

KUWAIT

Legal privilege global guide



About

Welcome to DLA Piper's Legal Professional Privilege Global Guide, the ultimate guide to legal professional privilege around the world.

Legal professional privilege protects the confidentiality of communications between lawyers and their clients and it has become an exception to the general principle of public policy for full disclosure. It is, in substance, a fundamental human right.

Although the concept of legal professional privilege is universal, its scope and limitation differ between jurisdictions. We are aware that many of our clients operate on a global platform, so it is of critical importance that they are aware of these differences in order to make informed decisions about the countries in which they are active and about how their business interests may be protected.

This global guide is a dynamic resource containing up-to-date details of the varying concepts and scope of legal professional privilege across dozens of jurisdictions globally. New jurisdictions are regularly being added to the guide, so if you cannot find the jurisdiction you are seeking, please let us know.

How to use this guide

Let us provide a few examples:

1. You are a Compliance Director for a listed company located in Country A and you have found that problematic conduct has occurred within your subsidiary in Country B.

Scenario A: You are about to send an e-mail to your in-house colleague in Country B with a legal assessment of the conduct in question. Before you push the button, you think about the scope of legal privilege. You will ask yourself: "Does Country B protect in-house lawyer communications? Or can my e-mail be seized by inspectors or discovered in court?" Our guide provides a first answer.

Scenario B: You plan to forward the legal advice received from DLA Piper to your colleague in Country B. Then you ask yourself the following question: "What is the scope of legal privilege in Country B?" Indeed, virtually all jurisdictions recognize the concept of privilege, but there is a big difference in terms of when privilege applies (e.g. only after the start of an investigation) and how broad is the scope. Again, our guide provides a first answer.

2. You are a freshly appointed Compliance Director for your internationally active company, and no clouds darken your horizon - yet. Before launching a new communications policy, you want to find out about the underlying privilege issues. Our guide provides initial guidance for your strategic legal communications and planning, and will help shape your strategy for sourcing and storing legal advice.

But remember, our Legal Professional Privilege Global Guide **does not constitute legal advice**. While this guide will be essential reading for those who need to find out more about the scope of legal professional privilege around the world, it is imperative that you contact the contributors to the individual chapters for more comprehensive guidance and legal advice in your particular case.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.



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Concept of legal professional privilege

The second Article of the State of Kuwait's permanent Constitution of 1963 confirms that Kuwait's legal system is based upon Shari'a law (**"Islamic Religious Law"**). Legislation deriving from Shari'a is the main source of law in the state of Kuwait. The Amir has overarching responsibility for initiating, sanctioning and promulgating laws in the State of Kuwait.

However, in contrast to many other gulf states, such as the United Arab Emirates, the State of Kuwait's legal system is based upon a number of differing legal systems including French civil law, English common law, Islamic legal principles and Egyptian law.

In many civil law jurisdictions in the region, the concepts of legal professional privilege and "without prejudice" communications do not exist *per se*, and the parties have the right to use any document which may support their position in civil litigation. This is the position in the State of Kuwait, which does not have any express provision in respect of legal professional privilege. Instead, lawyer-client legal professional privilege is interpreted under Islamic Religious Law.

Indeed, lawyers in the State of Kuwait are bound by duties of confidentiality which, in many cases, incorporate concepts similar to legal professional privilege.

Scope of legal professional privilege

Legal professional privilege protects all communications between a professional legal adviser and their client from being disclosed without the permission of the client. The privilege is solely for the benefit of the client and not the lawyer. The objective of this legal principle is to protect one's access to the justice system by ensuring individuals can disclose all relevant information to their legal advisers without the fear that this disclosure may result in negative repercussions or prejudice them in the future.

A lawyer ceases to be bound by the requirements of legal professional privilege if the lawyer can demonstrate that documentation or information:

- Was in the public domain at the time it was disclosed to the lawyer;
- Entered the public domain subsequent to the time it was disclosed to the lawyer through no fault of the lawyer; or
- Was in the lawyer's possession free of any obligation of confidence at the time it was disclosed to the lawyer, evidenced by contemporaneous records.

Notwithstanding the lawyer-client privilege, a lawyer may disclose certain documents / information to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the lawyer provides the client with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain a protective order preventing or limiting the disclosure and/or requiring that the documents / information so disclosed be used only for the purposes required by law.

The concept of legal professional privilege in the State of Kuwait is limited only to the professional relationship between a lawyer and their client, through the lawyer's obligation to keep confidential all information disclosed by their client (pursuant to *Kuwait Law No. 42/1964* organizing the legal profession). Accordingly, the relationship between a lawyer and their client benefits from a limited scope of privilege because the parties are independent entities and the lawyer, of course, owes a duty of confidentiality to the client.

It appears that the same privilege protections do not apply to in-house legal counsel advising officers, directors or employees of the company as they are not independent to the client. However, to protect information or communications passing between in-house counsel and the employer, it may be possible for a confidentiality agreement to be put in place.

Legal professional privilege in the context of merger control

Legal professional privilege has not been clearly defined within the context of merger control in Kuwait.

Recent cases and/or other legal developments

There do not appear to be any recent cases or other legal developments in the State of Kuwait regarding legal professional privilege.

Data privilege

Content to follow shortly.

Key contacts



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Disclaimer

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please contact your usual DLA Piper contact.