

LEGAL PRIVILEGE IN RUSSIA: FAQs

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Legal privilege is widely recognised as a fundamental human right. However, the scope of privilege differs across jurisdictions. As a result, a communication that is privileged in one jurisdiction may not be considered as confidential in another jurisdiction.

Mergen Doraev answers some of the most frequently asked questions which arise in relation to legal professional privilege from a Russian law perspective.

Does legal privilege exist in Russia?

In Russia, legal professional privilege is not recognized as a substantive right of a client. However, legal advice and related communication is protected through attorney (professional) secrecy.

Attorney secrecy (in Russian - "*advokatskaya tayna*") is protected under Art. 8 of Federal Law "On Legal Practice and the Bar in the Russian Federation" No. 63-FZ of May 31, 2002. The Attorneys Code of Conduct, the rules applicable to the legal profession in Russia, and the Code of Criminal Procedure also contain specific provisions granting protection from disclosure of attorney-client communication.

Key rights and obligations related to attorney secrecy include:

- prohibition to disclose information as to matters he is entrusted with in his capacity as a legal advisor;
- right to refuse from answering questions in criminal proceedings as a witness regarding the information received from the client;
- prohibition to summon the attorney for questioning in regard to any information related to providing legal services;
- the attorney's office and place of residence cannot be searched without a court order;
- as a general rule, information and documents included to attorney's folders cannot be used as evidence in the criminal procedure.

What is protected by legal privilege?

Legal privilege covers a broad spectrum of information and documents and includes *inter alia* the following:

- fact that the client seeks legal advice (including a name of the client);
- evidence and documents collected by the attorney to prepare for a proceeding;
- information received from the client;
- information about the client;
- details of legal advice;
- terms of a legal service agreement;
- fees paid for legal services.¹

It is notable that the duty to maintain attorney secrecy does not have any time limitation.

Is an outside counsel, who is not admitted to the bar, protected by legal privilege?

It is not necessary to have a license to practice law in Russia. However, a lawyer who is not admitted to the bar of the region of

¹ See Art. 6(5) of the Attorneys Code of Conduct.

Russia in which he or she lives, is not protected by privilege, because attorney secrecy is linked to the capacity of an attorney.

Are documents prepared by in-house lawyers protected by legal privilege?

An in-house counsel cannot have a status of attorney under Russian law, and consequently the rules on attorney secrecy do not apply to any communications between in-house counsels and employees.

Does legal privilege apply to the correspondence of non-national qualified lawyers?

In general, only Russian attorneys are protected by legal privilege under Russian law. While Federal Law “On Legal Practice and the Bar in the Russian Federation” allows foreign attorneys to practice respective foreign law within the territory of Russia,² it remains unclear whether such non-national qualified lawyers are protected by legal privilege.

² See Art. 2(5) of the Federal Law “On Legal Practice and the Bar in the Russian Federation”.

Who may waive the legal privilege protection?

The Attorneys Code of Conduct provides that the attorney cannot waive legal privilege without the client's express authority. The waiver should be made in writing in the presence of the attorney.³

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³ See Art. 6(3) of the Attorneys Code of Conduct.