

# ATTORNEY-CLIENT PRIVILEGE FOR IN-HOUSE COUNSEL

BEYOND THE BASICS

## INTRODUCTION

- Overview of Privilege
- Privilege in Investigations
- Privilege for Affiliated Entities
- Common Interest Doctrine
- Advisors & Consultants
- Mergers & Acquisitions
- Privilege Around the World
- Best Practices for Preserving Privilege



# OVERVIEW OF PRIVILEGE



## ATTORNEY-CLIENT PRIVILEGE

- The attorney-client privilege protects:
  - A communication,
  - Made between privileged persons (i.e., attorney, client or agent),
  - In confidence,
  - For the purpose of obtaining or providing legal assistance for the client.
- Courts typically construe the privilege narrowly.

## ATTORNEY-CLIENT PRIVILEGE (CONT'D)

- The communication must be made for the purpose of obtaining ***legal*** advice, rather than business or other advice.
- Legal advice should be the primary purpose of the communication.
- There should be an expectation that the advice will not be disclosed to others.
- The attorney's primary role in making the communication cannot be non-legal, such as giving business advice or acting as corporate secretary.

## WORK PRODUCT DOCTRINE

- Protects material prepared and attorney mental impressions formed ***in anticipation of litigation***.
- There is no work product protection for documents prepared in the ordinary course of business.

Also available as part of the eCourse  
[2016 Corporate Counsel eConference](#)

First appeared as part of the conference materials for the  
38<sup>th</sup> Annual Corporate Counsel Institute session

"Attorney-Client Privilege: Best Practices for Keeping Privileged Information Privileged"