

Privilege in corporate disputes revisited: *Aabar Holdings S.a.r.l. v. Glencore plc* [2024]
EWHC 3046 (Comm.)

1. What was the basic common law “rule” in relation to a shareholder seeking disclosure of legal advice given to the company pre-*Aabar v. Glencore*?
2. *Aabar v. Glencore*: what are the proceedings about?
3. How did the Court approach the general rule in *Aabar v. Glencore*?
4. Does the rule extend to without prejudice communications?
5. What about beneficial owners of shares and indirect shareholders?
6. What about former and new shareholders?
7. Is the approach taken by the Court to the rule in *Aabar v. Glencore* open to criticism?
8. Has the music now stopped?
9. How should corporate lawyers and litigators respond to *Aabar v. Glencore* in the short term?
10. If the rule has been abolished once and for all, what are the long-term consequences?

In this follow-up to Erskine Chambers’ first webinar on 6 May 2022 (available on catch-up!), James and Jack discuss the recent decision in *Aabar Holdings v Glencore* and the state of the law on privilege in corporate disputes.

They look at what the Court decided, including whether the so-called “shareholder rule” permitting shareholders to disclosure of a company’s privileged documents does not in fact exist. They debate whether the decision might be open to criticism and whether this changes things for corporate and litigation lawyers.

List of cases referred to

England

BBGP Managing General Partner Ltd. v. Babcock & Brown Global Partners [2011] Ch. 296
Various Claimants v. G4S plc. [2023] EWHC 2863 (Ch.)
Aabar Holdings S.à.r.l. v. Glencore Plc. [2024] EWHC 2046 (Comm.)

Bermuda

Oasis Investments II Master Fund Ltd. and others v. Jardine Strategic Holdings Limited [2024] CA (Bda) 7 Civ (Court of Appeal of Bermuda)

Cayman

Re 58.Com (2023) 22 March 2023 FSD 275/2020