “Measures”).

Becoming a lawyer:

### Positive conditions in Article 5

*To apply for practicing law, a person shall satisfy the following conditions:*

- 1. Upholding the Constitution of the People's Republic of China;
- 2. He or she has passed the national uniform legal profession qualification examination and obtained the legal profession qualification;
- 3. Completing one-year internship at a law firm; and

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<sup>7</sup> [https://www.gov.cn/xinwen/2018-05/17/content\\_5291614.htm](https://www.gov.cn/xinwen/2018-05/17/content_5291614.htm)



*4. Having good character and conduct.*

The certificate of passing the national uniform judicial examination and lawyer's qualification certificate obtained before the national uniform legal profession qualification certificate shall have equal force with the national uniform legal profession qualification certificate.

Negative conditions in Articles 7 and 11

Article 7

*A lawyer's practicing certificate shall not be issued to an applicant who is under any of the following circumstances:*

- 1. Having no capacity or limited capacity in civil conduct;*
- 2. Having a record of criminal punishment, except for a crime of negligence; or*
- 3. He or she is expelled from a public office or his or her lawyer's or notary's practicing license is revoked.*

Article 11

*A civil servant shall not concurrently serve as a practicing lawyer.*

*A lawyer, who serves as a member of a standing committee of a people's congress at any level, shall not be engaged in a practice of representation or defense in litigation during his term of membership.*

- ii. What are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

1. Having passed the bar exam (State Judicial Examination) or having obtained the qualification of attorney;
2. Having engaged in legal affairs for more than two years, or having served as a judge, prosecutor or lawyer for more than one year;
3. Having been approved by the entity for which he/she works to be a corporate lawyer.

Becoming a corporate lawyer:

*Measures for the Administration of Corporate Lawyers*, effective on Jan 1st, 2019.

- **Positive conditions in article 5**

An applicant for a corporate lawyer certificate shall meet the following conditions:

- (1) Upholding the Constitution of the People's Republic of China.
- (2) Qualifying for the legal profession or as a lawyer according to the law.
- (3) Entering into a labor contract with a state-owned enterprise in accordance with the law.
- (4) Engaging in legal affairs work for more than two years, or having served as a judge, prosecutor or lawyer for more than one year.
- (5) Of integrity.
- (6) The entity with which he or she works consents to his or her appointment as a corporate lawyer.

- **Negative conditions in article 6**

Where an applicant has any of the following circumstances, a corporate lawyer certificate shall be denied:

- (1) With no or limited capacity for civil conduct.
- (2) Having received criminal punishment, except for negligence crime.

- (3) Having been expelled from the public service or having had his or her lawyer's or notary's practice certificate suspended.
- (4) Suspected of crime with judicial proceedings not concluded or suspected of violating the discipline or law and under ongoing examination.
- (5) Listed as an object of joint punishment for dishonesty.

iii. What are the rights and obligations of the inhouse counsel as member of the bar association?

Rights:

Can only represent the entity for which he/she works before Chinese tribunals.

- 1. File petitions in all types of litigation, participate in mediation or arbitration, provide non-litigation services etc.;
- 2. Interview, file reviews, perform investigations, evidence collection and inquiry, cross-examination, argument, defense etc.

Corporate lawyers “have the right to meet, consult case files, investigate, collect evidence and put questions, cross-examination, argument, defense, and so forth and be entitled to access information, documents, materials and other necessary power and conditions related to the performance of their duties.” (art. 14 of Measures)

Also, they enjoy the same rights as a member of Lawyers’ association.

Obligations:

Abide by professional rules of China Bar Association

There are just some minor differences concerning the restrictions on practice. For attorneys, if they once served as a judge or prosecutor, they shall not act as agent ad litem or defender within two years after leaving his post in a people's court or people's procuratorate. However, there are no such limitations for corporate lawyers.

As long as he or she engages in legal service practices in the name of lawyer, he or she shall observe the same obligations as a lawyer. A lawyer “may only practice law in one law firm” (Lawyers Law, art. 10) and “the law firm shall uniformly accept a client's authorization and enter into a written authorization agreement with a client, and uniformly charge fees and enter them into accounts according to the provisions of the state” (Lawyers Law, art. 25).

As for a corporate lawyer, shall “accept the management and supervision of the entity with which he or she works and process legal affairs as entrusted or assigned, and may not engage in paid legal services, hold part-time office at a legal service institution such as law firm, or process litigation or non-litigation legal affairs outside the entity with which he or she works in his or her capacity as lawyer.” (*Measures for the Administration of Corporate Lawyers*, article 14 al. 2).

iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

In China, there’s only one kind of social security in general. The social security contains basic endowment insurance, basic medical insurance, employment injury insurance, unemployment insurance and maternity insurance.

The difference shows in the distinction of “rural system” and “city system” for basic endowment insurance and basic medical insurance. Civil servants are particularly in another system of basic endowment insurance.  
So, yes, they all belong to the same social security system.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.  
There is no such debate under the Chinese legal system.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

No, there’s no special in-house counsel register in China, only for lawyers.

3. Can the inhouse counsel represent its employer in court and if so, before which courts? Yes, for the status of corporate lawyer, no for inhouse counsels  
In civil procedures, a litigation representative is not necessarily a lawyer (Civil Procedure Law, art. 61 al. 2). Therefore, an inhouse counsel can represent its employer in civil courts.

Article 13 of Measures states that a corporate lawyer can “processing various litigation, mediation, arbitration and other legal affairs”.

For criminal procedure, only “during the period of criminal investigation, a criminal suspect may only retain a lawyer as a defender” (Criminal Procedure Law, art. 34), so before criminal court, it’s also possible for inhouse counsel to represent its employer.

As there’s no administrative courts in China, it follows the same rules of civil procedure, a litigation representative is not necessarily a lawyer (Administrative Procedure Law, art. 31)

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

No. No relative dispositions in law for corporate lawyers and employees. However, there are several dispositions concerning corporate lawyers (Measures) in other inferior legal texts.

“Corporate lawyers shall join the lawyers’ association, enjoy the rights of members and fulfill their obligations.” (art. 17 of Measures) Thus, corporate lawyers shall also obey the *Rules of Lawyers’ association* according to which the violation of confidentiality obligation shall be punished. (art. 24-26, confidentiality obligations: disclosure of client’s commercial secrets, personal privacy, nation’s secrets etc.)

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

For now, no.

## 6. Czech Republic

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?  
No.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
No.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Yes. All courts where compulsory representation by an attorney is not required.
4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?  
No.
5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
No.

## 7. Pays de la Zone UEMOA<sup>8</sup>

1. La réglementation de votre juridiction autorise-t-elle les juristes internes (c'est-à-dire les juristes qui pratiquent le droit et qui sont employés par une entreprise ou un groupe d'entreprises) à exercer leurs activités en tant qu'avocats ? Pratiquant le droit et employés par une entreprise ou une entité publique) d'être membres du barreau ?

Non. Le règlement N°05 de l'UEMOA régissant la profession d'avocat, assujetti l'exercice de la profession d'avocat soit à l'exécution d'un stage et d'une formation professionnelle. Pour exercer en tant qu'avocat dans la zone UEMOA, le juriste d'entreprise doit obtenir le Certificat d'Aptitude à la Profession d'Avocat (CAPA) à la suite de quoi il sera inscrit sur la liste de stage du barreau. Après son inscription au barreau, une formation professionnelle est exigée pour l'inscription au tableau de l'ordre des avocats. Voir les articles 23 à 30 du règlement N°05 de l'UEMOA.

2. Si le juriste d'entreprise n'est pas autorisé à être membre du barreau, peut-il être inscrit dans un registre spécial de juristes d'entreprise ? Être inscrit dans un registre ou une liste spéciale de juristes d'entreprise gérée par une autorité de régulation ou une association ?

Non.

3. Le juriste d'entreprise peut-il représenter son employeur devant les tribunaux et, dans l'affirmative, devant quels tribunaux ?

Non, le juriste d'entreprise n'est pas autorisé à plaider devant les cours et tribunaux.

4. Privilège juridique : Le juriste d'entreprise bénéficie-t-il du privilège juridique, c'est-à-dire que la réglementation en vigueur dans votre pays protège la confidentialité des informations fournies par le juriste d'entreprise ?

Non, le juriste d'entreprise n'a pas de privilège juridique au regard des textes en vigueur au sein du système juridique sénégalais.

Les réglementations en vigueur dans votre juridiction protègent-elles la confidentialité des communications entre le juriste d'entreprise et son employeur et/ou le cabinet d'avocats engagé pour conseiller et assister le juriste d'entreprise?

Oui. Le juriste d'entreprise est lié à son employeur par un contrat de travail, dans lequel l'employeur peut prévoir une clause de confidentialité pour assurer la non-divulgence des connaissances acquises à l'occasion de ce travail.

Par rapport à la confidentialité des communications entre le juriste d'entreprise et le cabinet d'avocats, l'article 5 du code de déontologie des Avocats de l'espace UEMOA du 05 juillet 2019 impose aux avocats le respect du secret professionnel.

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<sup>8</sup> La Zone UEMOA est l'Union économique et monétaire ouest-africaine qui comprend 8 pays : Bénin, Burkina Faso, Côte d'Ivoire, Guinée-Bissau, Mali, Niger, Sénégal, Togo.

## 8. France

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

No.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

No.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

In principle, no, with a few increasingly limited exceptions such as, for example:

- before the commercial court if the amount at stake in the dispute is less than €10,000, if it relates to the keeping of the commercial register or if it concerns a pledge problem,
- before the Conseil de Prud'hommes (labour law).

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

No, only attorney/client exchanges are confidential in all matters and for all purposes.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

On April 30, 2024 the Parliament has adopted a draft law granting legal privilege to in-house lawyers, subject to certain conditions. The law provides that the legal privilege of inhouse counsel does not apply to the criminal and tax domain.

Please refer to the draft law at [https://www.assemblee-nationale.fr/dyn/16/textes/116t0293\\_texte-adopte-seance](https://www.assemblee-nationale.fr/dyn/16/textes/116t0293_texte-adopte-seance)

Within the legal profession, the debate is fairly clear-cut between those in favour (Paris, i.e. half of all French lawyers, and the ACE union) and those opposed (the other French Bars and other unions).

[https://www.cnb.avocat.fr/sites/default/files/documents/resolution\\_-\\_confidentialite\\_des\\_consultations\\_juridiques\\_des\\_juristes\\_dentreprises.pdf](https://www.cnb.avocat.fr/sites/default/files/documents/resolution_-_confidentialite_des_consultations_juridiques_des_juristes_dentreprises.pdf)

## 9. Germany

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

Yes.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,  
§§ 46 Abs. 2, 46a BRAO, 1. January 2016
- ii. What are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?  
Either obtaining the qualification to become a judge according to the DRiG (§ 5 DRiG), or fulfil the integration requirements pursuant to the EuRAG. To meet the integration requirements, an established European lawyer in Germany must have at least three years of effective and regular practice in the field of German law, including Community law (§ 11 Abs. 1 EuRAG).

Another option is to hold a certificate in accordance pursuant § 16a EuRAG. This certificate is awarded to a person who has completed training that allows direct access to the profession of European lawyer (§ 1 EuRAG). An aptitude test may be required by the Examination Office. And the activity must be carried out in a professionally independent and autonomous manner.

- iii. What are the rights and obligations of the inhouse counsel as member of the bar association?  
In principle the rights and obligations correspond to those of a “normal” lawyer. However, the exemption from seizure only applies if the In-House counsel is involved in typical legal tasks for their employer. The right to refuse to give evidence only applies in civil proceedings.

In addition, the In-house counsel must inform the bar association of any change in his employment relationship.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

Yes.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.  
The legislator has recognized that there can be no personal independence for dependent employees, which is why only professional independence is required. Professional independence must be guaranteed in the employment contract. It must be guaranteed that the lawyer is not bound by instructions in this regard.(§ 46 Abs. 3 BRAO)

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

N/A

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

The advice and representation are limited to the legal affairs of the employer. These also include legal matters within affiliated companies within the meaning of Section 15 of the German Stock Corporation Act, authorized legal services provided by the employer to its members, provided that the employer is an association or trade union pursuant to Section 7 of the Legal Services Act or Section 8 (1) No. 2 of the Legal Services Act, and 3. authorized legal services provided by the employer to third parties, provided that the employer is a member of the professions listed in Section 59c (1) sentence 1 numbers 1 to 3<sup>9</sup> or a professional association of such professions.

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

In principle, yes.

The identity of the client is not subject to legal privilege. The duty of confidentiality under employment contract and professional secrecy for in-house lawyers regularly run concurrently. In-house lawyers have the same rights and obligations as all other lawyers, with the exception of the criminal law right to refuse to testify and the prohibition of confiscation. This is important for effectiveness of criminal prosecution. Incorporating in-house lawyers in the ban on seizure could potentially result in the prosecution authorities not having access to relevant evidence.

Documents discovered in the possession of an in-house lawyer are only protected from seizure if they pertain to typical legal tasks. Insofar as the in-house lawyer works for his company, this is not a legal activity that leads to a legal privilege.

The right to refuse to give evidence does not apply to in-house lawyers with regard to what has been entrusted to them or has become known to them in this capacity.

ECJ: C-550/07-P, „Akzo/Nobel“, Slg 2010, I-8301: The ECJ has ruled that communications between in-house lawyers and their non-lawyer employer are not subject to confidentiality and freedom from seizure. The ECJ justified its decision with the argument that an in-house lawyer does not have the same degree of independence from his employer as an external lawyer. The ECJ decision on the Akzo Nobel case denies in-house counsel the right to refuse to give evidence.

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

The privilege results from the reference in § 46c I BRAO to the general regulations for lawyers.

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<sup>9</sup> These professions are the following: members of the Chamber of Patent Attorneys, tax consultants (Steuerberater), tax representatives (Steuerbevollmächtigte), certified accountants and sworn auditors, members of the legal profession from other countries who would be authorised to establish themselves in the Federal Republic of Germany under the Act on the Activities of European Lawyers in Germany or under Section 206, and with members of the patent attorney profession from other countries who would be authorised to establish themselves in the Federal Republic of Germany under the Act on the Activities of European Patent Attorneys in Germany or under Section 157 of the Patent Attorney Code, tax advisors, tax agents, auditors and chartered accountants from other countries who are authorised to practise their profession jointly with tax advisors, tax agents, auditors or chartered accountants in the Federal Republic of Germany in accordance with the Tax Consultancy Act or the Auditors' Code.



- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?
- i. If yes, please explain briefly your jurisdiction's adopted version of this theory: The attorney-client privilege is fundamentally protected by the freedom from seizure and the right to refuse to give evidence. The exemption from seizure only applies if the In-House counsel is involved in typical legal tasks for their employer. The right to refuse to give evidence only applies in civil proceedings.  
The prevailing opinion is that in-house lawyers are also entitled to the seizure privilege if they carry out genuine legal work for their firm and the necessary independence is guaranteed (e.g. possibility to take on independent mandates, right to refuse mandates and freedom from instructions).
- However, the prohibition of seizure only applies if:
- the documents from the employer's business area are in the sole custody of the in-house lawyer and
  - they constitute written communications between the employer or an equivalent person and the in-house lawyer, who is authorized to refuse to give evidence
  - the documents from the employer's business area are in the sole custody of the in-house lawyer and
  - they constitute written communications between the employer or an equivalent person and the in-house lawyer, who is authorized to refuse to give evidence.
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?  
The exemption from confiscation does not apply to internal company or group correspondence.
- f. What is the extent of the protection and what are the limits?
- i. What type of documents are included?  
Please see answer above.
- ii. Can the lawyer refuse to testify in legal proceedings?  
Only in civil proceedings
- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?  
Please see answer above.
- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?  
The In-House counsel is obliged to maintain confidentiality. The legal privilege does not apply in the cases above.

g. Please indicate the name and date of the applicable law providing for the legal privilege.  
[§ 43a \(2\) BRAO, 8.9.1994](#)

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
[No.](#)

## 10. Guinea

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?  
No.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
The current regulatory framework does not offer any opportunity for such possibility.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Only as an ordinary person and as an employee but should prove the proxy letter from the CEO of the Company.
4. Legal Privilege  
No.
5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
Yes, there is an association of in-house counsels Cercle Droit et Conforme de Guinee (CDCG) in Guinea who is trying to propose something like creating a special law for the total independency of In-house counsels. Internal informal debate ongoing.

## 11. Hungary

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

Yes, and the inhouse counsels are members of the same bar associations as the attorneys.

In Hungary, the profession of legal counsel - whether exercised in the public or private sector - was divided into two categories under the Act Nr LXXVIII. of 2017 on the activities of lawyers (herein after: Act on the Activities of Lawyers) effective as of 1<sup>st</sup> January, 2018: one can be a "simple" legal adviser with limited tasks, or a legal adviser registered at the bar association with the right to perform the activities defined in the Act.

The legislation that came into force on 1<sup>st</sup> January, 2018 brought legal advisers and attorneys/advocates - as similar activities - into the same bar associations. This new approach is also supported by the fact that the act is called the Act on the Activities of Lawyers rather than the Law on Lawyers. Under this „new” law, anyone wishing to continue to provide the full range of legal services listed in the Act must join the relevant regional bar association, which has a separate bar association section for inhouse counselors. In terms of levels, there is therefore the lawyer/advocate (and trainee lawyer), the legal counsel (and legal rapporteur), whose activities do not cover all the possible activities of a lawyer, and the non-barrister-at-law or counsels outside of the chambers, who can work on a much more limited basis and with fewer tasks than the counsels registered at the Bar.

Although the admission of legal advisers to the Bar is voluntary in the sense that not all legal advisers are obliged to become members of the Bar, legal representation and countersigning is only possible with Bar membership.

This is partly due to Act CXXX of 2016 on the Code of Civil Procedure (the "Code of Civil Procedure"), which makes compulsory legal representation a general feature of the basic model of forensic procedures. This model emphasizes professional legal representation; therefore, it is expected that lawyers providing compulsory legal representation perform this activity on the basis of a uniform set of requirements, in a responsible and verifiable manner.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it, Section 67.§ (1) of Act Nr LXXVIII. of 2017. on the activities of lawyers, effective as of 1st January 2018
- ii. What are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?  
On request, a person shall be admitted to the regional chamber as inhouse counsel if he/she/they is (i) a national of a State party to the Agreement on the European Economic Area, (ii) has a university degree in law, (iii) has passed the Hungarian law examination, (iv) is employed as a lawyer by a legal entity other than a natural person which is not entitled to practice as a lawyer, (v) regarding the employer, the registered office or the place of business or branch of the employer where the Chamber legal adviser is employed is located within the area of activity of the regional chamber, (vi) in the case of multiple employers, each of his employers shall submit a declaration that the conditions for

practicing as a lawyer are fulfilled, (vii) all his employers declare that the conditions necessary for the electronic administration of his business are met; and (viii) is not disqualified from practicing as a lawyer.

The Hungarian law examination is a standardized examination, in which all candidates have to demonstrate their knowledge in the same subjects (civil law, penalty law, EU law, labor law etc), regardless of the field in which they have pursued their compulsory legal practice (i.e. court, law office, notary office or legal department of authorities). It gives the right to work independently in any legal profession.

If a European Community lawyer is applying for admission to the Bar as a legal counsel, they must prove that the following conditions are met instead of those set out in (a) to (c) above:

- a) they have practised as a lawyer in Hungary for at least three years without interruption in connection with Hungarian law or the application of European Union law in Hungary,
- b) has the level of Hungarian language skills necessary for the practice of the profession of lawyer.

The following activities are incompatible with the practice of law, therefore the existence of these circumstances constitutes an obstacle to admission to the Bar both for lawyers and counsels:

- a) (with the exception provided for in the Act on the Activities of Lawyers) government service, public service, tax and customs service, health service, public servant, public education employee, law enforcement administrative employee, defence employee, law enforcement employee, professional or contract military employee, judicial employee, judicial expert, notary, court bailiff,
- b) any other activity involving an obligation to perform work for remuneration (except: educational or scientific activities, translation, art, sports etc.)

While employment, public service relationships, unlimited liability membership in a business partnership or performing the duties of the chief executive officer of the legal person is incompatible for attorneys/advocates, it is not prohibited for inhouse counsels.

The inhouse counsel is also obliged to take an oath before being admitted to the Bar. The oath reads as follows: "I (name of the person swearing the oath) swear that I will be faithful to Hungary and its Fundamental Act, and will uphold its laws. In the performance of my professional duties as a lawyer, I will act conscientiously and to the best of my ability in the interests of my client/employer and will preserve the secrecy of any information which may come to my knowledge in the course of my duties."

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

The main differences between the activities of an attorney and a legal counsel are that the latter cannot act as a defender in criminal proceedings (but can act as a representative of a legal person), cannot hold a (lawyer's) deposit <sup>10</sup>and shall be employed. Special rules

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<sup>10</sup> Deposit or escrow is defined in the Civil Code (Act V of 2013) as: the transfer and acceptance of movable property for the purpose of entrustment and safekeeping, on the basis of a deposit contract, with an obligation to release (return) the property. A lawyer may perform deposit activities without a special licence from the authorities or the Chamber. Escrow activities may be: safekeeping and/or administration

apply to legal advisers in areas such as disciplinary liability, the drafting of documents within the organization, and the keeping of records and the management of files and the inhouse counsel may not accept a mandate/assignment to act as a lawyer.

Special rules in disciplinary liability:

The order for a preliminary investigation shall be refused if the disciplinary proceedings against the legal adviser are already pending in the disciplinary proceedings instituted by the employer as provided for by special law (i.e. law regulating employment relationships, especially in the public sector).

In principle, no disciplinary action may be taken against a legal adviser for disciplinary offences committed solely against his employer, his employer's affiliated undertaking or a body having a management or maintenance relationship with his employer. However, where the employer has terminated the employment of a legal counsel being member of the Bar by immediate dismissal for culpable misconduct which also constitutes a disciplinary offence, he may be held liable for such disciplinary offence, but in such a case only a written reprimand or exclusion from the profession may be imposed.

Special rules of drafting of documents:

The lawyer (not including the bar counsel) may be replaced in the drafting of the document to be countersigned by the lawyer - subject to the lawyer's professional approval - by a substitute lawyer declared to the Bar, by a permissive provision in the mandate contract or on the basis of the client's express approval by another lawyer or law firm in Hungary entrusted with the task of replacing the countersigning lawyer. A legal counsel may be replaced in the drafting of a document to be countersigned by the counsel - subject to the professional approval of the legal adviser - by an employee of his employer, who is clearly identifiable subsequently and who also meets the conditions laid down in the rules of the Bar.

Special rules regarding the keeping of records and the management of files

The Hungarian Bar Association strictly regulates the activities and obligations of lawyers in relation to document management and preservation as well. However, these rules apply only to the activities of the legal counsel registered at the bar in the field of records management regarding

- a) a document countersigned by the inhouse counsel,
- b) a document generated in a matter involving the countersigning of a document drafted by the inhouse counsel; and
- c) a document annexed to an application for registration of a company or for registration of a change in the company submitted by the inhouse counsel.

The obligations relating thereto shall be discharged by the inhouse counsel through the employer of the inhouse counsel for whom the document is part of the file.

The difference between a legal adviser who is a member of the Bar and a legal adviser who is not a member is that a non-member can only carry out other legal activities, legal advice and drafting of documents, i.e. he is not entitled to two important powers: legal representation and countersigning of documents.

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of the subject of the escrow. The lawyer may deposit money, a means of payment in lieu of cash, vouchers, securities or other documents.

With the exception of affiliated firms, an inhouse counsel may be employed by no more than two non-natural persons regarding the exercise of the profession of lawyer, that is, he/she can have maximum two clients.

Practitioner of the profession of lawyer (thus both attorneys and inhouse counsels are included) is required to maintain legal professional confidentiality.

However, an inhouse counsel is under no obligation of confidentiality to the employer with whom he or she has acquired knowledge of the legal secret in the course of his or her employment, or to the employer or to persons designated by his or her client.

The inhouse counsel registered at the Bar is entitled to practice as a lawyer on a regular basis and for remuneration. As a member of a regional chamber, the activities of an inhouse counsel include:

- a) legal representation,
- b) representing legal persons in criminal proceedings,
- c) providing legal advice,
- d) drafting documents,
- e) countersigning documents,
- f) in the context of the activities referred to in points a) to e), produce the electronic formatting of drafted documents and their annexes.

The training of registered counsels must be provided by the regional chamber. Furthermore, the employer shall ensure that the inhouse counsel has the opportunity to participate in training organized by the Bar Association, and shall exempt him from work for the duration of the training.

Also, the employer may take over the payment of the inhouse counsel's payment obligations towards the Bar Association.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

In Hungary, we only have one social security and retirement plan system, there is not any difference if someone is a lawyer, a counsel or a teacher for example.

However, the access of the system is not the same. Attorneys/lawyers have to be independent and cannot be subject to employment relationships, while the inhouse counsels are lawyers practicing law and being employed by a company or a public entity. Thus, inhouse counsels are employed in employment relationships, benefiting from all the advances and social securities of such employment (like paid holidays, paid sick leave, limits on the termination of employment.) Accordingly, the social security and pension contributions are deducted and paid by the legal adviser's employer.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege. Employment relationships are incompatible for lawyers, as those type of relationships would create a dependent legal relationship for the lawyer, who in turn has a legal obligation to maintain his professional independence. In order to ensure this independence, the Act on the Activities of Lawyers contains a number of prohibitions

which make certain activities and legal relationships incompatible with the legal profession, while some restrictions are only applicable for lawyers but not for legal counsels (like employment relationships).

On the other hand, the inhouse counsel - by the definition of the Act - is practicing the profession of lawyer within the framework of his employment relationship with a legal entity, for his employer, an affiliate of his employer or a body having a management or maintenance relationship with his employer as his client. Therefore, the legal counsel's activities do not cover all the possible activities of an attorney: the legal adviser cannot act as a defender in criminal proceedings (but can act as a representative of a legal person) and cannot hold a (lawyer's) deposit.

Furthermore, an important rule of the Act on the Legal Activities, which differs from the rules on employees' liability, is that the legal counsel is obliged to refuse to comply with an instruction if its execution would result in disciplinary offences being committed, and at the same time considers an agreement which makes the counsel's right to refuse this instruction subject to an adverse legal consequence to be null and void.

A provision of the Act related to the termination of the employment relationship also belonging to the liability rules, is that the legal counsel must notify the disciplinary commissioner of the Bar within thirty days if his/her employment relationship is terminated by the employer with immediate effect due to the counsel's culpable breach of duty. However, the counsel may not be held liable for disciplinary offences committed solely against his employer, his employer's affiliated undertaking or a body having a management or maintenance relationship with his employer.

A lawyer may practice as a lawyer against his or her former employer if the employment relationship has been terminated for at least three years and he or she has not been involved in the case. The former employer may grant an exemption from this restriction.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
The legal counsels are not only allowed to be a member of the bar association, but it is compulsory for them if they wish to act with the full powers granted to legal advisers. The inhouse counsels are members of the same bar associations as the attorneys.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
As per Act Nr CXXX of 2016 on civil procedure law inhouse counsels can be authorized representatives in civil cases and they are also entitled to represent the employers even in cases when legal representation is mandatory, within the scope defined in the Act on the activities of lawyers.

As per Act Nr LX of 2017 on arbitration (+Rules of Procedure of Permanent Court of Arbitration of the Hungarian Trade and Chamber of Commerce and Industry), in addition to economic and commercial disputes, arbitration is available for the whole range of private civil law disputes, except for special disputes under the Civil Code and administrative disputes, contracts excluded by law, including consumer contracts. The parties of the arbitration proceedings may act in person or by their representatives. Legal representation in arbitration proceedings shall not be compulsory. The representative of a party may be any person of legal capacity.

As per Act Nr XC. of 2017 on criminal procedure the inhouse counsels registered at the Bar have



the right to represent their employer in criminal proceedings as well, provided that the employer is legal person.

As per Act I of 2017 on the Code of Administrative Procedure in administrative proceedings, Act I of 2017 on the Code of Administrative Procedure (Kp.) allows that in the case of mandatory legal representation (before the Tribunal and the Curia as well) an officer or employee of the administrative body with a legal qualification may also act.

A legal counsel cannot represent a natural person, only the employer which must be a legal person. The only exception to this is that on the basis of an authorization from an employee representative organization, its chamber legal adviser may represent its own member in employment or civil service proceedings.

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

Yes, unless otherwise provided by the Act on the Activities of Lawyers, a practitioner (including a legal counsel) is bound by the obligation of professional secrecy. That is, a practitioner of the profession of lawyer shall refuse to testify and disclose information about a lawyer's privilege in any official or judicial proceedings, unless he has obtained a waiver of the obligation of professional secrecy from the person entitled to have access to the lawyer's privilege. However, no valid waiver may be granted to disclose privileged information obtained as a defender in criminal proceedings.

1.If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?  
Act Nr. LXXVIII. of 2017 on the Activities of Lawyers  
and also, in line with these regulations:  
Act Nr CXXX of 2016 on civil procedure law  
Act Nr XC. of 2017 on criminal procedure  
Act I of 2017 on the Code of Administrative Procedure
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?  
No.
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?  
No.
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.  
*“The profession of lawyer is an activity aimed at promoting, with legal expertise, by legal means and in a lawful manner, independently of public authorities, the enforcement of the rights and legitimate interests of the client, the fulfilment of his obligations, the settlement of disputes between opposing parties, if possible by agreement, which includes participation in the administration of justice. A lawyer shall practice his profession conscientiously, to the best of his ability and in compliance with the law. The lawyer's*

*activity is based on trust between the client and the lawyer, which must be respected by all.” (Section 1.§ (1) and (2) of Act on the Activities of Lawyers)*

Therefore, lawyer-client privilege means all facts, information and data of which a lawyer becomes aware in the course of carrying out his or her duties. The obligation of professional secrecy also applies to any document or other medium containing a lawyer's secret. (Sections 9.§ (1) and (2) of Act on the Activities of Lawyers)

That is, the theory that our country applied is the “absolute trust”, which is inseparable from confidentiality and is an essential element of the proper exercise of the legal profession.

Furthermore, in order to fully guarantee the right of defence, i.e. the client's freedom to disclose information to his lawyer, even in writing, in order to protect his rights, the Act on the Activities of Lawyers introduced the legal instrument of the “defence document” as a general rule and extended the protection of confidentiality to all judicial, administrative and public authority proceedings.

A document or part of a document drawn up for the purpose of the defence is a document or part of a document which has been produced in the course of, or records what has been said in the course of, a communication between a lawyer and his client in the exercise of his rights of defence in public authority proceedings. This status of the document has to be clear from the document itself.

The situation of legal counsels is special, as in their case the client is their employer, so communications within the firm with the counsel are also protected by law.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

The duty of professional secrecy is independent of the mandate of the lawyer. This means that the obligation of professional secrecy arises from the first lawyer-client relationship. It is therefore not conditional on the client giving the lawyer an actual, formal mandate. The lawyer is under an obligation to keep the entrusted secret even after the entrustment has been completed or after the entrustment contract has been terminated either by the client or by the lawyer.

The duty of professional secrecy shall continue to apply without time limit after the termination of the practice of the profession of lawyer or the termination of the legal relationship.

A legal counsel registered at the Bar is under no obligation of confidentiality towards his employer with whom he has acquired knowledge of the attorney-client privilege in the course of his employment, nor towards the employer or towards persons designated by his client.

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?

Lawyer-client privilege means all facts, information and data of which a lawyer becomes aware in the course of carrying out his or her duties. The obligation of professional secrecy also applies to any document or other medium containing a lawyer's secret.

ii. Can the lawyer refuse to testify in legal proceedings?

A practitioner of the profession of lawyer shall refuse to testify and disclose information about a lawyer's privilege in any official or judicial proceedings, unless he has obtained a waiver of the obligation of professional secrecy from the person entitled to have access to the lawyer's privilege.

The determining factor in relation to an attorney-client privilege is whether the attorney learned the fact or information that constitutes a privilege while acting as a defender of the attorney-client privilege or in some other form of representation. In the former case, the interest protected by the privilege is protected by an inescapable prohibition on evidence, because the lawyer cannot be questioned as a witness, even despite the consent of the person entitled to the privilege, about a fact of which he has acquired knowledge in his capacity as a defence counsel. Please note though that inhouse counsels shall not be defenders in criminal cases, they may only be legal representatives of the legal person which is employing them.

The law does not prohibit the interrogation of a lawyer as a witness about a fact which was not known in a defensive capacity and which is relevant to the evidence as the holder may waive the obligation of confidentiality.

Lawyer-client privilege also protects the information covered by lawyer-client privilege from the authorities investigating the lawyer's activities. This means that the authorities are not entitled to know this information during an official investigation of the lawyer (e.g. a search by the investigating authorities, a tax audit), and the lawyer has an explicit duty to protect the lawyer's privilege before the authorities.

The lawyer is responsible for keeping the secret entrusted to him. A lawyer who breaches a confidentiality obligation may be subject to disciplinary proceedings before the competent Bar Association. The disciplinary board of the bar, if it finds that the lawyer is responsible, may impose a disciplinary sanction on him, which may be a fine or, in more serious cases, disbarment. In addition to his ethical responsibility towards the professional body, a lawyer may also be liable under substantive and criminal law.

iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

All kind of legal proceedings are covered, the confidentiality of the communication between the counsel and the client applies in every case, because it originates from the legal activity, not from the type of the proceeding.

iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

As based on the Act Nr. LXXVIII. of 2017 on the Activities of Lawyers inhouse counsels are also considered as lawyers performing activities of lawyers, yes, the regulations of legal privilege shall also be applied to inhouse counsels as well. The only difference that the Act provides for inhouse counsels is a further exception to the exemption from the obligation of professional secrecy: he is under no obligation of secrecy towards his employer with whom he has acquired the attorney-client privilege in the context of his employment, nor towards the employer or the persons designated by his client.

g. Please indicate the name and date of the applicable law providing for the legal

privilege.

Act Nr. LXXVIII. of 2017 on the Activities of Lawyers

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No, as the status of the inhouse counsels have been amended lately with the Act Nr. LXXVIII. of 2017 on the Activities of Lawyers coming into effect on 1st January, 2018.

This legislation that came into force on 1<sup>st</sup> January, 2018 brought legal advisers and attorneys/advocates - as similar activities - into the same bar associations. However, these regional bar associations have a separate bar association section for counselors. Also, legal counselors have their separate section within the Hungarian Bar Association: the temporary National Bar Council (NCCL) functioned from 5 March 2018 to February 2019, and the new NCCL was established in March 2019 for a 4- year term. The NCCL shall act primarily in the interests of legal advisers, who have the right of attendance, right of deliberation, organization of joint events. Anyone is free to express their views and make comments on the functioning of the section.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

A unique feature of the legal adviser's legal relationship from a liability point of view is that, unlike a lawyer, the legal adviser is not required to have a lawyer's liability insurance pursuant to Section 25 of the Act on the Lawyer's Activities. The employer, as the party responsible for the employee's activities, is liable to third parties for claims for damages and compensation for damages under the rules on liability for employee damages (§ 6:540 of the Civil Code Act V of 2013).

There is interchangeability between lawyers and legal counsels, so anyone who has not been a lawyer but has practiced as a legal counsel for a year can apply to be admitted to the Bar as a lawyer.

## 12. Ireland

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

- a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Solicitors: The Solicitors Acts 1954-2015 (the Acts) set out the general framework for the regulation and education of solicitors in Ireland, including eligibility to practice as a solicitor in Ireland. All ‘practicing solicitors’ (i.e. qualified solicitors engaging in the provision of legal services) must be registered with the Law Society of Ireland (the Law Society) pursuant to the Acts, including in-house solicitors. Membership of the Law Society is also open to non-practising solicitors, i.e. qualified solicitors who do not / no longer provide legal services.

Barristers: Barristers are largely self-regulated by the Bar of Ireland. Membership of the “Law Library” is optional and is governed by the “Rules of Membership of the Law Library”. In-house barristers can be members of the Law Library and obtain membership to gain access to the resources available to its members. As a standalone requirement, the Acts provide that all ‘practising barristers’ (i.e. qualified barristers engaging in the provision of legal services), must apply to the Legal Services Regulatory Authority (LSRA) to be added to the Roll of Practising Barristers. This includes “barristers in employment” i.e. in-house counsel.

Lawyers qualified to practise in another EU Member State may also become members of the Law Society or the Bar Council pursuant to the Establishment Directive (98/5/EC). These are known as EU Registered Lawyers. In practice, the number of EU Registered Lawyers in Ireland is negligible (approx. 20 across both professions). A majority of EU Qualified Lawyers work in-house.

- ii. What are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Solicitors: To become a member of the Law Society as a “practising solicitor”, a person (including a person wishing to work as an in-house solicitor) must:

- pass a series of Law Society exams and complete a two-year traineeship in a law firm (during the traineeship, a trainee must attend several months of academic instruction before taking certain Law Society exams);
- apply for entry onto the “Roll of Solicitors” maintained by the Law Society;
- once entered, apply to the Law Society for a “practising certificate” (unless exempt from this requirement ); and
- Provide evidence of professional indemnity insurance cover (or an exemption).
- Renew the practising certificate every year while the solicitor continues to provide legal services.

Barristers: Membership of a national bar association is not mandatory. However, most barristers are members of the Law Library of Ireland. To join the Law Library as an in-house barrister, a person must:

- Be a “qualified barrister”;
- Confirm that they have been added to the “Roll of Practising Barristers” maintained by the LSRA;
- Provide evidence of membership of the Law Library professional indemnity insurance scheme or of a policy of professional indemnity insurance acceptable to the Library Committee.

Where a practising barrister chooses not to be a member of the Law Library, he/she must pay an annual levy directly to the LSRA. This levy also applies to practising legal professionals who are members of the Law Library/Law Society but, in those cases, those associations discharge the fee on behalf of the member. The fee is incorporated into the membership fees for those associations.

- iii. What are the rights and obligations of the inhouse counsel as member of the bar association?

Solicitors:

1. In-house solicitors with a “practising certificate” from the Law Society can provide a full range of legal services, but only to one client; their employer.
2. In-house solicitors are subject to the same requirements and rules that apply to solicitors in private practice. For example, they must:
  - a. Comply with a range of statutory rules of professional conduct including under the Acts, the LSRA Act 2015, and privacy / data protection and money laundering / terrorist financing law;
  - b. Adhere to range of non-statutory rules of professional conduct, including specific practice notes and directions as well as the “Solicitor’s Guide to Good Professional Conduct” (which represents Law Society’s policy and recommendations, but does not have the force of law); and
  - c. Comply with annual continuous professional development ‘CPD’ requirements;

Barristers:

1. Barristers working in-house can represent their employers in court, at tribunals or hearings and provide other appropriate legal services to their employers.
2. As with all practising barristers, barristers working in-house must comply with relevant statutory rules set out in the Acts and elsewhere.
3. The LSRA issues additional rules and guidance for barristers, including specific rules for barristers working in house e.g., ‘Guidance for Practising Barristers in Employment in Respect of the Roll of Practising Barristers’.

Barristers working in-house who are members of the Law Library must comply with the Code of Conduct for the Bar of Ireland and other rules, regulations and guidance issued by the Bar of Ireland.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

Yes, generally speaking. However, there is no sector-specific social security and/or retirement plan system for lawyers in Ireland. All lawyers, in-house and otherwise, are subject to the same social security and retirement plan systems as the general working population. Applicable rules and requirements will vary based on an individual’s

personal circumstances and nature of employment and whether they are an employee or self-employed, independent of membership of the legal profession.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

#### Challenges to Bar Membership

This issue is not applicable in Ireland. There is no difficulty with in-house counsel being members of the relevant bar association.

#### Challenges to Legal Privilege

Irish case law recognises that in-house counsel often perform many functions for their clients, but underlines that independence is of paramount importance when assessing the appropriateness of an assertion of legal professional privilege. The High Court case of *F&C Reit Property Asset Management plc v Friends First Managed Pension Funds Ltd.* [2017] IEHC 383 demonstrates that for legal professional privilege to apply, the Irish courts must be satisfied that an in-house counsel was dispensing independent legal advice in their capacity as a professionally qualified lawyer, as distinct from dispensing general advice in their capacity as a 'man of business'.

The court formulated a test for the determination of whether legal professional privilege attached to in-house counsel in Irish law as follows:

"Does the evidence disclose that at the material time the person claiming legal professional privilege was in fact acting as an independent legal adviser to his employer? If the evidence discloses that he acted in such a capacity, then his communications are privileged. If, on the other hand, the evidence shows that he was acting as a principal rather than as a legal adviser, then the privilege may not attach".

Whether or not privilege attaches to an in-house counsel depends on the facts of each particular case.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
N/A.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Yes. Qualified barristers entered on the Roll of Practising Barristers and qualified solicitors who hold a "practising certificate" have rights of audience to represent their client (which includes their employer) before the courts and may also represent them at tribunals, inquiries, hearings etc. In practice, clients are almost exclusively represented by barristers in the higher courts i.e. the High Court, Court of Appeal and Supreme Court and solicitors rarely exercise this right.

EU Registered Lawyers (see 2(a)(i) above) also enjoy rights of audience before the Irish courts and can practice local law in association with an Irish lawyer. Though not concerning an in-house lawyer, a recent Irish Supreme Court case held that visiting EU-qualified lawyers also have rights of audience before an Irish court despite failing to comply with the strict legal requirements of their right to provide legal services before the courts of an EU Member State (*Klohn v An Bord Pleanála* ([2021] IESC 30).



#### 4. Legal Privilege

- vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Yes. The Irish High Court confirmed this relatively recently, noting that ‘lawyer’ for the purpose of claiming legal professional privilege “includes solicitors, barristers, salaried in-house legal advisers, foreign lawyers and the Attorney General” (McMahon v Irish Aviation Authority [2016] IEHC 221). This principle dates to the Irish Supreme Court decision of Geraghty v Minister for Local Government [1975] IR 300 which approved an English Court of Appeal decision in which it was held:

“there can be no difference between the position of a full-time salaried legal adviser employed by a government department, a local authority, an industrial concern or any single employer, and the position of a legal adviser who practises his profession independently and is rewarded for his services by fees”.

However, it is important to note that privilege will only apply to communications containing legal advice and made by in-house counsel in their capacity as legal advisor to their client (i.e. the business that employs them). Communications made by in-house counsel in any of the other capacities in which they can frequently act (e.g. business, commercial, administrative, executive) or the discharge of any function besides that of providing legal advice are not protected by privilege. Please see 2(a)(v) above for relevant case law on this point.

Note, however, an exception at 5(i)(1)(f)(iii) below regarding European Commission competition law investigations.

1.If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?  
Common law. In certain circumstances, additional statutory protections apply . Privilege can also be limited by statute.

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Yes. In Ireland, it is more commonly referred to as the “dominant purpose” theory.

The Irish Courts have referred to the right to claim legal professional privilege and the right to protect privileged documents from disclosure as “one of the great bulwarks of our legal system” (IBRC & Ors v Quinn & Ors [2015] IECA 84)Ireland recognises two categories of legal professional privilege, and both rely on the dominant purpose theory:

Legal advice privilege: protects confidential information contained in communications between a lawyer and their client in the context of a professional



legal relationship where the communication is made for the dominant purpose of seeking, giving or receiving legal advice; and

Litigation privilege: applies to communications between persons engaged in or preparing for litigation or, in more recent times, a regulatory investigation and which protects confidential communications between a lawyer and a client or between one of them and a third party, the dominant purpose of which is use in connection with actual or contemplated litigation or a regulatory investigation.

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?  
No.

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.  
N/A

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?  
The test for legal advice privilege is:

- There must be a communication made between a person and their lawyer for the purpose of obtaining legal advice;
- The dominant purpose of the communication must be to give or receive legal advice;
- The communication at issue must be made in confidence and be confidential in nature; and
- A professional lawyer-client relationship must exist between the person and the lawyer.

The test for litigation privilege was recently articulated by the Irish High Court as follows:

- Was the litigation / regulatory investigation reasonably apprehended at the time the documents in question were brought into being;
- Were the documents in question brought into being for the purpose of that litigation / regulatory investigation;
- If the documents were created for more than one purpose, the documents will be protected by litigation privilege in the event that the litigation / regulatory investigation was the dominant purpose;
- The party claiming privilege has the onus of proving that the documents are protected by privilege.

If not actually live, the proximity of the litigation should be such that it must be reasonably apprehended or threatened, beyond a mere possibility.

- f. What is the extent of the protection and what are the limits?

Legal Advice Privilege: Legal advice privilege is only capable of applying to confidential communications between a client and their lawyers. There is a limited exception where a third party has a 'common interest' in the legal advice sought by the client and/or received from the lawyer.

Legal advice privilege is permanent. It remains for the duration of the legal professional relationship and continues to operate even after the relationship has ceased. The purpose behind the permanency is to assure clients that they can freely communicate with their lawyer, without fear of disclosure at any point in the future. The Irish courts have quoted with approval the phrase, "once privileged, always privileged" in relation to legal advice privilege.

**Litigation Privilege:** Litigation privilege can apply to confidential communications between a client and their lawyer, and a third party as well.

There is greater uncertainty as to the duration of litigation privilege. Where litigation privilege is linked to particular proceedings, it can sometimes continue where the subject matter of the initial proceedings is subsequently litigated in related proceedings. The proceedings must be sufficiently connected, but whether this is the case depends on several factors. Parties to litigation should not assume that a connection between sets of proceedings will be sufficient to deem the proceedings "closely related" meaning that privilege would be preserved.

**Confidentiality:** Importantly, a document or communication must be confidential to attract privilege under Irish law. If a document's confidential character is lost, either by waiver, express or implied, or in some instances by accident, via disclosure or dissemination, then privilege will not apply except in limited circumstances.

Other circumstances where privilege may be lost/overridden include:

- where privilege is overridden by statute (see more at 5(i)(1)(a) above);
- some instances of disputes over testamentary dispositions; and
- in some proceedings which involve the welfare of minors.

i. What type of documents are included?

Legal professional privilege (both Legal Advice Privilege and Litigation Privilege) attaches to a broad range of communications and/or documents if the relevant test for privilege is satisfied.

In the context of discovery, the term "Documents" has been interpreted broadly to include hard copy and electronic communications, information and data such as agreements, letters, emails, diary entries, minutes, text messages phone records, voicemails, power-point presentations, photographs, internet pages, pitches, spreadsheets, accounts, cheques, receipts, invoices, and any other such documents, whether in draft or final form. Discovery may also extend to personal devices (phones, laptops, PCs, personal files etc.)

"Communications" are also interpreted broadly and generally capture all correspondence and conversations between lawyer and client.

Other points to note:

- The law will not protect a so-called 'pre-existing document' from disclosure, i.e., a document created for some other purpose prior to the client seeking legal advice.

- Legal advice privilege applies only to requests for legal advice communicated to a lawyer, or advice between the client and lawyer. Privilege generally encompasses information gathered by the lawyer and incorporated into the advice tendered to the client, which might be said to comprise a lawyer's "work product". However, not every fact that may come to the lawyer's attention during the course of the relationship with the client will be privileged.

ii. Can the lawyer refuse to testify in legal proceedings?

Sometimes. For example, where a lawyer is asked to attend court to give evidence of matters that are within lawyer/client confidentiality, they should not attend unless they receive a witness summons or subpoena. Otherwise, it is a matter for the court, not for the lawyer, to decide whether a matter is confidential. Where required, the lawyer can explain to the court that certain information is confidential (as opposed to privileged), and then leave the matter in the hands of the court to decide.

Separately, privilege belongs to the lawyer's client (or prospective client), not the lawyer. A lawyer cannot be compelled to disclose privileged communications unless ordered to do so by a court. A civil court or tribunal cannot draw adverse inferences where legal professional privilege is claimed. Participants in non-contentious proceedings (such as statutory inquiries), including in-house counsel, may rely on the right against self-incrimination where applicable.

While not directly related to legal professional privilege, in a criminal context, inferences may be drawn from an accused's invoking of the privilege against self-incrimination / right to silence. Such an inference may be drawn where the offence concerned is an "arrestable offence" (i.e. an offence for which a person can be imprisoned for 5 years or more).

iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

Legal professional privilege applies to a broad range of proceedings, as follows:

- Legal advice privilege may be relied upon in all circumstances, including in non-contentious matters which may require the production or disclosure of documents (for example, pursuant to a request from a regulator).
- Legal professional privilege can be relied upon before tribunals, inquiries and regulatory or criminal investigations.
- Legal professional privilege applies in both criminal or civil litigation, with the exception of documents/communications created in furtherance of a criminal or fraudulent activity or conduct injurious to the administration of justice.
- Unless agreed otherwise in advance, the Irish High Court can make orders compelling either party to produce relevant documentation in the context of Irish arbitration proceedings; this is subject to the same legal professional privilege protections afforded to parties in litigation.
- Both the Labour Court and adjudication officers appointed by the Workplace Relations Commission can compel parties to produce relevant documents; this is subject to the same legal professional privilege protections afforded to parties in litigation.

Exception: Legal professional privilege does not apply to legal advice provided by in-house counsel to their employers, or communications between in-house counsel and their employers, in competition investigations conducted by the European Commission.

iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

Not specifically. Lawyers are expected to maintain the highest standards of client confidentiality in carrying out their work and their professional duty of confidentiality extends beyond legal privilege. The duty of confidentiality applies: (i) to all communications passing between a lawyer and their clients (or former clients); and

(ii) to the existence of the relationship.

A client's affairs can only be disclosed with the consent of the client, by the direction of a court, or to a body requiring disclosure while exercising its statutory powers. The lawyer's professional duty of confidentiality overrides any inclination he/she may have as a dutiful citizen to report any matter to the authorities or to cooperate with them against the interest of the client. This duty also applies to in-house counsel.

In-house counsel may also have a statutory or contractual duty of confidentiality to their employer, especially if they are employed in the public sector.

It should be noted, however, that the document or communication over which privilege is asserted must itself be confidential in nature to attract privilege under Irish law (see further S. 5(i)(1)(f) above).

g. Please indicate the name and date of the applicable law providing for the legal privilege.

The principles underpinning legal professional privilege developed incrementally over time at common law and in some cases can be supplemented by statutory protections and/or limited by statutory restrictions (see 5(i)(1)(a) above). Accordingly, there is no single piece of legislation or case law laying down all the requirements, principles, policies, etc. for legal professional privilege in Ireland. A composite list of all relevant case law and legislation extends beyond the scope of this questionnaire.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

Not at present. However, The Review of the Administration of Civil Justice (Dublin, 2020), a report prepared by the Irish Civil Justice Review Group, chaired by Mr. Justice Peter Kelly, former President of the Irish High Court (the Kelly Report) proposes radical changes for the law of discovery in Ireland. Although not yet implemented, the Kelly Report proposes to replace the discovery process with a procedure known as 'production of documents', based on the approach taken by the courts at the Dubai International Finance Centre (the DIFC Model). The DIFC Model strikes a balance between the common law tradition (disclosure of relevant documents upon which the party intends to rely, or which harm their own case or support their counterparty's case) and the civil law tradition (disclosure only of documents upon which a party intends to rely). Under the DIFC Model, a party can still request documents from their counterparty, but that counterparty can object to production on the basis of privilege.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

As a general comment, the status of in-house counsel is well-established in Ireland. The Law Society and LSRA issue regular guidance and practice notes specifically addressed to in-house counsel.



### 13. Italy

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)? No, if the lawyer is employed by a company. The profession of lawyer is incompatible, among other things, with any subordinate work activity even if with limited working hours. However, it has been highlighted that the use of the title of lawyer is reserved exclusively to those who are or have been registered in a register.

There are exceptions to the rules on incompatibility:

- The exercise of the profession of lawyer is compatible with teaching or research in legal subjects at universities, in public or private secondary schools and in public research and experimentation institutions and bodies.
- Full-time university teachers and researchers can carry out their professional activity within the limits permitted by university regulations. For this limited professional exercise they must be registered in the special list attached to the ordinary register.
- Registration in the special list for lawyers who carry out legal activities on behalf of public bodies is reserved.

- a. If yes (this is the case of the registration in the special list for lawyers who carry out legal activities on behalf of public bodies is reserved):

- i. Please indicate the name and date of the applicable regulations allowing it  
Legge 31 dicembre 2012, n. 247 “Nuova disciplina dell’ordinamento della professione forense” into force from 2 February 2013 (published in Italian Official Journal n. 15 of 18 January 2013). Text updated on 18 July 2020. Link: <https://www.consiglionazionaleforense.it/documents/20182/51913/Legge+247-2012+-+Testo+aggiornato+al+18+luglio+2020.pdf/c8146804-2291-4c3e-b49f-f1c41a53bec0?t=1600956509000>
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?  
To register on the list, interested parties present the resolution of the body from which there is the stable establishment of a legal office with specific responsibility for dealing of the legal affairs of the institution itself and the membership of the appointed professional in this office in exclusive form of these functions; the responsibility of the office is entrusted to a lawyer registered in the special list who exercises his powers in accordance with the principles of the law professional.
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?  
Registration in the list is mandatory to perform specific services.

The lawyers registered in the list are subject to the disciplinary power of the council of the order.<sup>11</sup>

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
  - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.  
In the employment contract, autonomy and independence of intellectual and technical judgment of the lawyer is guaranteed.<sup>12</sup>
- 2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
No.
  - 3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
No.
  - 4. Legal Privilege  
Please note that in-house counsel shall observe rules on the confidentiality established in the internal rules (e.g. Ethical Code) of the company and rules on specific matters that require secrecy (e.g. market abuse provisions).
  - 5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
No.
  - 6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?  
The Italian Association of Corporate Lawyers/ Associazione Italiana Giuristi di Impresa (A.I.G.I.) was established in 1976 by a small group of heads of legal departments of large companies, with the aim of enhancing the figure and role of the corporate lawyer by promoting - similarly to what already happened in other countries – legal status.

The Corporate Lawyer - who works for the Company to which he/she belongs - combines the managerial role with the contribution of his/her specific legal skills, contributing with the other company functions to the formation of the Company's decision-making processes.

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<sup>11</sup>The lawyers registered in the list are subject to the same regulations applicable to the other lawyers members of the bar association (for example, re legal privilege, conflict of interest, etc.). Art. 23 of Legge 31 dicembre 2012, n. 247 (article on lawyers who carry out legal activities on behalf of public bodies) recalls Art. 2 on the rules applicable to lawyers (all lawyers)

<sup>12</sup>This means that according to his/her employment contract, the lawyer undertakes to exercise its profession in an autonomous and intellectually and technically independent manner.

On 5 December 2013 the A.I.G.I. has obtained registration in the list of unregulated professions kept by the Ministry of Justice: this in implementation of Legislative Decree 9 November 2007, n. 206, which implemented Directive 2005/36/EC (Qualifications Directive Professional).

The Association's aim is the promotion, training and development of corporate lawyers and their role in Italy. <https://www.aigi.it/>



## 14. Japan

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

Yes.

- a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it  
The Attorneys Act of Japan (Act No. 205 of 1949, as amended) does not regulate this issue. Articles 50 and 51 (Chapter 5) of the Lawyers Professional Ethics Guideline (“*bengoshi syokumu kihon kitei*” in Japanese), being the basic regulations of the Japan Federation of Bar Associations applicable to all lawyers in Japan, squarely refer to inhouse counsels.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

There is no special requirement applicable to inhouse counsels.

- iii. What are the rights and obligations of the inhouse counsel as member of the bar association?

Their rights and obligations are the same as those of other lawyers working for law firms.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

It depends on the relationship between the employer company and the inhouse counsels. They are often bound to an employment agreement, in which case employee’s pension (“*kousei nenkin*” in Japanese) would apply.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

At the level of regulations and/or case laws, no such argument has been officially recognized.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

Not applicable (because the inhouse counsel is allowed to be a member of the bar association without any problems).

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

Yes. The inhouse counsel may represent its employer in any courts.

4. Legal Privilege

- vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

No. At the outset, there is no “legal privilege” for lawyers under Japanese law (except in anti-trust investigation of the Fair Trade Commission of Japan under limited circumstances).

- 5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

At least officially, we are not aware of such initiatives.

## 15. Mexico

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,  
*There is no law which imposes any restriction to the legal profession of inhouse.*

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

*Same as any other attorney, no difference.*

*In Mexico, all lawyers, including inhouse counsel, are not required to have bar association membership or to pass a bar examination as lawyers need only to have a law school degree and to obtain a license from the Secretary of Public Education (SEP) to practice law nationwide.*

*In Mexico being a member of a bar is not mandatory to practice law.*

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

*Same as other members, no distinction.*

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

*Yes.*

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

*In Mexico such argument has not been addressed.*

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
*No.*

3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
*Yes, before any court.*

### 4. Legal Privilege

- vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the

inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

1. If yes:

a. Is the privilege based in statute or regulation, or is it based in common law?

No distinction.

b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Yes, we have attorney-client privilege.

c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Yes, that is the general rule applicable for any attorney.

d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

N/A.

e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

Same as any attorney.

f. What is the extent of the protection and what are the limits?

i. What type of documents are included?

ii. Can the lawyer refuse to testify in legal proceedings?

iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

No specific limits but an attorney can refuse to testify in proceedings related to the clients.

g. Please indicate the name and date of the applicable law providing for the legal privilege.

N/A, it is the general law.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

## 16. The Netherlands

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
Yes.
  - a. If yes:
    - i. Please indicate the name and date of the applicable regulations allowing it.  
Article 5.9(g) of the Legal Profession By-Law (*Verordening op de Advocatuur*).
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?  
According to Article 5.9(g) of the Legal Profession By-Law, a lawyer can practice law while employed by another employer, as long as the lawyer exclusively represents that employer or legal entities in the employer's group, and the activities primarily focus on the practice of law. The lawyer is obligated to obtain a professional charter signed by the employer according to Article 5.12(1) of the Legal Profession By-Law and has to provide a copy to the president of the bar association according to Article 5.15(1) of the Legal Profession By-Law.
    - iii. what are the rights and obligations of the inhouse counsel as member of the bar association?  
An inhouse counsel as member of the bar association has legal professional privilege, can have confidential communications, is able to represent the employer in court, has ongoing authority to negotiate settlements in court and must be enabled to pursue education. Moreover, the employed lawyer can maintain independence from their employer. Based on the signed professional charter, the employer must refrain from influencing the lawyer's professional conduct and cannot dismiss an employed lawyer due to differences in professional conduct.
    - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?  
Yes.
    - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.  
As stated above, the employed lawyer can maintain independence from the employer. Based on the signed professional charter, the employer must refrain from influencing the lawyer's professional conduct and cannot dismiss an employed lawyer due to differences in professional conduct.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

Does not apply, because inhouse counsels are allowed to be a member of the bar association. However, the inhouse counsel can also become a member of the Dutch association of inhouse counsels, named *Nederlands Genootschap van Bedrijfsjuristen* or ‘NGB’.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
If the inhouse counsel is a member of the bar association, it can represent the employer before the Dutch court and before the courts of all member states as per Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998.

#### 4. Legal Privilege

- vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Yes, but only if the inhouse counsel is a member of the bar association and has signed a professional charter.

##### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

According to Article 2.3 of the Code of Conduct for European Lawyers, members of the bar association have a duty of confidentiality. The Dutch Supreme Court has also determined that all inhouse counsels benefit of legal privilege, as long as they are a member of the bar association and are in possession of a signed professional charter (Supreme Court 24 May 2022, ECLI:NL:HR:2022:760, r.o. 4.4.2.).

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Yes.

- i. If yes, please explain briefly your jurisdiction’s adopted version of this theory:

The Dutch Supreme Court stated that a member of the bar association can only invoke legal privilege with respect to what has been entrusted to him/her in his/her professional capacity. Therefore, a lawyer or inhouse counsel is only entitled to legal privilege with respect to the knowledge he/she has acquired in the normal exercise of the profession, which means that the knowledge must be entrusted to him/her in the context of legal services to a

client who has turned to him/her because of his/her capacity as a lawyer (Supreme Court Raad 24 May 2022, ECLI:NL:HR:2022:760, r.o. 4.5.).

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

No.

- d. What are the conditions that must be fulfilled in order to benefit from legal privilege?

As stated above, a lawyer or inhouse counsel is only entitled to legal privilege with respect to the knowledge he/she has acquired in the normal exercise of his/her profession, which means that the knowledge must be entrusted to him/her in the context of legal services to a client who has turned to him/her because of his/her capacity as a lawyer.

- e. What is the extent of the protection and what are the limits?

- i. What type of documents are included?

This includes all documents that have been entrusted in his/her capacity as a lawyer.

- ii. Can the lawyer refuse to testify in legal proceedings?

Yes.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

As far as I know this covers at least civil and criminal proceedings.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

Yes, according to Article 2.3 of the Code of Conduct for European Lawyers, members of the bar association have a duty of confidentiality.

- f. Please indicate the name and date of the applicable law providing for the legal privilege.

Article 165(2)(b) of the Dutch Code of Civil Procedure and Article 218 of the Dutch Code of Criminal Procedure.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No, not that I am aware of.

## 17. Peru (Lima)

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
Yes.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it.

Ley 30220 del año 2014 (Ley Universitaria) que prevé que el abogado para su ejercicio previamente debe obtener un título profesional conforme a las formalidades que se encuentran en la citada ley. Asimismo, luego debe incorporarse a un Colegio Profesional a fin de obtener un registro y puede ejercer a nivel nacional.

*Law 30220 of the year 2014 (University Law) which provides that the lawyer for his practice must first obtain a professional degree according to the formalities found in the aforementioned law. Likewise, he/she must then join a Professional Association in order to obtain a registration and may practice at the national level.*

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Presentar su título de abogado otorgado por una universidad pública o privada a nivel nacional. Pagar los derechos administrativos fijados por cada Colegio profesional. Basta con incorporarse a uno de ellos para poder ejercer a nivel nacional.

*Present their law degree from a public or private university at the national level. Pay the administrative fees set by each professional association. It is sufficient to join one of them to be able to practice at the national level.*

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

Los derechos y obligaciones están contenidos en los Estatutos de cada Colegio Profesional. Los principales derechos son el libre ejercicio profesional y contar con beneficios en la salud, educación y esparcimiento al estar al día en sus cuotas ordinarias (miembro hábil) Asimismo, sus principales obligaciones son respetar el Código de Ética Profesional y prestar el ejercicio con solvencia moral.

*The rights and obligations are contained in the Bylaws of each Professional Association. The main rights are the free professional practice and to have benefits in health, education and recreation by being up to date in their ordinary dues (member in good standing). Likewise, their main obligations are to respect the Code of Professional Ethics and to provide the practice with moral solvency.*

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?



Yes.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Solo cabe un conflicto de intereses, si el abogado interno tiene en su oficina profesional, los mismos casos de la dependencia publica en la que trabaja.

*There is only a conflict of interest if the in-house counsel has in his professional office the same cases as the public agency in which he works.*

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
No.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Yes.

4. Legal Privilege

- vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

Costituzione Politica del Peru del ano 1993 (Art. 2 inciso 18)  
*Political Constitution of Peru of 1993 (Art. 2 clause 18)*

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Yes.

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Yes.

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

No.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

*Que exista un trato cliente-abogado debidamente acreditado.  
That there is a duly accredited client-attorney relationship.*

- f. What is the extent of the protection and what are the limits?
- i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

*Se incluyen todos los documentos relacionados con el patrocinio legal. El abogado puede negarse a declarar si ello implica levantar su secreto profesional. Están cubiertos todos los procedimientos judiciales. Dicho privilegio está vinculado a un deber de confidencialidad recogido en la Constitución y el Código de Ética Profesional de cada colegio.*

*All documents related to the legal sponsorship are included. The lawyer may refuse to testify if it involves lifting his professional secrecy. All legal proceedings are covered. This privilege is linked to a duty of confidentiality as set forth in the Constitution and the Code of Professional Ethics of each bar association.*

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

*Peruvian Constitution of 1993 (Art. 2 paragraph 18)*

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

*No, because there is already a legal basis.*

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

*There is a lack of a law project that establishes the figure of professional lobbying and thus avoid future conflicts of interest.*

## 18. Poland

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?

Only persons who have met certain prerequisites are admitted to the Bar, generally if they have completed a law degree and passed a professional examination. This is irrespective of whether the person works as an inhouse or, for example, in a law firm or government administration. As a so-called inhouse can also work non-Bar members, in which case the rules for Bar members do not apply.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,  
Law on legal advisers (Ustawa o radcach prawnych) dated 6th July 1982 and Law on Advocates (Prawo o adwokaturze) dated 26<sup>th</sup> May 1982.

In Poland, there are two types of attorneys admitted to the Bar: the Legal Advisor (in simple terms, a business lawyer) and the Lawyer (in simple terms, a defense attorney), but over time these two types of professions have significantly aligned with each other and are almost identical.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Admission to the Bar is granted to the person who graduated from higher legal studies in the Republic of Poland and obtained a master's degree or foreign legal studies recognized in the Republic of Poland, enjoys full public rights, has full capacity to perform legal activities, is of irreproachable character and by his past behavior gives the guarantee of proper performance of the profession of Radca Prawny or Adwokat and has completed his/her respective legal training in the Republic of Poland and passed the respective legal state examination (subject to certain exceptions). This applies to all person who fulfill the requirements despite where they are perform they activities. However, Adwokat is not allowed to be active based on labour law agreement, so Adwokat if active in-house counsel collaborates based on other civil law agreements with the respective company.

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

The same as other members of the bar.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

This depends on which basis Inhouse Lawyer is active for the company, office, authority, etc. There is no special security or retirement plan only for lawyers.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is

raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Both Radca Prawny and Adwokat are, according to bar regulations, independent in their work. The question of dependency may arise rather in relation to Radca Prawny, because Adwokat on the basis of current regulations is not allowed to work under a labor law agreement.

Questions of subordination are regulated differently than in the case of "ordinary employees". The scope of a Radca Prawny 's duties is to provide legal advice. In case Radca Prawny is employed based on labour law agreement, these activities are performed for the employer and under his direction. However, the employer must follow the terms and conditions of practice of the profession, arising from the Law on Legal Advisors and the applicable rules of professional conduct. Pursuant to these regulations, the employer may not instruct Radca Prawny to perform an activity beyond the scope of legal advice. The employer may e.g., give instructions regarding the time or place of matters to be handled, as well as set the order of activities to be performed with the provision that some of them are urgent. Radca Prawny is also bound by instructions, orders and instructions addressed to the general workforce, for example, regarding occupational health and safety.

However, Radca Prawny is not bound by instructions as to the content of a legal opinion. With this regard he is independent.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
No, as there is no special register for Inhouse Counsel.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
This is defined by the status of inhouse counsel as Radca Prawny or Adwokat and ruled by the respective regulations.

#### 4. Legal Privilege

- vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?

Under Polish law, Radca Prawny working on the basis of employment agreement are in principle treated in the same way as external lawyers for determining privilege.

##### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

Statute (Law on legal advisers) and Code of ethics for legal advisers.

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

This refers to the fact of communication with the Legal Counsel and not to the defined purpose. Assuming that the Legal Advisor performs only legal consulting work for the employer, all communication is covered by the privilege. This, however, would mean a very wide scope of secrecy, since the inhouse is usually included in a number of the company's activities. Therefore, based on the decision of the Court of Justice (C-550/07 P, Akzo Nobel Chemicals Ltd v Commission), the argument is built that the scope of protection is not infinite.

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Please see under b.

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

Please see under b.

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?

Documents in possession of Radca Prawny only, not if they are also in possession of for ex. client. For dawn raids in competition law it refers also to the documents that are in the possession of the client.

- ii. Can the lawyer refuse to testify in legal proceedings?

Yes, but please see under iii.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, dawn raids from authorities, such as tax, competition law authorities, FDA, ...?

The primary exemption from professional confidentiality is addressed in the Polish Code of Criminal Procedure. According to this provision, a judge, upon request from a

prosecutor, may waive the obligation of confidentiality, permitting a lawyer to testify. Such a decision could be made in pursuit of justice, particularly in the absence of sufficient evidence. This provision faces significant criticism within the Polish legal community and is invoked sparingly. Additionally, Radca Prawny are mandated to disclose information pertaining to money laundering or terrorist activities.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

Yes.

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Statute (Law on legal advisers) and Code of ethics for legal advisers, Polish Code of Criminal Procedure, Law on Anti-Money Laundering and Financing of Terrorism.

- 5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

Not known.

## 19. Québec

Québec is the only “legal” jurisdiction in Canada, which can be defined as “civilist”. Québec’s Civil Code was based, at its inception, on the old French “Napoleon Code”. All lawyers in Québec, are regulated by the Québec Bar association / le Barreau du Québec.

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations?  
In Québec, in-house counsels-lawyers that are company employees and public entities’ lawyers are members of the Québec Bar association. Either you are a lawyer, or you are not. There are no categories or a hierarchy in relation to the status of a lawyer.

You may be specialised in different domains, practice in different ways, be paid by Fees or salary or %.

Studies to become a lawyer are the same for all, except for certain choices one can make as to specialty. After having succeeded your University Law Faculty courses and exams, you receive a Bachelor of Law diploma or, as in my case, at the time, the Université de Montréal was giving out Law Diplomas that were then called “Licence en droit (“LL.L” / License in Law (“LL.L.”), based on the French system. After one’s University Law Degree, you must be admitted to the Bar School / École du Barreau, where you will take additional courses followed by Bar exams. If you succeed your Bar exams, you will then have to complete an ‘articling” period / un stage en droit. During which period, you will be supervised by an experienced lawyer or a group of experienced lawyers recognised by the Bar association. This supervising lawyer or group of lawyers / les maîtres de stage, will then have to assess your work and confirm you (the articling student /le stagiaire) have completed, in a satisfactory manner, the articling period / la période de stage. This statement is then forwarded to the Bar association who will then call the student to the Bar / l’étudiant sera alors admis au Barreau. After all these steps, the student will then become a LAWYER, as he/she will now be a member of the Québec Bar association. Depending on where he/she will decide to practice will establish his/her local Bar.

It should be noted that to be member of the Bar association is essential to be qualified as a lawyer. If you are not a member of the Bar, you are not a lawyer and cannot be referred to as a lawyer nor can you define or present yourself as a lawyer.

To be a member of the Bar association, one must complete an annual report, complete the required hours of continuous education, and pay the required annual fees. You must be in good standing with the Bar association to maintain your status as a lawyer in Québec.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?
  1. Based on the previous paragraph, there are no specific applicable regulation allowing an in-house counsel to be a Bar member. Said in-house counsel, if a lawyer, is a Bar member. There is no second-class lawyers...
  2. The legal requirements to become a Bar association member are the same for all.

3. The rights and obligations of an in-house counsel are the same as any other lawyer.
4. An in-house counsel can belong to a social security and retirement plan system if his/her employer offers such a Plan. The Québec Bar association does not offer its members a social security and retirement plan, unfortunately!
5. Again, considering the previous references and facts, the argument of “independence from the company” which employs an in-house counsel is quite relative or baseless. How independent is a law firm lawyer in relation to his/her corporate client??? I would say, no different at all. When I was practicing with a national law firm, we had major corporate clients that were exclusively represented by some of our own law firm lawyers for years, even decades.

Some of our lawyers serviced only one corporate client nearly all their professional life. It would thus be quite difficult to state that such a law firm lawyer was independent from “his/her” client. Therefore, how very different is an in-house counsel from a corporate law firm lawyer? They both represent the interests of their client. However, it seems a recurrent theme when this argument is brought up, as if an in-house lawyer is deemed to be less scrupulous or perhaps delinquent or less knowledgeable or less trustful as to law and rules. Well, that to me is offensive and wrong. In fact, in-house counsels are very often far more knowledgeable than law firm lawyers, depending on their background and experience. The legal privilege also applies to an in-house counsel, as does the lawyers’ Code of conduct and ethics. The disciplinary body applicable to all lawyers is the Syndic du Barreau.

I repeat, an in-house counsel who is a lawyer, is a Bar association member. There is no special registry for in-house counsels except, that the Bar association can identify different categories of lawyers by lists. These lists have nothing to do with a right of practice, but act as a law practice specialty. For example, the Bar association can identify: Criminal law practicing lawyers, Labour lawyers, Family law lawyers, Youth protection lawyers, I.E. lawyers, A.I. lawyers, Corporate and Commercial law lawyers, Real estate lawyers, Sports, Fashion, Immigration, etc.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

Yes, an in-house counsel can represent its employer in court, at every court level, as a lawyer (who is a Bar member). I Have personally represented my employer up to, and including, the Québec Court of Appeal, which is the last court level before the Supreme Court of Canada.

It should however be noted that a lawyer must assess if it is in the best interest of his client or not, to be represented by him or her. For a lawyer /in-house counsel, the client’s interest is paramount. Therefore, one must have the competence to adequately represent a client.

When I went to Court for my employer, it was for specific issues, and I was the best person to do so, because of my knowledge of the firm and the legal arguments at stake. In other cases, where my expertise, such as in litigation, is not utmost, external lawyers are hired.



#### 4. Legal Privilege

1. Yes, the in-house counsel benefits of the legal privilege. The confidentiality of the communications in our jurisdiction, between the in-house counsel and its employer or the outside law firm /outside lawyer hired for advice, assistance, or representation by the firm or in-house counsel is applicable.
2. It is the same privilege applicable to all lawyers which in Québec applies to in- house counsels. Common law is considered.
3. The theory of primary purpose of attorney-client confidentiality stating that communications are privileged only if the primary purpose of the communication is for legal advice will apply in relation to in-house counsels, as to all lawyers.
4. d. e. f. g.: Please note, that privileges and confidentiality aspects between a client and his/her lawyer, are also applicable to in-house counsels who, I repeat again, are full-fledged lawyers and considered as such. That is the position, of our Québec Bar association.

To my knowledge (sous toutes réserves), in Québec, as well as in the rest of Canada, in-house counsels who are lawyers (meaning they must be Bar association members), are recognised as lawyers because they are lawyers. And, if they are lawyers, all rules, privileges, constraints, conduct and ethics applicable to lawyers include in-house counsels.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
No.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

The status of in-house counsel in my jurisdiction and the status of in-house counsels as to the UIA

I certainly approve and support the Québec Bar association's position as to in-house counsels because that position is logic, based in law, in facts, in common sense, modernity, vision and finance. Qualifying in-house counsels in a different manner than any other lawyers, when both have the same academic qualifications and have succeeded all requirements, would be considered discriminatory and unjustifiable.

Legal action could and would be brought against the Bar association. Also to keep in mind, is that numerous in-house counsels have already been lawyers in law firms.

Often, they leave their law firm to go work for one of their past law firm clients, as was my case.

It is also necessary to keep in mind the fact that there are much more lawyers who are not practicing in law firms than there are litigation or law firm lawyers. Most of the Québec Bar association members are in-house counsels, public service lawyers, diverse organization lawyers.

Numerically, there are some 30 000 (or around that number) lawyers who are members of the

Québec Bar association. Of that number, more than half of those members, meaning more than 15 000 members, are not practicing in law firms!!!

But, since all are recognised as lawyers, they must all pay their Bar association Fees. Therefore, imagine more than 15 000 lawyers paying big annual fees, which total amount goes directly into the coffers of the Bar association, in addition to the other” traditional” paying lawyers.

It would certainly be absurd, if our Bar association voluntarily discounted thousands of potential members, who are fully qualified, for baseless reasons, which would deprive the Bar association of millions of dollars...

I believe the same reasoning is long overdue for those jurisdictions who do not take all the arguments into account.

I believe it should also be noted, considered and kept in mind, that one of our recent Québec Bar association president / une de nos récentes Bâtonnière du Québec, was an in-house counsel who, after her Bar mandate, was nominated as a Québec Superior Court judge.

In conclusion, law, and its practice, are evolving very fast and, for our profession to survive in this new demanding era, changes and adjustments must be made, and they must be made rapidly. The areas of law practice are multiplying, and more and more types of practice will emerge as time goes by. We are even challenged and threatened by artificial intelligence that can take over much of our work. To think, in these present times, that there is only one Way to practice law or to represent clients, as was the case in the past, is to already be out of sync with the present challenges we must face.

Honestly, this survey is anachronic in our times. To think that some law jurisdictions, associations, and regulatory bodies believe that we can afford to ostracise qualified lawyers and not allow them to be members of different Bar associations is a clear indication that some are not keeping up with the hard reality of our times. For example, the financial prejudice caused by excluding qualified lawyers is also preposterous, when so many Bar associations could benefit from additional needed Fees, coming from more members, to improve the services, supervision and support given to lawyers.

It is my hope that certain of these arguments can provide a new way of assessing the value of in-house counsels to finally decide that they are full fledged lawyers who must be recognised as such, as is the case in our Québec jurisdiction.

## 20. Spain

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
Yes.
  - a. If yes:
    - i. Please indicate the name and date of the applicable regulations allowing it,  
Real Decreto 135/2021, de 2 de marzo, por el que se aprueba el Estatuto General de la Abogacía Española.
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?  
The requirements to register as a lawyer (in house or independent) and practice the profession in Spain are as follows:  
Hold a degree in Law.  
Pass the entrance exam to the legal profession organized by the Ministry of Justice.  
Apply for registration with one bar association.
    - iii. what are the rights and obligations of the inhouse counsel as member of the bar association?  
Free practicing lawyers and in-house lawyers have -in principle- the same rights and obligations.
    - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?  
Yes on a voluntary basis.
    - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.  
No cases or regulations.
2. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Yes, they can represent its employer before all kind of courts.
3. Legal Privilege
  - vi. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?  
Royal Decree 135/2021 of 2 March, and in its Article 39 it expressly recognises it: "The legal profession may also be practised as an employed professional as a

company lawyer under a common employment relationship, by means of an employment contract formalized in writing and in which the basic freedom, independence and professional secrecy for the practice of the profession must be respected and expressed if such practice is on an exclusive basis".

However, this recognition has not absolutely shielded the professional secrecy of this group, which in practice has experienced how the National Commission for Markets and Competition or even the Tax Agency have used the case law of the CJEU to try to undermine this right.( TJCE AM&S Europe Limited c. Comisión, 18 of May 1982 (155/79) TJUE Azko Nobel Chemicals Ltd y Akros Chemicals Ltd c. Comisión Europea september 14, 2010 ( C-550/07 P)).

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

Statute and regulation.

Ley Orgánica del Poder Judicial 6/1985 (LOPJ) New Estatuto General de la Abogacía (2021), and the code of ethics of the profession.

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

In principle, this is not the case in Spain. However, the transposition of the DAC 6 directive through the General Tax Law establishes the obligation for tax intermediaries (advisors, lawyers, managers or financial institutions) to declare operations that may be considered as aggressive tax planning in the international sphere. In practice, according to experts in tax matters, it will be difficult to opt out of this reporting obligation on the grounds of professional secrecy, as it will be necessary to be able to demonstrate that they did not act proactively in the design of this planning.

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory?

Yes, "Lawyers must keep secret all the facts or news of which they have knowledge by reason of any of the modalities of their professional activity, and may not be obliged to testify about them" (art. 542.3 Organic Law of the Judiciary).

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

No conditions concerning “any of the modalities of their professional activity” (art. 542.3 Organic Law of the Judiciary).

- f. What is the extent of the protection and what are the limits?

*No limits except -maybe- in tax regulation.*

- i. What type of documents are included?

All kind of information “all the facts or news”.

- ii. Can the lawyer refuse to testify in legal proceedings?

Yes.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

In principle all of them.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

The approved Statute (2021) has established in its Article 22.4 that: "the lawyer shall be relieved of this duty on matters that only affect or refer to his client, provided that the client has expressly authorized him to do so".

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Ley Orgánica del Poder Judicial 6/1985 del Poder Judicial (LOPJ).

Código deontológico de la Abogacía, aprobado por el Pleno del Consejo General de la Abogacía Española el 6 de marzo de 2019.

Estatuto General de Abogacía aprobado por el Consejo de Ministros a través del Real Decreto 135/2021.

4. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

## 21. Sweden

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
No.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
No.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Yes if the matter concerns commercial law and dispute resolution the inhouse counsel can represent its employer, but it's common to hire a law firm. If it would concern criminal matters, and if it's a serious crime, the suspect might have the right to get a public counsel who has to be member of the bar.
4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel?  
No.
5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
No.

## 22. Switzerland

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
No.
2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?  
No.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
As an authorized representative, the inhouse counsel can represent its employer before all courts, but he has party status. However, it cannot represent third parties.

There is an exception for lawyers who are employed by a recognized public utility organization. They may be registered with the cantonal registry of lawyers. Once they are, they can represent their employer in court as long as this activity is limited to mandates strictly related to the purpose pursued by this organization.

### 4. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Yes. The law has been amended so that as of January 1, 2025, an internal legal department of a company will have the right to refuse to collaborate and produce documents. This was not the case before. However, this is not considered a "legal privilege" as understood in the Anglo-Saxon and US legal systems.

#### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?  
This right to refuse to collaborate is based in the law (specifically the Code of Civil Procedure).
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?  
This question will eventually be settled by case law.
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of

the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

This question will eventually be settled by case law.

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

The right of the internal legal department of a company (and its organs) to refuse to collaborate is limited. It allows a company with such a legal department to refuse to collaborate and produce documents in the context of civil proceedings, under certain conditions. According to Article 167a of the Code of Civil Procedure (coming into force on January 1, 2025), a party may refuse to collaborate and produce documents related to the activities of its internal legal department if the following conditions are met:

a) it is registered as a legal entity in the Swiss commercial register or in an equivalent foreign register;

b) the person leading the legal department holds a cantonal lawyer's license or meets the professional requirements to practice as a lawyer in their home State;

c) the activity would be considered inherent to the exercise of the legal profession if it were performed by a lawyer.

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?

Presumably, all sorts of documents related to the internal legal department's activities. However, practice and case law have not yet been developed.

- ii. Can the lawyer refuse to testify in legal proceedings?

Yes.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

Only civil procedures.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

No.

- g. Please indicate the name and date of the applicable law providing



for the legal privilege.

Code of Civil Procedure of December 19, 2008, amendment of March 17, 2023. Effective date: January 1st, 2025.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

Since the new legal provisions are not yet in force, case law will be required to clarify the scope of the right to refuse to collaborate.

## 23. England & Wales

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it?  
[Bar Standards Board Regs or BSB Handbook SRA rules](#)
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?  
[I believe those set out in the handbook](#)
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?  
[The same as any other member](#)
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?  
[Depends on the employer. If it's the same employer I would say yes.](#)
- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.  
[The SRA Guidelines and BSB Handbook deal with this, but the commercial reality can make adherence difficult. A company policy should address this issue - for example its whistleblowing policy](#)

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

b. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.  
[The Law Society In-House Network and Association of Corporate Counsel in Europe](#)
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?  
[I would not consider the requirements special and would be as those applicable to other lawyers](#)

- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?  
They would be the same as those lawyers who work in private practice
  - iv. Is the inhouse counsel subject to a code of ethics?  
Yes.
  - v. Is there some kind of disciplinary body to enforce the code of ethics?  
SRA or BSB.
  - vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.  
There are safeguards in place in relation to the SRA and BSB.
3. Can the inhouse counsel represent its employer in court and if so, before which courts?  
Depends if they have rights of audience in the UK. If they so, then yes, in all courts.

#### 4. Legal Privilege

- vii. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

##### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?  
Common law - case law.
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?  
No, communications made for the purpose of seeking or providing legal advice. Covers all legal advice.
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose

of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

No. although for litigation privilege there is a dominant purpose test which is similar.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

How to case law has evolved over the years.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

Communication confidential made for the purpose of giving seeking legal advice from a professional adviser and crime is excluded, there needs to be a legal context.

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?

- ii. Can the lawyer refuse to testify in legal proceedings?

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

All documents and all proceedings are potentially protected - confidentiality and LPP are closely linked. cannot refuse to testify - you assert your right to privilege.

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Common law principles

- 5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

Not to my knowledge. I would say such initiatives are not necessary in the UK. There are sufficient protections.

- 6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

I believe there are sufficient safeguards.

## 24. Washington D.C., USA

1. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

Yes, they are required to be admitted to the bar in at least one jurisdiction (state). All in-house counsel are members of the bar and are no different than lawyers practicing in a private firm or for the government. Inhouse counsel have the same rights and obligations as any other lawyer admitted to practice law. They are held to the same ethical rules/obligations, including confidentiality of their clients' information (the client being the corporation), independence, avoidance of conflict or appearance of conflict, etc. Additionally, in most instances an inhouse counsel can practice in a limited capacity within states where they are not licensed to practice (rules vary from state to state).

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,  
Each state has its own regulations/rules relating to admission to the Bar and licensing of lawyers. Technically the District of Columbia is not a state, it is the capital of the U.S., but like any state it has its own rules and regulations related to attorney admissions. Admission to the District of Columbia Bar is governed by Rule 46 of the District of Columbia Court of Appeals. Rule 46 was most recently amended on July 12, 2021 but has been in effect in some form for many years.
- ii. what are the legal requirements that the inhouse counsel has to fulfill to become member of the bar association?  
Inhouse counsel must fulfill the same requirements as any other attorney to become a member of the District of Columbia Bar. Admission may be based on proof of good moral character and general fitness as it relates to the practice of law, as well as an examination in the jurisdiction of the District of Columbia Bar, transfer of a Uniform Bar Examination score attained in another jurisdiction, or membership in good standing in the bar of another jurisdiction for at least 3 years immediately prior to the application for admission.
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?  
Inhouse counsel has the same rights and obligations as any other attorney who is a member of the District of Columbia Bar, including the obligations of confidentiality, truthfulness in statements to others, etc.
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?  
Generally, all working citizens in the United States who file taxes can contribute to and participate in the social security system. It doesn't distinguish between lawyers, in-house counsel, electricians, secretaries, etc. We all contribute to social security (our retirement fund to which we are entitled to claim at the age of 62 (we can wait and claim it later, until age 70). Generally, the benefit one receives is

dependent on how long one worked and how much money one contributed to the system over that working life.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

N/A.

2. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

N/A.

3. Can the inhouse counsel represent its employer in court and if so, before which courts?

Yes, in-house counsel can represent their employer in court. Generally, if you are licensed to practice law in a state, you can appear before the state, local and municipal courts of that state. Usually, lawyers must petition to be admitted to Federal courts, and some require a sponsor, but generally all who ask can be admitted.

4. Legal Privilege: Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of communications between the inhouse counsel and its employer and / or the law firm hired for advice and assistance by the in-house counsel (Y/N)?

Yes.

If yes:

- Is the privilege based in statute or regulation, or is it based in common law?

Common law

- The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

No

The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Yes, though it is referred to as the "significant purpose test" rather than the "substantial purpose" theory. The test was adopted by the District of Columbia Circuit in the ruling *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014), authored by Justice Kavanaugh prior to his elevation to the Supreme Court.

If yes, please explain briefly your jurisdiction's adopted version of this theory:

Under *Kellogg Brown* "the test boils down to whether obtaining or providing legal advice was one of the significant purposes of the attorney-client communication."

*Id.* at 760. See also *Fed. Trade Comm'n v. Boehringer Ingelheim Pharms., Inc.*, 892 F.3d 1264, 1267 (D.C. Cir. 2018) (“[C]ourts applying the primary purpose test should determine whether obtaining or providing legal advice was *one of* the significant purposes of the attorney-client communication.”) (internal citations and quotations omitted). *Fed. Trade Comm'n v. Match Grp., Inc.*, No. 1:22-MC-54 (RJL/GMH), 2024 WL 1509180, at \*12 (D.D.C. Mar. 12, 2024) (“The D.C. Circuit has rejected a strict ‘but for’ requirement under which a communication could not be privileged if there was any purpose behind it other than seeking or providing legal advice; instead, a communication is entitled to attorney-client privilege if one of the significant purposes’ of the communication was to obtain or give legal advice.”) (internal citations and quotations omitted).

If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

N/A

What are the conditions that must be fulfilled in order to benefit from legal privilege?

The attorney client privilege applies when the following conditions are met: “(1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.” *Jones v. Carson*, No. CV 15-310 (CKK/GMH), 2018 WL 11410070, at \*4 (D.D.C. Mar. 30, 2018) (quoting *In re Sealed Case*, 737 F.2d 94, 98–99 (D.C. Cir. 1984).

It is also worth noting that “‘the [attorney-client] privilege covers not only communications between an attorney and high-level corporate officers, ... but also between the attorney and any corporate employee acting at the direction of corporate superiors in order to secure legal advice for the corporation.’ *Boehringer Ingelheim*, 180 F. Supp. 3d at 16. Moreover, ‘communications among non-attorneys can be entitled to protection if they concern matters in which the parties intend to seek legal advice or reflect legal advice provided by an attorney.’ *George Washington Univ.*, 2020 WL 3489478, at \*11.” See *United States Equal Emp. Opportunity Comm'n v. George Washington Univ.*, 502 F. Supp. 3d 62, 79 (D.D.C. 2020).

What is the extent of the protection and what are the limits?

Extent of Protection - Notably, “[t]he privilege covers both (i) those communications in which an attorney gives legal advice; and (ii) those communications in which the client informs the attorney of facts that the attorney needs to understand the problem and provide legal advice. In the corporate context, the attorney-client privilege applies to communications between corporate employees and a corporation's counsel made for the purpose of obtaining or providing legal advice. The privilege applies regardless of whether the attorney is in-house counsel or outside counsel.” *Fed. Trade Comm'n v. Boehringer Ingelheim Pharms., Inc.*, 892 F.3d 1264, 1267 (D.C. Cir. 2018). Importantly, the privilege does not protect disclosure of the underlying facts but it “does protect the *communication* of facts by corporate employees to the general counsel when, as here, the communications were for the purpose of obtaining or providing legal advice.” *Id.* at 1268.

Limits of Protection – As alluded to above “voluntary breach of confidence or selective disclosure for tactical purposes waives the privilege. Disclosure is inconsistent with confidentiality, and courts need not permit hide-and-seek manipulation of confidences in order to foster candor.” *In re Sealed Case*, 676 F.2d 793, 818 (D.C. Cir. 1982). Waiver can of the privilege can also occur inadvertently. *Agility Pub. Warehousing Co. K.S.C. v. Dep't of Def.*, 110 F. Supp. 3d 215, 225 (D.D.C. 2015) (citing *In re Sealed Case*, 877 F.2d 976, 980 (D.C.Cir.1989)). Additionally, a crime-fraud exception to attorney client privilege exists. For the exception to exist “[f]irst, the client must have made or received the otherwise privileged communication with the intent to further an unlawful or fraudulent act . . . . Second, the client must have carried out the crime or fraud.” *In re Sealed Case*, 107 F.3d 46, 49 (D.C. Cir. 1997) (internal citations omitted).

- What type of documents are included?

Documents that qualify as communications and meet the four-part test above are covered by the attorney client privileged. This includes draft documents in some circumstances. *See Loftin v. Bande*, 258 F.R.D. 31, 35 (D.D.C. 2009) (“A draft may receive attorney-client privilege or attorney work product protection. Drafts, standing alone, are not ‘communications’ and hence normally are not within the attorney-client privilege. *See In re Sealed Case*, 146 F.3d 881, 884 (D.C.Cir.1998) (describing drafts as ‘material that is outside the attorney-client privilege.’). But a draft is protected under the attorney-client privilege if the draft itself contains protected confidential communications from the client or the attorney. *See Ideal Elec. Co. v. Flowserve Corp.*, 230 F.R.D. 603, 606–07 (D.Nev.2005)”). In addition, the District of Columbia has an “attorney work product privilege” that protects against admission of certain documents in court. As the D.C. Circuit has explained “[t]he work product protection is broader than the attorney-client privilege in that it is not restricted solely to confidential communications between an attorney and



client. It is narrower, however, insofar as the doctrine protects only work performed [by attorneys or their agents] in anticipation of litigation or for trial.” *F.T.C. v. Boehringer Ingelheim Pharms., Inc.*, 778 F.3d 142, 149 (D.C. Cir. 2015) (internal citations omitted).

- Can the lawyer refuse to testify in legal proceedings?  
Yes as to privileged information but the court may determine that the privilege does not apply and compel disclosure.
- What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA...?  
“The attorney-client privilege and the work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client.”  
See <https://www.dcbart.org/for-lawyers/legal-ethics/rules-of-professional-conduct/client-lawyer-relationship/confidentiality-of-information#:~:text=The%20attorney%2Dclient%20privilege%20and%20the%20work%20product%20doctrine%20apply,produce%20evidence%20concerning%20a%20client.>
- Is the legal privilege linked to a duty of confidentiality by the in-house counsel?  
Yes.

Please indicate the name and date of the applicable law providing for the legal privilege?

The privileges come from the common law, they are not based on statute. The U.S. Court of Appeals for the District of Columbia Circuit has defined the attorney client privilege and work product doctrine through its rulings on various matters.

5. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
N/A.
6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?  
No.

## V. Complete survey country by country

### 1. Austria

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

#### **Austria**

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

#### **No.**

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

According to Austrian law in-house counsels are not lawyers. In Austria, there is a legal requirement for representation in certain proceedings, distinguishing between absolute and relative legal representation. With absolute legal representation, it is mandatory to be represented by a lawyer. On the other hand, relative legal representation means that if one chooses to be represented, it must be done by a lawyer. Absolute legal representation is regulated in § 27 of the Austrian Code of Civil Procedure (ZPO), while relative legal representation is governed by § 29 (1) in conjunction with § 27 (2) of the Austrian ZPO.

Absolute legal representation is mandatory in district court proceedings when the dispute value exceeds 5,000 euros (in the case of "value-based jurisdiction" – "Wertzuständigkeit": meaning that a district court has jurisdiction because the dispute amount is equal to or less than 15,000 euros.), in first-instance proceedings before regional courts, and in appellate proceedings.

Relative legal representation is required in district court proceedings when the dispute value exceeds 5,000 euros (in the case of "Subject Matter Jurisdiction" – "Eigenzuständigkeit": meaning that a district court is competent based on the allocation according to the disputed subject matter.), in proceedings related to matters of marriage, in the case of proceedings before a requested/assigned judge, and in the so-called "personal exemption" according to § 28 of the Austrian ZPO. § 28 ZPO states that lawyers, notaries, individuals qualified to act as judges, and officials of the Financial Procuratorate who have passed the bar examination are not bound by the mandatory requirement of legal representation, but if they choose to be represented, it must be done by a lawyer.

In all other proceedings where neither absolute nor relative legal representation is required, one can be represented by virtually anyone, including an in-house counsel. Neither absolute nor relative legal representation is generally required in district court proceedings when the dispute value is below 5,000 euros.

## 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
  - d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
  - e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
  - f. What is the extent of the protection and what are the limits?
    - i. What type of documents are included?
    - ii. Can the lawyer refuse to testify in legal proceedings?
    - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
    - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
  - g. Please indicate the name and date of the applicable law providing for the legal privilege.
6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
**No.**
7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

Fundamentally, as a registered lawyer, it is only possible to work either independently or as an employee of a law firm. (This arises from the provisions of the Austrian Lawyers' Code.) However, if a legal professional is employed by a company or a public entity (solely), there are issues with independence:

The Austrian legislator operated on the assumption of a self-employed lawyer who dealt with the legal matters of their client in an independent manner. This handling of external affairs requires a special level of trust - similar to the doctor-patient relationship. The modern in-house counsel lacks this element of independence, as they are contractually bound to their (sole) client and integrated into their organization; this means they are acting in their own interest, not in the interest of an external party. This is the reason why in-house counsels do not benefit from a legal privilege. (Source: <https://rdb.manz.at/document/rdb.tso.LIderstandard20102101?execution=e1s4&highlight=Unternehmensjurist+Rechtsanwalt>)

According to § 23 (2) of the Austrian Lawyers' Code, the following applies: Within their area of jurisdiction, the Bar Association is responsible for representing, promoting, and safeguarding the professional, social, and economic interests of the lawyers and legal trainees who are members of the Bar Association. It is also the responsibility of the Bar Association to particularly uphold the independence of the legal profession. Since in-house counsels generally do not meet this criterion of independence, they cannot become members of the Bar Association.

## 2. Belgium

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

BELGIUM

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

NO

- a. If yes:
- i. Please indicate the name and date of the applicable regulations allowing it,
  - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
  - iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
  - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
  - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.
4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

YES

- a. If yes:
- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.

Institut des juristes d’entreprise – Instituut voor bedrijfsjuristen. The Institute was incorporated by the Law of 1 March 2000 establishing an Institute of Company Lawyers (<https://ije.be/fr/>). The coordinated version in English is attached to this survey). It counts more than 2300 members.

Its General Secretary, Mr Simon Vander Putten, and its General Director, Mrs Julie Dutordoir, have kindly agreed to be interviewed for the purposes of this survey.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?

Membership for in-house counsels is optional, but an in-house counsel can only use the title “juriste d’entreprise”/ “bedrijfsjurist” (company lawyer) and have legal professional privilege if they are a member of the Institute:

Requirements :

- Belgian or foreign law degree.
- have a contract of employment or civil service status with an employer operating in Belgium. As an exception, company lawyers who are directors in their organisation and have self-employed status due to certain mandatory rules, can also be admitted.
- work mainly in the field of law for an employer that has activities in Belgium (and not mainly for the clients of the employer), including other companies of the same group, or, if the employer is a federation, also for the members of the federation.
- total intellectual independence. This is stipulated in the above-mentioned Law since 2023.

Membership is not exclusive in the sense, for instance, that the inhouse counsel can be a member of Institutes for inhouse counsels in other countries at the same time.

- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?

Obligations:

- pay the membership fee (414 EUR/year).
- follow the code of ethics.
- follow ongoing training. The Institute offers free training to its members (webinars, lunch seminars, ...often lead by law firms) for which the members get educational credits.
- act with total intellectual independence

Rights:

- assistance and legal protection insurance in the event of difficulties with the employer (pressure, etc.)
- protected title (Unauthorised use of the title is punishable by criminal law)
- confidentiality of advice given to one’s employer (legal professional privilege)
- benefit from the Institute’s (free) training and networking opportunities

- iv. Is the inhouse counsel subject to a code of ethics?

Yes : [Deontologische Code de Déontologie \(ije.be\)](http://ije.be)

The company lawyer's Code of Ethics is based on 5 pillars:

- **The company lawyer acts in the public interest.**  
The Statute of the Company lawyer was created to allow companies, in the general interest, to obtain the best possible internal advice.
- **The company lawyer explicitly undertakes to comply with the law.**  
Therefore, he or she will never advise against the law.
- **The company lawyer is intellectually independent.**  
Even though the company lawyer, as an employee, works in a relationship of subordination, he or she remains intellectually independent in his/her work and in the legal advice he/she gives.
- **The company lawyer practises a regulated profession and uses the protected title correctly**  
The title of “juriste d'entreprise” (French) or "bedrijfsjurist" (Dutch) is exclusively reserved to the members of the Institute of Company lawyers.
- **The advice given by a company lawyer to his or her employer is confidential.**  
This confidentiality is the necessary condition for the correct execution of the duty of company lawyer. The company lawyer can only properly fulfil his or her task as an independent advisor of the company if he or she can communicate his/her advice in confidence.

v. Is there some kind of disciplinary body to enforce the code of ethics?

Yes :

- Disciplinary Committee - (presided by magistrates appointed by royal decree and of which designated company lawyers are also part)
- Appeals Committee - (presided and seated by magistrates appointed by royal decree and of which designated company lawyers are also part)
- Cassation

vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Duty to exercise the profession of in-house lawyer with complete intellectual independence.

5. Can the inhouse counsel represent its employer in court and if so, before which courts?  
No.

6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

YES

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

The Law of 1 March 2000 creating an Institute of Company Lawyers provides (art. 5) that legal advice given by a company lawyer, affiliated to the Institute of Company Lawyers, on behalf of his or her employer is confidential.

Confidentiality also covers correspondence relating to the request for an opinion, draft opinions and other preparatory documents.

Confidentiality covers advice given to the employer or the employer's holding company, the co-workers etc.

In-house counsel's opinions and related documents may not be consulted or copied by persons other than the addressee(s), nor may they be seized by the authorities or courts, for example in the course of a search. The in-house lawyer may not be obliged to answer questions concerning the content of his or her opinions or the facts communicated to him or her in this regard.

The confidentiality of in-house counsel's opinions is based on the fundamental rights enshrined in Articles 6 (right to legal assistance) and 8 (right to privacy) of the European Convention on Human Rights (ECHR).

In case of dawn raid, the President of the IBJ-IJE, or a person delegated by him or her, can go to the company to assist the company lawyer in the procedure if confidentiality is at stake.

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Yes.



- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

The law states : "Art. 5 Legal advice given by the company lawyer, for the benefit of his employer or, in the case referred to in Article 4, § 1/1, for the benefit of his principal and in the context of his legal advisory activity, are confidential. This confidentiality also covers internal correspondence containing the request for an opinion, internal correspondence exchanged concerning this request, draft opinions and internal documents drawn up in preparation for the opinion."

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

No. Only legal advice is protected under the Law of 1 March 2000. If a company lawyer writes something else, there is no protection.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

/

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

The inhouse lawyer must be a member of the Institute of Company lawyers.

The advice does not have to be marked "confidential", but this is recommended by the Institute. It is not always easy to mark it as such in practice because inhouse lawyers also advise on a lot of small topics during the day. The more delicate the information is, the more precautions the inhouse counsel should take.

- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?  
Legal advice, internal correspondence containing the request for advice, internal correspondence exchanged concerning this request, draft advice and internal documents drawn up in preparation for the advice.
  - ii. Can the lawyer refuse to testify in legal proceedings?

The company lawyer cannot be obliged to answer questions about the content of his or her opinions or about the facts communicated to him or her in this context.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?  
All proceedings at Belgian level.  
Foreign authorities/ UE authorities currently do not recognize this privilege following European case law.
- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

Yes (same scope).

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

March 1<sup>st</sup> 2000 - Loi créant un Institut des juristes d'entreprise / Wet tot oprichting van een Instituut voor bedrijfsjuristen. It was explicitly confirmed by a modification made in 2023.

- 7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No new legal initiative at this moment. The above-mentioned law has been modernized in 2023 (through the Laws of 14 mars 2023 and 7 April 2023) to enshrine in law the developed jurisprudence and legal practice regarding confidentiality.

The Institute has lodged an appeal against the law transposing the "whistleblowers" directive, since it could affect the duty of confidentiality offered to company lawyers.

The Institute is often consulted by the Belgian authorities if new draft legislation may have an impact on confidentiality.

- 8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

The most important aspect in Belgium is that inhouse counsels have the option to adhere to a specific Institute of Company Lawyers as a member, which provides protection to them when exercising their legal profession.

Other items:

Confidentiality between company lawyers from different employers: Non-public information exchanged between in-house counsel is confidential, unless there is a unilateral declaration or agreement to the contrary in writing. ([Code of Ethics](#), art. 11)

Confidentiality between a lawyer representing a counterparty of the employer, and a company lawyer : Both have to agree that their exchange will be confidential. This contractual basis is confirmed in a Protocol concluded between the Institute and the French- and German-speaking bar associations of Belgium, but there is currently no such protocol with the Flemish bar association of Belgium, but the company lawyer and external lawyer can agree on such confidentiality.

The Institute aims to establish good relations with the Belgian bar associations in order to promote the collaboration between lawyers and company lawyers, so to avoid they are viewed as competitors. A joint seminar about the collaboration between lawyers and company lawyers is organized by the Institute and the Brussels bar associations on 22 March 2024.

### 3. Brazil

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

Brazil.

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?
  - a. If yes:
    - i. Please indicate the name and date of the applicable regulations allowing it,
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
    - iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
    - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
    - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

In the Brazilian Bar Association (Ordem dos Advogados do Brasil – OAB), there is no specific registry designated for in-house lawyers who work exclusively for a company as employees. In this regard, all lawyers, including those who work as in-house counsels, must be registered with the Brazilian Bar Association as regular lawyers and follow the same procedures as lawyers who practice law independently or in external law firms.

Therefore, there is no separate registry for in-house lawyers within the OAB, once they are considered regular lawyers and must comply with the requirements established by the Statute of the Legal Profession and the Brazilian Bar Association (Law no. 8.906/1994) and related regulations on law practice in Brazil.

Furthermore, lawyers working for public entities can be members of the Brazilian Bar Association as long as they consider the following circumstances:

4. **Registration Requirements:** Lawyers, whether working for public or private entities, must meet the registration requirements set by the OAB to become members. This typically includes holding a law degree from a recognized institution, passing the bar exam (Exame de Ordem), and meeting any other criteria established by the OAB.

5. **Dedication to Public Employment:** While lawyers working for public entities can be members of the OAB, they must ensure that their legal practice complies with the rules and regulations governing their public employment. This may include considerations related to exclusive dedication, conflicts of interest, and ethical standards.
6. **Professional Ethics:** Lawyers working for public entities must comply to the ethical standards established by the OAB, as well as any additional ethical guidelines or codes of conduct applicable to their public employment.

Moreover, lawyers employed by a public entity must observe articles 28 and 30 of Brazilian Law No. 8.906/1994 concerning the incompatibility, meaning the total prohibition, and the impediment, which is the partial prohibition of practicing law. These conditions can lead to the suspension of the filiation between lawyers in public entities and the Brazilian Bar Association.

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?
  - a. If yes:
    - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register?
    - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
    - iv. Is the inhouse counsel subject to a code of ethics?
    - v. Is there some kind of disciplinary body to enforce the code of ethics?
    - vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

In the Brazilian Bar Association (Ordem dos Advogados do Brasil - OAB), there is no specific registry designated as the "Special In-House Counsel Register", as may exist in other jurisdictions or legal systems. Within the OAB, in-house lawyers (lawyers who work exclusively for a company or organization as employees) undergo the same registration and admission process as lawyers who practice law independently or in external law firms.

Therefore, to practice as an in-house lawyer in Brazil, it is necessary to be duly enrolled in the OAB as a regular lawyer, fulfilling the requirements established by the Statute of the Legal Profession and the Brazilian Bar Association (Law No. 8,906/1994) and related regulations. There is no separate special registry for in-house lawyers within the OAB.

Nevertheless, it is important for in-house lawyers to comply with all ethical and professional obligations established by the OAB and to stay updated on any specific regulations related to the practice of in-house law in Brazil.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

Considering there is no distinction between in-house counsels and practicing lawyers, the employees enrolled in private companies can represent their employers before all courts. Since lawyers employed by public entities must observe certain requirements in order to represent, they must obey the criteria outlined in the article 28 of the Statute of the Legal Profession and the Brazilian Bar Association (Brazilian Law No. 8,906/1994) and compliance with public employment regulations ensuring that their legal practice complies with the rules and regulations governing their public employment, including any restrictions on outside legal work or conflicts of interest.

5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Whereas there is no distinction between in-house counsel and practicing lawyers in Brazil, the Statute of the Legal Profession and the Brazilian Bar Association (Law No. 8,906/1994) protects the confidentiality in its article 7, item II and article stating that the lawyer has the right of “the inviolability of their office or workplace, as well as their work instruments, written, electronic, telephone, and telematic correspondence, as long as they relate to the practice of law”. Additionally, the Code of Ethics of the Brazilian Bar Association (OAB) addresses the confidentiality as irrefrangible in its articles 26, 35, 36 and 37, only violable with just cause, in cases of serious threat to the right to life and honor or involving self-defense. Lastly, article 154 of the Criminal Code (Law 2.848/1940) stipulates detention in case the disclosure of privileged information due to the professional the practice.

- 6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

- 7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

No.

#### 4. Bulgaria

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

**Answer :**

The jurisdiction for which I am completing the survey is The Republic of Bulgaria.

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

**Answer:**

The regulations in Bulgaria’s jurisdiction don’t allow the inhouse counsels to be members of the Bar associations, as our Bar law prohibit lawyers to have labour employment contracts .

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

**Answer:**

The inhouse counsel can’t be registered in a special in-house counsel register because this type of register does not exist in The Republic of Bulgaria.

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?



- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

**Answer:**

The inhouse counsel can represent its employer in all the courts in The Republic of Bulgaria.

5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

**Answer:**

The Bulgarian law , especially Labor code protects and establish the principle of the confidentiality of the communications between the inhouse counsel and its employer. They can be settled in the internal rules of the Employee, as well as in the employee agreement .

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
- g. Please indicate the name and date of the applicable law providing for the legal privilege.

- 6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

**Answer**

There are currently no pending draft laws proposed in relation to the inhouse counsels. Various professional NGOs are making efforts to improve their place in Bulgarian law, but to date the draft law for inhouse counsel has been rejected by the competent authorities

- 7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

I hope in the near future the law of inhouse lawyers to take place In Bulgaria.

## 5. China

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area. PEOPLE’S REPUBLIC OF CHINA
3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)? YES for certain category

there are three types of legal professions in China:

(i) Attorney

(ii) corporate lawyer (in practice working for big firms)

According to *Measures for the Administration of Corporate Lawyers*, corporate lawyer is “an employee who enters into a labor contract with a state-owned enterprise, receives a corporate lawyer certificate issued by the justice authority in accordance with the law, and engages in legal affairs work in the enterprise”.

(iii) legal counsel

Corporate lawyers and attorneys shall pass the bar exam, and they can represent respectively their own company and clients before Chinese tribunals by abiding by professional rules.

Legal counsels do not need to pass the bar exam. They cannot represent their companies before tribunals.

An inhouse counsel can possibly be:

- 4) an employee of a company or a public entity (in this case, the employee shall not practice in the name of lawyer);
- 5) an attorney undertaking non-contentious legal consultant services (in this case, the attorney won’t be “employed” but “authorized”); or
- 6) a corporate lawyer (only for public entities).

According to Ministry of Justice’s data on May 17, 2018, there are 17 state-owned enterprises settled the position for corporate lawyer<sup>13</sup>.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it, Lawyers Law of the People's Republic of China (2017 Amendment), effective on Jan. 1<sup>st</sup>, 2018.

Measures for the Administration of Corporate Lawyers, effective on Jan 1st, 2019 (hereinafter referred to as “Measures”).

Becoming a lawyer:

- **Positive conditions in Article 5**

To apply for practicing law, a person shall satisfy the following conditions:

1. Upholding the Constitution of the People’s Republic of China;

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<sup>13</sup> [https://www.gov.cn/xinwen/2018-05/17/content\\_5291614.htm](https://www.gov.cn/xinwen/2018-05/17/content_5291614.htm)

2. He or she has passed the national uniform legal profession qualification examination and obtained the legal profession qualification;
3. Completing one-year internship at a law firm; and
4. Having good character and conduct.

The certificate of passing the national uniform judicial examination and lawyer's qualification certificate obtained before the national uniform legal profession qualification shall have equal force with the national uniform legal profession qualification certificate.

**- Negative conditions in article 7 and 11**

■ Article 7

A lawyer's practicing certificate shall not be issued to an applicant who is under any of the following circumstances:

1. Having no capacity or limited capacity in civil conduct;
2. Having a record of criminal punishment, except for a crime of negligence; or
3. He or she is expelled from a public office or his or her lawyer's or notary's practicing license is revoked.

■ Article 11

A civil servant shall not concurrently serve as a practicing lawyer.

A lawyer, who serves as a member of a standing committee of a people's congress at any level, shall not be engaged in a practice of representation or defense in litigation during his term of membership.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
  1. Having passed the bar exam (State Judicial Examination) or having obtained the qualification of attorney;
  2. Having engaged in legal affairs for more than two years, or having served as a judge, prosecutor or lawyer for more than one year;
  3. Having been approved by the entity for which he/she works to be a corporate lawyer.

Becoming a corporate lawyer:

*Measures for the Administration of Corporate Lawyers*, effective on Jan 1st, 2019.

**- Positive conditions in article 5**

An applicant for a corporate lawyer certificate shall meet the following conditions:

- (1) Upholding the Constitution of the People's Republic of China.
- (2) Qualifying for the legal profession or as a lawyer according to the law.
- (3) Entering into a labor contract with a state-owned enterprise in accordance with the law.
- (4) Engaging in legal affairs work for more than two years, or having served as a judge, prosecutor or lawyer for more than one year.
- (5) Of integrity.
- (6) The entity with which he or she works consents to his or her appointment as a corporate lawyer.

**- Negative conditions in article 6**

Where an applicant has any of the following circumstances, a corporate lawyer certificate shall be denied:

- (1) With no or limited capacity for civil conduct.
- (2) Having received criminal punishment, except for negligence crime.

- (3) Having been expelled from the public service, or having had his or her lawyer's or notary's practice certificate suspended.
- (4) Suspected of crime with judicial proceedings not concluded, or suspected of violating the discipline or law and under ongoing examination.
- (5) Listed as an object of joint punishment for dishonesty.

iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

#### Rights:

Can only represent the entity for which he/she works before Chinese tribunals.

- 1. File petitions in all types of litigation, participate in mediation or arbitration, provide non-litigation services etc.;
- 2. Interview, file reviews, perform investigations, evidence collection and inquiry, cross-examination, argument, defense etc.

Corporate lawyers “have the right to meet, consult case files, investigate, collect evidence and put questions, cross-examination, argument, defense, and so forth and be entitled to access information, documents, materials and other necessary power and conditions related to the performance of their duties.” (art. 14 of Measures)  
Also, they enjoy the same rights as a member of Lawyers’ association.

#### Obligations:

Abide by professional rules of China Bar Association

There are just some minor differences concerning the restrictions on practice. For attorneys, if they once served as a judge or prosecutor, they shall not act as agent ad litem or defender within two years after leaving his post in a people's court or people's procuratorate. However, there are no such limitations for corporate lawyers.

As long as he or she engages in legal service practices in the name of lawyer, he or she shall observe the same obligations as a lawyer. A lawyer “may only practice law in one law firm” (Lawyers Law, art. 10) and “the law firm shall uniformly accept a client's authorization and enter into a written authorization agreement with a client, and uniformly charge fees and enter them into accounts according to the provisions of the state” (Lawyers Law, art. 25).

As for a corporate lawyer, shall “accept the management and supervision of the entity with which he or she works and process legal affairs as entrusted or assigned, and may not engage in paid legal services, hold part-time office at a legal service institution such as law firm, or process litigation or non-litigation legal affairs outside the entity with which he or she works in his or her capacity as lawyer.” (*Measures for the Administration of Corporate Lawyers*, article 14 al. 2).

iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

In China, there’s only one kind of social security in general. The social security contains: basic endowment insurance, basic medical insurance, employment injury insurance, unemployment insurance and maternity insurance.

The difference shows in the distinction of “rural system” and “city system” for basic endowment insurance and basic medical insurance. Civil servants are particularly in another system of basic endowment insurance.

So, yes, they all belong to the same social security system.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

There is no such debate under the Chinese legal system

- 4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? NO

There's no special in-house counsel register in China, only for lawyers.

- a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

- 5. Can the inhouse counsel represent its employer in court and if so, before which courts? Yes for the status of corporate lawyer, no for inhouse counsels

In civil procedures, a litigation representative is not necessarily a lawyer (Civil Procedure Law, art. 61 al. 2). So, yes for civil courts.

Article 13 of Measures states that a corporate lawyer can "processing various litigation, mediation, arbitration and other legal affairs".

For criminal procedure, only "during the period of criminal investigation, a criminal suspect may only retain a lawyer as a defender" (Criminal Procedure Law, art. 34), so before criminal court, it's also possible for inhouse counsel to represent its employer.

As there's no administrative courts in China, it follows the same rules of civil procedure, a litigation representative is not necessarily a lawyer (Administrative Procedure Law, art. 31)

- 6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)? NO

NO relative dispositions in law for corporate lawyers and employees.

However, there are several dispositions concerning corporate lawyers (Measures) in other inferior legal texts.

“Corporate lawyers shall join the lawyers’ association, enjoy the rights of members and fulfill their obligations.” (art. 17 of Measures) Thus, corporate lawyers shall also obey the *Rules of Lawyers’ association* according to which the violation of confidentiality obligation shall be punished. (art. 24-26, confidentiality obligations: disclosure of client’s commercial secrets, personal privacy, nation’s secrets etc.)

1. If yes:
  - a. Is the privilege based in statute or regulation, or is it based in common law?
  - b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
    - i. If yes, please explain briefly your jurisdiction’s adopted version of this theory:
  - c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
    - i. If yes, please explain briefly your jurisdiction’s adopted version of this theory:
  - d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
  - e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
  - f. What is the extent of the protection and what are the limits?
    - i. What type of documents are included?
    - ii. Can the lawyer refuse to testify in legal proceedings?
    - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
  - g. Please indicate the name and date of the applicable law providing for the legal privilege.
- 7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?  
For now, no.
- 8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?



## 6. Czech Republic

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

### CZECH REPUBLIC

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)? **NO**
  - a. If yes:
    - i. Please indicate the name and date of the applicable regulations allowing it,
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
    - iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
    - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
    - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.
3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? **NO**
  - a. If yes:
    - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
    - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
    - iv. Is the inhouse counsel subject to a code of ethics?
    - v. Is there some kind of disciplinary body to enforce the code of ethics?

- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

**Yes. All courts where compulsory representation by an attorney is not required.**

#### 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)? **NO**

##### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from

authorities, such as tax, competition law authorities,  
FDA, ...?

- iv. Is the legal privilege linked to a duty of confidentiality  
by the inhouse counsel?

- g. Please indicate the name and date of the applicable law  
providing for the legal privilege.

- 6. Are there any initiatives (draft laws, proposals from professional associations) in your country  
regarding the status of inhouse counsels or the protection of legal privilege?

**NO**

- 7. Is there anything else you might want to add regarding the status of inhouse counsels in your  
jurisdiction?

**NO**

## **7. Pays de la Zone UEMOA<sup>14</sup>**

### **1. Veuillez indiquer la juridiction pour laquelle vous répondez à l'enquête.**

Dans le cadre de cette l'enquête, le terme "juridiction" est défini comme une zone géographique qui a une autorité réglementaire sur vos activités en tant qu'avocat, en raison de vos activités en tant qu'avocat, en raison (a) de votre présence physique dans la région et/ou (b) de vos conseils relatifs aux lois de cette région.

- Dans la zone UEMOA, la profession d'avocat est réglementée par le règlement N°05/CM/UEMOA relatif à l'harmonisation des règles régissant la profession d'avocat dans l'espace UEMOA adopté le 25 septembre 2014 et entré en vigueur le 01 janvier 2015

### **2. La réglementation de votre juridiction autorise-t-elle les juristes internes (c'est-à-dire les juristes qui pratiquent le droit et qui sont employés par une entreprise ou un groupe d'entreprises) à exercer leurs activités en tant qu'avocats ? Pratiquant le droit et employés par une entreprise ou une entité publique) d'être membres du barreau (Oui/Non) ?**

- Non. Le règlement N°05 de l'UEMOA régissant la profession d'avocat, assujetti l'exercice de la profession d'avocat soit à l'exécution d'un stage et d'une formation professionnelle. Pour exercer en tant qu'avocat dans la zone UEMOA, le juriste d'entreprise doit obtenir le Certificat d'Aptitude à la Profession d'Avocat (CAPA) à la suite de quoi il sera inscrit sur la liste de stage du barreau. Après son inscription au barreau, une formation professionnelle est exigée pour l'inscription au tableau de l'ordre des avocats. Voir les articles 23 à 30 du règlement N°05 de l'UEMOA.

### **3. Si le juriste d'entreprise n'est pas autorisé à être membre du barreau, peut-il être inscrit dans un registre spécial de juristes d'entreprise ? Etre inscrit dans un registre ou une liste spéciale de juristes d'entreprise gérée par une autorité de régulation ou une association ?**

-Non

### **4. Le juriste d'entreprise peut-il représenter son employeur devant les tribunaux et, dans l'affirmative, devant quels tribunaux ?**

- Non, le juriste d'entreprise n'est pas autorisé à plaider devant les cours et tribunaux

### **5. Privilège juridique**

#### **i. Le juriste d'entreprise bénéficie-t-il du privilège juridique, c'est-à-dire que la réglementation en vigueur dans votre pays protège la confidentialité des informations fournies par le juriste d'entreprise ?**

- Non, le juriste d'entreprise n'a pas de privilège juridique au regard des textes en vigueur au sein du système juridique sénégalais.

#### **i.e Les réglementations en vigueur dans votre juridiction protègent-elles la confidentialité des communications entre le juriste d'entreprise et son employeur et/ou le cabinet d'avocats engagé pour conseiller et assister le juriste d'entreprise (Oui/Non) ?**

- Oui. Le juriste d'entreprise est lié à son employeur par un contrat de travail, dans lequel l'employeur peut prévoir une clause de confidentialité pour assurer la non-divulgateion des connaissances acquises à l'occasion de ce travail.

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<sup>14</sup> La Zone UEMOA est l'Union économique et monétaire ouest-africaine qui comprend 8 pays : Bénin, Burkina Faso, Côte d'Ivoire, Guinée-Bissau, Mali, Niger, Sénégal, Togo.

- Par rapport à la confidentialité des communications entre le juriste d'entreprise et le cabinet d'avocats, l'article 5 du code [de déontologie des Avocats de l'espace UEMOA du 05 juillet 2019](#) impose aux avocats le respect du secret professionnel.

## 8. France

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

FRANCE

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)? NO

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? NO

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?

- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

In principle, no, with a few increasingly limited exceptions such as, for example:

- before the commercial court if the amount at stake in the dispute is less than €10,000, if it relates to the keeping of the commercial register or if it concerns a pledge problem,
- before the industrial tribunal (Conseil de Prud'hommes).

#### 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

NO Only attorney/client exchanges are confidential in all matters and for all purposes.

##### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?

- ii. Can the lawyer refuse to testify in legal proceedings?
    - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
    - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
  - g. Please indicate the name and date of the applicable law providing for the legal privilege.
6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?
7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

On April 30, 2024 the Parliament has adopted a draft law granting legal privilege to in-house lawyers, subject to certain conditions. The law provides that the legal privilege of inhouse counsel does not apply to the criminal and tax domain.

Please refer to the draft law at [https://www.assemblee-nationale.fr/dyn/16/textes/116t0293\\_texte-adoptee-seance](https://www.assemblee-nationale.fr/dyn/16/textes/116t0293_texte-adoptee-seance)

Within the legal profession, the debate is fairly clear-cut between those in favour (Paris, i.e. half of all French lawyers, and the ACE union) and those opposed (the other French Bars and other unions).

[https://www.cnb.avocat.fr/sites/default/files/documents/resolution\\_-\\_confidentialite\\_des\\_consultations\\_juridiques\\_des\\_juristes\\_dentreprises.pdf](https://www.cnb.avocat.fr/sites/default/files/documents/resolution_-_confidentialite_des_consultations_juridiques_des_juristes_dentreprises.pdf)



## 9. Germany

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

Answer: Germany

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

Answer: Yes

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Answer: §§ 46 Abs. 2, 46a BRAO, 1. January 2016

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Answer: either obtaining the qualification to become a judge according to the DRiG (§ 5 DRiG), or fulfil the integration requirements pursuant to the EuRAG. To meet the integration requirements, an established European lawyer in Germany must have at least three years of effective and regular practice in the field of German law, including Community law (§ 11 Abs. 1 EuRAG). Another option is to hold a certificate in accordance pursuant § 16a EuRAG. This certificate is awarded to a person who has completed training that allows direct access to the profession of European lawyer (§ 1 EuRAG). An aptitude test may be required by the Examination Office. And the activity must be carried out in a professionally independent and autonomous manner.

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

Answer: In principle the rights and obligations correspond to those of a “normal” lawyer. However, the exemption from seizure only applies if the In-House counsel is involved in typical legal tasks for their employer. The right to refuse to give evidence only applies in civil proceedings.

In addition, the In-house counsel must inform the bar association of any change in his employment relationship.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

Answer: Yes

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Answer: The legislator has recognised that there can be no personal independence for dependent employees, which is why only professional independence is required. Professional independence must be guaranteed in the employment contract. It must be guaranteed that the lawyer is not bound by instructions in this regard.(§ 46 Abs. 3 BRAO)

- 4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

- 5. Can the inhouse counsel represent its employer in court and if so, before which courts?

Answer: the advice and representation is limited to the legal affairs of the employer. These also include legal matters within affiliated companies within the meaning of Section 15 of the German Stock Corporation Act, authorised legal services provided by the employer to its members, provided that the employer is an association or trade union pursuant to Section 7 of the Legal Services Act or Section 8 (1) No. 2 of the Legal Services Act, and 3. authorised legal services provided by the employer to third parties, provided that the employer is a member of the professions listed in Section 59c (1) sentence 1 numbers 1 to 3<sup>15</sup> or a professional association of such professions.

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<sup>15</sup> These professions are the following: members of the Chamber of Patent Attorneys, tax consultants (Steuerberater), tax representatives (Steuerbevollmächtigte), certified accountants and sworn auditors, members of the legal profession from other countries who would be authorised to establish themselves in the Federal Republic of Germany under the Act on the Activities of European Lawyers in Germany or under Section 206, and with members of the patent attorney

## 6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Answer: In Principle, yes.

The identity of the client is not subject to legal privilege. The duty of confidentiality under employment contract and professional secrecy for in-house lawyers regularly run concurrently. In-house lawyers have the same rights and obligations as all other lawyers, with the exception of the criminal law right to refuse to testify and the prohibition of confiscation. This is important for effectiveness of criminal prosecution. Incorporating in-house lawyers in the ban on seizure could potentially result in the prosecution authorities not having access to relevant evidence.

Documents discovered in the possession of an in-house lawyer are only protected from seizure if they pertain to typical legal tasks. Insofar as the in-house lawyer works for his company, this is not a legal activity that leads to a legal privilege. The right to refuse to give evidence does not apply to in-house lawyers with regard to what has been entrusted to them or has become known to them in this capacity.

ECJ: C-550/07-P, „Akzo/Nobel“, Slg 2010, I-8301:

The ECJ has ruled that communications between in-house lawyers and their non-lawyer employer are not subject to confidentiality and freedom from seizure. The ECJ justified its decision with the argument that an in-house lawyer does not have the same degree of independence from his employer as an external lawyer. The ECJ decision on the Akzo Nobel case denies in-house counsel the right to refuse to give evidence.

1. If yes:
  - a. Is the privilege based in statute or regulation, or is it based in common law?  
  
Answer: The privilege results from the reference in § 46c I BRAO to the general regulations for lawyers.
  - b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your

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profession from other countries who would be authorised to establish themselves in the Federal Republic of Germany under the Act on the Activities of European Patent Attorneys in Germany or under Section 157 of the Patent Attorney Code, tax advisors, tax agents, auditors and chartered accountants from other countries who are authorised to practise their profession jointly with tax advisors, tax agents, auditors or chartered accountants in the Federal Republic of Germany in accordance with the Tax Consultancy Act or the Auditors' Code.

jurisdiction adopted this theory or a version of this theory (Yes/No)?

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory: The attorney-client privilege is fundamentally protected by the freedom from seizure and the right to refuse to give evidence. The exemption from seizure only applies if the In-House counsel is involved in typical legal tasks for their employer. The right to refuse to give evidence only applies in civil proceedings.<sup>16</sup>
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory: please see answer above
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?  
Answer: The exemption from confiscation does not apply to internal company or group correspondence.
- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?  
  
Answer: please see answer above.
  - ii. Can the lawyer refuse to testify in legal proceedings?  
  
Answer: Only in civil proceedings
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from

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<sup>16</sup> The prevailing opinion is that in-house lawyers are also entitled to the seizure privilege if they carry out genuine legal work for their firm and the necessary independence is guaranteed (e.g. possibility to take on independent mandates, right to refuse mandates and freedom from instructions).

However, the prohibition of seizure only applies if

- the documents from the employer's business area are in the sole custody of the in-house lawyer and
- they constitute written communications between the employer or an equivalent person and the in-house lawyer, who is authorised to refuse to give evidence
  - the documents from the employer's business area are in the sole custody of the in-house lawyer and
  - they constitute written communications between the employer or an equivalent person and the in-house lawyer, who is authorised to refuse to give evidence.

authorities, such as tax, competition law authorities, FDA, ...?

Answer: please see answer above

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

Answer: the In-House counsel is obliged to maintain confidentiality. The legal privilege does not apply in the cases above.

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Answer: § 43a (2) BRAO, 8.9.1994

- 7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

Answer. No.

- 8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

## 10. Guinea

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area. **Guinea.**
2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?
  - a. If yes: **No.**
    - i. Please indicate the name and date of the applicable regulations allowing it,
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association? **La Loi 014 does not allow inhouse counsel to become a member of bar association.**
    - iii. what are the rights and obligations of the inhouse counsel as member of the bar association? **Nothing!**
    - iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer? No. **They belong to the national security regime like any other employee, whereas Lawyers have no social security coverage.**
    - v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege. **In-house counsel as an employee is under the subordination of his employer and his independency is very limited as he is obliged to obey to all the instructions of his or her employer.**
3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? **The current regulatory framework does not offer any opportunity for such possibility.**
  - a. If yes:
    - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ? **Nothing.**
    - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register? **Nothing as it does not exist.**
    - iv. Is the inhouse counsel subject to a code of ethics? **Only the code of ethics of his employer.**

- v. Is there some kind of disciplinary body to enforce the code of ethics? **Yes, as an employee, in-house counsel is subject to the company disciplinary procedure for any violation of the internal rules.**
  - vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the in- house counsel's bar membership and legal privilege. **The same as above in point (v).**
4. Can the inhouse counsel represent its employer in court and if so, before which courts? **Only as an ordinary person and as an employee but should prove the proxy letter from the CEO of the Company.**

#### 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)? **No.**
  - 1. If yes:
    - a. Is the privilege based in statute or regulation, or is it based in common law?
    - b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)? **Yes.**
      - i. If yes, please explain briefly your jurisdiction's adopted version of this theory: **all communication between the attorney and the client are covered by the secret professionnel and the attorney is obliged to stick to it in all circumstances.**
    - c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)? **Yes.**
    - d. If yes, please explain briefly your jurisdiction's adopted version of this theory: **Same as above (i).**
    - e. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly. **No.**

- f. What are the conditions that must be fulfilled in order to benefit from legal privilege? **There is no specific condition it is just based on the statute and the law.**
  - g. What is the extent of the protection and what are the limits? There is no limit in law currently.
    - i. What type of documents is included? **All the documents exchanged between the attorney and the client.**
    - ii. Can the lawyer refuse to testify in legal proceedings? **No, if required by the court. But not against his client.**
    - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...? **Civil, Criminal and Business affairs.**
    - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel? **This does not exist!**
  - h. Please indicate the name and date of the applicable law providing for the legal privilege. **Nothing!**
  - ii. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege? **Yes, there is an association of in-house counsels Cercle Droit et Conformance de Guinee (CDCG ) in Guinea who is trying to propose something like creating a special law for the total independency of In-house counsels. Internal informal debate ongoing.**
6. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction? **No.**



## 11. Hungary

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, "jurisdiction" is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.-->

Hungary

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
Yes, and the inhouse counsels are members of the same bar associations as the attorneys.

In Hungary, the profession of legal counsel - whether exercised in the public or private sector - was divided into two categories under the Act Nr LXXVIII. of 2017 on the activities of lawyers (herein after: Act on the Activities of Lawyers) effective as of 1<sup>st</sup> January, 2018: one can be a "simple" legal adviser with limited tasks, or a legal adviser registered at the bar association with the right to perform the activities defined in the Act.

The legislation that came into force on 1<sup>st</sup> January, 2018 brought legal advisers and attorneys/advocates - as similar activities - into the same bar associations. This new approach is also supported by the fact that the act is called the Act on the Activities of Lawyers rather than the Law on Lawyers. Under this „new” law, anyone wishing to continue to provide the full range of legal services listed in the Act must join the relevant regional bar association, which has a separate bar association section for inhouse counselors. In terms of levels, there is therefore the lawyer/advocate (and trainee lawyer), the legal counsel (and legal rapporteur), whose activities do not cover all the possible activities of a lawyer, and the non-barrister-at-law or counsels outside of the chambers, who can work on a much more limited basis and with fewer tasks than the counsels registered at the Bar.

Although the admission of legal advisers to the Bar is voluntary in the sense that not all legal advisers are obliged to become members of the Bar, legal representation and countersigning is only possible with Bar membership.

This is partly due to Act CXXX of 2016 on the Code of Civil Procedure (the "Code of Civil Procedure"), which makes compulsory legal representation a general feature of the basic model of forensic procedures. This model emphasizes professional legal representation; therefore, it is expected that lawyers providing compulsory legal representation perform this activity on the basis of a uniform set of requirements, in a responsible and verifiable manner.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Section 67.§ (1) of Act Nr LXXVIII. of 2017. on the activities of lawyers, effective as of 1<sup>st</sup> January 2018

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

On request, a person shall be admitted to the regional chamber as inhouse counsel who

- a) a national of a State party to the Agreement on the European Economic Area,
- b) has a university degree in law,
- c) has passed the Hungarian law examination,
- (d) is employed as a lawyer by a legal entity other than a natural person which is not entitled to practise as a lawyer,
- (e) regarding the employer, the registered office or the place of business or branch of the employer where the Chamber legal adviser is employed is located within the area of activity of the regional chamber,
- (f) in the case of multiple employers, each of his employers shall submit a declaration that the conditions for practising as a lawyer are fulfilled,
- (g) all his employers declare that the conditions necessary for the electronic administration of his business are met; and
- (h) is not disqualified from practising as a lawyer.

The Hungarian law examination is a standardized examination, in which all candidates have to demonstrate their knowledge in the same subjects (civil law, penalty law, EU law, labour law etc), regardless of the field in which they have pursued their compulsory legal practice (i.e. court, law office, notary office or legal department of authorities). It gives the right to work independently in any legal profession.

If a European Community lawyer is applying for admission to the Bar as a legal counsel, they must prove that the following conditions are met instead of those set out in (a) to (c) above:

- c) they have practised as a lawyer in Hungary for at least three years without interruption in connection with Hungarian law or the application of European Union law in Hungary,
- d) has the level of Hungarian language skills necessary for the practice of the profession of lawyer.

The following activities are incompatible with the practice of law, therefore the existence of these circumstances constitutes an obstacle to admission to the Bar both for lawyers and counsels:

- a) (with the exception provided for in the Act on the Activities of Lawyers) government service, public service, tax and customs service, health service, public servant, public education employee, law enforcement administrative employee, defence employee, law enforcement employee, professional or contract military employee, judicial employee, judicial expert, notary, court bailiff,
- (b) any other activity involving an obligation to perform work for remuneration (except: educational or scientific activities, translation, art, sports etc.)

While employment, public service relationships, unlimited liability membership in a business partnership or performing the duties of the chief executive officer of the legal person is incompatible for attorneys/advocates, it is not prohibited for inhouse counsels.

The inhouse counsel is also obliged to take an oath before being admitted to the Bar. The oath reads as follows: "I (name of the person swearing the oath) swear that I will be faithful to Hungary and its Fundamental Act, and will uphold its laws. In the performance of my professional duties as a lawyer, I will act conscientiously and to the best of my ability in the interests of my client/employer and will preserve the secrecy of any information which may come to my knowledge in the course of my duties."

(And if the swearer is convinced: God help me so!)

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

The main differences between the activities of an attorney and a legal counsel are that the latter cannot act as a defender in criminal proceedings (but can act as a representative of a legal person), cannot hold a (lawyer's) deposit <sup>17</sup>and shall be employed. Special rules apply to legal advisers in areas such as disciplinary liability, the drafting of documents within the organisation, and the keeping of records and the management of files and the inhouse counsel may not accept a mandate/assignment to act as a lawyer.

Special rules in disciplinary liability:

The order for a preliminary investigation shall be refused if the disciplinary proceedings against the legal adviser are already pending in the disciplinary proceedings instituted by the employer as provided for by special law (i.e. law regulating employment relationships, especially in the public sector).

In principle, no disciplinary action may be taken against a legal adviser for disciplinary offences committed solely against his employer, his employer's affiliated undertaking or a body having a management or maintenance relationship with his employer. However, where the employer has terminated the employment of a legal counsel being member of the Bar by immediate dismissal for culpable misconduct which also constitutes a disciplinary offence, he may be held liable for such disciplinary offence, but in such a case only a written reprimand or exclusion from the profession may be imposed.

Special rules of drafting of documents:

The lawyer (not including the bar counsel) may be replaced in the drafting of the document to be countersigned by the lawyer - subject to the lawyer's professional approval - by a substitute lawyer declared to the Bar, by a permissive provision in the mandate contract or on the basis of the client's express approval by another lawyer or law firm in Hungary entrusted with the task of replacing the countersigning lawyer. A legal counsel may be replaced in the drafting of a document to be countersigned by the counsel - subject to the professional approval of the legal adviser - by an employee of his employer, who is clearly identifiable subsequently and who also meets the conditions laid down in the rules of the Bar.

Special rules regarding the keeping of records and the management of files

The Hungarian Bar Association strictly regulates the activities and obligations of lawyers in relation to document management and preservation as well. However, these rules apply only to the activities of the legal counsel registered at the bar in the field of records management regarding

- a) a document countersigned by the inhouse counsel,

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<sup>17</sup> Deposit or escrow is defined in the Civil Code (Act V of 2013) as: the transfer and acceptance of movable property for the purpose of entrustment and safekeeping, on the basis of a deposit contract, with an obligation to release (return) the property. A lawyer may perform deposit activities without a special licence from the authorities or the Chamber. Escrow activities may be: safekeeping and/or administration of the subject of the escrow. The lawyer may deposit money, a means of payment in lieu of cash, vouchers, securities or other documents.

(b) a document generated in a matter involving the countersigning of a document drafted by the inhouse counsel; and

(c) a document annexed to an application for registration of a company or for registration of a change in the company submitted by the inhouse counsel.

The obligations relating thereto shall be discharged by the inhouse counsel through the employer of the inhouse counsel for whom the document is part of the file.

The difference between a legal adviser who is a member of the Bar and a legal adviser who is not a member is that a non-member can only carry out other legal activities, legal advice and drafting of documents, i.e. he is not entitled to two important powers: legal representation and countersigning of documents.

With the exception of affiliated firms, an inhouse counsel may be employed by no more than two non-natural persons regarding the exercise of the profession of lawyer, that is, he/she can have maximum two clients.

Practitioner of the profession of lawyer (thus both attorneys and inhouse counsels are included) is required to maintain legal professional confidentiality.

However, an inhouse counsel is under no obligation of confidentiality to the employer with whom he or she has acquired knowledge of the legal secret in the course of his or her employment, or to the employer or to persons designated by his or her client.

The inhouse counsel registered at the Bar is entitled

- Practice as a lawyer on a regular basis and for remuneration
- As a member of a regional chamber, the activities of an inhouse counsel include
  - a) legal representation,
  - b) representing legal persons in criminal proceedings,
  - c) providing legal advice,
  - (d)** drafting documents,
  - (e)** countersigning documents,
  - (f)** in the context of the activities referred to in points (a) to (e), produce the electronic formatting of drafted documents and their annexes

The training of registered counsels must be provided by the regional chamber. Furthermore, the employer shall ensure that the inhouse counsel has the opportunity to participate in training organized by the Bar Association, and shall exempt him from work for the duration of the training.

Also, the employer may take over the payment of the inhouse counsel's payment obligations towards the Bar Association.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

In Hungary, we only have one social security and retirement plan system, there is not any difference if someone is a lawyer, a counsel or a teacher for example.

However, the access of the system is not the same. Attorneys/lawyers have to be independent

and cannot be subject to employment relationships, while the inhouse counsels are lawyers practicing law and being employed by a company or a public entity. Thus, inhouse counsels are employed in employment relationships, benefiting from all the advances and social securities of such employment (like paid holidays, paid sick leave, limits on the termination of employment.) Accordingly, the social security and pension contributions are deducted and paid by the legal adviser's employer.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Employment relationships are incompatible for lawyers, as those type of relationships would create a dependent legal relationship for the lawyer, who in turn has a legal obligation to maintain his professional independence. In order to ensure this independence, the Act on the Activities of Lawyers contains a number of prohibitions which make certain activities and legal relationships incompatible with the legal profession, while some restrictions are only applicable for lawyers but not for legal counsels (like employment relationships).

On the other hand, the inhouse counsel - by the definition of the Act - is practising the profession of lawyer within the framework of his employment relationship with a legal entity, for his employer, an affiliate of his employer or a body having a management or maintenance relationship with his employer as his client. Therefore, the legal counsel's activities do not cover all the possible activities of an attorney: the legal adviser cannot act as a defender in criminal proceedings (but can act as a representative of a legal person) and cannot hold a (lawyer's) deposit.

Furthermore, an important rule of the Act on the Legal Activities, which differs from the rules on employees' liability, is that the legal counsel is obliged to refuse to comply with an instruction if its execution would result in disciplinary offences being committed, and at the same time considers an agreement which makes the counsel's right to refuse this instruction subject to an adverse legal consequence to be null and void.

A provision of the Act related to the termination of the employment relationship also belonging to the liability rules, is that the legal counsel must notify the disciplinary commissioner of the Bar within thirty days if his/her employment relationship is terminated by the employer with immediate effect due to the counsel's culpable breach

of duty. However, the counsel may not be held liable for disciplinary offences committed solely against his employer, his employer's affiliated undertaking or a body having a management or maintenance relationship with his employer.

A lawyer may practice as a lawyer against his or her former employer if the employment relationship has been terminated for at least three years and he or she has not been involved in the case. The former employer may grant an exemption from this restriction.

4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?-->

The legal counsels are not only allowed to be a member of the bar association, but it is

compulsory for them if they wish to act with the full powers granted to legal advisers. The inhouse counsels are members of the same bar associations as the attorneys.

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

5. Can the inhouse counsel represent its employer in court and if so, before which courts?

Act Nr CXXX of 2016 on civil procedure law

- o inhouse counsels can be authorized representatives in civil cases and they are also entitled to represent the employers even in cases when legal representation is mandatory, within the scope defined in the Act on the activities of lawyers

Act Nr LX of 2017 on arbitration

(+Rules of Procedure of Permanent Court of Arbitration of the Hungarian Trade and Chamber of Commerce and Industry)

- o in addition to economic and commercial disputes, arbitration is available for the whole range of private civil law disputes, except for special disputes under the Civil Code and administrative disputes, contracts excluded by law, including consumer contracts. The parties of the arbitration proceedings may act in person or by their representatives. Legal representation in arbitration proceedings shall not be compulsory. The representative of a party may be any person of legal capacity.

Act Nr XC. of 2017 on criminal procedure

- o the inhouse counsels registered at the Bar have the right to represent their employer in criminal proceedings as well, provided that the employer is legal person.

Act I of 2017 on the Code of Administrative Procedure

- o In administrative proceedings, Act I of 2017 on the Code of Administrative Procedure (Kp.) allows that in the case of mandatory legal representation (before the Tribunal and the Curia as well) an officer or employee of the administrative body with a legal qualification may also act.

A legal counsel cannot represent a natural person, only the employer which must be a legal person. The only exception to this is that on the basis of an authorisation from an employee representative

organisation, its chamber legal adviser may represent its own member in employment or civil service proceedings.

## 6. Legal Privilege

- ii. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Yes, unless otherwise provided by the Act on the Activities of Lawyers, a practitioner (including a legal counsel) is bound by the obligation of professional secrecy. That is, a practitioner of the profession of lawyer shall refuse to testify and disclose information about a lawyer's privilege in any official or judicial proceedings, unless he has obtained a waiver of the obligation of professional secrecy from the person entitled to have access to the lawyer's privilege. However, no valid waiver may be granted to disclose privileged information obtained as a defender in criminal proceedings.

### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

Act Nr. LXXVIII. of 2017 on the Activities of Lawyers

(also, in line with these regulations:

Act Nr CXXX of 2016 on civil procedure law Act Nr

XC. of 2017 on criminal procedure

Act I of 2017 on the Code of Administrative Procedure)

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?--> No.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?--> No.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

*“The profession of lawyer is an activity aimed at promoting, with legal expertise, by legal means and in a lawful manner, independently of public authorities, the enforcement of the rights and legitimate interests of the client, the fulfilment of his obligations, the settlement of disputes between opposing parties, if possible by agreement, which includes participation in the administration of justice. A lawyer shall practice his profession conscientiously, to the best of his ability and in compliance with the law. The lawyer's*

*activity is based on trust between the client and the lawyer, which must be respected by all.”*  
(Section 1.§ (1) and (2) of Act on the Activities of Lawyers)

Therefore, lawyer-client privilege means all facts, information and data of which a lawyer becomes aware in the course of carrying out his or her duties. The obligation of professional secrecy also applies to any document or other medium containing a lawyer's secret. (Sections 9.§ (1) and (2) of Act on the Activities of Lawyers)

That is, the theory that our country applied is the “absolute trust”, which is inseparable from confidentiality and is an essential element of the proper exercise of the legal profession.

Furthermore, in order to fully guarantee the right of defence, i.e. the client's freedom to disclose information to his lawyer, even in writing, in order to protect his rights, the Act on the Activities of Lawyers introduced the legal instrument of the “defence document” as a general rule and extended the protection of confidentiality to all judicial, administrative and public authority proceedings.

A document or part of a document drawn up for the purpose of the defence is a document or part of a document which has been produced in the course of, or records what has been said in the course of, a communication between a lawyer and his client in the exercise of his rights of defence in public authority proceedings. This status of the document has to be clear from the document itself.

The situation of legal counsels is special, as in their case the client is their employer, so communications within the firm with the counsel are also protected by law.

b. What are the conditions that must be fulfilled in order to benefit from legal privilege?

The duty of professional secrecy is independent of the mandate of the lawyer. This means that the obligation of professional secrecy arises from the first lawyer-client relationship. It is therefore not conditional on the client giving the lawyer an actual, formal mandate. The lawyer is under an obligation to keep the entrusted secret even after the entrustment has been completed or after the entrustment contract has been terminated either by the client or by the lawyer.

The duty of professional secrecy shall continue to apply without time limit after the termination of the practice of the profession of lawyer or the termination of the legal relationship.

A legal counsel registered at the Bar is under no obligation of confidentiality towards his employer with whom he has acquired knowledge of the attorney-client privilege in the course of his employment, nor towards the employer or towards persons designated by his client.

c. What is the extent of the protection and what are the limits?

i. What type of documents are included?

Lawyer-client privilege means all facts, information and data of which a lawyer becomes aware in the course of carrying out his or her duties. The obligation of professional secrecy also applies to any document or other medium containing a lawyer's secret.

ii. Can the lawyer refuse to testify in legal proceedings?

A practitioner of the profession of lawyer shall refuse to testify and disclose information about a lawyer's privilege in any official or judicial proceedings, unless he has obtained a waiver of the



obligation of professional secrecy from the person entitled to have access to the lawyer's privilege.

The determining factor in relation to an attorney-client privilege is whether the attorney learned the fact or information that constitutes a privilege while acting as a defender of the attorney-client privilege or in some other form of representation. In the former case, the interest protected by the privilege is protected by an inescapable prohibition on evidence, because the lawyer cannot be questioned as a witness, even despite the consent of the person entitled to the privilege, about a fact of which he has acquired knowledge in his capacity as a defence counsel. Please note though that inhouse counsels shall not be defenders in criminal cases, they may only be legal representatives of the legal person which is employing them.

The law does not prohibit the interrogation of a lawyer as a witness about a fact which was not known in a defensive capacity and which is relevant to the evidence as the holder may waive the obligation of confidentiality.

Lawyer-client privilege also protects the information covered by lawyer-client privilege from the authorities investigating the lawyer's activities. This means that the authorities are not entitled to know this information during an official investigation of the lawyer (e.g. a search by the investigating authorities, a tax audit), and the lawyer has an explicit duty to protect the lawyer's privilege before the authorities.

The lawyer is responsible for keeping the secret entrusted to him. A lawyer who breaches a confidentiality obligation may be subject to disciplinary proceedings before the competent Bar Association. The disciplinary board of the bar, if it finds that the lawyer is responsible, may impose a disciplinary sanction on him, which may be a fine or, in more serious cases, disbarment. In addition to his ethical responsibility towards the professional body, a lawyer may also be liable under substantive and criminal law.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

All kind of legal proceedings are covered, the confidentiality of the communication between the counsel and the client applies in every case, because it origins from the legal activity, not from the type of the proceeding.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

As based on the Act Nr. LXXVIII. of 2017 on the Activities of Lawyers inhouse counsels are also considered as lawyers performing activities of lawyers, yes, the regulations of legal privilege shall also be applied to inhouse counsels as well. The only difference that the Act provides for inhouse counsels is a further exception to the exemption from the obligation of professional secrecy: he is under no obligation of secrecy towards his employer with whom he has acquired the attorney-client privilege in the context of his employment, nor towards the employer or the persons designated by his client.

- d. Please indicate the name and date of the applicable law providing for the legal privilege.

Act Nr. LXXVIII. of 2017 on the Activities of Lawyers

7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No, as the status of the inhouse counsels have been amended lately with the Act Nr. LXXVIII. of 2017 on the Activities of Lawyers coming into effect on 1st January, 2018.

This legislation that came into force on 1<sup>st</sup> January, 2018 brought legal advisers and attorneys/advocates - as similar activities - into the same bar associations. However, these regional bar association have a separate bar association section for counselors. Also, legal counselors have their separate section within the Hungarian Bar Association: the temporary National Bar Council (NCCL) functioned from 5 March 2018 to February 2019, and the new NCCL was established in March 2019 for a 4- year term. The NCCL shall act primarily in the interests of legal advisers, who have the right of attendance, right of deliberation, organisation of joint events. Anyone is free to express their views and make comments on the functioning of the section.

8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

A unique feature of the legal adviser's legal relationship from a liability point of view is that, unlike a lawyer, the legal adviser is not required to have a lawyer's liability insurance pursuant to Section 25 of the Act on the Lawyer's Activities. The employer, as the party responsible for the employee's activities, is liable to third parties for claims for damages and compensation for damages under the rules on liability for employee damages (§ 6:540 of the Civil Code Act V of 2013)

There is interchangeability between lawyers and legal counsels, so anyone who has not been a lawyer but has practiced as a legal counsel for a year can apply to be admitted to the Bar as a lawyer.

## 12. Ireland

No.	Question	Response <sup>18</sup>
1.	Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.	Republic of Ireland
2.	Do the regulations in your jurisdiction allow the in-house counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?	Yes.
2(a)	If yes:	
2(a)(i)	Please indicate the name and date of the applicable regulations allowing it,	<ul style="list-style-type: none"> <li>• <b>Solicitors:</b> The Solicitors Acts 1954-2015 (the <b>Acts</b>) set out the general framework for the regulation and education of solicitors in Ireland, including eligibility to practice as a solicitor in Ireland. All ‘practicing solicitors’ (i.e. qualified solicitors engaging in the provision of legal services) must be registered with the Law Society of Ireland (the <b>Law Society</b>) pursuant to the Acts, including in-house solicitors. Membership of the Law Society is also open to non-practising</li> </ul>

<sup>18</sup> **NOTE:** The legal profession in Ireland is split into two categories:

1. **Solicitors:** Provide general legal advice and representation and are members of the Law Society of Ireland; and
2. **Barristers:** Their primary role is to act as advocates in court and many are members of the collective structure of the Bar of Ireland, known as the “Law Library” (but this is optional).

The responses to this questionnaire address each profession separately, where necessary.

Both professions are subject to additional general regulation and oversight by the Legal Services Regulatory Authority or ‘LSRA’. The LSRA is not a “bar association” as such, and in general is primarily responsible for investigating complaints against legal practitioners.

No.	Question	Response <sup>18</sup>
		<p>solicitors, i.e. qualified solicitors who do not / no longer provide legal services.</p> <ul style="list-style-type: none"> <li>• <b>Barristers:</b> Barristers are largely self-regulated by the Bar of Ireland. Membership of the “Law Library” is optional and is governed by the “<i>Rules of Membership of the Law Library</i>”. In-house barristers can be members of the Law Library and obtain membership to gain access to the resources available to its members.</li> </ul> <p>As a standalone requirement, the Acts provide that <i>all</i> ‘practising barristers’ (i.e. qualified barristers engaging in the provision of legal services), must apply to the Legal Services Regulatory Authority (<b>LSRA</b>) to be added to the Roll of Practising Barristers. This includes “<i>barristers in employment</i>” i.e. in-house counsel.</p> <ul style="list-style-type: none"> <li>• Lawyers qualified to practise in another EU Member State may also become members of the Law Society or the Bar Council pursuant to the Establishment Directive (98/5/EC). These are known as EU Registered Lawyers. In practice, the number of EU Registered Lawyers in Ireland is negligible (approx. 20 across both professions). A majority of EU Qualified Lawyers work in-house.</li> </ul>
2(a)(ii)	what are the legal requirements that the in-house counsel has to fulfil to become member of the bar association?	<ul style="list-style-type: none"> <li>• <b>Solicitors:</b> To become a member of the Law Society as a “<i>practising solicitor</i>”, a person (including a person wishing to work as an in-house solicitor) must: <ul style="list-style-type: none"> <li>○ pass a series of Law Society exams and complete a two-year traineeship in a law firm (during the traineeship, a trainee must attend several months of academic instruction before taking certain Law Society exams);</li> <li>○ apply for entry onto the “<i>Roll of Solicitors</i>” maintained by the Law Society;</li> </ul> </li> </ul>

No.	Question	Response <sup>18</sup>
		<ul style="list-style-type: none"> <li>○ once entered, apply to the Law Society for a “<i>practising certificate</i>” (unless exempt from this requirement<sup>19</sup>); and</li> <li>○ Provide evidence of professional indemnity insurance cover (or an exemption).</li> <li>○ Renew the practising certificate every year while the solicitor continues to provide legal services.</li> </ul> <ul style="list-style-type: none"> <li>● <b>Barristers:</b> Membership of a national bar association is not mandatory. However, most barristers are members of the Law Library of Ireland. To join the Law Library as an in-house barrister, a person must: <ul style="list-style-type: none"> <li>○ Be a “<i>qualified barrister</i>”,<sup>20</sup></li> <li>○ Confirm that they have been added to the “<i>Roll of Practising Barristers</i>” maintained by the LSRA;</li> <li>○ Provide evidence of membership of the Law Library professional indemnity insurance scheme or of a policy of professional indemnity insurance acceptable to the Library Committee.</li> </ul> </li> <li>● Where a practising barrister chooses not to be a member of the Law Library, he/she must pay an annual levy directly to the LSRA. This levy also applies to practising legal professionals who are members of the Law Library/Law Society but, in those cases, those associations discharge the fee on behalf of the member. The fee is incorporated into the membership fees for those associations.</li> </ul>
2(a)(iii)	what are the rights and obligations of the in-house counsel as member of the bar association?	<p><b><u>Solicitors:</u></b></p> <p>9. In-house solicitors with a “<i>practising certificate</i>” from the Law Society can provide a full range of legal services, but only to one client; their employer.</p>

<sup>19</sup> Solicitors employed by the State do not require a practising certificate.

<sup>20</sup> A barrister is a ‘qualified barrister’ if he or she: (a) Has been admitted to the Barrister-at-Law degree by the Honorable Society of King’s Inns; (b) Has been called to the Bar of Ireland; or (c) Is a ‘registered lawyer’ under the EC (Lawyers’ Establishment) Regulation.

No.	Question	Response <sup>18</sup>
		<p>10. In-house solicitors are subject to the same requirements and rules that apply to solicitors in private practice. For example, they must:</p> <ol style="list-style-type: none"> <li>Comply with a range of statutory rules of professional conduct including under the Acts, the LSRA Act 2015, and privacy / data protection and money laundering / terrorist financing law;</li> <li>Adhere to range of non-statutory rules of professional conduct, including specific practice notes and directions as well as the “<i>Solicitor’s Guide to Good Professional Conduct</i>” (which represents Law Society’s policy and recommendations, but does not have the force of law); and</li> <li>Comply with annual continuous professional development ‘CPD’ requirements;</li> </ol> <p><b><u>Barristers:</u></b></p> <ol style="list-style-type: none"> <li>Barristers working in-house can represent their employers in court, at tribunals or hearings and provide other appropriate legal services to their employers.</li> <li>As with all practising barristers, barristers working in-house must comply with relevant statutory rules set out in the Acts and elsewhere.</li> <li>The LSRA issues additional rules and guidance for barristers, including specific rules for barristers working in house e.g., ‘<i>Guidance for Practising Barristers in Employment in Respect of the Roll of Practising Barristers</i>’.</li> <li>Barristers working in-house who are members of the Law Library must comply with the Code of Conduct for the Bar of Ireland and other rules, regulations and guidance issued by the Bar of Ireland.</li> </ol>
2(a)(iv)	Does the in-house counsel belong to the same social security and retirement plan system as the lawyer?	<ul style="list-style-type: none"> <li>Yes, generally speaking. However, there is no sector-specific social security and/or retirement plan system for lawyers in Ireland. All lawyers, in-house and otherwise, are subject to the same social security and retirement plan systems as the general working population. Applicable rules and requirements will vary based on an individual’s personal circumstances and nature of employment and whether they are an</li> </ul>

No.	Question	Response <sup>18</sup>
		employee or self-employed, independent of membership of the legal profession.
2(a)(v)	Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the in-house counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the in-house counsel's bar membership and legal privilege.	<p><b><u>Challenges to Bar Membership</u></b> This issue is not applicable in Ireland. There is no difficulty with in-house counsel being members of the relevant bar association.</p> <p><b><u>Challenges to Legal Privilege</u></b> Irish case law recognises that in-house counsel often perform many functions for their clients, but underlines that independence is of paramount importance when assessing the appropriateness of an assertion of legal professional privilege. The High Court case of <i>F&amp;C Reit Property Asset Management plc v Friends First Managed Pension Funds Ltd.</i> [2017] IEHC 383 demonstrates that for legal professional privilege to apply, the Irish courts must be satisfied that an in-house counsel was dispensing independent legal advice in their capacity as a professionally qualified lawyer, as distinct from dispensing general advice in their capacity as a ‘<i>man of business</i>’.</p> <p>The court formulated a test for the determination of whether legal professional privilege attached to in-house counsel in Irish law as follows:</p> <p><i>“Does the evidence disclose that at the material time the person claiming legal professional privilege was in fact acting as an independent legal adviser to his employer? If the evidence discloses that he acted in such a capacity, then his communications are privileged. If, on the other hand, the evidence shows that he was acting as a principal rather than as a legal adviser, then the privilege may not attach”.</i></p> <p>Whether or not privilege attaches to an in-house counsel depends on the facts of each particular case.</p>
3(a)(i) – (vi)	<p>If the in-house counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?</p> <p>a. If yes:</p> <p>i. please indicate the name of such</p>	N/A

No.	Question	Response <sup>18</sup>
	<p>authority or association and the name and date of the applicable law providing for it.</p> <p>ii. what are the legal requirements that the in-house counsel has to fulfil to register with the special in-house counsel register ?</p> <p>iii. what are the rights and obligations of the in-house counsel who is registered with the special in-house counsel register?</p> <p>iv. Is the in-house counsel subject to a code of ethics?</p> <p>v. Is there some kind of disciplinary body to enforce the code of ethics?</p> <p>vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the in-house counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the in-house counsel's bar membership and legal privilege.</p>	



No.	Question	Response <sup>18</sup>
4	Can the in-house counsel represent its employer in court and if so, before which courts?	<p>Yes. Qualified barristers entered on the Roll of Practising Barristers and qualified solicitors who hold a “<i>practising certificate</i>” have rights of audience to represent their client (which includes their employer) before the courts and may also represent them at tribunals, inquiries, hearings etc. In practice, clients are almost exclusively represented by barristers in the higher courts i.e. the High Court, Court of Appeal and Supreme Court and solicitors rarely exercise this right. EU Registered Lawyers (see 2(a)(i) above) also enjoy rights of audience before the Irish courts and can practice local law in association with an Irish lawyer. Though not concerning an in-house lawyer, a recent Irish Supreme Court case held that <i>visiting</i> EU-qualified lawyers also have rights of audience before an Irish court despite failing to comply with the strict legal requirements of their right to provide legal services before the courts of an EU Member State (<i>Klohn v An Bord Pleanála</i> ([2021] IESC 30).</p>
5	Legal Privilege	
5(i)	Does the in-house counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the in-house counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?	<p>Yes. The Irish High Court confirmed this relatively recently, noting that ‘lawyer’ for the purpose of claiming legal professional privilege “<i>includes solicitors, barristers, salaried in-house legal advisers, foreign lawyers and the Attorney General</i>” (<i>McMahon v Irish Aviation Authority</i> [2016] IEHC 221).</p> <p>This principle dates to the Irish Supreme Court decision of <i>Geraghty v Minister for Local Government</i> [1975] IR 300 which approved an English Court of Appeal decision in which it was held:</p> <p style="padding-left: 40px;"><i>“there can be no difference between the position of a full-time salaried legal adviser employed by a government department, a local authority, an industrial concern or any single employer, and the position of a legal adviser who practises his profession independently and is rewarded for his services by fees”.</i></p> <p>However, it is important to note that privilege will only apply to communications containing legal advice and made by in-house counsel in their capacity as <i>legal advisor</i> to their client (i.e. the business that employs them). Communications made by in-house counsel in any of the other capacities in which they can frequently act (e.g. business, commercial, administrative, executive) or the discharge of any function besides that of providing legal advice are not protected by privilege.</p>

No.	Question	Response <sup>18</sup>
		<p>Please see 2(a)(v) above for relevant case law on this point.</p> <p>Note, however, an exception at 5(i)(1)(f)(iii) below regarding European Commission competition law investigations.</p>
5(i)(1)	If yes:	
5(i)(1)(a)	Is the privilege based in statute or regulation, or is it based in common law?	Common law. In certain circumstances, additional statutory protections apply <sup>21</sup> . Privilege can also be limited by statute. <sup>22</sup>
5(i)(1)(b)	The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?	Yes. In Ireland, it is more commonly referred to as the “dominant purpose” theory.
5(i)(1)(b)(i)	If yes, please explain briefly your jurisdiction’s adopted version of this theory:	<p>The Irish Courts have referred to the right to claim legal professional privilege and the right to protect privileged documents from disclosure as “one of the great bulwarks of our legal system” (<i>IBRC &amp; Ors v Quinn &amp; Ors [2015] IECA 84</i>) Ireland recognises two categories of legal professional privilege, and both rely on the dominant purpose theory:</p> <ul style="list-style-type: none"> <li>• <b><u>Legal advice privilege:</u></b> protects confidential information contained in communications between a lawyer and their client in the context of a professional legal relationship where the communication is made for the <b>dominant purpose</b> of seeking, giving or receiving legal advice; and</li> <li>• <b><u>Litigation privilege:</u></b> applies to communications between persons engaged in or preparing for litigation or, in more recent times, a regulatory investigation and which protects confidential communications between</li> </ul>

<sup>21</sup> For example, the Data Protection Act 2018 allows persons to assert legal professional privilege on receipt of requests for data made by the Data Protection Commission and/or data subjects. If the data would be exempt from production in court proceedings on the basis of legal professional privilege, this is a valid basis upon which to refuse to disclose the documents under the act.

<sup>22</sup> For example, S. 45 of the Courts and Officers Act 1995 allows the court to make rules requiring the disclosure of certain documents/ expert reports, names of witnesses, etc. relating to personal injuries actions, notwithstanding privilege.

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		a lawyer and a client or between one of them and a third party, the <b>dominant purpose</b> of which is use in connection with actual or contemplated litigation or a regulatory investigation.
5(i)(1)(c)	The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)? (i) If yes, please explain briefly your jurisdiction's adopted version of this theory:	No.  N/A
5(i)(1)(d)	If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.	N/A
5(i)(1)(e)	What are the conditions that must be fulfilled in order to benefit from legal privilege?	<ul style="list-style-type: none"> <li>• The test for <b>legal advice privilege</b> is: <ul style="list-style-type: none"> <li>a. There must be a <b>communication</b> made between a person and their lawyer for the purpose of obtaining legal advice;</li> <li>b. The <b>dominant purpose</b> of the communication must be to give or receive <b>legal advice</b>;</li> <li>c. The communication at issue must be <b>made in confidence</b> and be <b>confidential</b> in nature; and</li> <li>d. A professional <b>lawyer-client relationship</b> must exist between the person and the lawyer.</li> </ul> </li> <li>• The test for litigation privilege was recently articulated by the Irish High Court as follows: <ul style="list-style-type: none"> <li>a. Was the litigation / regulatory investigation <b>reasonably</b> apprehended at the time the documents in question were brought into being;</li> <li>b. Were the documents in question <b>brought into being</b> for the <b>purpose</b> of</li> </ul> </li> </ul>

No.	Question	Response <sup>18</sup>
		<p>that <b>litigation</b> / regulatory investigation;</p> <p>c. If the documents were created for <b>more than one purpose</b>, the documents will be protected by litigation privilege in the event that the <b>litigation</b> / regulatory investigation was the <b>dominant purpose</b>;</p> <p>d. The <b>party claiming privilege</b> has the <b>onus of proving</b> that the documents are protected by privilege.</p> <p>If not actually live, the proximity of the litigation should be such that it must be reasonably apprehended or threatened, beyond a mere possibility.</p>
5(i)(1)(f)	What is the extent of the protection and what are the limits?	<ul style="list-style-type: none"> <li>• <b><u>Legal Advice Privilege:</u></b> Legal advice privilege is only capable of applying to confidential communications between a client and their lawyers. There is a limited exception where a third party has a 'common interest' in the legal advice sought by the client and/or received from the lawyer.</li> <li>• Legal advice privilege is permanent. It remains for the duration of the legal professional relationship and continues to operate even after the relationship has ceased. The purpose behind the permanency is to assure clients that they can freely communicate with their lawyer, without fear of disclosure at any point in the future. The Irish courts have quoted with approval the phrase, "once privileged, always privileged" in relation to legal advice privilege.</li> <li>• <b><u>Litigation Privilege:</u></b> Litigation privilege can apply to confidential communications between a client and their lawyer, and a third party as well.</li> <li>• There is greater uncertainty as to the duration of litigation privilege. Where litigation privilege is linked to particular proceedings, it can sometimes continue where the subject matter of the initial proceedings is subsequently litigated in related proceedings. The proceedings must be sufficiently connected, but whether this is the case depends on several factors. Parties to litigation should</li> </ul>

No.	Question	Response <sup>18</sup>
		<p>not assume that a connection between sets of proceedings will be sufficient to deem the proceedings "closely related" meaning that privilege would be preserved.</p> <ul style="list-style-type: none"> <li>• <b>Confidentiality:</b> Importantly, a document or communication must be confidential to attract privilege under Irish law. If a document's confidential character is lost, either by waiver, express or implied, or in some instances by accident, via disclosure or dissemination, then privilege will not apply except in limited circumstances.</li> <li>• <b>Other circumstances where privilege may be lost/overridden include:</b> <ul style="list-style-type: none"> <li>○ where privilege is overridden by statute (see more at 5(i)(1)(a) above);</li> <li>○ some instances of disputes over testamentary dispositions; and</li> <li>○ in some proceedings which involve the welfare of minors.</li> </ul> </li> </ul>
5(i)(1)(f)(i)	What type of documents are included?	<ul style="list-style-type: none"> <li>• Legal professional privilege (both Legal Advice Privilege and Litigation Privilege) attaches to a broad range of communications and/or documents if the relevant test for privilege is satisfied.</li> <li>• In the context of discovery, the term "<b>Documents</b>" has been interpreted broadly to include hard copy and electronic communications, information and data such as agreements, letters, emails, diary entries, minutes, text messages phone records, voicemails, power-point presentations, photographs, internet pages, pitches, spreadsheets, accounts, cheques, receipts, invoices, and any other such documents, whether in draft or final form. Discovery may also extend to personal devices (phones, laptops, PCs, personal files etc.)</li> <li>• "<b>Communications</b>" are also interpreted broadly and generally capture all correspondence and conversations between lawyer and client.</li> <li>• <b>Other points to note:</b></li> </ul>

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		<ul style="list-style-type: none"> <li>○ The law will not protect a so-called ‘<i>pre-existing document</i>’ from disclosure, i.e., a document created for some other purpose prior to the client seeking legal advice.</li> <li>○ Legal advice privilege applies only to requests for legal advice communicated <i>to a lawyer</i>, or advice <i>between</i> the client and lawyer.</li> <li>○ Privilege generally encompasses information gathered by the lawyer and incorporated into the advice tendered to the client, which might be said to comprise a lawyer’s “work product”. However, <i>not every fact</i> that may come to the lawyer’s attention during the course of the relationship with the client will be privileged.</li> </ul>
5(i)(1)(f)(ii)	Can the lawyer refuse to testify in legal proceedings?	<ul style="list-style-type: none"> <li>● Sometimes. For example, where a lawyer is asked to attend court to give evidence of matters that are within lawyer/client confidentiality, they should not attend unless they receive a witness summons or subpoena. Otherwise, it is a matter for the court, not for the lawyer, to decide whether a matter is confidential. Where required, the lawyer can explain to the court that certain information is confidential (as opposed to privileged), and then leave the matter in the hands of the court to decide.</li> <li>● Separately, privilege belongs to the lawyer’s client (or prospective client), not the lawyer. A lawyer cannot be compelled to disclose privileged communications unless ordered to do so by a court. A civil court or tribunal cannot draw adverse inferences where legal professional privilege is claimed. Participants in non-contentious proceedings (such as statutory inquiries), including in-house counsel, may rely on the right against self-incrimination where applicable.</li> <li>● While not directly related to legal professional privilege, in a criminal context, inferences may be drawn from an accused’s invoking of the privilege against self-incrimination / right to silence. Such an inference may be drawn where the offence concerned is an “<i>arrestable</i>”</li> </ul>

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		<i>offence</i> ” (i.e. an offence for which a person can be imprisoned for 5 years or more).
5(i)(1)(f)(iii)	What type of proceedings are covered – civil proceedings, criminal proceedings, dawn raids from authorities, such as tax, competition law authorities, FDA, ...?	<p>Legal professional privilege applies to a broad range of proceedings, as follows:</p> <ul style="list-style-type: none"> <li>• Legal advice privilege may be relied upon in <b>all circumstances</b>, including in non-contentious matters which may require the production or disclosure of documents (for example, pursuant to a request from a regulator).</li> <li>• Legal professional privilege can be relied upon before tribunals, inquiries and regulatory or criminal investigations.</li> <li>• Legal professional privilege applies in both criminal or civil litigation, with the exception of documents/communications created in furtherance of a criminal or fraudulent activity or conduct injurious to the administration of justice.</li> <li>• Unless agreed otherwise in advance, the Irish High Court can make orders compelling either party to produce relevant documentation in the context of Irish arbitration proceedings; this is subject to the same legal professional privilege protections afforded to parties in litigation.</li> <li>• Both the Labour Court and adjudication officers appointed by the Workplace Relations Commission can compel parties to produce relevant documents; this is subject to the same legal professional privilege protections afforded to parties in litigation.</li> </ul> <p><b>Exception:</b> Legal professional privilege does not apply to legal advice provided by in-house counsel to their employers, or communications between in-house counsel and their employers, in competition investigations conducted by the European Commission.</p>
5(i)(1)(f)(iv)	Is the legal privilege linked to a duty of confidentiality by the in-house counsel?	<p>Not specifically. Lawyers are expected to maintain the highest standards of client confidentiality in carrying out their work and their professional duty of confidentiality extends beyond legal privilege. The duty of confidentiality applies:</p> <p>(i) to all communications passing between a lawyer and their clients (or former clients); and</p> <p>(ii) to the existence of the relationship.</p>

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		<p>A client's affairs can only be disclosed with the consent of the client, by the direction of a court, or to a body requiring disclosure while exercising its statutory powers. The lawyer's professional duty of confidentiality overrides any inclination he/she may have as a dutiful citizen to report any matter to the authorities or to cooperate with them against the interest of the client. This duty also applies to in-house counsel.</p> <p>In-house counsel may also have a statutory or contractual duty of confidentiality to their employer, especially if they are employed in the public sector.</p> <p>It should be noted, however, that the document or communication over which privilege is asserted must itself be confidential in nature to attract privilege under Irish law (see further S. 5(i)(1)(f) above).</p>
5(i)(1)(g)	Please indicate the name and date of the applicable law providing for the legal privilege.	The principles underpinning legal professional privilege developed incrementally over time at common law and in some cases can be supplemented by statutory protections and/or limited by statutory restrictions (see 5(i)(1)(a) above). Accordingly, there is no single piece of legislation or case law laying down all the requirements, principles, policies, etc. for legal professional privilege in Ireland. A composite list of all relevant case law and legislation extends beyond the scope of this questionnaire.
6.	Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of in-house counsels or the protection of legal privilege?	Not at present. However, The Review of the Administration of Civil Justice (Dublin, 2020), a report prepared by the Irish Civil Justice Review Group, chaired by Mr. Justice Peter Kelly, former President of the Irish High Court (the <b>Kelly Report</b> ) proposes radical changes for the law of discovery in Ireland. Although not yet implemented, the Kelly Report proposes to replace the discovery process with a procedure known as ' <i>production of documents</i> ', based on the approach taken by the courts at the Dubai International Finance Centre (the <b>DIFC Model</b> ). The DIFC Model strikes a balance between the common law tradition (disclosure of relevant documents upon which the party intends to rely, or which harm their own case or support their counterparty's case) and the civil law tradition (disclosure only of documents upon which a party intends to rely). Under the DIFC Model, a party can still request documents from their counterparty, but that counterparty can object to production on the basis of privilege.
7.	Is there anything else you might want to add regarding	As a general comment, the status of in-house counsel is well-established in Ireland. The Law Society and LSRA



No.	Question	Response <sup>18</sup>
	the status of in-house counsels in your jurisdiction?	issue regular guidance and practice notes specifically addressed to in-house counsel.

### 13. Italy

15. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

#### ITALIAN JURISDICTION (ITALY)

16. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

**No, if the lawyer is employed by a company. The profession of lawyer is incompatible, among other things, with any subordinate work activity even if with limited working hours. However, it has been highlighted that the use of the title of lawyer is reserved exclusively to those who are or have been registered in a register.**

**There are exceptions to the rules on incompatibility:**

- **The exercise of the profession of lawyer is compatible with teaching or research in legal subjects at universities, in public or private secondary schools and in public research and experimentation institutions and bodies.**
- **Full-time university teachers and researchers can carry out their professional activity within the limits permitted by university regulations. For this limited professional exercise they must be registered in the special list attached to the ordinary register.**
- **Registration in the special list for lawyers who carry out legal activities on behalf of public bodies is reserved.**

- a. If yes (this is the case of the registration in the special list for lawyers who carry out legal activities on behalf of public bodies is reserved):**

- i. Please indicate the name and date of the applicable regulations allowing it, **Legge 31 dicembre 2012, n. 247 “Nuova disciplina dell’ordinamento della professione forense”** into force from 2 February 2013 (published in Italian Official Journal n. 15 of 18 January 2013). Text updated on 18 July 2020.

**Link:**

**<https://www.consigionazionaleforense.it/documents/20182/51913/Legge+247-2012+-+Testo+aggiornato+al+18+luglio+2020.pdf/c8146804-2291-4c3e-b49f-f1c41a53bec0?t=1600956509000>**

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association? **To register on the list, interested parties present the resolution of the body from which there is the stable establishment of a legal office with specific responsibility for dealing of the**

**legal affairs of the institution itself and the membership of the appointed professional in this office in exclusive form of these functions; the responsibility of the office is entrusted to a lawyer registered in the special list who exercises his powers in accordance with the principles of the law professional.**

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association? **Registration in the list is mandatory to perform specific services.**

**The lawyers registered in the list are subject to the disciplinary power of the council of the order.<sup>23</sup>**

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege. **In the employment contract, autonomy and independence of intellectual and technical judgment of the lawyer is guaranteed.<sup>24</sup>**

**17. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? No.**

- a. If yes
  - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
  - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
  - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
  - iv. Is the inhouse counsel subject to a code of ethics?
  - v. Is there some kind of disciplinary body to enforce the code of ethics?

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<sup>23</sup>The lawyers registered in the list are subject to the same regulations applicable to the other lawyers members of the bar association (for example, re legal privilege, conflict of interest, etc.). Art. 23 of Legge 31 dicembre 2012, n. 247 (article on lawyers who carry out legal activities on behalf of public bodies) recalls Art. 2 on the rules applicable to lawyers (all lawyers)

<sup>24</sup>This means that according to his/her employment contract, the lawyer undertakes to exercise its profession in an autonomous and intellectually and technically independent manner.

- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

18. Can the inhouse counsel represent its employer in court and if so, before which courts? **No**

19. Legal Privilege

**Please note that in-house counsel shall observe rules on the confidentiality established in the internal rules (e.g. Ethical Code) of the company and rules on specific matters that require secrecy (e.g. market abuse provisions).**

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

- 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
    - b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
      - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
    - c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
      - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
    - d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
  - f. What is the extent of the protection and what are the limits?
    - i. What type of documents are included?
    - ii. Can the lawyer refuse to testify in legal proceedings?
    - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
    - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
  - g. Please indicate the name and date of the applicable law providing for the legal privilege.
20. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege? **No**
21. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

**The Italian Association of Corporate Lawyers/ Associazione Italiana Giuristi di Impresa (A.I.G.I.) was established in 1976 by a small group of heads of legal departments of large companies, with the aim of enhancing the figure and role of the corporate lawyer by promoting - similarly to what already happened in other countries – legal status.**

**The Corporate Lawyer - who works for the Company to which he/she belongs - combines the managerial role with the contribution of his/her specific legal skills, contributing with the other company functions to the formation of the Company's decision-making processes.**

**On 5 December 2013 the A.I.G.I. has obtained registration in the list of unregulated professions kept by the Ministry of Justice: this in implementation of Legislative Decree 9 November 2007, n. 206, which implemented Directive 2005/36/EC (Qualifications Directive Professional).**

**The Association's aim is the promotion, training and development of corporate lawyers and their role in Italy.**

**Link: <https://www.aigi.it/>**

## 14. Japan

### UIA Japan National Committee - Responses

22. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

**Answer: JAPAN (in the sense of both (a) and (b)).**

23. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

**Answer: Yes.**

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

**Answer: The Attorneys Act of Japan (Act No. 205 of 1949, as amended) does not regulate this issue. Articles 50 and 51 (Chapter 5) of the Lawyers Professional Ethics Guideline (“*bengoshi syokumu kihon kitei*” in Japanese), being the basic regulations of the Japan Federation of Bar Associations applicable to all lawyers in Japan, squarely refer to inhouse counsels.**

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

**Answer: There is no special requirement applicable to inhouse counsels.**

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

**Answer: Their rights and obligations are the same as those of other lawyers working for law firms.**

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

**Answer: It depends on the relationship between the employer company and the inhouse counsels. They are often bound to an employment agreement, in which case employee’s pension (“*kousei nenkin*” in Japanese) would apply.**

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

**Answer: At the level of regulations and/or case laws, no such argument has been officially recognized.**

24. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

**Answer: Not applicable (because the inhouse counsel is allowed to be a member of the bar association without any problems).**

- a. If yes:
  - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
  - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
  - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
  - iv. Is the inhouse counsel subject to a code of ethics?
  - v. Is there some kind of disciplinary body to enforce the code of ethics?
  - vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

25. Can the inhouse counsel represent its employer in court and if so, before which courts?

**Answer: Yes. The inhouse counsel may represent its employer in any courts.**

26. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

**Answer: No. At the outset, there is no “legal privilege” for lawyers under Japanese law (except in anti-trust investigation of the Fair Trade Commission of Japan under limited circumstances).**

- 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
- g. Please indicate the name and date of the applicable law providing for the legal privilege.

27. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

**Answer: At least officially, we are not aware of such initiatives.**

28. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

**Answer: No.**





## 15. Mexico

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

### MEXICO

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

There is no law which imposes any restriction to the legal profession of inhouse

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Same as any other attorney, no difference. In Mexico being a member of a bar is not mandatory

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

Same as other members, no distinction

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

yes

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

In Mexico such argument has not been addressed

4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? **NO.**

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

5. Can the inhouse counsel represent its employer in court and if so, before which courts?

yes, before any court

6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

no distinction

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Yes we have attorney-client privileged

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose

of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

yes, that is the general rule applicable for any attorney

i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

N/A

e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

same as any attorney

f. What is the extent of the protection and what are the limits?

i. What type of documents are included?

ii. Can the lawyer refuse to testify in legal proceedings?

iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

No specific limits but an attorney can refuse to testify in proceedings related to the clients

g. Please indicate the name and date of the applicable law providing for the legal privilege.

N/A no it is the general law

7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

**No.**

8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

**No.**

## 16. The Netherlands

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

### **The Netherlands.**

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

**Yes.**

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

**Article 5.9(g) of the Legal Profession Bye-Law (*Verordening op de Advocatuur*).**

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

**According to Article 5.9(g) of the Legal Profession Bye-Law, a lawyer can practice law while employed by another employer, as long as the lawyer exclusively represents that employer or legal entities in the employer’s group, and the activities primarily focus on the practice of law. The lawyer is obligated to obtain a professional charter signed by the employer according to Article 5.12(1) of the Legal Profession Bye-Law and has to provide a copy to the president of the bar association according to Article 5.15(1) of the Legal Profession Bye-Law.**

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

**An inhouse counsel as member of the bar association has legal professional privilege, can have confidential communications, is able to represent the employer in court, has ongoing authority to negotiate settlements in court and must be enabled to pursue education. Moreover, the employed lawyer can maintain independence from their employer. Based on the signed professional charter, the employer must refrain from influencing the lawyer’s professional conduct and cannot dismiss an employed lawyer due to differences in professional conduct.**

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

**Yes**

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

**As stated above, the employed lawyer can maintain independence from the employer. Based on the signed professional charter, the employer must refrain from influencing the lawyer's professional conduct and cannot dismiss an employed lawyer due to differences in professional conduct.**

- 4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

**Does not apply, because inhouse counsels are allowed to be a member of the bar association. However, the inhouse counsel can also become a member of the Dutch association of inhouse counsels, named *Nederlands Genootschap van Bedrijfsjuristen* or 'NGB'.**

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

- 5. Can the inhouse counsel represent its employer in court and if so, before which courts?

**If the inhouse counsel is a member of the bar association, it can represent the employer before the Dutch court and before the courts of all member states as per Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998.**

6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

**Yes, but only if the inhouse counsel is a member of the bar association and has signed a professional charter.**

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

**According to Article 2.3 of the Code of Conduct for European Lawyers, members of the bar association have a duty of confidentiality. The Dutch Supreme Court has also determined that all inhouse counsels benefit of legal privilege, as long as they are a member of the bar association and are in possession of a signed professional charter (Supreme Court 24 May 2022, ECLI:NL:HR:2022:760, r.o. 4.4.2.).**

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

**Yes.**

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

**The Dutch Supreme Court stated that a member of the bar association can only invoke legal privilege with respect to what has been entrusted to him/her in his/her professional capacity. Therefore, a lawyer or inhouse counsel is only entitled to legal privilege with respect to the knowledge he/she has acquired in the normal exercise of the profession, which means that the knowledge must be entrusted to him/her in the**

**context of legal services to a client who has turned to him/her because of his/her capacity as a lawyer (Supreme Court Raad 24 May 2022, ECLI:NL:HR:2022:760, r.o. 4.5.).**

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

**No.**

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

**As stated above, a lawyer or inhouse counsel is only entitled to legal privilege with respect to the knowledge he/she has acquired in the normal exercise of his/her profession, which means that the knowledge must be entrusted to him/her in the context of legal services to a client who has turned to him/her because of his/her capacity as a lawyer.**

- f. What is the extent of the protection and what are the limits?
- i. What type of documents are included?

**This includes all documents that have been entrusted in his/her capacity as a lawyer.**

- ii. Can the lawyer refuse to testify in legal proceedings?

**Yes.**

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

**As far as I know this covers at least civil and criminal proceedings.**



- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

**Yes, according to Article 2.3 of the Code of Conduct for European Lawyers, members of the bar association have a duty of confidentiality.**

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

**Article 165(2)(b) of the Dutch Code of Civil Procedure and Article 218 of the Dutch Code of Criminal Procedure.**

7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

**No, not that I am aware of.**

8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

**No.**

**Annex: Professional Charter for the employed lawyer**

Related to section 25 of the Legal Profession Regulations

The undersigned:

1. .... located at .....  
hereinafter referred to as 'the employer  
2. .... residing at .....  
hereinafter referred to as 'the employee

whereas:

- a. That the employee has been employed by the employer since..... as., which employment in full working time/in part-time .....namely;
- b. That the parties consider it desirable that the employee (henceforth) performs his activities within the present employment in the capacity of an attorney at law and that the employee wishes to be/is registered on the tableau in the district of.....as an attorney at law, while entering/remaining in the service of the employer;
- c. That the employer has a general and personal responsibility towards the overall running of his company;
- d. That the profession of lawyer should be exercised in freedom and independence under the rules of professional conduct applicable to lawyers and that the employee therefore has his own personal responsibility with regard to his professional conduct as a lawyer;
- e. That in addition to the employment contract/officer relationship applicable in this matter, a further agreement is necessary regulating the individual responsibility of the lawyer in relation to the responsibility of the employer as described above, for as long as the practice

in the present employment continues;

- f. That Article 5.12 of the Regulation on the Legal Profession provides that the practice of law in employment by the lawyer in the service of an employer as mentioned in Article 5.9, subsections, e, f and g as well as with an employer as mentioned in Article 5.9, subsections c and d, if the majority of the control of the practice legal entity is vested in non-lawyers, is only allowed if, in accordance with the model professional statute as referred to in Article 5.12(3), the employer has undertaken in writing to respect the independent practice of law and to promote undisturbed compliance with the lawyer's rules of professional conduct, including the provisions of that Regulation.

agree as follows:

#### Article 1

The employee shall retain the capacity of lawyer in all activities that occur within the employment relationship and shall always make this capacity clearly known to third parties. The employer shall avoid giving third parties the impression that the employee is acting in any other capacity in relation to his activities within that employment.

#### Article 2

The employer shall respect the employee's free and independent professional practice. As the employer, he shall refrain from everything that may influence the professional conduct of the employee and the professional determination of a policy to be followed in a case, without prejudice to the provisions of Article 7. The employer shall ensure that the employee is not disadvantaged in respect of the above where his position as an employee is concerned.

#### Article 3

The employer shall enable the employee to fulfil his obligations under his membership of the Dutch Bar Association and his local Bar Association, including internship and training obligations.

#### Article 4

The employer shall enable the employee to comply with the rules of professional conduct applicable to lawyers. He shall ensure that the employee is completely free not to take on the defence of the interests of two or more parties if the interests of those parties conflict or if a development is likely.

The employer shall enable the employee to comply with his obligations as a lawyer with regard to confidentiality of information and the free and unfettered exercise of the right to privilege in relation to the cases he handles and the nature and scope of related interests. The employer shall refrain from doing anything to enable others than the employee, the client, persons designated by the client or the staff working in the law practice to take cognisance of such data. If necessary, the employer shall adapt the organisation and set-up of the firm to the above, and shall enable the employee to properly conduct his law practice by providing adequate resources.

#### Article 5

With regard to the employer, the employee is obliged to follow the instructions given to him by or on behalf of the employer to promote order and the smooth running of the organisation, including the quality of services, as long as they do not conflict with the provisions of this agreement.

#### Article 6

The employer shall enable the employee to arrange for appropriate substitution of his work by another lawyer during his absence due to holidays, special leave or illness at the employer's expense.

#### Article 7

The employer may provide that the employee is accountable in respect of his practice to one or more other lawyers practising in the employer's employ.

#### Article 8

Without prejudice to the provisions of the previous article, differences of opinion on the professional policy of the employee in handling matters entrusted to him shall not constitute grounds for unilateral termination of the employment relationship by the employer, or measures that may lead to it.

#### Article 9

The employer will not impose any obstacle on the employee with regard to work as a lawyer to be performed by him after the termination of the present employment.

#### Article 10

The parties may each refer any disputes that may arise in relation to the application of this agreement to the Bar Council in the district where the employee holds office as a lawyer, for mediation and advice. The other party shall give its full cooperation to such an initiative.

#### Article 11

This agreement ends upon termination of the employment referred to under a. or as much earlier as the employee loses the capacity of lawyer registered in the Netherlands. This provision does not affect the employer's continuing obligations in respect of the confidentiality of information as described in the second paragraph of Article 4.

Thus agreed and signed in duplicate at ...../.....

.....

the employer the employee

## **Article 1**

The public should not be confused about the capacity in which the lawyer is acting to the outside world. To eliminate the possibility of this, an in-house lawyer will be allowed to perform his activities within that employment only in the capacity of an attorney at law.

## **Article 2 jo. article 5**

Article 2 specifies the free and independent practice of the profession. This freedom means that, without prejudice to the provisions of Article 7, no repercussions can arise within the firm if the lawyer's professional conduct deviates from the employer's views.

The provision of Article 2 is obviously without prejudice to a normal power of instruction of the employer who can at the same time be considered a client (of the in-house lawyer/lawyer). Cf. also Article 5 in this context: the employer can require the employee to meet certain quality criteria, e.g. reporting regularly to the client on the progress of a case. However, the in-house lawyer/lawyer will have to be free to refuse certain assignments if they are not compatible with his professional responsibility.

## **Articles 3 and 4**

These articles guarantee compliance with an attorney at law's obligations by virtue of his membership of the Dutch Bar Association and the orders in the district. The details of the obligations given in Article 4 are not exhaustive. Rules of professional conduct are understood to mean the laws applicable to an attorney at law, regulations governing the legal profession, rules of conduct and guidelines. With regard to concrete compliance with the obligation of confidentiality of information and the unhindered exercise of the right to refuse to give evidence, reference is made to the explanatory note to the Directives relating to associations of lawyers and other (recognised) professional groups (Adv.bl. no. 8, 14 April 1995, p. 347).

## **Article 8**

Article 8 completes the guarantee given by the employer in Article 2. Policy differences between the employee and the employer regarding the handling of cases entrusted to the lawyer may not be a reason for dismissal or any measures leading thereto. This provision does not affect the fact that, as will be the case in a law firm where lawyers work as salaried attorneys at law, a decision to terminate the employment relationship or any measures that may lead thereto may be taken by the employer if the employee's performance does not meet the expectations of a good employee. This also applies if circumstances have developed such that, other than as a result of the difference of opinion referred to in Article 8, cooperation within the employment relationship is no longer properly possible. Article 8 shall also be an exception in the situation where the employee fails to meet his responsibilities towards the lawyer or lawyers who are placed above him in the organisation on the basis of Article 7.

## **Article 10**

Article 10 provides the parties with the possibility, in order to avoid a (real) labour dispute, to settle disagreements or uncertainties about the application of this statute. Obviously, this provision does not affect the competence of the subdistrict court.

#### Article 11

The provisions of the last sentence of this article obviously have limited application in cases where the employer itself is (was) the client of the employee/lawyer.

## 17. Peru

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

### LIMA - PERU

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)? **YES**

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Ley 30220 del año 2014 (Ley Universitaria) que prevé que el abogado para su ejercicio previamente debe obtener un título profesional conforme a las formalidades que se encuentran en la citada ley. Asimismo, luego debe incorporarse a un Colegio Profesional a fin de obtener un registro y puede ejercer a nivel nacional.

*Law 30220 of the year 2014 (University Law) which provides that the lawyer for his practice must first obtain a professional degree according to the formalities found in the aforementioned law. Likewise, he/she must then join a Professional Association in order to obtain a registration and may practice at the national level.*

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Presentar su título de abogado otorgado por una universidad pública o privada a nivel nacional. Pagar los derechos administrativos fijados por cada Colegio profesional. Basta con incorporarse a uno de ellos para poder ejercer a nivel nacional.

*Present their law degree from a public or private university at the national level. Pay the administrative fees set by each professional association. It is sufficient to join one of them to be able to practice at the national level.*

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

Los derechos y obligaciones están contenidos en los Estatutos de cada Colegio Profesional. Los principales derechos son el libre ejercicio profesional y contar con beneficios en la salud, educación y esparcimiento al estar al día en sus cuotas ordinarias (miembro hábil). Asimismo, sus principales obligaciones son respetar el Código de Ética Profesional y prestar el ejercicio con solvencia moral. *The rights and obligations are contained in the Bylaws of each Professional Association. The main rights are the free professional practice and to have benefits in health, education and recreation by being up to date in their ordinary dues (member in good standing). Likewise, their main obligations are to respect the Code of Professional Ethics and to provide the practice with moral solvency.*

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

**Si.**

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Solo cabe un conflicto de intereses, si el abogado interno tiene en su oficina profesional, los mismos casos de la dependencia pública en la que trabaja.

- 4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? **NO**
  - a. If yes:
    - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
    - ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
    - iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
    - iv. Is the inhouse counsel subject to a code of ethics?
    - v. Is there some kind of disciplinary body to enforce the code of ethics?
    - vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.
- 5. Can the inhouse counsel represent its employer in court and if so, before which courts?

**Si.**

#### 6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the

inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

Constitución Política del Perú del año 1993 (Art. 2 inciso 18)

*Political Constitution of Peru of 1993 (Art. 2 clause 18)*

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)? **Si.**

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)? **Si.**

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly. **No.**

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

Que exista un trato cliente-abogado debidamente acreditado.

*That there is a duly accredited client-attorney relationship.*

- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?



Se incluyen todos los documentos relacionados con el patrocinio legal. El abogado puede negarse a declarar si ello implica levantar su secreto profesional. Están cubiertos todos los procedimientos judiciales. Dicho privilegio está vinculado a un deber de confidencialidad recogido en la Constitución y el Código de Ética Profesional de cada colegio.

*All documents related to the legal sponsorship are included. The lawyer may refuse to testify if it involves lifting his professional secrecy. All legal proceedings are covered. This privilege is linked to a duty of confidentiality as set forth in the Constitution and the Code of Professional Ethics of each bar association.*

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Constitución del Estado peruano del año 1993 (Art. 2 inciso 18)

*Peruvian Constitution of 1993 (Art. 2 paragraph 18)*

7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No pues ya existe una base legal.

*No, because there is already a legal basis.*

8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

Falta un proyecto de ley que establezca la figura del lobby profesional y así evitar futuros conflictos de interés.

*There is a lack of a law project that establishes the figure of professional lobbying and thus avoid future conflicts of interest.*

## 18. Poland

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

Poland

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

Only persons who have met certain prerequisites are admitted to the Bar, generally if they have completed a law degree and passed a professional examination. This is irrespective of whether the person works as an inhouse or, for example, in a law firm or government administration. As a so-called inhouse can also work non-Bar members, in which case the rules for Bar members do not apply.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Law on legal advisers (Ustawa o radcach prawnych) dated 6th July 1982 and Law on Advocates (Prawo o adwokaturze) dated 26<sup>th</sup> May 1982.

In Poland, there are two types of attorneys admitted to the Bar: the Legal Advisor (in simple terms, a business lawyer) and the Lawyer (in simple terms, a defense attorney), but over time these two types of professions have significantly aligned with each other and are almost identical.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Admission to the Bar is granted to the person who graduated from higher legal studies in the Republic of Poland and obtained a master's degree or foreign legal studies recognized in the Republic of Poland, enjoys full public rights, has full capacity to perform legal activities, is of irreproachable character and by his past behavior gives the guarantee of proper performance of the profession of Radca Prawny or Adwokat and has completed his/her respective legal training in the Republic of Poland and passed the respective legal state examination (subject to certain exceptions). This applies to all person who fulfill the requirements despite where they are perform they activities. However, Adwokat is not allowed to by active based on labour law agreement, so Adwokat if active in-house counsel collaborates based on other civil law agreements with the respective company.

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

The same as other members of the bar.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

This depends on which basis Inhouse Lawyer is active for the company, office, authority, etc. There is no special security or retirement plan only for lawyers.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Both Radca Prawny and Adwokat are, according to bar regulations, independent in their work. The question of dependency may arise rather in relation to Radca Prawny, because Adwokat on the basis of current regulations is not allowed to work under a labor law agreement.

Questions of subordination are regulated differently than in the case of "ordinary employees". The scope of a Radca Prawny 's duties is to provide legal advice. In case Radca Prawny is employed based on labour law agreement, these activities are performed for the employer and under his direction. However, the employer must follow the terms and conditions of practice of the profession, arising from the Law on Legal Advisors and the applicable rules of professional conduct. Pursuant to these regulations, the employer may not instruct Radca Prawny to perform an activity beyond the scope of legal advice. The employer may e.g., give instructions regarding the time or place of matters to be handled, as well as set the order of activities to be performed with the provision that some of them are urgent. Radca Prawny is also bound by instructions, orders and instructions addressed to the general workforce, for example, regarding occupational health and safety.

However, Radca Prawny is not bound by instructions as to the content of a legal opinion. With this regard he is independent.

- 4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

No, as there is no special register for Inhouse Counsel.

- a. If yes:
  - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

5. Can the inhouse counsel represent its employer in court and if so, before which courts?

This is defined by the status of inhouse counsel as Radca Prawny or Adwokat and ruled by the respective regulations.

## 6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Under Polish law, Radca Prawny wording on the basis of employment agreement are in principle treated in the same way as external lawyers for determining privilege.

### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?  
Statute (Law on legal advisers) and Code of ethics for legal advisers.
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

This refers to the fact of communication with the Legal Counsel and not to the defined purpose. Assuming that the Legal Advisor

performs only legal consulting work for the employer, all communication is covered by the privilege. This, however, would mean a very wide scope of secrecy, since the inhouse is usually included in a number of the company's activities. Therefore, based on the decision of the Court of Justice (C-550/07 P, Akzo Nobel Chemicals Ltd v Commission), the argument is built that the scope of protection is not infinite.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

Please see above.

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Please see under b.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

Please see under b.

- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?

Documents in possession of Radca Prawny only, not if they are also in possession of for ex. client. For dawn raids in competition law it refers also to the documents that are in the possession of the client.

- ii. Can the lawyer refuse to testify in legal proceedings?  
Yes, but please see under iii.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, dawn raids from authorities, such as tax, competition law authorities, FDA, ...?

The primary exemption from professional confidentiality is addressed in the Polish Code of Criminal Procedure. According to this provision, a judge, upon request from

a prosecutor, may waive the obligation of confidentiality, permitting a lawyer to testify. Such a decision could be made in pursuit of justice, particularly in the absence of sufficient evidence. This provision faces significant criticism within the Polish legal community and is invoked sparingly. Additionally, Radca Prawny are mandated to disclose information pertaining to money laundering or terrorist activities.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?  
Yes.

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Statute (Law on legal advisers) and Code of ethics for legal advisers, Polish Code of Criminal Procedure, Law on Anti-Money Laundering and Financing of Terrorism.

- 7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

Not known.

- 8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

## 18. Poland

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

Poland

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

Only persons who have met certain prerequisites are admitted to the Bar, generally if they have completed a law degree and passed a professional examination. This is irrespective of whether the person works as an inhouse or, for example, in a law firm or government administration. As a so-called inhouse can also work non-Bar members, in which case the rules for Bar members do not apply.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Law on legal advisers (Ustawa o radcach prawnych) dated 6th July 1982 and Law on Advocates (Prawo o adwokaturze) dated 26<sup>th</sup> May 1982.

In Poland, there are two types of attorneys admitted to the Bar: the Legal Advisor (in simple terms, a business lawyer) and the Lawyer (in simple terms, a defense attorney), but over time these two types of professions have significantly aligned with each other and are almost identical.

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

Admission to the Bar is granted to the person who graduated from higher legal studies in the Republic of Poland and obtained a master's degree or foreign legal studies recognized in the Republic of Poland, enjoys full public rights, has full capacity to perform legal activities, is of irreproachable character and by his past behavior gives the guarantee of proper performance of the profession of Radca Prawny or Adwokat and has completed his/her respective legal training in the Republic of Poland and passed the respective legal state examination (subject to certain exceptions). This applies to all person who fulfill the requirements despite where they are perform they activities. However, Adwokat is not allowed to by active based on labour law agreement, so Adwokat if active in-house counsel collaborates based on other civil law agreements with the respective company.

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

The same as other members of the bar.

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

This depends on which basis Inhouse Lawyer is active for the company, office, authority, etc. There is no special security or retirement plan only for lawyers.

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

Both Radca Prawny and Adwokat are, according to bar regulations, independent in their work. The question of dependency may arise rather in relation to Radca Prawny, because Adwokat on the basis of current regulations is not allowed to work under a labor law agreement.

Questions of subordination are regulated differently than in the case of "ordinary employees". The scope of a Radca Prawny 's duties is to provide legal advice. In case Radca Prawny is employed based on labour law agreement, these activities are performed for the employer and under his direction. However, the employer must follow the terms and conditions of practice of the profession, arising from the Law on Legal Advisors and the applicable rules of professional conduct. Pursuant to these regulations, the employer may not instruct Radca Prawny to perform an activity beyond the scope of legal advice. The employer may e.g., give instructions regarding the time or place of matters to be handled, as well as set the order of activities to be performed with the provision that some of them are urgent. Radca Prawny is also bound by instructions, orders and instructions addressed to the general workforce, for example, regarding occupational health and safety.

However, Radca Prawny is not bound by instructions as to the content of a legal opinion. With this regard he is independent.

- 3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

No, as there is no special register for Inhouse Counsel.

- a. If yes:
  - i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.



- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

This is defined by the status of inhouse counsel as Radca Prawny or Adwokat and ruled by the respective regulations.

## 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Under Polish law, Radca Prawny wording on the basis of employment agreement are in principle treated in the same way as external lawyers for determining privilege.

### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?  
Statute (Law on legal advisers) and Code of ethics for legal advisers.
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

This refers to the fact of communication with the Legal Counsel and not to the defined purpose. Assuming that the Legal Advisor

performs only legal consulting work for the employer, all communication is covered by the privilege. This, however, would mean a very wide scope of secrecy, since the inhouse is usually included in a number of the company's activities. Therefore, based on the decision of the Court of Justice (C-550/07 P, Akzo Nobel Chemicals Ltd v Commission), the argument is built that the scope of protection is not infinite.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

Please see above.

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

Please see under b.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

Please see under b.

- f. What is the extent of the protection and what are the limits?

- i. What type of documents are included?

Documents in possession of Radca Prawny only, not if they are also in possession of for ex. client. For dawn raids in competition law it refers also to the documents that are in the possession of the client.

- ii. Can the lawyer refuse to testify in legal proceedings?  
Yes, but please see under iii.

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, dawn raids from authorities, such as tax, competition law authorities, FDA, ...?

The primary exemption from professional confidentiality is addressed in the Polish Code of Criminal Procedure. According to this provision, a judge, upon request from

a prosecutor, may waive the obligation of confidentiality, permitting a lawyer to testify. Such a decision could be made in pursuit of justice, particularly in the absence of sufficient evidence. This provision faces significant criticism within the Polish legal community and is invoked sparingly. Additionally, Radca Prawny are mandated to disclose information pertaining to money laundering or terrorist activities.

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?  
Yes.

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Statute (Law on legal advisers) and Code of ethics for legal advisers, Polish Code of Criminal Procedure, Law on Anti-Money Laundering and Financing of Terrorism.

- 6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

Not known.

- 7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

## 19. Québec

### Question No. 1:

My jurisdiction is the Province of Québec, Canada. Québec is the only “legal” jurisdiction in Canada, which can be defined as “civilist”. Québec’s Civil Code was based, at its inception, on the old French “Napoleon Code”. All lawyers in Québec, are regulated by the Québec Bar association / le Barreau du Québec.

### Question No. 2: a) Yes.

In Québec, in-house counsels-lawyers that are company employees and public entities’ lawyers are members of the Québec Bar association. Either you are a lawyer, or you are not. There are no categories or a hierarchy in relation to the status of a lawyer.

You may be specialised in different domains, practice in different ways, be paid by Fees or salary or %.

Studies to become a lawyer are the same for all, except for certain choices one can make as to specialty. After having succeeded your University Law Faculty courses and exams, you receive a Bachelor of Law diploma or, as in my case, at the time, the Université de Montréal was giving out Law Diplomas that were then called “Licence en droit (“LL.L” / License in Law (“LL.L.”), based on the French system. After one’s University Law Degree, you must be admitted to the Bar School / École du Barreau, where you will take additional courses followed by Bar exams. If you succeed your Bar exams, you will then have to complete an ‘articling’ period / un stage en droit. During which period, you will be supervised by an experienced lawyer or a group of experienced lawyers, recognised by the Bar association. This supervising lawyer or group of lawyers / les maîtres de stage, will then have to assess your work and confirm you (the articling student /le stagiaire) have completed, in a satisfactory manner, the articling period / la période de stage. This statement is then forwarded to the Bar association who will then call the student to the Bar / l’étudiant sera alors admis au Barreau. After all these steps, the student will then become a LAWYER, as he/she will now be a member of the Québec Bar association. Depending on where he/she will decide to practice will establish his/her local Bar. As in my case, my local Bar is Montreal, where I work.

It should be noted that to be member of the Bar association is essential to be qualified as a lawyer. If you are not a member of the Bar, you are not a lawyer and cannot be referred to as a lawyer nor can you define or present yourself as a lawyer.

To be a member of the Bar association, one must complete an annual report, complete the required hours of continuous education, and pay the required annual fees. You must be in good standing with the Bar association to maintain your status as a lawyer in Québec.

6. Based on the previous paragraph, there are no specific applicable regulation allowing an in-house counsel to be a Bar member. Said in-house counsel, if a lawyer, is a Bar

member. There is no second-class lawyers...

7. The legal requirements to become a Bar association member are the same for all.
8. The rights and obligations of an in-house counsel are the same as any other lawyer.
9. An in-house counsel can belong to a social security and retirement plan system if his/her employer offers such a Plan. The Québec Bar association does not offer its members a social security and retirement plan, unfortunately!
10. Again, considering the previous references and facts, the argument of “independence from the company” which employs an in-house counsel is quite relative or baseless. How independent is a law firm lawyer in relation to his/her corporate client??? I would say, no different at all. When I was practicing with a national law firm, we had major corporate clients that were exclusively represented by some of our own law firm lawyers for years, even decades. Some of our lawyers serviced only one corporate client nearly all their professional life. It would thus be quite difficult to state that such a law firm lawyer was independent from “his/her” client. Therefore, how very different is an in-house counsel from a corporate law firm lawyer? They both represent the interests of their client. However, it seems a recurrent theme when this argument is brought up, as if an in-house lawyer is deemed to be less scrupulous or perhaps delinquent or less knowledgeable or less trustful as to law and rules. Well, that to me is offensive and wrong. In fact, in-house counsels are very often far more knowledgeable than law firm lawyers, depending on their background and experience. The legal privilege also applies to an in-house counsel, as does the lawyers’ Code of conduct and ethics. The disciplinary body applicable to all lawyers is the Syndic du Barreau.

### **Question No. 3:**

I repeat, an in-house counsel who is a lawyer, is a Bar association member. There is no special registry for in-house counsels except, that the Bar association can identify different categories of lawyers by lists. These lists have nothing to do with a right of practice, but act as a law practice specialty. For example, the Bar association can identify: Criminal law practicing lawyers, Labour lawyers, Family law lawyers, Youth protection lawyers, I.E. lawyers, A.I. lawyers, Corporate and Commercial law lawyers, Real estate lawyers, Sports, Fashion, Immigration, etc.

1. No.

### **Question No. 4:**

Yes, an in-house counsel can represent its employer in court, at every court level, as a lawyer (who is a Bar member). I Have personally represented my employer up to, and including, the Québec Court of Appeal, which is the last court level before the Supreme

Court of Canada.

It should however be noted that a lawyer must assess if it is in the best interest of his client or not, to be represented by him or her. For a lawyer /in-house counsel, the client's interest is paramount. Therefore, one must have the competence to adequately represent a client.

When I went to Court for my employer, it was for specific issues, and I was the best person to do so, because of my knowledge of the firm and the legal arguments at stake. In other cases, where my expertise, such as in litigation, is not utmost, external lawyers are hired.

**Question No. 5: Legal Privilege**

5. Yes, the in-house counsel benefits of the legal privilege. The confidentiality of the communications in our jurisdiction, between the in-house counsel and its employer or the outside law firm /outside lawyer hired for advice, assistance, or representation by the firm or in-house counsel is applicable.
1. It is the same privilege applicable to all lawyers which in Québec applies to in- house counsels. Common law is considered.
2. The theory of primary purpose of attorney-client confidentiality stating that communications are privileged only if the primary purpose of the communication is for legal advice will apply in relation to in-house counsels, as to all lawyers.
3. d. e. f. g.: Please note, that privileges and confidentiality aspects between a client and his/her lawyer, are also applicable to in-house counsels who, I repeat again, are full-fledged lawyers and considered as such. That is the position, of our Québec Bar association.

**Question No. 6: Status of in-house counsels in Canada or the protection of legal privilege.**

To my knowledge (sous toutes réserves), in Québec, as well as in the rest of Canada, in-house counsels who are lawyers (meaning they must be Bar association members), are recognised as lawyers because they are lawyers. And, if they are lawyers, all rules, privileges, constraints, conduct and ethics applicable to lawyers include in-house counsels.

**Question No. 7: The status of in-house counsel in my jurisdiction AND THE STATUS OF IN-HOUSE COUNSELS AS TO THE UIA**

I certainly approve and support the Québec Bar association 's position as to in-house counsels because that position is logic, based in law, in facts, in common sense, modernity , vision and finance. Qualifying in-house counsels in a different manner than any other lawyers, when both have the same academic qualifications and have succeeded all requirements, would be considered discriminatory and unjustifiable.

Legal action could and would be brought against the Bar association. Also to keep in mind, is that

numerous in-house counsels have already been lawyers in law firms. Often, they leave their law firm to go work for one of their past law firm clients, as was my case.

It is also necessary to keep in mind the fact that there are much more lawyers who are not practicing in law firms than there are litigation or law firm lawyers. Most of the Québec Bar association members are in-house counsels, public service lawyers, diverse organization lawyers.

Numerically, there are some 30 000 (or around that number) lawyers who are members of the Québec Bar association. Of that number, more than half of those members, meaning more than 15 000 members, are not practicing in law firms!!!

But, since all are recognised as lawyers, they must all pay their Bar association Fees. Therefore, imagine more than 15 000 lawyers paying big annual fees, which total amount goes directly into the coffers of the Bar association, in addition to the other” traditional” paying lawyers.

It would certainly be absurd, if our Bar association voluntarily discounted thousands of potential members, who are fully qualified, for baseless reasons, which would deprive the Bar association of millions of dollars...

I believe the same reasoning is long overdue for those jurisdictions who do not take all the arguments into account.

I believe it should also be noted, considered and kept in mind, that one of our recent Québec Bar association president / une de nos récentes Bâtonnière du Québec, was an in-house counsel who, after her Bar mandate, was nominated as a Québec Superior Court judge.

In conclusion, law, and its practice, are evolving very fast and, for our profession to survive in this new demanding era, changes and adjustments must be made, and they must be made rapidly. The areas of law practice are multiplying, and more and more types of practice will emerge as time goes by. We are even challenged and threatened by artificial intelligence that can take over much of our work. To think, in these present times, that there is only one Way to practice law or to represent clients, as was the case in the past, is to already be out of sync with the present challenges we must face.

Honestly, this survey is anachronic in our times. To think that some law jurisdictions, associations, and regulatory bodies believe that we can afford to ostracise qualified lawyers and not allow them to be members of different Bar associations is a clear indication that some are not keeping up with the hard reality of our times. For example, the financial prejudice caused by excluding qualified lawyers is also preposterous, when so many Bar associations could benefit from additional needed Fees, coming from more members, to improve the services, supervision and support given to lawyers.

It is my hope that certain of these arguments can provide a new way of assessing the value of in-house counsels to finally decide that they are full fledged lawyers who must be recognised as such, as is the case in our Québec jurisdiction.





## 20. Spain

2. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

SPAIN

3. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?  
YES

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,  
*Real Decreto 135/2021, de 2 de marzo, por el que se aprueba el Estatuto General de la Abogacía Española.*

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

*The requirements to register as a lawyer (in house or independent) and practise the profession in Spain are as follows:*

*Hold a degree in Law.*

*Pass the entrance exam to the legal profession organised by the Ministry of Justice.*

*Apply for registration with one bar.*

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

*Free practising lawyers and in-house lawyers have -in principle- the same rights and obligations.*

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

*YES ON A VOLONTARY BASIS.*

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

*NO CASES OR REGULATIONS.*

4. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

5. Can the inhouse counsel represent its employer in court and if so, before which courts?

*YES, THEY CAN REPRESENT ITS EMPLOYER BEFORE ALL KIND OF COURTS.*

6. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

*Royal Decree 135/2021 of 2 March, and in its Article 39 it expressly recognises it: "The legal profession may also be practised as an employed professional as a company lawyer under a common employment relationship, by means of an employment contract formalised in writing **and in which the basic freedom, independence and professional secrecy for the practice of the profession must be respected and expressed if such practice is on an exclusive basis**".*

*However, this recognition has not absolutely shielded the professional secrecy of this group, which in practice has experienced how the National Commission for Markets and Competition or even the Tax Agency have used the case law of the CJEU to try to undermine this right. ( TJCE AM&S Europe Limited c. Comisión, 18 of may 1982 (155/79) TJUE Azko Nobel Chemicals Ltd y Akros Chemicals Ltd c. Comisión Europea september 14, 2010 ( C-550/07 P)).*

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

*STATUTE AND REGULATION.*

*Ley Orgánica del Poder Judicial 6/1985 (LOPJ) New Estatuto General de la Abogacía (2021), and the code of ethics of the profession.*

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

*In principle, this is not the case in Spain. However, the transposition of the DAC 6 directive through the General Tax Law establishes the obligation for tax intermediaries (advisors, lawyers, managers or financial institutions) to declare operations that may be considered as aggressive tax planning in the international sphere. In practice, according to experts in tax matters, it will be difficult to opt out of this reporting obligation on the grounds of professional secrecy, as it will be necessary to be able to demonstrate that they did not act proactively in the design of this planning.*

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

*YES "Lawyers must keep secret all the facts or news of which they have knowledge by reason of any of the modalities of their professional activity, and may not be obliged to testify about them" (art. 542.3 Organic Law of the Judiciary).*

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

*NO CONDITIONS CONCERNING "ANY OF THE MODALITIES OF THEIR PROFESSIONAL ACTIVITY,"*  
*(art. 542.3 Organic Law of the Judiciary).*

- f. What is the extent of the protection and what are the limits?

*No limits except -maybe- in tax regulation.*

- i. What type of documents are included?

*ALL KIND OF INFORMATION "all the facts or news"*

- ii. Can the lawyer refuse to testify in legal proceedings?

*YES*

- iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

*IN PRINCIPLE ALL OF THEM.*

- iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

*The approved Statute (2021) has established in its Article 22.4 that: "the lawyer shall be relieved of this duty on matters that only affect or refer to his client, provided that the client has expressly authorised him to do so".*

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

*Ley Orgánica del Poder Judicial 6/1985 del Poder Judicial (LOPJ).*

*Código deontológico de la Abogacía, aprobado por el Pleno del Consejo General de la Abogacía Española el 6 de marzo de 2019.*

*Estatuto General de Abogacía aprobado por el Consejo de Ministros a través del Real Decreto 135/2021.*

7. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

*NO*

8. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

*NO*

## 21. Sweden

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

### SWEDEN

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)? **NO.**

- a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association? **NO.**

- a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?
- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?

- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

Yes if the matter concerns commercial law and dispute resolution the inhouse counsel can represent its employer, but it's common to hire a lawfirm. If it would concern criminal matters, and if it's a serious crime, the suspect might have the right to get a public counsel who has to be member of the bar.

5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)? **NO**.

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?
- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?
  - i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?
- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?
- g. Please indicate the name and date of the applicable law providing for the legal privilege.

6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No, not what I'm aware of.

7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

No.

## 22. Switzerland

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

Switzerland.

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

No.

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,
- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?
- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?
- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?
- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel’s bar membership and legal privilege.

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

No.

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.
- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register?



- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?
- iv. Is the inhouse counsel subject to a code of ethics?
- v. Is there some kind of disciplinary body to enforce the code of ethics?
- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

As an authorized representative, the inhouse counsel can represent its employer before all courts, but he has party status. However, it cannot represent third parties.

There is an exception for lawyers who are employed by a recognized public utility organization. They may be registered with the cantonal registry of lawyers. Once they are, they can represent their employer in court as long as this activity is limited to mandates strictly related to the purpose pursued by this organization.

5. Legal Privilege

- ii. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

Yes. The law has been amended so that as of January 1, 2025, an internal legal department of a company will have the right to refuse to collaborate and produce documents. This was not the case before. However, this is not considered a "legal privilege" as understood in the Anglo-Saxon and US legal systems.

1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

This right to refuse to collaborate is based in the law (specifically the Code of Civil Procedure).

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

This question will eventually be settled by case law.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

This question will eventually be settled by case law.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:
- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.
- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

The right of the internal legal department of a company (and its organs) to refuse to collaborate is limited. It allows a company with such a legal department to refuse to collaborate and produce documents in the context of civil proceedings, under certain conditions. According to Article 167a of the Code of Civil Procedure (coming into force on January 1, 2025), a party may refuse to collaborate and produce documents related to the activities of its internal legal department if the following conditions are met:

- d) it is registered as a legal entity in the Swiss commercial register or in an equivalent foreign register;
- e) the person leading the legal department holds a cantonal lawyer's license or meets the professional requirements to practice as a lawyer in their home State;
- f) the activity would be considered inherent to the exercise of the legal profession if it were performed by a lawyer.

- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?

Presumably, all sorts of documents related to the internal legal department's activities. However, practice and case law have not yet been developed.

ii. Can the lawyer refuse to testify in legal proceedings?

Yes.

iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?

Only civil procedures.

iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

No.

g. Please indicate the name and date of the applicable law providing for the legal privilege.

Code of Civil Procedure of December 19, 2008, amendment of March 17, 2023. Effective date: January 1st, 2025.

6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

No.

7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

Since the new legal provisions are not yet in force, case law will be required to clarify the scope of the right to refuse to collaborate.

## 23. England and Wales

1. Please state the jurisdiction for which you are completing the survey. For purposes of this survey, “jurisdiction” is defined as a geographical area that has regulatory authority over your activities as a lawyer, due to (a) your physical presence inside the area and/or (b) your advice relating to the laws of that area.

England & Wales

2. Do the regulations in your jurisdiction allow the inhouse counsels (i.e. lawyers practicing law and being employed by a company or a public entity) to be members of the bar associations (Yes/No)?

a. If yes:

- i. Please indicate the name and date of the applicable regulations allowing it,

Bar Standards Board Regs or BSB Handbook SRA rules

- ii. what are the legal requirements that the inhouse counsel has to fulfil to become member of the bar association?

I believe those set out in the handbook

- iii. what are the rights and obligations of the inhouse counsel as member of the bar association?

the same as any other member

- iv. Does the inhouse counsel belong to the same social security and retirement plan system as the lawyer?

depends on the employer. if it's the same employer I would say yes

- v. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

The SRA Guidelines and BSB Handbook deal with this, but the commercial reality can make adherence difficult. A company policy should address this issue - for example its whistleblowing policy

3. If the inhouse counsel is not allowed to be a member of the bar association, can he/she be registered in a special in-house counsel register or list administered by a regulatory authority or association?

a. If yes:

- i. please indicate the name of such authority or association and the name and date of the applicable law providing for it.

The Law Society In-House Network and Association of Corporate Counsel in Europe

- ii. what are the legal requirements that the inhouse counsel has to fulfil to register with the special in-house counsel register ?

I would not consider the requirements special and would be as those applicable to other lawyers

- iii. what are the rights and obligations of the inhouse counsel who is registered with the special in-house counsel register?

They would be the same as those lawyers who work in private practice

- iv. Is the inhouse counsel subject to a code of ethics?

Yes

- v. Is there some kind of disciplinary body to enforce the code of ethics?

SRA or BSB

- vi. Please indicate whether and how the applicable regulation and/or case law (and/or underlying legal doctrine) have addressed the argument that the inhouse counsel would lack of independency from the company that employs him/her, which is raised in some jurisdictions to oppose to the inhouse counsel's bar membership and legal privilege.

there are safeguards in place in relation to the SRA and BSB

4. Can the inhouse counsel represent its employer in court and if so, before which courts?

Depends if they have rights of audience in the UK. If they so, then yes, in all courts

## 5. Legal Privilege

- i. Does the inhouse counsel benefit of the legal privilege, i.e. do the regulations in your jurisdiction protect the confidentiality of the communications between the inhouse counsel and its employer and/or the law firm hired for advice and assistance by the in-house counsel (Yes/No)?

### 1. If yes:

- a. Is the privilege based in statute or regulation, or is it based in common law?

common law - case law

- b. The primary purpose theory of attorney-client confidentiality states that communications are privileged only if the primary purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

no. communications made for the purpose of seeking or providing legal advice. covers all legal advice.

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- c. The substantial purpose theory of attorney-client confidentiality states that communications are privileged if a substantial purpose of the communications is for legal advice. Has your jurisdiction adopted this theory or a version of this theory (Yes/No)?

no. although for litigation privilege there is a dominant purpose test which is similar

- i. If yes, please explain briefly your jurisdiction's adopted version of this theory:

- d. If your jurisdiction uses a different theory concerning the attorney-client privilege, please explain briefly.

how to case law has evolved over the years

- e. What are the conditions that must be fulfilled in order to benefit from legal privilege?

communication confidential made for the purpose of giving seeking legal advice from a professional adviser and crime is excluded, there needs to be a legal context.

- f. What is the extent of the protection and what are the limits?
  - i. What type of documents are included?
  - ii. Can the lawyer refuse to testify in legal proceedings?
  - iii. What type of proceedings are covered – civil proceedings, criminal proceedings, down raids from authorities, such as tax, competition law authorities, FDA, ...?
  - iv. Is the legal privilege linked to a duty of confidentiality by the inhouse counsel?

all documents and all proceedings are potentially protected - confidentiality and LPP are closely linked. cannot refuse to testify - you assert your right to privilege

- g. Please indicate the name and date of the applicable law providing for the legal privilege.

Common law principles

6. Are there any initiatives (draft laws, proposals from professional associations) in your country regarding the status of inhouse counsels or the protection of legal privilege?

not to my knowledge. I would say such initiatives are not necessary in the UK. There are sufficient protections.

7. Is there anything else you might want to add regarding the status of inhouse counsels in your jurisdiction?

I believe there are sufficient safeguards

\* \* \*