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HOW TO PROTECT YOUR TRADE SECRETS IN KENYA

Trade secrets are a form of intellectual property that protect confidential business information whose value lies in its secrecy. They include proprietary knowledge, operational methods, customer and supplier information, marketing strategies, financial forecasts and other sensitive data that provide a business with a competitive advantage.

In Kenya, safeguarding trade secrets requires taking deliberate measures to maintain confidentiality, including internal controls, contractual protections and enforcement strategies. Understanding how trade secrets are recognised and legally protected is essential for any business seeking to preserve its competitive edge and prevent the unauthorised use of its valuable information.

The legal basis for trade secret protection in Kenya

Kenya does not have a standalone statute that expressly regulates trade secrets. Nonetheless, trade secret protection exists through a combination of constitutional provisions, international obligations and common law principles.

Articles 2(5) and 2(6) of the Constitution of Kenya incorporate international law into Kenyan law. Kenya is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which obliges member states to protect undisclosed information against unfair commercial use. In addition, Kenyan courts have long recognised and enforced confidentiality obligations through contract law and the equitable doctrine of breach of confidence.

The requirements for trade secret protection

The criteria for trade secret protection in Kenya are informed by Article 39(2) of the TRIPS Agreement. For information to qualify as a trade secret, three requirements must be satisfied:

a) It must be a secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

b) It must have a commercial value because it is secret; and

c) There must be reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

The duration of trade secret protection

Trade secret protection lasts for as long as the information remains confidential, continues to derive commercial value from its secrecy and is subject to reasonable protective measures. Once the information enters the public domain, legal protection is lost.

Why trade secrets matter to Kenyan businesses

a) Trade secret protection is potentially perpetual-Unlike patents, industrial designs, plant breeder rights or utility models which are protected for a fixed statutory period, trade secrets remain protected for as long as the information remains secret.

b) Trade secrets do not require registration or public disclosure-Businesses are not required to expose sensitive information to the public in order to secure protection.

c) Trade secrets are cost-effective-Protection is achieved through internal controls, contractual arrangements and organizational practices rather than through formal registration procedures or payment of government fees.

The practical steps to protect trade secrets in Kenya

Effective protection of trade secrets requires a coordinated approach that combines legal, technical and organizational measures. These include:

a) Identifying and classifying trade secrets-Businesses should conduct an internal audit to determine the information that qualifies as a trade secret and distinguish it from general confidential information.

b) Implementing technical and physical safeguards-Appropriate safeguards may include restricting access to sensitive information through authentication and authorization controls, encrypting electronic data, maintaining secure backups and monitoring system access.

c) Contractual protection of trade secrets- Employment contracts should include clear confidentiality obligations, provisions on ownership of work product and duties to return confidential materials upon termination.

Non-disclosure agreements are essential when sharing sensitive information with suppliers, consultants, investors or potential partners.

Commercial agreements should likewise incorporate confidentiality clauses and specify remedies in the event of breach.

Enforcement of trade secrets in Kenya

Kenyan courts have consistently demonstrated a willingness to protect confidential information through both contractual and equitable remedies. In ***Excel Global Limited v Kithinji & another*** *[2025] eKLR*, the High Court reaffirmed that confidential business information is protectable where it is disclosed or accessed in circumstances giving rise to an obligation of confidence.

The Court emphasised that a claimant must establish three key elements: that the information was confidential in nature, that it was imparted or obtained under a duty of confidence and that there was unauthorised use or disclosure resulting in harm.

At the same time, case law makes clear that trade secret protection is not absolute. In British American Tobacco Ltd v Cabinet Secretary for the Ministry of Health & 5 others, the Court of Appeal held that claims of confidentiality may yield where disclosure is mandated by statute or justified by overriding public interest considerations.

This line of authority illustrates the courts' role in balancing private commercial interests against statutory and constitutional imperatives of transparency and accountability.

Conclusion

Trade secrets provide an essential means of protecting confidential business information in Kenya.

Their effectiveness depends on identifying sensitive information, implementing appropriate technical and organizational safeguards and establishing contractual measures to maintain confidentiality.

Well-structured legal documentation, supported by internal controls and a proactive enforcement strategy, reduces the risk of misappropriation and strengthens the security and value of a business's most sensitive information.

How CM Advocates LLP's Intellectual Property and Technology Unit Can Support You

At CM Advocates LLP, our Intellectual Property and Technology Unit helps businesses safeguard their most valuable confidential information.
With expertise across Kenya, Uganda, Tanzania, Rwanda, South Sudan, Zambia, and Ethiopia, we provide regionally informed legal guidance to prevent misappropriation, enforce confidentiality and strengthen competitive advantage.

Our support services include:

- Drafting and reviewing confidentiality agreements: We prepare NDAs, employee agreements and commercial agreements to protect sensitive business information.
- Advising on internal safeguards: We guide clients on implementing technical, operational and organizational measures to maintain the secrecy of proprietary information.
- Enforcement strategies: We assist in taking legal action in cases of misappropriation or breach of confidence, including injunctions and contractual remedies.
- Policy development: We help organisations establish comprehensive trade secret policies and procedures to reduce risk and ensure compliance with Kenyan law and international best practices.

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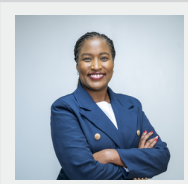
Need legal guidance?
For support with trade secret protection or related intellectual property matters, please contact:

CONTRIBUTOR



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