Global Attorney-Client Privilege Guide - Vietnam

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# 01 - Discovery

## What disclosure/discovery is required in litigation?

Unlike those found in common law jurisdictions, there are no similar discovery procedures under Vietnam's Civil Procedure Code. However, the Civil Procedure Code 2015 does require related parties to take the necessary measures to gather evidence from third parties on their own initiative. Further, the court's involvement in the collection of evidence is available upon the parties' request, should they have given their best effort to collect evidence but failed to do so. This request must clearly identify the issues that need to be proven by the evidence, the relevant evidence to be gathered, and the reasons why the requesting party cannot gather the evidence in question. The court will then decide whether to formally require the individuals or organizations with possession of or control over the evidence in question to provide it to the court.

Regarding the disclosure of evidence between the involved parties, they are obliged to provide all documentation and evidence within a certain period of time upon request of the court. If the parties fail to provide or inadequately provide the evidence requested by the court within the deadline, the court shall resolve the case based on the evidence already provided by the parties. Any documents/materials provided after the deadline set by the court shall not be admitted into evidence, with a few exceptions prescribed by the law.

On 3 May 2020, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters entered into force for Vietnam. Accordingly, Vietnam may provide evidence in Vietnam to foreign courts upon the request of other contracting states to the convention, or request other contracting states to assist in collecting evidence. However, on accession to this convention, Vietnam also made an express reservation that it would not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents, as known in common law jurisdictions, unless all of the following conditions are met:

The judicial proceeding before a competent court has been commenced

The documents to be collected are specified in the Letters of Request as to date, subject and relevant information and facts to prove the direct relationship between the information sought and the pending proceeding

The documents are related to the requested person or under the person's possession or control

# 02 - Type of privilege

## Does the jurisdiction recognize the concept of privilege or another form of protection from disclosure of legal communications and documents prepared by or for lawyers?

Vietnamese law does not recognize the common law doctrine of attorney-client legal privilege in relation to legal communications and documents prepared by or for lawyers. Under the current regulations, lawyers are obligated to keep the documents and information provided to them by their clients as well as their work product confidential. Specifically, the Law on Lawyers stipulates that a lawyer is prohibited from disclosing information about a case, matter or client that the lawyer obtained during the course of their practice, except where the client agrees to the disclosure in writing or the law stipulates otherwise. Nevertheless, courts and other relevant authorities can compel lawyers to produce work product provided by the client if an action is commenced.

The provisions of the Criminal Procedure Code and the Civil Procedure Code on evidence give judges (in civil cases) and investigating bodies and courts (in criminal cases) broad powers to collect evidence by, among other means, compelling individuals, agencies, or organizations to provide documents and other evidence related to the matter in controversy in order to clarify the issues in the case.

While there are no reported cases in which a lawyer has been required to produce a document received from their client, it must be noted that neither the Criminal Procedure Code nor the Civil Procedure Code exempt lawyers from the exercise of the powers afforded to investigating agencies and courts. Simply put, Vietnamese law does not recognize any concept of privilege that would apply to attorney work product or any documents or evidence provided by clients to their lawyers.

On a related note, the new Penal Code that fully came into effect on 1 January 2018 stipulates an obligation for advocates (including attorneys) to make denouncements upon detection of crimes against national security or other extremely serious crimes. The advocates shall bear criminal responsibility upon failure to adhere to this stipulation. This provision somewhat narrows down the scope of protection of clients' confidential information and is contrary to the provisions of the Law on Lawyers.

# 03 - Scope of privilege

## Is attorney-client communication only privileged as long as it remains in the lawyer's possession, or is a copy held by the client also protected?

Vietnamese law does not recognize the common law doctrine of attorney-client privilege. Lawyers are prohibited from disclosing information that they obtain in the performance of their professional responsibilities, except where the client agrees in writing to such disclosure or as stipulated by law. This means that lawyers owe obligations of confidentiality to their clients with regard to all information that remains in the lawyers’ possession. Documents or other evidence in the client’s possession are not subject to this obligation of confidentiality. Furthermore, the client may be compelled by the courts or competent authorities to produce relevant documents or information if an action is commenced.

## Are in-house lawyers treated in the same way as external lawyers for determining privilege?

As Vietnamese law does not recognize the common law doctrine of attorney-client legal privilege, there is no separate regime for in-house lawyers. In-house lawyers have the same obligation to maintain the confidentiality of documents and information provided to them by their clients, as well as that of their work product. In-house lawyers may also be subject to contractual obligations arising out of their employment contracts to maintain the confidence of documents and evidence provided to them by their employer. Naturally, in-house lawyers will be required to produce documents upon a valid request from competent Vietnamese authorities in the same circumstances as external lawyers.

## Does privilege extend to internal communications between in-house lawyers?

There are generally no provisions on privilege for internal communications between two or more in-house lawyers under Vietnamese law. It much depends on the Policy/Code of Conduct of the entities that the in-house lawyers are currently working at to determine what kind of internal communications can be made in public or private. But generally in practice, any correspondence internally made, even with a disclaimer as privileged or highly confidential, can still be collected upon request from the courts and other relevant authorities. Entities may reserve the right to request courts or other relevant authorities to keep the materials confidential if such materials are related to trade secrets or personal information.

## Are foreign lawyers recognized for the purposes of privilege?

Vietnamese law does not distinguish between foreign and local lawyers for purposes of privilege.

## Does privilege extend to nonlegal professionals who may from time to time advise on legal issues relating to their field, e.g., accountants or tax consultants advising on tax law?

The disclosure of information that is shared by a client with nonlegal professionals, such as accountants or tax advisers, is subject to the service agreements between the client and the nonlegal professionals. Even if a service agreement requires a nonlegal professional to keep all communications with their client confidential, the courts or competent authorities may, in circumstances provided by law, compel relevant persons or organizations to supply documents or other evidence to clarify the facts of a case.

# 04 - Sharing documents with third parties

## In what circumstances (if any) can a document be given to a third party without losing protection?

There is no doctrine of attorney-client privilege in Vietnam. Information about a case, matter, or client obtained by a lawyer in the performance of their professional responsibilities can be provided to a third party with the client's written consent or as required by law.

# 05 - Investigations

## Are there any differences in how privilege operates in civil, criminal, regulatory or investigatory situations?

Vietnamese law does not recognize the doctrine of privilege. In any case, the protection and disclosure of documents must be in accordance with the provisions of the Criminal Procedure Code and the Civil Procedure Code on evidence, and legally speaking, there are no differences between these procedures.

## Can notes of interviews with employees and other documents produced during investigations be covered by privilege?

Since there is no doctrine of attorney-client privilege in Vietnam, interview notes with employees are not outside the scope of the Criminal Procedure Code and the Civil Procedure Code on evidence. Thus, it is very much possible that the courts and/or relevant competent agencies may request such notes be produced during investigations.

# 06 - Regulatory investigations

## Can governmental regulators require a privileged document to be provided to them?

While lawyers owe obligations of confidence to their clients, government regulators may compel the disclosure of information about a case, matter, or client obtained by a lawyer in the performance of their professional responsibilities. Practically speaking, lawyers may request the competent authorities to keep the document confidential if such document contains trade secrets or any personal information of the relevant party.

# 07 - Recent issues

## What (if any) recent issues have arisen in relation to privilege in the jurisdiction?

In the past few years, the Supreme People's Court announced a number of judgments that could be a good point of reference, authority, and even precedents. A number of local courts' judgments and decisions are also published and available for public search on the website of the Supreme People's Court. However, we are not aware of any decisions concerning privilege in Vietnam.

# 08 - Authors

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