

**ANNEX 2A: NOTES ON SCOPE AND NATURE OF  
LEGAL ADVICE PRIVILEGE AND RELATED DOCTRINES  
IN SELECTED COUNTRIES**

**1. What documents and information does the privilege protect?**

**Common Law**

- Australia: As in the US. Sources were not clear about scope of entity privilege (control group or broader).
- England/Wales: As in the US, with somewhat different phrasing (e.g., confidential communications between a client and lawyer which have come into existence for the dominant purpose of giving or receiving legal advice about what would prudently and sensibly be done in the relevant legal context), but where the client is the entity only communications with a “control group” may be privileged (a similar concept exists in a minority of jurisdictions in the US).
- Hong Kong: As in England/Wales but without the control group limitation.
- India: As in England/Wales but without the control group limitation.
- Singapore: As in the UK (control group limitation not addressed in sources). Communications in anticipation of retention also protected (this point may not be different under English law—not addressed in sources).
- US: Communications between attorney and client made for the purpose of seeking legal advice and information or documents that would reveal such communications. The privilege does not attach if the communication is to further a crime or fraud.
- The privilege includes communications in contemplation of retention of the lawyer even if no retention results.
- The privilege attaches if the primary purpose was to seek legal advice and not for business advice.
- (There is a broader realm of protection for all information in a lawyer’s possession, but that prevents only voluntary disclosure, not compelled disclosure such as in response to a document request in arbitration or litigation.)

**Civil Law – Europe and Middle East**

- Austria: Attorneys are subject to a duty of confidentiality and must treat as strictly confidential all information which relates to: (i) facts the attorney has been entrusted within a professional capacity (including

documents provided to the attorney by a client); and (ii) facts that the client has an interest in keeping confidential that have otherwise become known to the attorney.

Exceptions to confidentiality may apply in cases concerning money laundering or financing of terrorism.

EU law: Legal privilege is recognized under EU law and typically comes into play in anti-trust investigations. In 2022 the scope of the legal privilege was broadened by the Court of Justice of the European Union (“CJEU”) to encompass all communications between external European Economic Area (“EEA”)-qualified external lawyers and their clients. It is no longer limited to advice relating to the exercise of the rights of defense. Legal privilege applies also to internal notes reporting the content of legal advice received from an external legal counsel, and to internal documents that were exclusively prepared for the purposes of seeking legal advice from an external legal counsel, in the exercise of the rights of defense.

France: All communications between attorney and client. This includes (but is not limited to): legal opinions, meeting notes, and communications on any medium.

Germany: The professional secrecy obligation encompasses any document, material or information that has become known to the lawyer in course of their professional relationship with the client.

Professional secrecy also attaches to information the attorney receives from third parties if this occurs in the exercise of their professional work.

Professional secrecy does not apply to facts that are readily apparent to the public or that do not need to be kept secret from the point of view of their limited significance.

Professional secrecy does not prevent the seizure of attorney communications if the attorney is an accomplice to the crime or is unlawfully obstructing justice.

Netherlands: The attorney must maintain confidentiality with regard to all information that is entrusted to the attorney in his/her professional capacity and about his or her clients and the cases concerned if entrusted with the attorney by virtue of practicing his or her profession, regardless of how this information was shared or of who shared this information.

Exceptions to confidentiality may apply if a lawyer is suspected of serious crimes, such as a joint criminal venture with client.

Communications between a lawyer and his client with the clear object of, or for the commission of, a crime is not privileged.

Portugal: Professional secrecy applies to general legal advice and representation in litigation, covering all facts and communications that a lawyer (a member of the Portuguese Bar Association) becomes aware of during, and as a result of, his or her work as a lawyer.

Russia: Russian law does not recognise the concept of legal professional privilege as in England or the US. Yet, there is a very similar concept - advocate's secrecy (*адвокатская тайна*). An advocate's secret is any information connected with an advocate providing legal services to their client (not only for litigation purposes). Such information may include the fact of an advocate being contacted by a client; information obtained by an advocate from their client; evidence and documents collected by an advocate while preparing for a case; the content of legal advice provided to the client, etc.

Spain: All the facts, communications, data, information, documents and proposals that a lawyer has become aware of, issued or received in the course of their professional activity.

This extends to secrets and plans of the client, letters, communications or memoranda received by the lawyer from the other party, and conversations held with clients, opposing parties or their lawyers.

Sweden: All information in respect to the client's affairs which has been confided to the attorney in his professional capacity or which he has learned in connection therewith. There are exceptions from this rule for certain particularly serious crimes, but they do not apply if the attorney was acting as a defence Attorney.

Similar to US, the privilege includes communications in contemplation of retention of the lawyer even if no retention results. Also, the privilege does not attach if the communication is to further a crime or fraud.

Switzerland: The attorney must maintain confidentiality with regard to all information that is entrusted to the attorney by the client, so long as such information relates to attorney's typical professional activity (i.e. legal representation and legal advice).

The attorney and the client may refuse to disclose any factual information exchanged between them. However, it is not legally

possible to shield existing facts (which are otherwise discoverable) from discovery by transmitting them to an attorney (eg, by handing over documents containing factual information to an attorney).

Turkey: Information entrusted to an attorney by a client is confidential where the information relates to the provision of legal services. However, the privilege as to documents held by the client is unclear. Consequently, a client may not be able to prevent the disclosure of documents held by the client.

Ukraine: The legal professional privilege exists in all types of legal proceedings (criminal, civil, competition, etc.). It encompasses any information which becomes known to an advocate (and its employees) in relation to a client or issues on which a client approached an advocate, the content of advice, consultations, clarifications, documents compiled by advocate, information on electronic carriers and other documents and information received by the advocate during the conduct of his/her practice.

UAE (Mainland and Dubai International Financial Center): Communications between attorney and client. In the DIFC, the privilege law follows that of England/Wales.

### **Civil Law - Latin America**

Brazil: All communications between attorney and client. Case law in Brazil is split, however, regarding whether the privilege applies only to (i) the communications *held by the lawyer*; or (ii) the communications themselves. In the former situation, copies of the communications held by the client would not be privileged. In the latter situation, all copies of the attorney-client communications would be privileged.

Mexico: All information entrusted to an attorney and all confidential communications made between an attorney and client, while an attorney is acting in a professional capacity.

### **Civil Law – Asia**

China: Lawyers are to keep their clients' trade secrets confidential and protect clients' privacy, but they are required to disclose any crimes their clients are committing or contemplating that severely impair national or public security, or seriously endangering the personal safety of others. And lawyers can be sanctioned for concealing important facts.

Courts can require lawyers to testify or give evidence against their clients, but in practice it is extremely rare for lawyers to be required to

do so. But government bureaus and regulatory authorities will not respect a confidentiality obligation claimed by a lawyer in relation to their client. A US court held that the fact that a court *could* compel disclosure of attorney-client communication meant there was no attorney-client privilege in China. *Wultz v. Bank of China Ltd.*, 979 F. Supp. 2d 479 (SDNY 2013).

Japan:

Attorneys have the privilege and obligation to refuse to testify on confidential facts obtained in the course of their duties, and to keep documents they have confidential, but clients cannot refuse to testify on their communications with their lawyers, but they can withhold attorney communications in their possession. More generally, in civil cases, clients can generally refuse to disclose documents created only for internal use (whether or not involving counsel) unless there are “special circumstances to determine otherwise” (but the only example given is where there had been disclosure to third parties in a bankruptcy proceeding).

Jailhouse communications are protected, but not communications with suspects or defendants who are not detained. But in administrative cases (as opposed to criminal cases), the law does not explicitly prohibit lawyers from confiscating evidence in the possession of lawyers, but it is rare for authorities to exercise such rights against lawyers.

Effective in 2020, the Antimonopoly Act was amended to provide a privilege-like mechanism to protect attorney-client communications in antitrust investigations.

Korea:

Like Japan, attorneys have a right to, and are required to, protect confidential information of the clients and prospective clients. But unlike Japan it appears there is not a separate protection for information about attorney communications in the possession of the client.

**2. Does the privilege apply to all lawyers or only some?**

**Common Law**

Australia:

As in UK, but in-house communication will not be privileged if advice is compromised by counsel’s loyalties to the employer.

England/Wales:

Privilege applies to all lawyers and their staff, including in-house counsel and foreign lawyers. There is no requirement that foreign lawyers be qualified or barred in England/Wales.

- Hong Kong: As in UK, apparently (extends to in-house counsel) and extends to foreign lawyers.
- India: Unclear whether in-house counsel are included or not (conflict between statute (no) and an appellate decision (yes)).
- Singapore: It applies to all lawyers and their staff, including in-house counsel. Foreign lawyers: court decision says no, but text of statute seems to suggest yes.
- US: Privilege applies to all lawyers and their staff, including in-house counsel (who must be members of the bar). Foreign lawyers: courts differ on protection of foreign lawyers' communications made outside the US; in general, foreign lawyers need to be members of a U.S. bar or a registered "foreign legal consultant" to practice in the U.S. (and gain the protection of the privilege), although many states permit foreign lawyers to practice as in-house counsel or temporarily in the U.S. (and then their advice will also attract privilege).

#### **Civil Law – Europe and Middle East**

- Austria: Applies to members of the Austrian (and other EU-countries) bar, not in-house counsel. Whether foreign lawyers (other than from EU-countries) in general have a right to make use of the attorney's privilege, and, if so, to what extent, is disputed and not settled case-law.
- France: Only to members of the French bar. The privilege does not apply to in-house counsel. Foreign lawyers: If the lawyer is admitted to a bar association within the EU, their communications with clients are privileged. Since April 2018, non-EU lawyers can register as Foreign Legal Consultants to practice law in France under the professional title they use in their state of origin if they are nationals of a jurisdiction that entered into an international trade agreement with the European Union, and said agreement includes provisions on legal services. Written and oral communications between a Foreign Legal Consultant and a client are privileged.
- Germany: The professional secrecy obligation is (generally) not applicable to in-house counsel (Syndikusrechtanwälte). Still, in-house counsel may refuse to testify in civil court proceedings regarding information obtained from their employer if the in-house counsel is admitted to the bar (similarly, in-house counsel is not obliged to disclose corresponding documents).

Foreign lawyers who are admitted to the German bar are recognized for the purposes of privilege. Whether other foreign lawyers also enjoy privilege is disputed.

- Netherlands: Applies to members of the Dutch bar and to in-house counsel that remains a member of the bar (subject to several conditions). Privilege does not extend to in-house counsel who's not admitted to the bar. Privilege extends to foreign lawyers to the extent such lawyers are bound to confidentiality by their home legal system
- Portugal: Applies only to members of the Portuguese bar, including in-house counsel that are members of the Portuguese bar.
- Russia: Only to members of the bar and registered foreign lawyers, not in-house counsel.
- Spain: Privilege, or more properly the professional secrecy obligation, applies to external lawyers, in-house counsel, and foreign lawyers practicing on a temporary or permanent basis.
- Sweden: Only to members of the Swedish (and other EU-countries) bar, not in-house counsel or foreign lawyers. In-house counsel cannot be admitted to the bar.
- Switzerland: Applies to members of the Swiss bar, not in-house counsel.
- It is generally recognized that article 321 of the Swiss Criminal Code, pursuant to which the intentional breach of the professional secrecy by an attorney is a punishable offence, also applies to foreign attorneys irrespective of their nationality or of the jurisdiction in which they practice (provided the breach of their confidentiality obligation occurs within Swiss jurisdiction). To this extent, foreign protections for attorney-client privilege are fully recognized in Switzerland.
- In contrast, the professional secrecy obligation is, in principle, only applicable to attorneys admitted to practice in Switzerland or within the EU/EFTA. Privilege does not apply to other foreign attorneys, though in civil proceedings, the protection of attorney-client communications from disclosure also extends to communications with foreign attorneys.
- Turkey: Turkish law does not distinguish between in-house and external lawyers. The duty of confidentiality appears to apply to the legal profession as a whole. Foreign lawyers: foreign lawyers are only permitted to provide legal advice on matters relating to foreign and international laws through attorney partnerships, and in these situations enjoy the attorney-client privilege.

Ukraine: Only to members of the bar and registered foreign lawyers, not in-house counsel.

UAE: Privilege only applies to external lawyers, not in-house counsel.

### **Civil Law – Latin America**

Brazil: Privilege applies to all lawyers and their staff, including in-house counsel. Foreign lawyers: foreign lawyers have the same rights, duties and protections granted to Brazilian lawyers in relation to privilege, provided that they hold a Brazilian bar license authorizing them to practice in Brazil.

Mexico: Privilege applies to all lawyers and their staff, including in-house counsel, and their agents. Foreign lawyers: courts differ.

### **Civil Law - Asia**

China: Only to registered members of the bar, including registered foreign lawyers, but not in-house counsel. [But sources differ on this.]

Japan: The lawyer's right not to testify or disclose is applicable only to bengoshi and gaikokuhojimubengoshi, and in-house counsel are not usually so registered. If they are, however, they will have the same rights to keep confidentiality. Similarly with respect to foreign lawyers.

The client's right not to produce internal documents in civil cases applies to in-house lawyers as well as other client personnel.

Korea: Privilege extends to outside and in-house counsel.

### **3. Is the identity of the client protected from disclosure?**

IBA Report identifies some jurisdictions in which that is the case (France, Germany, Austria, and mistakenly includes US and Canada).

This is not particularly relevant in international arbitration because the client will generally be known.

### **4. Are communications between opposing attorneys protected from disclosure?**

#### **Common Law**

England/Wales: Same as US.

United States: No (unless otherwise protected by some privilege).

## Civil Law - Europe

- Austria: Confidentiality obligation extends to the employees and assistants of the attorney. The confidentiality obligation may also include persons which have access to confidential information on the basis of a contractual relationship with the attorney.
- That said, sources are unclear if attorney-attorney communications remain privileged.
- France: Attorney-to-attorney communications are privileged. Indeed, the privilege protecting communications between lawyers is even broader than the privilege protecting communications between a lawyer and a client. Pursuant to the National Regulation of the Lawyer's Profession, all communications between lawyers are by nature confidential and therefore cannot be produced in court.
- Communications between lawyers are privileged unless stamped "official" or considered to be procedural acts. Even if stamped "official," however, a communication between lawyers should not be disclosed to a third party if it refers to discussions or documents that are privileged. Such a communication would itself be considered as privileged under French law.
- Communications between a French lawyer (*i.e.*, a lawyer admitted to a French bar association) and a foreign lawyer are also deemed privileged, irrespective of the foreign rules on privilege applicable to the foreign lawyer, if they are included in the file of the French lawyer.
- Germany: Correspondence between lawyers is not treated as confidential unless it is expressly marked e.g. "Confidential" or "Without Prejudice," which is rarely done.
- Netherlands: Information communicated to a lawyer by an opposing party or a third party is not, in principle, protected. But this does not apply to information communicated by another lawyer acting for an opposing party or a third party. Seemingly, then, communications between lawyers remains privileged (though sources are unclear on this point).
- Portugal: Yes, communications between attorneys are privileged.
- Russia: Yes.
- Spain: Spanish professional secrecy will keep privileged communications between attorneys if made or prepared when litigation is anticipated or commenced.

Sweden: Only if they are otherwise protected because they contain information that could not be demanded from the lawyer.

Switzerland: Communications by the client with agents of the attorney and communications by agents of the client with an attorney also fall within the scope of attorney-client privilege.

Attorney-client communications or work product may be shared among clients who are represented by separate attorneys without waiving the relevant protections. Nonetheless, each client may in principle choose to disclose such information at his or her discretion.

Turkey: Not specifically addressed. But inferring from the fact that third-party disclosure will result in waiver of privilege, it seems likely that attorney-attorney communications are not protected from disclosure.

Ukraine: Not addressed in the sources.

UAE: Apparently not addressed.

#### **Civil Law - Asia**

China: Apparently not addressed. Presumably subject to the same rules above.

### **5. Who (if anyone) can waive the privilege and decide to produce the documents?**

#### **Common Law**

Australia: The client owns the right to waive the privilege.

England/Wales: As in Australia.

Hong Kong: As in Australia.

India: As in Australia.

Singapore: As in Australia.

US: As in Australia.

#### **Civil Law - Europe and Middle East**

Austria: The client may release the attorney from his/her duty to maintain confidentiality. Still, even where there has been a waiver by the client, the attorney must consider whether the client could face detrimental effects due to the disclosure of the information. If this is the case, the

attorney is obliged to refuse to provide evidence relating to these facts, even if the client is prepared to allow disclosure of the information.

France: Client cannot waive as to documents in lawyer's possession but can waive as to the client's own documents.

Germany: The client may release the attorney from his/her duty to maintain confidentiality (waiver may be limited to certain situations, specific information and persons).

Netherlands: Only the lawyer, and not the client, can decide whether to invoke or to waive the privilege, but only after approval of the client. Even if the client relinquishes the confidentiality of the information, the attorney has an independent duty to weigh whether to preserve the confidentiality of the information. The client cannot instruct the lawyer to disclose or testify about information obtained in their capacity as a lawyer.

A lawyer may still invoke privilege when his client disclosed privileged communications to a third party out of court.

Portugal: Per the opinion issued by the Lisbon District Bar Association No. 20/2015 of 16 July 2015, professional secrecy is a duty and also a right of attorneys. Consequently, the lawyer alone may decide to seek authorization from the Portuguese Bar Association to reveal privileged information, which is the only entity with authority to waive professional privilege.

However, this interpretation is contentious. Several Portuguese court decisions have disagreed, and maintained that the client may release the lawyer from its obligation to maintain the privilege.

Russia: Only the client may relieve the attorney of the duty of keeping professional secrets. The attorney may use certain limited information necessary for supporting the attorney's position in a civil dispute with the client or for defending himself/herself during disciplinary or criminal proceedings.

Spain: In Spain, lawyers cannot be released of secrecy obligations by the client. The client can waive privilege, however, in Catalonia.

In Spain, as a general rule, the local bar association where the lawyer is registered may waive confidentiality. The lawyer asks the Bar to waive confidentiality. The other party's lawyer is given an opportunity to oppose. The Bar decides.

- Sweden: As in the US. Attorney can reveal but only to protect him/herself in a dispute with the client.
- Switzerland: The client may release the attorney from the confidentiality obligation. However, since attorney-client privilege is considered a cornerstone of the rule of law, an attorney may refuse to disclose protected information despite a release. In specific circumstances, an attorney may seek a waiver from the attorney supervisory authority if a waiver cannot be obtained from the client (e.g., because of the client's death or the former client's refusal to waive attorney-client privilege to prevent the attorney from bringing claims against the client).
- Turkey: The privilege is imposed by law as a professional obligation on attorneys, and does not specify any right of the client to the privilege.
- Ukraine: Only the client may relieve the attorney of the duty of keeping professional secrets. The attorney may use certain limited information necessary for supporting the attorney's position in a civil dispute with the client or for defending himself/herself.
- UAE: The privilege is imposed by professional code of conduct and by law. As such there is no "owner" of the privilege as such. However, the client can waive upon giving written consent.

#### **Civil Law – Latin America**

- Mexico: The client holds the right to privilege information, and consequently the client may waive this right.
- Brazil: The client holds the privilege and may waive the right. However, even with the client's authorization, an attorney may choose to withhold disclosure.

#### **Civil Law – Asia**

- China: Not addressed in the applicable laws and regulations.
- Japan: Essentially, the client can waive, but not the lawyer. The lawyer has the right to confidentiality, but apparently there aren't circumstances in which the lawyer can waive it. If the client has disclosed the document, the lawyer can no longer withhold it. The client can waive the protection for internal documents.
- Korea: The right to claim privilege belongs to the lawyer, not the client.

**6. What constitutes a waiver or loss of the privilege?**

**Common Law**

Australia: As in England/Wales, including concept of limited waiver.

England/Wales: Disclosure (loss of confidentiality)

Implied waiver in proceedings between attorney and client

Express waiver

Seeking advice in furtherance of a crime or fraud (no privilege attaches)

Unlike the US, there is a possibility of a limited waiver—by disclosure to a third party on the understanding that the documents will only be used for certain limited purposes

Where disclosure in litigation was inadvertent, the document can only be used by the receiving party with the permission of the court.

Hong Kong: As in England/Wales, including concept of partial waiver. Includes a concept of subject matter waiver (called “collateral waiver”).

India: As in England/Wales, except crime/fraud broadened to include any illegal purpose. It appears that limited waiver may be possible as in England.

Singapore: Express or implied consent.

Disclosure.

If client is a witness, court can order disclosure of communications necessary to explain evidence on the same subject matter that the client has given.

Communication in furtherance of a crime or fraud purpose.

Information that lawyer becomes aware of where client committed crime or fraud after engagement of the lawyer.

US: Express consent/waiver.

Disclosure of the document to anyone other than attorney and client or their staffs

Disclosure of privileged documents on the same subject matter in the context of litigation or arbitration

Relying on the attorney advice as a defense in a court proceeding (or arbitration)

Seeking advice in furtherance of a crime or fraud. [IBA Report says this is a general rule.]

Lawyer can reveal to protect himself or herself in a dispute with the client.

Inadvertent production should not result in waiver of privilege if reasonable measures taken to protect confidentiality.

### **Civil Law – Europe and Middle East**

Austria: Express/implied consent to release the attorney from his confidentiality obligation.

Attorney-client communication is not privileged per se, rather, ‘privilege’ results from the attorney’s duty of confidentiality. The predominate view, is that only documents in the exclusive possession of an attorney are privileged, not those in possession of the client. Similarly, if documents are sent by the attorney to a third person (e.g., an in-house lawyer or another employee of the client), privilege is no longer applicable. Therefore, the third party (as opposed to an attorney) may be obligated (e.g. by court order), to reveal that information.

France: Under French law, attorney-client privilege arises from the lawyer’s professional duty of secrecy. As the lawyer’s obligation is general and absolute, the privilege can only be waived by clients as to documents sent or received from the client (*i.e.*, copies of documents held by the client). Disclosure of information to third parties.

Germany: Express/implied consent to release the attorney from his confidentiality

Client is the so called “master of the secret” (*Herr des Geheimnisses*) and may limit the circle of persons to whom the attorney is allowed to release information (this does not impact counsel’s duty to maintain confidentiality towards others). A waiver cannot, however, be limited to minute facts or statements as this would permit falsifications or misinterpretation of facts. In general, the release may be revoked. If the attorney is released of his/her duty to maintain confidentiality the attorney is no longer entitled to refuse testimony and has to divulge

corresponding documents if called upon (though significant exceptions apply to this rule to documents that relate to a defense to alleged criminal or regulatory offenses).

Since the 'privilege' results from professional confidentiality regulations, only documents in the exclusive possession of the attorney can be 'privileged'; e.g. if documents compiled by a lawyer are sent to a third party (e.g., a foreign lawyer or even a client) (which is only allowed with client consent), the legal privilege is no longer applicable. However, the document may still be subject to confidentiality of the third party, if sent to another German lawyer.

Netherlands:

Consent from client to waive confidentiality. Even if the client relinquishes confidentiality, the attorney has an independent duty to weigh whether or not he or she should preserve the confidentiality of the information.

Privilege can only be waived explicitly and not inadvertently. Disclosure of privileged communication in national court proceedings or arbitration does not result in loss of the benefit of the privilege, assuming that the privilege was not waived explicitly by the lawyer.

Attorney-client communications, remain privileged even when sent to the client. It does not matter where the communications are stored.

Portugal:

As a general rule, breach of professional secrecy through third-party disclosure, including accidental disclosure, cannot result in the privileged being waived, and the information being used as evidence in court. Information may be shared among employees of the same entity, where the entity is the client, without privilege being waived.

Russia:

Express or implied waiver.

Disclosure in court proceedings.

Confidentiality of the document is otherwise lost.

Abuse of privilege, e.g. furtherance of a crime or fraud purpose.

Spain:

Waiver is accomplished through the procedure specified in question 5 above.

Sweden:

Express consent/waiver

Disclosure of the document or information [in the context of litigation]

Communication in furtherance of a criminal or fraudulent purpose.

Switzerland: Express consent (or instructions) to release the attorney from his confidentiality obligation. The client can revoke the release at any time.

Public disclosure of protected information by the client.

The client's communications of privileged information to third parties who are not bound by the professional secrecy obligation may lead to the (public) disclosure of this information and the loss of the protection afforded by attorney-client privilege.

The client may choose to release select information without forgoing privilege in general.

For the purposes of attorney-client privilege, it is irrelevant when the communication took place and where the record of such communication is located.

Accidental disclosure of an attorney-client communication is not considered a waiver of the privilege. However, factually, such accidental disclosure may nonetheless lead to the loss of the protection if the person receiving the protected information is not bound by the professional secrecy obligation and discloses the information to other parties or to the public.

Turkey: Disclosure to a third party will waive privilege.

Ukraine: Express waiver.

Secrecy will not be lost due to disclosure to a third party.

UAE: Privilege can only be waived by written consent of the client, and by an attorney accused of a criminal charge or a civil claim arising from the relationship with the client or of negligence or professional misconduct.

### **Civil Law – Latin America**

Brazil: Express waiver

Intentional disclosure to non-lawyer third party

Sharing information with fellow employees not involved in the legal issues being discussed with counsel may result in waiver

Accidental disclosure may result in waiver, and is evaluated on a case-by-case basis

Mexico: Express consent/waiver by a “clear and precise” renunciation (preferably in writing).

Accidental disclosure may result in waiver (determined on a case by case basis given a lack of regulation or case law)

Sharing information with individual(s) not bound by legal professional secrecy may result in waiver of attorney-client privilege (determined on a case by case basis)

Broad dissemination of information will typically waive the attorney-client privilege (e.g., sharing information with a newspaper)

### **Civil Law - Asia**

China: Not addressed in applicable rules and regulations, but disclosure is likely to result in waiver of confidentiality protections.

Japan: Disclosure to a third party will result in loss of protection for both the lawyer confidentiality right and the client internal-document right.

In criminal and administrative proceedings, inadvertent production will as a practical matter permit use of the information by the government.

Dispute between lawyer and client allows lawyer to use protected material to defend him or herself.

“When the client obviously commits a crime.”

Korea: Waiver, including where the client calls the lawyer to testify on the subject of advice. In criminal proceedings only, privilege is lost if client has consented to disclosure of confidential information or where there is a need to stop a continuing or imminent crime that could cause serious personal injury or death.

### **7. Does public policy bar or require disclosure in the context of civil proceedings (that is, regardless of client consent)?**

China: Sources don't directly address, but given that (i) courts can require disclosure where a client is committing a crime or contemplating a crime that that severely impairs national or public security, or seriously endangers the personal safety of others, and (ii) regulatory agencies generally ignore lawyer confidentiality, there may be a public

policy requiring disclosure. But it seems unclear whether that exception would apply where an arbitrator called for disclosure.

Netherlands: Attorney-client communications can be seized if the search for truth prevails over the concept of professional legal privilege. This is only allowed in exceptional circumstances.

**Sources (other than country reports and IBA Statement in Defence of the Principle of Lawyer-Client Confidentiality):**

**Australia**

Annex A to the Report of the ICCA Queen Mary Task Force on Third-Party funding in International Arbitration ([ICAA-QMUL Annex A](#))

**France**

[ResourceHub BakerMcKenzie](#)

[DLA Piper Legal Professional Privilege Global Guide](#)

**Germany**

[ResourceHub BackerMcKenzie](#)

[DLA Piper Legal Professional Privilege Global Guide](#)

[Lexology](#)

[Global Investigation Review](#)

[Norton Rose Fulbright](#)

[The Council Of Bars and Law Societies of Europe \(CCBE\) Germany - Rules of Professional Practice \(BORA\)](#)

[ICAA-QMUL Annex A](#)

[CCBE Fish Report](#)

[CCBE Updated Edwards Report](#)

**Hong Kong**

ICAA-QMUL Annex A

## **UAE**

[ResourceHub BakerMcKenzie](#)

[DLA Piper Legal Professional Privilege Global Guide](#)

## **Austria**

[ResourceHub BackerMcKenzie](#)

[DLA Piper Legal Professional Privilege Global Guide](#)

[The Council Of Bars and Law Societies of Europe \(CCBE\) Austria -  
Lawyers' Act](#)

[ICAA-QMUL Annex A](#)

[CCBE Fish Report](#)

[CCBE Updated Edwards Report](#)

## **Netherlands**

[ResourceHub BackerMcKenzie](#)

[DLA Piper Legal Professional Privilege Global Guide](#)

[The Council Of Bars and Law Societies of Europe \(CCBE\)  
Netherlands – The Rules of Conduct of Advocates](#)

[The Council Of Bars and Law Societies of Europe \(CCBE\)  
Netherlands – Act on Advocates](#)

[ICAA-QMUL Annex A](#)

[CCBE Fish Report](#)

[CCBE Updated Edwards Report](#)

[Lexology](#)

## **Spain**

[ResourceHub BakerMcKenzie](#)

[Latham & Watkins Pro Bono Institute Report](#)

[Lexology](#)

## **Switzerland**

ICAA-QMUL Annex A

[CCBE Fish Report](#)

[Lexology](#)

[Getting the deal through, Law Business Research](#)

## **EU Law**

Case C 694/20, Orde van Vlaamse Balies, EU:C:2022:963

White & Case article “[EU Court of Justice clarifies that all exchanges with external counsel are privileged – an important development amidst a dawn raid uptick in Europe](#)” published 6 April 2023

## **Turkey**

[ResourceHub BackerMcKenzie](#)

## **Portugal**

[Lexology](#)

## **Russia**

ICAA-QMUL Annex A

The Russian Federal Bar Association's [Code of Professional Ethics of Lawyers](#)

## **Ukraine**

ICAA-QMUL Annex A

Ukrainian National Bar Association's [Rules of Professional Conduct](#)

## **Brazil**

[ResourceHub BakerMcKenzie](#)

## **Mexico**

[ResourceHub BakerMcKenzie](#)

[Von Wobeser Mexico Country Report](#)

[Lexology](#)

## **China**

[privilege\\_in\\_internal\\_investigations\\_in\\_china\\_en\\_cn\\_2019\\_05.pdf \(cov.com\)](#)

[02 - Type of privilege | People's Republic of China | Global Attorney-Client Privilege Guide | Baker McKenzie Resource Hub](#)

[Regulation of the Legal Profession in China: Overview | Practical Law \(thomsonreuters.com\)](#)

[A PRIMER ON ATTORNEY CLIENT PRIVILEGE: PART 2 - Issuu](#)

## **Japan**

[Legal Privilege & Professional Secrecy in Japan - Lexology](#)

[Attorney-Client Privilege in Japan: A General Framework for Global Businesses \(mbainsights.com\)](#)

[02 - Type of privilege | Japan | Global Attorney-Client Privilege Guide | Baker McKenzie Resource Hub](#)

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## **Korea**

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