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¿What is a business secret and what measures can be adopted to protect it?

¿What can be considered a business secret?

A Business Secret or Trade Secret is all information of a technical, commercial, organizational, financial or industrial nature that (1) is **not known** by the people in the areas where such information is used and is not easily accessible; (2) provides business **value** due to its confidential nature; and (3) has been subject to **protective** measures to maintain its confidentiality.

¿What measures should be taken to protect it?

The 1/2019 on Business Secrets Act, establishes that in order to protect a business secret, the following information must be taken into account and certain requirements must be met.

In this sense, **Font & Yildiz accompanies its clients throughout the implementation process of those requirements.** See below:

1. Identify the business secret.

In order to apply the law and the relevant measures, it is important to define which information can be considered as business secret and, once decided, the necessary measures shall be applied to ensure its confidentiality.

2. Election of a coordinator.

It is advisable to have a manager within the company to ensure the implementation and compliance with the adopted measures.

3. Accessibility to business secrets.

Once the information is defined, it is important to appoint who has access to it and under what circumstances. In this way, we will limit the potential people who can misappropriate it and it will be easier to control it.

4. Technical protection measures.

Depending on whether the information is contained in a physical or digital format, the applicable measures will change. In the first case, sensitive information must be stored in a restricted space. In the second case, encryption is recommended. Digital access should also be restricted.

5. Legal measures.

There are several measures that need to be adopted. Within the scope of the company,

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1

confidentiality clauses should be included in the contracts with employees that have access to such information. In the case of senior managers and directors, it is advisable to sign confidentiality and **non-disclosure agreements** (NDA). It is also advisable to draw up **ethical codes** that establish the company's policy regarding information considered confidential.
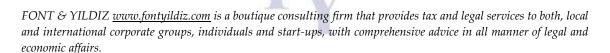
In its dealings with third parties, such as suppliers or collaborators, the company must establish **confidentiality agreements** when they have access to business secrets.

In any case, it is advisable to impose **penalty clauses** in case of breach of agreements.

6. Standardized protocols.

Once these measures have been implemented, protocols regarding the interaction between staff and confidential information should be defined so their treatment is controllable and easy to trace in the event of any misuse.

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Lawyer

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2