

ISRAEL

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.



Dr. Bertold Bar-Bouyssiére

Partner

bbb@dlapiper.com

T: +32 2 500 1535



Michael A Marelus

Associate

michael.marelus@dlapiper.com

T: +1 212 335 4542



Israel

Last modified 18 September 2019

Concept of legal professional privilege

Israeli law is based upon a common law legal system, which has been influenced both by its major religious communities and by the diverse history of the country (which, prior to its independence in 1948, was under Ottoman and then British sovereignty). Whilst predominantly a common law system, Israel's legal system does comprise facets of civil law, largely drawn from the Ottoman regime, German civil law and religious laws (including the Jewish Halakha and Shari'a law).

Despite numerous references in the Israeli Declaration of Independence, the State of Israel does not have a written constitution. The Knesset has responsibility for enacting statutes in the State of Israel.

The Israeli Supreme Court (*Beit Mishpat Elyon*) is the final court of appeal in the State of Israel, reserved to hear appeals from the District Court (which deals with all civil and criminal matters not under the jurisdiction of a Magistrate Court). The Supreme Court also sits as the High Court of Justice in Israel, hearing administrative cases.

Unlike in many civil law jurisdictions in the region, the concept of legal professional privilege does exist in the State of Israel.

Scope of legal professional privilege

Legal professional privilege protects all communications between professional legal advisers and their clients 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 protection if they 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.

A lawyer may disclose certain documents / information that would otherwise be protected by lawyer-client privilege 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.

Under Israeli law (pursuant to both the *Bar Association Law 1961* and the *Evidence Ordinance [New Version] 1971*), all matters or documents exchanged between a client and their lawyer, pertaining to the professional service granted by the lawyer to their client, are privileged. Accordingly, communications between in-house legal counsel of a company and its officers, directors or employees, pertaining to legal services rendered by the in-house legal counsel to their client – the company – are privileged.

The fact that the in-house legal counsel is an employee of the company is irrelevant and does not influence the application of privilege.

However, the communication is privileged only if both the officers, directors or employees are acting on behalf of the company and the communication relates to matters falling within the professional lawyer-client relationship between the in-house legal counsel and the company. In instances where privilege applies, it is absolute, and can only be waived by the client.

Legal professional privilege in the context of merger control

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

Recent cases and/or other legal developments

There do not appear to be any recent cases and other legal developments in Israel regarding legal professional privilege.

Key contacts



Jeremy Lustman

Partner

jeremy.lustman@dlapiper.com

T: +1 202 799 4214

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.