

Privilege Introduction

F Joseph Warin and Daniel P Chung
Gibson, Dunn & Crutcher

Published November 2016

GIR KNOW-HOW

Privilege

Introduction

F Joseph Warin and Daniel P Chung
Gibson, Dunn & Crutcher

Now, more than ever, a regulatory issue in one country can spawn investigations and prosecutions in a multiplicity of others. Even a corporation with a long history of operating on a global scale may not be equipped to handle the challenges that come with facing regulators in multiple jurisdictions. In order to begin to address these challenges, corporate leaders must be able to strategise and consult with their legal advisers without fear of undue disclosure and possible negative repercussions.

Companies that are proactive in developing clear but nimble policies and procedures on privilege will be in a better position to deal with these challenges. Operations should be structured so that day-to-day communication between counsel and employee is shielded by available privileges and protections (and not subsequently waived). Internal investigations must be carefully planned so that fact-finding results and corresponding legal

advice are protected from undue disclosure and use. Attorneys, accountants and other expert professionals should be hired and engaged in a way that satisfies the privilege requirements of relevant jurisdictions.

The attorney–client privilege and analogous doctrines are fundamental protections that allow companies to put their best foot forward with respect to compliance and litigation. The attorney–client privilege itself has deep roots in English common law, dating back to the reign of Elizabeth I. While the same basic protections exist in many other legal traditions, the “who, what, where, when, why and how” can be significantly different from jurisdiction to jurisdiction. This Know-how edition is designed to allow practitioners to compare and contrast these nuances, question by question, and to help them navigate scenarios when legally sensitive information is being discussed, shared and handled.



F Joseph Warin
Gibson, Dunn & Crutcher

F Joseph Warin is chair of the litigation department of Gibson, Dunn & Crutcher's Washington, DC, office. Mr Warin also serves as co-chair of the firm's white-collar defence and investigations practice group. His expertise includes white-collar crime and securities enforcement – including FCPA investigations, False Claims Act cases, special committee representations, compliance counselling and complex class action litigation.



Daniel P Chung
Gibson, Dunn & Crutcher

Daniel P Chung is a partner in the Washington, DC office of Gibson, Dunn & Crutcher. He is an experienced trial and appellate attorney, and his practice focuses on white-collar criminal defense, internal investigations and compliance counselling, regulatory enforcement and commercial litigation matters. Mr Chung has successfully represented both companies and individuals, and has appeared before the Department of Justice and Securities and Exchange Commission. In 2015, he was named by the Washington Business Journal as one of its “40 under 40” who have achieved professional excellence while maintaining a commitment to the community.

From 2008 to 2012, Mr Chung served as an Assistant United States Attorney in the Southern District of New York. He investigated and prosecuted a wide range of complex federal criminal cases, involving securities fraud, Ponzi schemes, bank fraud, mail fraud, wire fraud, healthcare fraud, insurance fraud, immigration fraud, money laundering, complex racketeering, murder, terrorism and international drug cartels. In 2012, he received the Federal Law Enforcement Foundation's “Prosecutor of the Year” award.

Mr Chung is a 2003 cum laude graduate of Harvard Law School. He graduated magna cum laude from Harvard College in 2000 with a Bachelor of Arts degree in history. Following law school, Mr Chung served as a law clerk for the Honorable Norman H Stahl on the US Court of Appeals for the First Circuit, and then for the Honorable Michael B Mukasey on the US District Court for the Southern District of New York.

Gibson, Dunn & Crutcher

F Joseph Warin

fwarin@gibsondunn.com

Daniel P Chung

dchung@gibsondunn.com

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306 USA
United States

Tel: +1 202 955 8500
Fax: +1 202 467 0539

www.gibsondunn.com