Global Privilege and Professional Secrecy Guide

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Welcome to the fifth edition of Baker McKenzie's Global Privilege and Professional Secrecy Guide – the most comprehensive resource of its kind, and an invaluable tool for our multinational clients navigating the increasingly complex landscape of legal privilege worldwide.

In this edition, we harness the insights of our colleagues across 38 jurisdictions to present the current law on privilege and professional secrecy, reflecting the many recent developments in national legislation and professional standards. We are pleased this year to include new jurisdictions contributed by our teams in Chile, Colombia, Saudi Arabia, Switzerland, Ukraine, and Venezuela, as well as expanded content on the potential legal implications of artificial intelligence.

The law in this field is constantly evolving. However, the past three years have seen particularly dynamic change as courts and legislatures worldwide revisit the balance between confidentiality and transparency, often challenging the foundations that underpinned previous editions of this guide.

Notably, several civil law jurisdictions have moved closer to recognising, piloting, or at least exploring privilege for in-house lawyers. Our guide features updates on significant developments in France, Spain, the Netherlands, Belgium, and beyond.

In the common law world, a landmark English decision recently overturned a century-old precedent, now allowing companies to assert privilege against their shareholders. Elsewhere, debates continue regarding the treatment of dual-purpose communications, with a major judgment handed down in Australia.

The rapid rise of generative AI has given rise to novel concerns: Are AI tool inputs and outputs protected by privilege? While the clearest risk remains the loss of confidentiality through the use of public models, the application of existing privilege laws to new forms of documents and data is far from straightforward. The US courts are amongst the first to start to tackle this issue.

Meanwhile, companies conducting internal investigations encounter a markedly different privilege environment than even a few years ago. Courts, regulators, lawmakers, and professional bodies have tightened the criteria for privilege protection, increased scrutiny around waiver, and issued new guidance on preserving confidentiality in investigative processes. The issue of privilege in documents prepared during corporate responses to crises, particularly in the context of investigations following cyber incidents, is considered in several jurisdictions.

Few issues are more complex for our clients than the question of cross-border privilege. These matters demand not only a thorough understanding of the law and conflict of laws principles, but also practical experience in their application. While this guide cannot address every possible scenario, our team offers a wide range of services to support clients through these challenges. Please do not hesitate to contact us for tailored legal assistance.

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