

The new German Secrecy Protection Act (*Geschäftsgeheimnisgesetz*): 10 To Do's

In order to take advantage of the protective effect of the new German Trade Secrets Act, which implements the EU Directive on Trade Secrets (EU) 2016/943, undisclosed know-how and business information (trade secrets) must be kept secret and, above all, appropriate confidentiality measures must be taken. In the event of a dispute, the owner of a trade secret will have to prove in a court that this trade secret

- **is secret**, meaning 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, and thus, has commercial value;
- there is a **legitimate interest** in the secrecy of the information; and
- has been subject to **reasonable steps under the circumstances**, by the person lawfully in control of the information, to keep it secret.

Efficient IP and know-how management is required in order to be able to demonstrate the latter in a court of law – and, of course, to protect trade secrets in general. To achieve this, we recommend:

1. To appoint a **dedicated person** within the company who is internally responsible for the protection of trade secrets
2. Take an **inventory** of all trade secrets of the company as well as existing protective measures
3. To **categorize** the trade secrets in different categories of secrecy according to their importance and value for the company
4. Examine which trade secrets require **additional organisational, technical and legal protective measures** due to their economic and operational importance, development costs and the nature of the information, e.g.
 - **Organisational**
Limitation of access by certain employees or groups of employees ("need-to-know" principle); marking of trade secrets
 - **Facility**
Protective measures on the company premises, rooms with restricted access, alarm systems, video surveillance, security services
 - **IT**
Encryption and password protection; group authorizations; monitoring of data flows; IT security (firewalls, Trojan scanners, etc.)
 - **Legal**
Conclusion of appropriate confidentiality agreements

Whereby, depending on the importance of the trade secret, extensive and cost-intensive measures may be necessary
5. To quickly **implement** the new protective measures and to document them in a manner that is capable of being used in court
6. To revise **confidentiality clauses in employment contracts**, cooperation and other contracts as well as the standard confidentiality agreements/**NDAs** and, if necessary, to replace them in ongoing business relationships

7. In the case of particularly important secret know-how, to use **specially adapted, detailed non-disclosure agreements** which clearly identify the know-how concerned and impose specific protective measures on the partner

8. To use the possibility to exclude **reverse engineering** in contractual relationships (background: with the new statute reverse engineering will in principle be permissible which was seen differently before in Germany)

9. To **train employees** regularly on the handling of secrets, the necessity of protection of secrets and the consequences of an infringement, as well as the risks involved in the use of third-party business secrets

10. To ensure that appropriate protective measures are taken **in good time when new products and business ideas are being developed** creating new secret know-how; this will generally only work if employees are regularly trained accordingly

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