

## INTELLECTUAL PROPERTY UPDATE

### TECHNIQUES FOR MITIGATING AGAINST DISCLOSURE OF TRADE SECRETS

Set out below are a number of techniques for mitigating against the misuse or disclosure of techniques. Some of these techniques are directed to preventing the unauthorised disclosure of use or confidential information, whereas others ensure that the confider has recourse to robust legal protection if disclosure or misuse does occur.



1. Enter into **written agreements** with employees, contractors and potential collaborators with clear provisions regarding protection of confidential information. It is critical that these agreements clearly define what is and what isn't confidential. While in some cases, this might be simple (e.g., information marked with a 'confidential' watermark), in others it's more complex. Where there is a free flowing exchange of information as part of a joint collaboration between two businesses, it is often difficult after the fact to separate out one business' confidential information from that of the other. It's also important to ensure that the clear identification and demarcation of each parties' confidential information is maintained as the collaboration continues.



2. **Onboarding practices:** provide training to new employees and contractors on what constitutes confidential information and trade secrets and how it should be protected. Businesses should also provide incoming employees with training on what they can and can't bring from their previous employer.



3. **Outboarding practices:** provide outgoing employees with clear instructions regarding what they can and cannot take with them when they depart and arrange for the return of all confidential information (whether digital or otherwise) and company devices which may contain such information - such as laptops, phones and tablets.



4. Implement **technical protection measures** like information barriers and password protection for confidential documents. In addition to preventing unauthorised access, these measures will have the effect of making clear to those who do access that information that it is confidential - this is relevant to the legal test for breach of confidence.



5. Ensure confidential documents are **marked as confidential** and kept separately from non-confidential information. Again, this will assist in establishing the first element of breach of confidence, if necessary.



6. When developing new products, ensure that design and development occurs in a 'clean room' environment and that systems are in place to document the independent creation process. This is particularly important where a business employs former employees of a competitor.



7. Ensure that employment contracts include appropriate restraint clauses – particularly for employees that are likely to have frequent access to valuable information. This will act as an additional layer of protection in the event that certain information is not recognised as a trade secret (and is instead considered 'know how').