

**TUNISIA**

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## **1. DEFINITION-PRESENTATION**

### **What attorney / client privilege is and what is not:**

Under Tunisian law the ***Attorney-client privilege***, which is a legal concept that protects communications between a client and his attorney and keeps those communications confidential, is referred to by the expression “***Professional Secrecy***”.

Professional secrecy is the requirement, in our case, that an attorney may not reveal communications, conversations, and letters between him and his client

## **2. SOURCES**

### ***2.1 Relevant statutes:***

2.1.1 Article 5 of the Chapter II (registration Conditions) of the law n° 89-87 of September 7, 1989 organising the profession of lawyer:

Article 5 requires that the lawyer shall, before any exercise, take the oath which its content stresses on the professional secrecy: (“I swear... to keep the professional secrecy...”)

2.1.2 Article 29 of the law n° 89-87 of September 7, 1989 organising the profession of lawyer states that the lawyer’s office must be appropriate to the exercise of the profession and guarantees the professional secret.

2.1.3 Article 39 of the Chapter IV (Duties and rights of the lawyer) of the law n° 89-87 of September 7, 1989 organising the profession of lawyer:

Article 39 states that:

“It is forbidden to the lawyer to reveal the secrets which his client has provided or that he has been aware of in the course of the exercise of his profession”.

2.1.4 Article 254 of the Criminal Code.

Article 254 provides the following:

“are punished of six months of imprisonment and a fine of one hundred and twenty dinars, the doctors, surgeons, other health agents, pharmacists, midwives, and other persons who are in possession of secrets given their status or their professions, who reveal such secrets under circumstances other than where the law obliges or authorises the disclosure”

**2.1.5 For your information please note that** Chapter II, article 9 of the Tunisian Constitution provides that:

“The inviolability of the residence, the secrecy of the correspondence and the personal data protection are guaranteed, except in the exceptional cases envisaged by the law”

## **2.2 Relevant Case law:**

**No case law is available**

### **3. SCOPE LIMITS**

#### **Can the attorney/ client privilege be waived?**

The attorney/ client privilege can be waived.

#### **How?**

The client privilege may be waived with the consent of the client unless the disclosure of the secret threatens the public policy or morality. In this case the secret cannot be disclosed even with the consent of the client.

#### **Is the privilege limited? Which documents/ information are involved?**

Yes, professional secrecy is limited by some exceptions stated by law for example:

Paragraphs 2 and 3 of Article 254 of the Criminal Code mentioned in paragraph 2.1.4 above, provides an exception to its provisions when the disclosure concerns an illegal abortion.

The law n° 2003-75 of December 10, 2003 related to the support of the international efforts of fight against the terrorism and to the repression of money laundering declares in its article 22 that:

**“Is punished of one year to five years of imprisonment and a fine of one thousand to five thousand dinars the person, even bound by the professional secrecy, who did not indicate immediately to the proper authorities, facts and information related to terrorist offences known by him. Are excepted from the provisions of the previous paragraph the ancestry, the brothers, the sisters and the spouse. No action in damage or in penal liability can be admitted against who would carry out the aforementioned duty to inform the relevant authorities in good will.”**

### **3.1 *Between lawyers:***

Is the correspondence between lawyers protected?

Yes, the correspondence between lawyers is protected by the professional secrecy.

### **3.2 *Third parties:***

Lawyers cannot disclose information to third parties.

## **4. IN-HOUSE LAWYERS**

**Which regulations regarding legal privilege apply to in-house lawyers?**

It is stated under article 14-4 point 10 of the Labour Code that revealing one of the professional secrets of the employer company under circumstances other than where the law allows the disclosure, constitutes a serious offence which may lead to the dismissal of the employee (in-house lawyer) and the claim for compensation in case of damages suffered by the employer company due to the disclosure.

## **5. PROSPECTIVE**

**Does professional secrecy tends to be more or less protected?**

The professional secrecy tends to be more protected by law, and few exceptions are allowed (like in the case of terrorism mentioned above).