Management of Trade Secrets

Traditionally, trade secrets are poorly managed within organisations. It is not unusual to find minimal, or no documentation of trade secrets, an absence of any protection mechanisms for trade secret information, and/or a lack of audit trail. Additionally, it is not unusual for no budget to be allocated to the management of trade secret information, despite a comprehensive Baker McKenzie survey revealing that almost half of executives surveyed reported that trade secrets were more valuable to them than other forms of IP[1]. Under the relatively recent EU Trade Secrets directive which entered into force in 2018, organisations will need to demonstrate that they have taken "reasonable steps" to keep trade secret information secret. In addition, any attempt to demonstrate trade secret misappropriation in court will require you to demonstrate that the information was a trade secret at the time the misappropriation took place. Suggested below are some simple, common-sense steps which you can take to meet these challenges.

Policy & procedures – set out a clear company policy, outlining what you want to achieve and how. We would suggest setting up governance of your trade secret policy by appointing a staff member to manage your trade secret information. Your procedures should include how to identify trade secret information, as well as know-how within your organisation. "Know-how" can generally be considered as undocumented trade secret information – this should be documented to ensure access to other members of staff if required, and to ensure that this information is retained by your corporation (for instance in the event of staff leaving). It is important to remember that trade secret information may change over time, and therefore should be revisited and updated on a regular basis.

Access & Access controls – trade secret information should generally only be shared on a need-to-know basis. This means that staff working in unrelated positions should not have access to trade secret information. Suitable access controls can include for instance password protection of relevant documentation and electronic devices, restricted access to laboratory space etc.

Protection mechanisms – this can include steps taken to protect your trade secret information, for instance from hacking or theft. Mechanisms can include encryption of sensitive data; use of locked cabinets for storage of sensitive documentation and log books etc.

Agreements and contracts – these include agreements such as non-disclosure agreements (NDAs) with third parties, and confidentiality agreements with members of staff. You should ensure that all members of staff sign confidentiality agreements, and that NDAs are used when allowing third parties to access any trade secret information.

Education – you should take appropriate steps to ensure that your employees understand the nature of trade secret information and the controls that are in place within your organisation to protect this. Once rolled out to existing staff, this should form part of your induction procedure for new staff members.

Metadata – A record of trade secret information should be created and maintained. Data relating to trade secret information can include:

Name/Title of trade secret	**Date created**
Person(s) who created it	**Physical location** – in a safe in factory? In a file on the network etc.
Legal owner is your company the legal owner?	**Person(s) responsible for managing it**
Type of trade secret (technical, marketing etc.)	**Person(s) with authorised access**
Costs associated with creation and maintenance of trade secret	**Valuation**
Protection mechanisms in place?	**Shared?** (and if so, when and with whom)
Expiration date (if applicable)	**Reviewed (when and by whom)**

Valuation and Costs – you should ideally allocate a budget for the identification and maintenance of trade secret information, to include administrative costs (training etc.), technical costs (encryption etc.) and legal costs (NDAs etc.). You should also consider whether a valuation of your trade secret information would be beneficial – specialist organisations exist solely for trade secret valuation (please contact us if you require a recommendation).

[1] https://www.bakermckenzie.com/-/media/files/insight/publications/2017/trade-secrets