

## Attorney-Client Privilege in European Union, Pacific Rim and Latin America

	Existence of Attorney-Client Privilege or Duty of Confidentiality?	Privilege extended to in-house counsel?	Nuances
<b>Europe</b>			
European Union	<b>Yes.</b> Communications with outside counsel for the purpose and interest of seeking legal advice are protected	<b>No.</b> A corporation's communications with in-house counsel and related materials are discoverable with no further inquiry.	• Limited to EU antitrust proceedings; EU decisions do not alter the privilege rules in European nations or courts.
France	<b>Yes.</b> Lawyers are bound by professional secrecy; communications are protected with respect to litigation or an investigation.	<b>No.</b> However, an in-house counsel is obliged to respect business secrets.	• A breach of professional secrecy is considered a criminal offense. • Legal advice of major importance should only be provided by outside counsel to protect the privilege.
Germany	<b>Yes.</b> An attorney has an obligation to keep confidential any information obtained in exercise of his or her profession.	<b>Yes.</b> To qualify for privilege protection in-house attorneys (1) must be permitted to practice as an attorney in Germany; and (2) information must be obtained in the course of providing legal advice and not business advice	• It is essential that in-house counsel keep separate files for affairs involving legal services from all other files (management, accounting, etc).
Italy	<b>Yes.</b> Italian lawyers are bound by the duty of confidentiality and are penalized for breaches of confidentiality for information received in a professional capacity.	<b>No.</b> Lawyers are not permitted to be employees, either in civil service or in private industry, thus a person trained as a lawyer who becomes such an employee is no longer a lawyer.	• For outside counsel, there is no protection for documents in the client's possession.
Spain	<b>Yes.</b> Attorneys are governed by a general rule of professional confidentiality or secrecy. In addition to this duty, the attorney is also afforded a privilege to maintain such confidentiality.	<b>Yes.</b> In-house counsel enjoy the same rights and obligations as external counsel to carry out their professional duties.	• Any breach of confidentiality could lead to criminal liability.
United Kingdom	<b>Yes.</b> The attorney-client privilege is primarily found in case law and is referred to as the "Legal Professional Privilege." The privilege is split into two different categories: legal advice privilege and litigation privilege.	<b>Yes.</b> The United Kingdom affords in-house counsel acting in a professional capacity the privilege.	• Communications with expert witnesses also protected as privileged.
<b>Pacific Rim</b>			
Australia	<b>Yes.</b> The "Legal Professional Privilege" extends to communications to (1) obtain or give legal advice or (2) reference potential or actual litigation.	<b>Yes/Unclear.</b> The mere fact that a lawyer is in-house is not sufficient to deny the privilege, but attracts closer scrutiny to determine whether the in-house attorney's communication falls under (1) or (2).	• The precise scope of the privilege will vary slightly by state. • The privilege can apply to third parties if they come within (2).
China	<b>Yes.</b> Attorneys are prohibited from voluntarily disclosing a client's confidential information, but there are a number of exceptions that seemingly contravene this duty.	<b>Yes.</b> The law does not differentiate between in-house counsel and outside attorneys. Therefore, it is understood that the same rules also apply to in-house counsel.	• Historically, the Chinese government has required attorneys to rank their loyalty to the government above that owed to any individual client.
India	<b>Yes.</b> Professional communications between attorneys and clients are protected as privileged communications under the Indian Evidence Act of 1972.	<b>No.</b> An in-house counsel is not recognized as an attorney under Indian law.	• The employment contract of an in-house attorney usually contains a confidentiality clause so that a client will be entitled to damages in the event of a breach.
Japan	<b>Yes.</b> Lawyers have a statutory duty of confidentiality to their clients and may refuse to give testimony or produce documents that contain "secret" facts.	<b>Yes.</b> The duty of confidentiality and protection from disclosure apply, but only if they are a Bengoshi.	• Most in-house attorneys or those working in legal departments in Japan are not a Bengoshi.
South Korea	<b>Yes.</b> Under the Attorneys' Act, an attorney shall not disclose any secret information obtained in the course of their professional duties.	<b>Yes.</b> An attorney's right to refuse testimony and resist a search and seizure, as well as the professional duty of secrecy, is applicable to communications between a corporate client and its in-house counsel, provided that the communications are made in the counsel's capacity of a legal, rather than a business adviser	• South Korea's limited discovery practices limit the need for the privilege.
<b>Latin America</b>			
Argentina	<b>Yes.</b> All communications and documentation protected from disclosure.	<b>Yes.</b> In-house counsel's communication with management protected provided (1) appointed and public held out as legal counsel; (2) licensed; and (3) communications involve legal advice (not business advice).	• Privilege extends to legal office provided they are separate.
Brazil	<b>Yes.</b> All the information supplied to the attorney by the client, including written communication, is deemed confidential and may not be waived by the client. The confidentiality privilege is extended to the attorney's files, data, mail and any kind of communication (including telecommunications).	<b>Yes.</b> Same as outside counsel.	• Privilege extends to legal office provided they are separate.
Venezuela	<b>Yes.</b> All the information supplied to the attorney by the client, including written communication, is deemed confidential and may not be waived by the client. The confidentiality privilege is extended to the attorney's files, data, mail and any kind of communication (including telecommunications).	<b>Yes.</b> Same as outside counsel.	• Privilege does not extend to in-house tax counsel.
<b>The Last BRIC Country</b>			
Russia	<b>Yes.</b> Attorney privilege is only granted to attorneys at law. An individual is considered to be an attorney at law if they obtained the status of attorney at law through a legally specified procedure; - is registered in the register of attorneys at law held by the Ministry of Justice of Russian Federation; and - has the right to provide advocacy	<b>No.</b> In-house counsel not entitled to hold attorney license.	• All information maintained by in-house counsel can be seized by state officials.

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