

Bird & Bird & Business Secrets

Your secrets, your people and your competitive advantage

- Your business secrets are valuable; protecting them maintains competitive advantage.
- Your HR processes are essential to securing those secrets.
- Designing effective strategies around your people adds value and protects market share.



Bird & Bird helps its clients to maintain their competitive advantage by working with them to develop protection strategies designed to secure business secrets, prevent leaks and to respond lawfully if disaster strikes.

What's the issue?

The majority of business value today is held in the form of intangible assets. That is, intellectual property rights (IPR), trade secrets, business know-how and confidential information (Business Secrets).



80%

of listed companies' business value is held up in intangible assets

However, in today's world, it is all too easy for Business Secrets to be copied and shared, often unwittingly, through a myriad of channels: email, social media, heavily encrypted mobile devices which function as cameras and data protection laws all contribute to the peril.

The loss of this information can have drastic consequences for an organisation, from both a financial and reputational point of view. And yet, we know that businesses are not doing enough to protect these assets. This should be a matter of concern for some – but a real opportunity for their competitors.

In a recent survey we discovered:

92%

of participants believed it would be detrimental to the business if their most valuable confidential information fell into the hands of a competitor



65%

claimed not to have published any staff policies to manage their confidential information

What can you do?

Business Secrets do not enjoy the same structured framework of protection as patents and trademarks, for example, but various legal tools are still available to businesses faced with threats to their information.

We have advised many clients to secure delivery up of information, injunctive relief and damages, amongst other remedies, and also to resist potentially expensive claims. However, the most cost effective and successful outcomes in these situations are almost always achieved when businesses have invested time to develop a coherent strategy to manage the risks.

Such a thing may once have seemed a luxury, but it will soon become a necessity in Europe. The Trade Secrets Directive will introduce a harmonised system for protecting Business Secrets in the region. Central to its effectiveness will be the ability for businesses to evidence the steps they have taken to keep their intangible assets secure.

No such strategy would be complete without a people-based approach at its core.

**9 June
2018**

Deadline for
Member States
to implement the
EU Trade
Secrets Directive



Your Business Secrets Strategy

We recognise that every organisation is different, with unique values and individual processes. We will work with you to identify what information and Business Secrets are of most value to your organisation, where they are held and who has access to them, as well as to assess the effectiveness of the systems, processes and business environment you have in place to protect them.

Working with you we will then help you to design and implement a framework of protection which supports all necessary procedures and enables you to safeguard both your business secrets and business value.



To help you decide whether your existing processes and systems are adequate, you may find the following checklist useful:

- ☐ Do all your employees recognise and buy-in to the importance of carefully managing Business Secrets?
- ☐ Can you readily identify and categorise your Business Secrets?
- ☐ Are you able to identify the key points of risk within your business processes and systems, and have you assessed the likelihood that a breach will occur?
- ☐ Do you know when staff employment contracts were last reviewed - are they fit for purpose?
- ☐ Do you have published policies concerning the use of Business Secrets and company devices?
- ☐ Have you implemented specific Business Secrets procedures for leavers and new joiners?
- ☐ Can you control staff access to your Business Secrets and track company electronic devices?
- ☐ Are you in a position to monitor and spot suspicious behaviour?
- ☐ Have you identified mitigating actions to reduce the risks and maintain the value to your business?
- ☐ Do you have a disaster response plan in the event business sensitive information is misappropriated?

If you answered 'no' to any of these questions, then your organisation may be vulnerable.

[Please do get in touch](#)



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