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FRANCE INTRODUCES CONFIDENTIALITY FOR IN HOUSE LEGAL ADVICE: PRACTICAL IMPLICATIONS FOR KOREAN COMPANIES

Earlier this year, France enacted a new law introducing a statutory confidentiality regime for certain legal consultations prepared by in-house lawyers. Prior to this reform, legal advice prepared by in-house counsel in France enjoyed no confidentiality protection and was routinely disclosed in litigation and regulatory investigations. This new legal framework will enter into force no later than February 2027. These new protections are particularly timely for Korean companies and practitioners, coming shortly after Korea's National Assembly amended its Attorney-at-Law Act to introduce attorney-client privilege for Korean attorneys on 29 January 2026.

Although this reform marks an important change, its protections are limited in scope, subject to strict formal and substantive requirements: confidentiality for French in-house legal advice is much more limited than the professional secrecy enjoyed by external French counsel or American ACP. This newsletter explains the key features and limitations of the new French confidentiality regime and highlights the practical points Korean companies should consider when managing internal legal advice, investigations, and disputes involving France.

I. SCOPE OF CONFIDENTIALITY AND KEY EXCEPTIONS UNDER THE NEW LAW

Under the new French framework, confidentiality only attaches to specific legal documents prepared by an in-house lawyer, rather than to the lawyer himself/herself. Protections are limited to legal consultations that are "personalised" and "aimed at providing a legal opinion or advice based on the application of a legal provision." Importantly, confidentiality does not extend to business, commercial, strategic, or operational documents, even if they were prepared by, reviewed by, or copied to legal teams.

Only in-house lawyers who meet specific educational requirements (such as a Master of Law, or equivalent professional experience), and ethics training requirements can make legal consultations that benefit from confidentiality. In addition, the legal consultations must be produced solely for specified management or governance bodies within the company or its corporate group. Communications shared more broadly, or outside the permitted recipients will not qualify for protection.

Although confidentiality can apply in civil, commercial, and administrative proceedings, it does not apply in criminal or tax proceedings and cannot be relied upon against investigations conducted by European Union authorities. Moreover, courts may lift confidentiality in civil and administrative proceedings, where the legal advice was intended to facilitate or encourage unlawful conduct or where the statutory conditions are not met.

II. PRACTICAL IMPLICATIONS FOR CORPORATE LEGAL AND COMPLIANCE FUNCTIONS

Under the new law, protected documents must be expressly labelled as confidential under the statutory regime," identify its author, and be created and stored in accordance with dedicated internal filing procedures. Successive drafts and working versions of protected legal consultation are also covered. Improper or abusive use of confidentiality designation may expose the author to sanctions, including fines and, in serious cases, criminal liability.

Korean companies operating in France must take special care to clearly distinguish legal advice from business, compliance, or operational communications. Courts and authorities frequently deny confidentiality protections where the communications are predominantly non-legal in nature, even if legal personnel are involved or copied. Mixing legal analysis with commercial strategy or operational discussion therefore remains one of the most common reasons for confidentiality claims to fail.

Therefore, companies should ensure that confidential legal advice is shared strictly on a need-to-know basis, is not circulated widely within the organisation, and is not combined with general commercial communications. Companies must prepare to assert claims of confidentiality promptly and consistently during investigations or legal proceedings, as failure to do so may result in the loss of these protections.

III. IMPLICATIONS FOR ARBITRATION AND CROSS-BORDER DISPUTES

The French reform is not limited to French companies and may also have practical implications for foreign companies located in France, as well as for the French subsidiaries or branches of foreign companies. It is particularly relevant in the context of international arbitration and cross-border disputes involving French entities or France-seated proceedings. Historically, France's lack of protections for in-house legal advice often placed companies with French operations at a disadvantage during document production, especially where opposing parties were based in jurisdictions that recognise legal privilege for in-house counsel. By introducing a statutory confidentiality regime, France has narrowed the gap with jurisdictions that recognise legal privilege for in-house counsel.

That said, the protections afforded under French law remain narrower than common law ACP. In practice, arbitral tribunals are likely to scrutinise the purpose of the communication, the identity of its recipients, and other statutory requirements before recognizing ACP. Accordingly, Korean companies should continue to coordinate closely with external counsel and carefully consider whether particularly sensitive or strategic legal analyses should be documented through external legal opinions, especially in high-risk or multi-jurisdictional disputes.

IV. KEY TAKEAWAYS

France's new confidentiality regime for in-house legal advice is a notable shift in the French legal landscape but is still very limited.

Korean companies with operations or disputes involving France should assess whether their internal protocols for preparing, labelling, and storing in-house legal advice are adequate under

the new requirements. Clear separation between legal opinions and business communications, disciplined handling of documents during investigations and inspections, and early coordination with external counsel on sensitive matters will be important considerations for companies seeking to rely on the new regime.

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