

recognize privilege in their national legislation, the doctrine might be reversed.

For now, though, in-house counsel must remain highly vigilant when internally communicating advice in anti-trust matters. "It also means that local professional associations need to stay mobilized on the matter, in particular in those countries where legal privilege remains to be recognized at national level," he added.

INDEPENDENCE IN AN INTERDEPENDENT WORLD

Further complicating the issue of privilege is that many companies operate in multiple jurisdictions where in-house counsel enjoy privilege completely, partly, or not at all, says Alain Rondeau, vice-president, counsel and corporate secretary at Pratt & Whitney Canada Corp.

Speaking at the CCCA Corporate Counsel World Summit in



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Emerging issue in Brazil

For the most part in Brazil, issues of privilege — known as *prerrogativa* — only recently became a source of concern for in-house counsel after several high-profile cases.

One incident involved a raid by federal agents of a law firm; in another, federal agents raided a company and the files of its in-house counsel.

In Brazil, where the legal system hails from the civil law tradition, laws regulating the legal profession "focus mainly on attorneys practising in law firms," says José Romeu Amaral, president of the Brazilian In-house Commission of the *Movimento de Defesa da Advocacia*. "There is one small section dedicated to the in-house counsel profession," — almost all of whom are called to the bar. "Privilege for in-house counsel is not specifically addressed," says Amaral. "So what happens is that general rules for attorneys in law firms, including about privilege, are applied as an analogy to the legal departments since as lawyers we are subject to that law."

Part of the reason, says Amaral, is that there are few in-house counsel positions in Brazil. Fifty per cent of businesses are limited liability companies, while 45 per cent are under individual proprietorship. Less than 1 per cent are corporations, and of these only about 100 are large companies publicly listed on the Brazilian Stock Exchange.

Yet, entrepreneurship is taking hold in Brazil and growing. Small and medium-size companies are mushrooming, M&A activity is producing a greater number of larger companies, and foreign investment is flowing into the country. Following these trends, naturally, is the growing number of in-house counsel positions.

But for now, says Amaral, Brazil's in-house community has to ensure that the legal department, no matter how small, must remain physically separated from other departments in the company. "We understand that investigators cannot make a search in this space due to our privilege, unless the lawyer is the person being investigated. This is what we call inviolability of legal departments" says Amaral.

As evidence of the increasing importance of privilege for in-house counsel, Amaral says that the In-House Commission has issued a handbook on the subject of privilege for in-house counsel. ■