

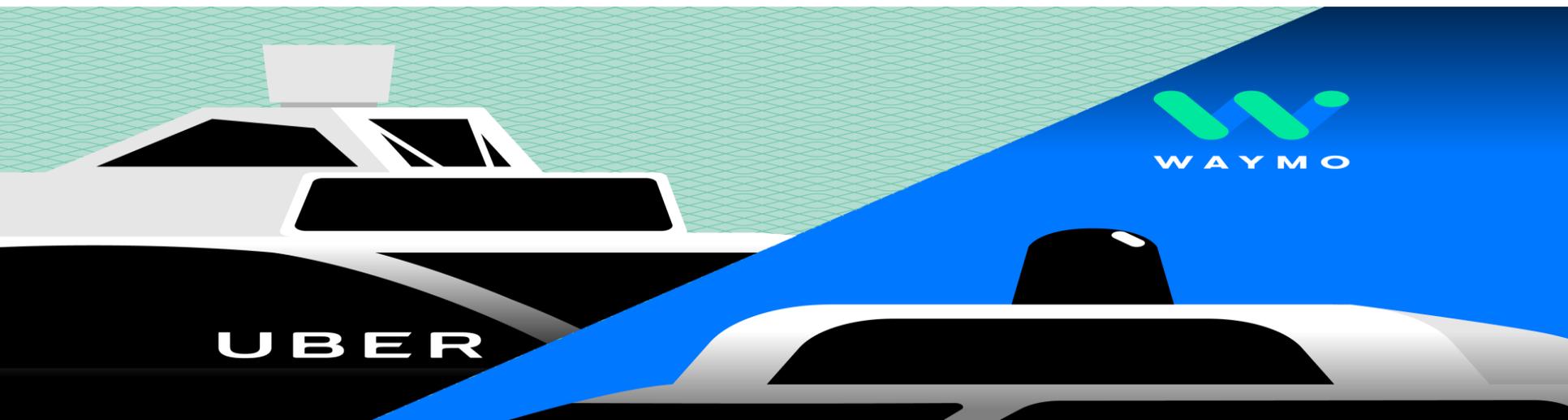
# Keeping Information Confidential

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# Relevant Cases and Types of Claims Filed

- Waymo v Uber (US 2016/2017) - Anthony Levandowski – 14,000 confidential documents and trade secrets taken
- USB containing highly confidential information found on the street in London (October 2017)
- Coca-Cola case (2006/2007)
- Court claim - civil v criminal for trade secrets theft



# Statutory Considerations

Civil or criminal case

What to include in employment contracts

Jurisdiction for remedies (Dubai Courts v DIFC)

# Federal Law No. 8 of the Year 1980 (UAE Labour Law)

- No express provision
- Article 127
- The parties may agree period of non-competition
- Reasonable restrictions in terms of prevented activities, geographical location and time period
- Must protect the employer's lawful interests to the extent that is necessary
- Articles 120 (6) and 139 provide that employment and payment of any end-of-service gratuity may be terminated if an employee reveals their employer's secret



# Federal Law No. 2 of the Year 2015 (Commercial Companies Law)

- Article 369
- Prohibits the disclosure of company secrets
- The penalty imposed may be an imprisonment of up to 6 months and/or a fine of at least AED 50,000, but not more than AED 500,000



# Federal Law No. 18 of the Year 1993 (Commercial Transactions Law)

- Article 64
- A trader may not induce the employees or workers of another competitor trader, so that they aid him in usurping the customers of that other trader, or so that they leave their employer's service and enter into his service or disclose to him the secrets of his competitor, and the foregoing acts are considered unfair competition necessitating damages.



# Federal Law No. 3 of the Year 1987 (Penal Code)

- Article 379
- Prohibits unauthorised disclosure or use by an employee of a secret with which the employee has been entrusted by his employer without obtaining prior consent
- Penalty may be imprisonment for a minimum period of 1 year and/or a fine of AED 20,000



# Federal Law No. 5 of the Year 2012 (Combatting Cybercrimes)

- Article 4 and 22
- Disclosure of confidential information through the internet like email and other IT systems may lead to temporary imprisonment and/or a fine of not less than AED 250,000 or not more than AED 1.5 million
- If data or information is deleted, omitted, corrupted, destroyed, disclosed, altered, copied, disseminated or re-published, this may lead to imprisonment for a minimum period of 5 years and/or a fine of no less than AED 500,000 or no more than AED 2 million
- Use of confidential business information obtained from work may lead to imprisonment of a minimum period of 6 months and/or a fine of not less than AED 500,000 and not more than AED 1 million



# Federal Law No. 5 of the Year 1985 (Civil Transactions Code)

- Article 905 imposes an obligation on employees to keep the commercial (trade) and industrial secrets of their employer confidential, even after the end of their employment term as well as preserve the things entrusted to them in performing their work
- Article 909 states that the parties may agree the period of non-compete, which must be limited as to the time period, place and activities for protecting the employer's lawful interests as an employee must not compete with their employer or engage in a competitive business, disclose trade secrets and solicit customers



# Intellectual Property Rights

- Employers should know and understand how to protect their intellectual property rights, know-how, trade secrets, design rights, trade marks, copyrights and patents
- For official use in the UAE, assignment of (IP) rights must be notarised
- Employers own patents and inventions developed by their employees



# Confidential Information

- There is currently no federal law on data protection and privacy in the UAE
- What constitutes confidential information differs among different jurisdictions
- It is important to clearly specify what is and what is not confidential information



# Trade Secrets

- Trade secrets refer to information that is unique and valuable to a business, which is not easily accessible or known by those who are inside or outside that business
- If trade secrets are disclosed, they cannot be protected
- There is no formal application or registration process for trade secrets in the UAE as opposed to intellectual property
- Former partners, employees leaving to join competitors, third parties or joint ventures may continue to retain and use trade secrets and highly confidential and sensitive business information obtained even after the end of their business relationship

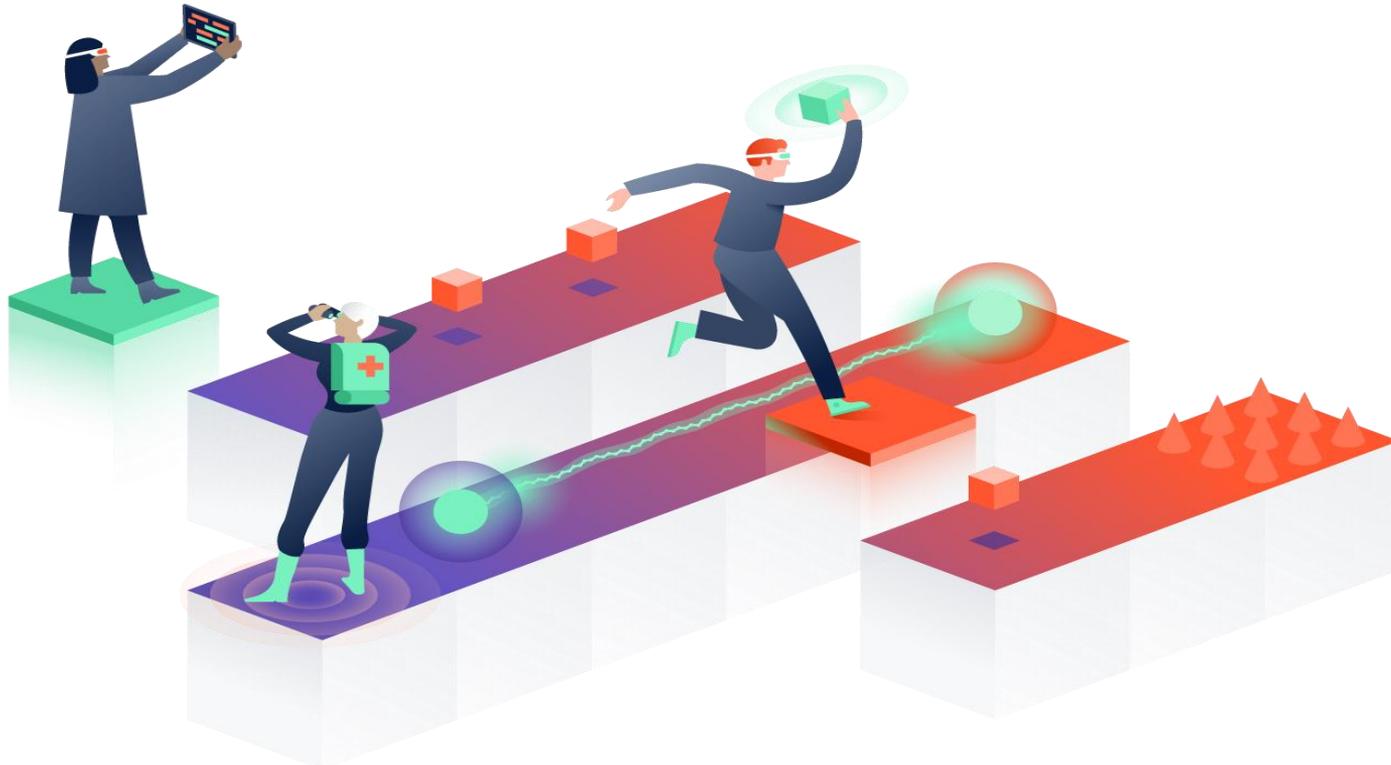


# Know-How

- Know-how is protected from unauthorised use or disclosure if it is not easily found through own research, published or put to public disposal
- Know-how is defined in Article 39 of the Industrial Regulation and Protection of Patents, Industrial Drawings and Designs Law which covers technical knowledge and experience that are acquired from a profession and can be practically applied
- Use, disclosure and publication of know-how without the holder's consent is unlawful
- The confidentiality status of know-how must be maintained to ensure legal protection, whereby the recipients must sign their agreement and commitment not to disclose to third parties without obtaining the prior consent of the discloser (signing an NDA)



- Two very well-known trade secrets are Coca-Cola and KFC
- Both have strong safety and security measures in place to protect their know-how (secret recipe and ingredients) from being disclosed
- Only two people in the world know a part of the secret formula which is then combined somewhere else using a computer processing system to standardise it
- The original hand-written recipe is locked up in a vault/safe guarded with surveillance cameras and other detection devices



# Unfair Competition

- Unfair competition applies to traders
- Article 11 of the UAE Transactions Law defines traders as individuals or companies providing trading services or activities according to the Companies Law
- Professionals and entities that deal with civil activities are also covered



# Restrictive Covenants and Employment Contracts



- They are commonly found in employment contracts or as an additional document to such contracts to restrict or limit an employee's activities during or after employment.
- They cover provisions relating to non-competition, non-solicitation, non-dealing, non-poaching, non-circumvention and non-disclosure.
- They can be enforced if they are not too wide and reasonable in time period, geographical area and scope of activities to the extent that is necessary to protect the employer's legitimate business interests and is not in restraint of trade.
- The clauses should be tailored according to the employee's position, skills, qualifications, type of business and nature of the job role.



# What to Include in Employment Contracts

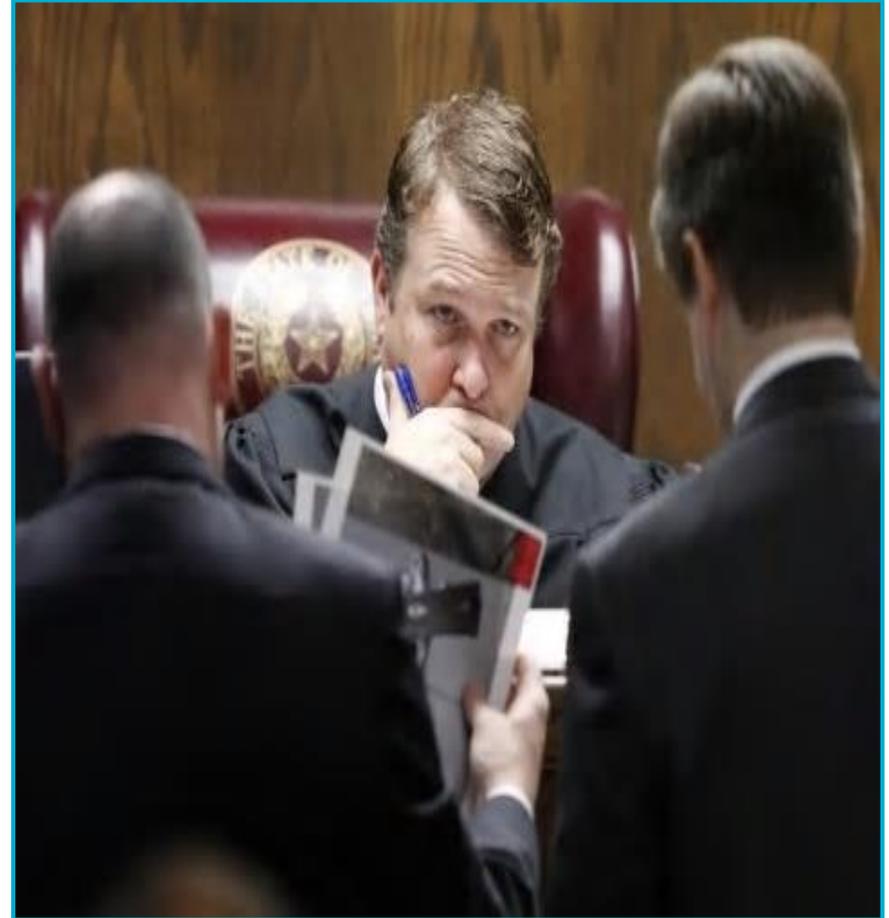
- Confidentiality provisions
- Post-termination restrictions that are reasonable in terms of duration, geographical location and scope of activities
- Liquidated damages clause
- Notice period and garden leave
- Limited or unlimited contract
- Retention scheme



To file a case for unauthorised disclosure, the claimant must show that the information disclosed:

- 1) was not public or common knowledge
- 2) was disclosed to the defendant in confidence
- 3) reasonable steps and strict measures were taken to protect it
- 4) a lot of resources were spent in developing or discovering it
- 5) was disclosed by the defendant in an unauthorised way
- 6) had caused the claimant to suffer a detriment as a result of the disclosure

There are certain circumstances in which disclosure of confidential information may be compelled



# Enforcement of Remedies and Jurisdiction

- Disclosure of confidential information may be subject to a criminal complaint if there is evidence
- Specific performance or injunctive relief are not (or rarely) granted
- Claim for monetary damages is possible if financial harm is proven
- Liquidated damages can be specified
- Can call MOHRE to cancel visa/workpermit



# Protective Measures

- Remain competitive through offering remuneration and promotion to make employees want to stay and remain loyal, e.g. benefits, incentives, increments, flexible working, etc
- Identify and clearly define and list the types of confidential information
- Have appropriate safety and security measures in place such as asking recipients to sign confidentiality agreements, marking materials as confidential, limiting access to certain people only on a need-to-know basis, including a confidentiality statement on relevant written notices, informing/reminding others of nature and consequences, etc
- Require the immediate return, delivery or destruction of the confidential information and a written confirmation of this upon the end of the business
- Ensure that employees assign their rights and such consent to transfer ownership to the employer is officially registered and notarised
- Ensure that employers know their rights and understand the measures for proving ownership of such rights through official channels
- Ensure that employers register their rights and correctly follow official formalities to avoid any issues in proving ownership of such rights or having to go to court to do so

PREVENTiON



# Business Protection Agreement

- Article 6 of the UAE Labour Law provides that disputes relating to rights or entitlements conferred by the UAE Labour Law must first be raised with the competent authority
- Provisions relating to bonuses, confidentiality, intellectual property and post-termination restrictions are not expressly covered in the UAE Labour Law
- Employers may require their employee to sign a separate NDA to cover the above so that it is a civil rather than an employment contract
- Employers may then be able to enforce such an agreement in the DIFC Courts rather than Dubai Courts



Thank you !

