

Legal Professional Privilege and Professional Secrecy in the UAE: Overview

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Practice note: overview | [Law stated as at 01-Mar-2022](#)

A Practice Note providing an overview of the laws in the UAE relating to the protection available to lawyer-client communications and the best practices for preserving the confidentiality, privilege, and secrecy in those communications in business and commercial situations. In the context of privilege and professional secrecy rules, this Note also considers the definition of lawyers and clients, the impact of a common interest or joint representation on the applicability of privilege, and the application of privilege in an internal investigation or an M&A transaction.

This Note provides an overview of the law related to:

- Parties' disclosure obligations.
- The rules related to legal professional privilege and professional secrecy.
- Who are considered to be lawyers and clients for the purposes of legal professional privilege and professional secrecy.
- How local courts consider privilege and professional secrecy issues when clients share counsel or a common interest with a third party.
- How a party can protect privileged documents during an internal investigation or in an M&A transaction.

For information on the different approaches to legal professional privilege, and professional secrecy in common law and civil law jurisdictions, see [Practice Notes, Legal professional privilege, legal confidentiality and professional secrecy: Cross-border](#) and [A world tour of the rules of privilege](#).

General Disclosure Rules

Rules of Disclosure in Civil Litigation

There is no recognised system of discovery under Federal Law No. (11) of 1992 on the Civil Procedures Law, as amended by Federal Decree-Law No. (15) of 2021 (Civil Procedure Law). A party to a dispute is not under a legal obligation to disclose all documentation or information in its possession that may be relevant to a case; it is only required to disclose information that may be beneficial to its prosecution or defence of a matter.

Either party can petition the court to compel the other party to produce a document in its possession if either:

- The law permits disclosure.

- The document is joint between the parties (that is, it is for the benefit of both parties to the litigation or evidencing their mutual obligations and rights).
- If the other party bases a claim on the document at any stage in the proceedings.
- The document is relevant to the claim(s) or the proceedings.

(Article 18, Federal Law No. (10) of 1992 on Evidence in Civil and Commercial Transactions, as amended by Federal Decree-Law No. (27) of 2020 (Evidence Law).)

The judge can compel the production of such a document if both the following criteria are met:

- The judge is convinced, based on submitted evidence, that the document is in the possession of the other party.
- The document was referred to or relied on by the other party, but not disclosed to the court.

The other party can refuse to produce the document if it can demonstrate that it is not in possession of the document, or it would be overly burdensome to obtain the document.

Rules of Specific Disclosure

Since the concept of discovery does not exist in the UAE, there are no rules of specific disclosure in UAE courts.

Legal Professional Privilege and Professional Secrecy Rules

Sources of Law

UAE law is modelled primarily on civil law. The rules relating to legal practice, confidentiality and evidence in mainland UAE are governed by:

- Law No. (23) of 1991 on the Regulation of the Legal Profession (Advocacy Law).
- Minister of Justice Decree No. (666) of 2015 on the Code of Ethics and Professional Conduct of the Legal Profession (Code of Ethics).
- The Evidence Law.
- The Civil Procedure Law.

The concepts of legal professional privilege, confidentiality and professional secrecy, which exempt disclosure of certain protected lawyer-client communications, are referred to as "privileged" in this Note. Distinctions are made where applicable.

In the UAE, there is no concept of legal privilege as would be understood in most common law countries. However, an attorney must keep confidential the communications made in furtherance of their professional representation of a client, unless disclosure is required to prevent the perpetration of a crime (*Article 42, Advocacy Law*). Further, such information must be kept confidential regardless of whether the representation is advisory/non-contentious or contentious in nature (*Code of Ethics*).

Disclosure of confidential information is limited to the following circumstances:

- Written consent has been obtained from the client or the rightful owner of the confidential information to its disclosure.
- There is an express court order compelling the disclosure of the confidential information (in this case the information is only disclosed to the extent required by such court).
- The attorney, attorney's partners or employees are accused of a crime or civil claim arising out of negligence or professional malpractice.

The principle of legal confidentiality is the same in non-contentious matters, civil litigation, criminal litigation, proceedings before regulatory authorities, and employment tribunals.

The Civil Procedure Law does not specifically address confidentiality in relation to arbitration tribunals.

As stated above, the concept of legal privilege as understood in most common law countries does not exist in the UAE onshore courts. As such, litigants in person are unable to refuse to disclose documents in the onshore courts on the ground of legal professional privilege or professional secrecy, unless they are bound by terms of a different agreement preventing the disclosure of those documents.

Purpose

An attorney is under a duty and ethical obligation to keep all information confidential relating to their professional representation of their client (*Article 3C, Code of Ethics*). This obligation applies to both legal proceedings litigation and the provision of legal advice or otherwise. The document need not have been produced for a particular purpose for the confidentiality requirement to apply.

Article 3C of the Code of Ethics is broadly drafted. As such, any information provided by the client in respect of their matter will be confidential. This information may not be disclosed, unless the client agrees to the disclosure or the court orders the disclosure of such information and documents.

Scope of Legal Privilege and Professional Secrecy Rules

Communications

Kinds of documents/communications protected from disclosure. UAE law does not draw a distinction between the different types of documents that may be protected by the professional duty to safeguard all confidential information. The attorney may become liable in circumstances where they have failed to protect the confidentiality of any document prepared pursuant to an attorney-client communication, that contains confidential information received from the client, or a third party. Based on an interpretation of the relevant laws, any information that is passed between a lawyer and their client is considered confidential.

Evidence of confidential communication. Any communications between an attorney and client are considered prima facie evidence of a confidential communication, so cannot be disclosed except in the circumstances set out above (see [Legal Professional Privilege and Professional Secrecy Rules](#)). This includes evidence of any such communications, such as meeting notes or emails summarising the discussions between the lawyer and their client.

Documents that have not been communicated. Documents that have not actually been communicated, such as a legal advice or a lawyer's notes regarding their client matters, are confidential, even though this is not expressly outlined in the relevant laws.

Third Parties

An attorney must safeguard confidential client information from third parties.

Confidential information communicated to an attorney by a third party with proprietary rights in such information, which is meant to be confidential, is also protected. Any information acquired by an attorney from a client or a third party, which the author or possessor of the information intends to share solely with the attorney, must be treated as confidential by the attorney (*Article 3C, Code of Ethics*).

The attorney cannot disclose this information to any other person without the written consent of the client, author or possessor of the information, unless either:

- Compelled by a court order to disclose the information.
- The attorney, their partners or employees are criminally charged or face a civil claim arising from either the client relationship or professional malpractice or negligence.

In circumstances where compelled by a court order, the attorney should be careful to only disclose information to the extent of the order and no more.

Further, the obligation to maintain confidential information covers a lawyer, their respective partners, and the staff of the firm (*Article 3C, Code of Ethics*). Any one of these categories of persons can be held liable to pay compensation for the violation of its obligation to maintain confidential information.

Confidentiality

A lawyer must keep all information related to their representation of a client confidential. Confidentiality is created when the author or owner of the information (whether the client or a third party) seeks to transmit the information solely to the lawyer (*Article 3C, Code of Ethics*). This is regardless of whether the information was confidential at the time of coming into existence, as the information, once communicated by a client to their lawyer, is considered to be confidential. The Code of Ethics does not specify a relevant time trigger. The lawyer cannot disseminate the confidential information related to their representation of a client without the written consent of the client or the author or owner of the information (*Article 3C, Code of Ethics*). If a lawyer disseminates confidential information to a third party (who did not otherwise share information with the lawyer under Article 3C), such information will likely only be considered confidential if the third party is made aware of its confidentiality, and consents in writing to its preservation.

The client is the possessor of the privilege and can waive confidentiality by written consent (see [Legal Professional Privilege and Professional Secrecy Rules](#)). A negligent disclosure by an attorney should not waive the privilege; however, it may, depending on the circumstances, subject the attorney to sanction (see [Loss and Waiver of Privilege](#)).

The Code of Ethics is silent as to the loss of confidentiality or privilege in the case of inadvertent or negligent disclosure of confidential information. Lawyers, partners, or their respective staff, will be liable for compensation

as a result of the breach of confidentiality, irrespective of whether or not the disclosure was negligent or inadvertent (*Article 3C, Code of Ethics*).

The lawyer can attempt to retrieve or retract the confidential information, to lessen any breach of confidentiality.

In addition to the disciplinary measures of the Code of Ethics, a lawyer may be liable under Article 432 of Federal Decree-Law No. 31/2021 On the Issuance of the Crimes and Penalties Law (*Penal Code*) for the intentional disclosure of confidential information. This provision contemplates both fines and imprisonment for such acts.

Adverse Inferences

If a party petitions the court to compel the other party to disclose a document, under Article 18(1)(b) of the Evidence Law, the petitioning party must specify a document in common between the parties, or a document on which the other party is relying. If the party from whom disclosure is sought does not deny the existence of the requested document, and refuses to submit it to the court, the court may draw an adverse inference and assume the requesting party's allegations are true concerning that documentation (*Article 19(3), Evidence Law*).

Exceptions

There are no specified exceptions to these rules. However, the court, at its discretion (*Articles 18 to 21, Evidence Law*), may hear a party's petition relating to the right to disclose or withhold confidential information.

Defining the Client

"Client" is broadly defined as any person who is represented by a lawyer before the courts, governmental departments, or arbitration tribunals, or any person who seeks legal advice from a lawyer (*Code of Ethics*).

In practice, a lawyer who is appointed by a client to represent the client before the courts must present to the courts a duly executed power of attorney from the client authorising such representation.

In general, when the client is a corporation, it is the members of a corporation with decision-making power who can be treated as representing the client. It is widely accepted that a general manager on a company trade licence would generally be viewed as having decision-making power on behalf of the company. Any authorisations or restrictions on legal representation can be made explicitly in a company's articles of association.

An attorney should ensure that the person signing the engagement letter on behalf of a corporate client who is otherwise delegated to act on its behalf is authorised to do so, through the company's articles of association, a duly authorised board resolution, or a power of attorney.

In particular, the ability of the board of directors to opt for arbitration must be included in the articles of association or be within the objects of the company (*Article 154, Federal Decree-Law No. 32/2021 On Commercial Companies (Commercial Companies Law)*). Otherwise, a special resolution by the general assembly of the company is required to grant authorised persons the right to arbitrate. In recent years, the courts have taken into consideration other factors (such as implied authority) to validate agreements to arbitrate.

Defining the Lawyer

A lawyer or a legal adviser is defined as:

- An individual lawyer.
- A foreign lawyer or legal adviser.
- A lawyer partner at a law firm.

(Code of Ethics.)

Further, the Code of Ethics applies to:

- Lawyers practising within the UAE.
- Legal advisers of any nationality practising within the UAE.
- Law firms licensed within the UAE.
- Lawyers or legal advisers who practise outside the UAE who have been licensed on a temporary basis to litigate, or offer or provide legal services, within the UAE.
- Representatives of any parties before any accredited arbitration tribunal within the UAE.

(Article 2C, Code of Ethics.)

Lawyers' Employees

The confidentiality requirement extends to any staff member working under a lawyer or within a law firm (*Article 3C, Code of Ethics*).

An employee must keep confidential the business or trade secrets of its employer (*Article 905(5), Federal Law No. (5) of 1985 on the Civil Transactions Law of the United Arab Emirates, as amended by Federal Decree-Law No. 30/2020 (Civil Code)*). This obligation survives the termination of the employment contract. Additionally, an employer has the right to terminate an employee for cause for, among other things, the unauthorised or wrongful disclosure of the employer's confidential information (*Article 44(5), Federal Decree-Law No. 33/2021 On Regulation of Labour Relations (Labour Law)*).

Further, it is a crime for a person to use a third party's information without its consent, or for its own or another's advantage, where that information was gained as a result of that person exercising a profession, position, craft, or art (*Article 432, Penal Code*).

Foreign Lawyers

Foreign lawyers are licensed in the UAE as legal consultants or legal advisers. Only UAE nationals can appear in court and litigate and are licensed as advocates (unless exempted under Article 2C (see [Defining the Lawyer](#))). However, foreign lawyers can advise on UAE law, and are under the same legal and ethical duties relating to confidentiality as UAE advocates (*Article 2C, Code of Ethics*).

In-House Lawyers

In-house lawyers occupy an ambiguous area under UAE law. Under the Advocacy Law and the Code of Ethics, in-house counsel do not generally appear before the courts on behalf of their clients in the UAE. Therefore, the confidentiality requirements would not directly apply to in-house counsel in this regard.

Additionally, in-house lawyers are more likely to provide commercial analysis or business advice to their corporate employers than their law firm counterparts. Many, if not most, companies in the UAE rely on external counsel for the provision of legal advice, particularly on novel issues or substantial transactions or projects.

The generally accepted default under UAE law is that in-house lawyers are primarily deemed to be employees. Therefore, while not bound by the same general confidentiality rules relating to lawyer-client representations, an in-house lawyer as an employee of the company will be required to keep confidential its employer's business or trade secrets.

If legal advice given by an in-house lawyer of a parent company to a subsidiary company in the same group falls under the auspices of the Code of Ethics, which it may not, UAE law recognises the parent and subsidiary companies as separate persons for the purposes of liability and accountability. Therefore, in-house counsel will likely require the written consent of the authorised representatives of the parent company to provide legal advice or disseminate confidential information to the subsidiary company. An in-house lawyer has a duty to keep their company's information confidential by virtue of their status as an employee, not as a lawyer.

Other Professionals

The Advocacy Law and the Code of Ethics apply specifically to lawyers and law firms. They do not govern the potential provision of legal advice by other professionals, nor the disclosure of related confidential information. Other professionals may be bound by their respective professional rules of conduct and ethics to keep information confidential, but are not bound by the Advocacy Law or the Code of Ethics. However, the requirement to maintain confidentiality on behalf of clients may be imputed to such professionals as a result of the provisions of the Civil Code, Labour Law, or Penal Code.

Duration of Privilege

Obligations of confidentiality remain even after the retainer for the legal matter in which the relevant document was produced or received has been terminated, revoked, or declined, unless waived by the client in writing.

Loss and Waiver of Privilege

The Code of Ethics provides that a lawyer can disclose confidential information if they have been accused of a crime or in a civil claim arising out of negligence or professional malpractice.

Other than the above, the Code of Ethics and the Advocacy Law do not provide any express terms to deal with circumstances where the confidentiality obligation is lost.

Scope of Waiver

Express waiver. The client is the holder or possessor of the confidential information or documentation and therefore has the right to waive it, in writing (*Article 3C, Code of Ethics*).

A written waiver may be provided by the client specifically for certain documents or communications. Therefore, the privilege can be retained for other related documents or communications. The Code of Ethics and Advocacy Law do not provide any express guidance in respect of partial waiver of confidential information. However, it could be inferred from the relevant laws that partial waiver is possible. To the extent that a court feels that the interests of the case would be served, it can request the disclosure of all information it deems pertinent or necessary to develop a complete and unbiased view of the facts and evidence at hand (*Articles 18 to 20, Evidence Law*).

Inadvertent disclosure. Inadvertent disclosure is not addressed directly by the Advocacy Law or the Code of Ethics. However, several strong inferences can be made from key provisions of the Advocacy Law:

- A lawyer cannot contravene the honour, trust, and ethics of the legal profession, nor act in such a fashion that would hinder the administration of justice (*Article 35, Advocacy Law*).
- A lawyer must not divulge any secrets entrusted to them as a result of the practice of their profession (*Article 42, Advocacy Law*).

Therefore, a lawyer who inadvertently receives confidential information from another lawyer would not be violating their ethical obligations to the extent that they review or use such information where they had a bona fide belief that the information was not confidential. In addition, the receiving lawyer would be in violation of their ethical obligations if they proceeded with a review or use of the confidential information where either:

- The transmitting lawyer informed the receiving lawyer of the error before the review.
- A reasonable receiving lawyer knew or should have known that they would have considered such information confidential if the same type of inadvertent transmission had occurred relating to their client representation.

If a lawyer petitions a UAE court to prevent disclosure of the inadvertent confidential information, the judge likely has broad discretion to make a determination on this. The judge would likely look at several factors, but primarily:

- Whether the disclosing party would have considered the information confidential.
- When weighed in the balance, the comparative harm or benefit to the parties relating to the disclosure of such information for purposes of litigation.

(*Article 389 (primarily), Civil Code*.)

The discovery process is foreign to the UAE, and the disclosure of any information of probative value relating to the litigation is controlled by the court and the judge. Therefore, on a practical level, the court-mediated dissemination of information may limit the potential for inadvertent transmission of confidential information.

Dissemination to certain groups. Legal privilege is not lost if a document is disseminated internally within a client to employees who are authorised to act on its behalf. Other employees may be required to sign non-disclosure or confidentiality agreements, to ensure preservation of the privilege.

Legal advice to a third party for the sake of compliance should not revoke the privilege. However, it is advisable to obtain non-disclosure or confidentiality agreements from such third parties as an added assurance.

Disclosure to Entities with a Common Interest

To the extent that the third party with common interest is not a co-claimant, then UAE law may recognise this as an implicit waiver of the privilege, unless the third party agrees to the privilege or confidentiality (*Article 3C, Code of Ethics*).

Co-claimants must agree to the common interest privilege in writing as an extension of the rights and protections contained in Article 3C of the Code of Ethics.

Unless the parties are co-claimants and there is an agreement in writing to the common interest privilege, a sharing party can unilaterally waive this privilege.

Disclosure to Entities Represented by the Same Counsel

Joint retainers are permitted provided that the parties are apprised of their rights and agree in writing to such representation under Article 3C of the Code of Ethics. The risks associated with the joint retainer include potential conflict of interests, and the potential lack of proportionality or parity between the parties to a joint retainer. This may require that a joint retainer includes various triggers for termination rights for a joint party with a smaller interest or lesser bargaining power.

Parties to a joint interest may share privileged communications without waiving the privilege, provided this is agreed to in writing.

The parties must agree to invoke (and waive) the joint interest in writing.

Partially Privileged Documents

If some information contained within a document qualifies as privileged or confidential information (as defined in the Code of Ethics), the entire document is safeguarded from disclosure.

Privilege in Unique Contexts

Privilege Against Self-Incrimination

While a defendant has the right to a fair trial and appropriate representation, the concept of the right of silence or against self-incrimination does not exist as a specific legal protection under UAE law, except as discussed below.

Spousal Privilege

A spouse of the perpetrator, or an ascendant or descendant relative, siblings and in-laws, may be exempt from the payment of a fine, even if those relatives knew of a crime of the perpetrator and failed to report it to the respective authorities (*Article 323, Penal Code*).

With respect to the crimes of false testimony, perjury, or abstaining from testifying, a truthful witness may be exempt from criminal sanctions if the testimony may subject the witness to severe harm (including matters which may implicate the freedom or honour of the witness, or may cause similar harm to a spouse (even if divorced), ascendants, descendants, brothers, sisters, or in-laws of the same degree) (*Article 304, Penal Code*).

Overriding Powers of the Court

UAE courts have broad powers to obtain information and may be able to compel the disclosure of information which is not protected by law or statute.

Internal Investigation

Non-disclosure or confidentiality agreements may add an additional layer of legal protection if an internal investigation proceeds to litigation, but will likely not protect a person who has been (or may be) charged with a crime under the Penal Code or other applicable law. However, provisions of the Penal Code and Federal Law No. (5) of 2012 on Combating Information Technology Crimes, as amended by Federal Decree-Law No. 34/2021 (Cybercrimes Law), are likely to prohibit the publication of the identities of persons charged of crimes in newspapers, periodicals, or other media. In addition to the articles of the Penal Code, Article 44 of the Cybercrimes Law states that the publication of photos, news or information can cause the publisher to face imprisonment and fines even if the information is true.

All persons who may be implicated should be informed of such a decision and should expressly agree in writing to participate in such investigations. Because of the potential for investigations (irrespective of magnitude) to place an interview subject in an embarrassing light, the contents of such interviews or investigations are usually considered confidential (*Article 44, Cybercrimes Law*), whether or not the interview was conducted before or after legal advice was sought.

The view of UAE law on in-house counsel is ambiguous, unless the in-house counsel is litigating before the UAE courts or is directly providing legal advice to their employer. The generally accepted interpretation of UAE law has been that an in-house lawyer is bound to keep confidential the employer's information. In the case of an internal investigation, the contents of interviews or investigations are usually considered confidential, whether or not they are carried out by in-house counsel.

Non-disclosure and confidentiality agreements should be signed by all employees or persons who will review, handle, or use the relevant information in an internal investigation. Non-disclosure and confidentiality agreements which purport to cover the divulging of criminal activity will almost certainly be rendered null and void as a matter of public policy. There may still be a prohibition on the publication of names in the media of those accused, under investigation, or being charged with criminal activity, under the Penal Code and the Cybercrimes Code.

M&A Transactions

Privileged documents or information can be shared with the potential buyer in an M&A transaction and still retain their privileged status, through a confidentiality agreement.

To protect its privileged documents from the buyer before closing, the seller can ensure all interested parties sign a confidentiality agreement. In the interests of protecting against an inadvertent or negligent waiver or disclosure of confidential information (or the assessment of compensation under the Code of Ethics), practical considerations may entail limitation of access to privileged documentation, and the disclosure of only that which is absolutely necessary to the completion of the transaction.

Cross-Border Matters

In theory, UAE law acknowledges the principle of freedom of contract, and the ability of parties to choose the governing law and dispute resolution forum (*Article 257, Civil Code*). However, in practice, the UAE courts usually

apply local law as a matter of course. UAE courts are reluctant to apply foreign law, especially if the judges are convinced that the foreign legal principle has a corollary in UAE law.

A petitioner must demonstrate to a UAE court that that on an analysis of the facts, a foreign law applies (although, in practice, the UAE courts only ever apply UAE laws). The petitioner must also submit to the attention of the UAE court certified, legal translations of the foreign law. Even in these circumstances, there is no guarantee that a UAE court will apply the foreign legal principle as it would be applied in its home jurisdiction.

The UAE courts are likely to apply UAE law. Therefore, if a document is not privileged in the country in which it was created, it will only be considered privileged or confidential if it would be privileged or confidential under UAE law. Likewise, a document that is privileged in the country in which it was created will only be considered privileged or confidential if it would be privileged or confidential under UAE law. Advice would need to be sought from a UAE-registered lawyer in these circumstances.

Recent Developments

There have been no significant recent developments relating to privilege or confidential information in the UAE.

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