

DO YOU HAVE TRADE SECRETS IN YOUR BUSINESS?

Did you know...

That the trade secrets directive will come into play on the 9th June 2018? We cover what this will mean for businesses who have trade secrets and what steps you should be taking before the 9th June 2018.

What is a trade secret?

A trade secret is commercial know-how which forms part of a company's Intellectual Property Rights. A trade secret is **valuable, confidential information which gives a competitive advantage**, and may comprise for example: a secret recipe, key customer lists or bespoke production methodology.

Who does this affect?

These changes **will affect every business** operating locally and cross-border in the EU. A degree of certainty will be added to dealing with trade secrets such as when trade secrets can be used; and how trade secrets are treated in legal proceedings.

Advice

If you have or rely upon one or more trade secrets, or are unsure, you will need to assess the impact of these changes.

You should at the very least:



Identify your trade secrets and where they are created.



Identify how you are protecting your trade secrets currently.



Educate your business on trade secrets and what they mean.



Put a plan in place to protect your trade secrets in the future.

Will Brexit effect this legislation?

In short – no. The deadline to implement the Trade Secrets Directive is 9 June 2018, at which point the UK will still be a member of the EU and therefore under an obligation to implement the Directive. However, following the Brexit and "Great Repeal Bill" it is unknown whether the new Directive will continue to apply to the UK, but, we will keep you informed.

What is changing?

Currently

The definition and enforceability of trade secrets varies by jurisdiction.



In the **UK** there are no statutory provisions relating to trade secrets and **these rights are enforceable by the equitable remedy for breach of confidence**, only after there has been a "breach" or "loss".

However



The **EU** is **aiming to standardise** the national laws in EU countries to protect against the unlawful acquisition, disclosure and use of trade secrets known as the Trade Secrets Directive. The Directive is due to come into force in **June 2018**.

This Directive includes a new definition:

'TRADE SECRET'

MEANS INFORMATION WHICH MEETS ALL OF THE FOLLOWING REQUIREMENTS:

01

It is **secret** in the sense that **it is not**, as a body or in the precise configuration and assembly of its components, **generally known** among or **readily accessible** to persons within the circles that normally deal with the kind of information in question;

02

It has **commercial value** because it is secret;

03

It has been **subject to reasonable steps** under the circumstances, by the person lawfully in control of the information, to **keep it secret**.