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Q247

Trade secrets: Overlap with restraint of trade, aspects of enforcement

Responsible Reporters: by Sarah MATHESON, Reporter General John OSHA and Anne Marie VERSCHUUR, Deputy Reporters General Yusuke INUI, Ari LAAKKONEN and Ralph NACK Assistants to the Reporter General

National/Regional Group	Republic of Korea
Contributors name(s)	Hwan Sung PARK and Young Mo KWON
e-Mail contact	hsp@leeko.com
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I. Current law and practice

Aspect (i) - Overlap with restraint of trade

1) Is trade secret protection viewed as a form of restraint of trade and, if so, under what circumstances and under which legal regimes (e.g. competion law)?

yes

Please comment.:

a) If so, under what circumstances and under which legal regimes (e.g. competion law)?

In the zealous effort to protect one's trade secret, it inevitably may result in restraining trade, namely, by way of restraining what knowledge a former employee cannot use in his/her new employment. While it would be completely natural to assume that the former employee has carried with his/her knowledge gained from the past employment, there is no legal entitlement to use that knowledge in the new employment, which, if strictly adhere to, would result in restraint on trade. However, enforcement is another tricky issue, especially for skills or intangible assets gained at the former employment as the use of these is not visibly evidenced.

In the perspective of Korea, currently there is no statutory prohibition on competition vis-a-vis employee's move to a competitor company. Companies instead opt to include a non-competition clause in the employment contract thereby preventing an employee from seeking employment at a competitor for [x] number of years. However, it should be noted that such non-competition clause is not always upheld by the courts.

The reason for this is that the courts see a conflicting interest between the company's right to protect its assets and the employee's constitutional right to seek employment. Moreover, the courts are mindful of the anti-competitive effect such non-competition clause could have on the industry at large if clause were to be enforced thereby limiting or restricting competition in the market.[1][#_ftn1]

The courts will side with the company in upholding a non-competition clause in an employment contract considering the following factors: (1) the non-competition clause is limited in scope to protect the company's trade secrets; (2) the position of the employee within the company; (3) the employee's role in the company; (4) the non-compete duration; (5) the geographical scope of the non-competion clause; (6) the subject industry of the non-competion clause; and (7) evidence of compensation provided to the employee in exchange of having the non-competition clause in place. Even in the case where the courts uphold the non-competition clause, the non-compete duration may be shortened having considered the above factors. Also, where there is no contractual non-competition obligation on the employee, the courts may impose such obligation on an employee in any case pursuant to the Unfair Competition Prevention and Trade Secret Protection Act (hereinafter the "Trade Secret Protection Act") when the courts are satisfied that the company's trade secrets could not otherwise be protected.[2][#_ftn2]

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[1][#_ftnref1] The Supreme Court of Korea has found a non-competition clause in an employment contract to be void for infringing the employee's basic constitutional right to employment and excessively limiting free competition in the market thereby harming the good social order as provided in Article 103 of the Civil Act (Supreme Court Decision, 2009 Da 82244, March 11, 2010).

[2][#_ftnref2] Supreme Court Decision, 2002 Ma 4380, July 16, 2003.

2) How does your law distinguish between general skills or knowledge acquired during the course of employment, confidential information, and trade secrets? What protection is extended to each?

While trade secrets are protected by the Trade Secret Protection Act, general skills, knowledge acquired during the course of employment or confidential information are not specificially protected by any statute in Korea. However, where a commercial contract provides for a particular skills or knowledge as confidential information, then such skills or knowledge would be afforded protection vis--vis the contract. General skills are not afforded any particular protection.

Given that there is a distinction between trade secrets and confidential information in terms of the basis for its protection, the level of protection granted for each varies as well.

A. Trade Secrets

As mentioned earlier, trade secrets are protected under the Trade Secret Protection Act, infringement of

which may receive both the civil and criminal sanctions. In terms of civil sanctions, the Trade Secret Protection Act provides that the infringer would be liable for compensation for damages incurred as a result of the trade secret infringement. In terms of criminal sanctions, the Trade Secret Protection Act provides that the infringer could face imprisonment not exceeding 10 years or a fine not exceeding KRW 100 million for use or intention to use the trade secrets unlawfully obtained or disclosing the trade secrets to a third party to use knowing that it would be used overseas. Also, the infringer could face imprisonment not exceeding 5 years or a fine not exceeding KRW 50 million for for use or intention to use the trade secrets unlawfully obtained or disclosing the trade secrets to a third party to use for improper profits.

B. Confidential Information

Confidential Information is protected based on a commercial contract rather than through a statute. Confidential information is broader in scope compared to trade secrets and the courts have provided protection of confidential information when evidenced by a contractual obligation with a third party. And any non-competition clause inserted into an employment contract to protect confidential information has been enforced as valid by the courts.

3) Are employees under a duty of confidence whether or not such a duty is set out in their contract of employment?

yes

If yes please answer the following sub-questions::

a) are express confidentiality clauses to protect classes of information broader than would anyway be protected by the employee's duty of confidence permitted; and

The Supreme Court has ruled that even in the absence of a clear language in the employment contract confering a duty of confidence, an employee has the duty to keep trade secrets in confidence based on the concept of good faith or implied obligation in light of the relationship of trust in the employment context. (Supreme Court Decision, 96 Da 16605, December 23, 1996)

While there is no court precedent on the scope of protection thus far, the consensus among academics is that the Trade Secret Protection Act provides protection to information that is considered trade secrets only while the contractual confidentiality clause goes beyond in scope to protect information that may not be considered trade secrets, namely, information that may not necessarily be commercially valuable. The duty of confidence under the principle of good faith and trust also protects trade secrets only. Therefore, the contractual confidentialtiy obligation would confer a greater/broader protection than that available at law.

b) how long after the end of employment does an ex-employee's duty of confidence in relation to trade secrets last in the absence of any express confidentiality clause?

The objective of trade secret protection is to promote fair competition in the market by preventing another from gaining unwarranted advantage at the expense of the trade secret owner. However, the duration of protection is time limited and a former employee’s duty of confidence in relation to trade secrets is time limited. In the absence of an express confidentiality clause, the courts will take a number of factors into consideration in deciding how long the duty of confidence should last. Namely, the courts will consider factors such as (i) technical complexity of the trade secrets; (ii) the

time and cost expended by the company in obtaining the trade secrets; (iii) the efforts put into maintaining the trade secrets as secrets; (iv) the time it would take the competitor to lawfully acquire the same trade secrets; (v) duration of employment with the trade secrets owner; (vi) the role of the employee in the company; (vii) access to the trade secrets; (viii) internal policy in handling the trade secrets; (ix) infringement of the employee's constitutional right to employment; (x) duration of patent protection if the trade secrets were to be patented; and (xi) other economic circumstances of the company. (Supreme Court Decision, 97 Da 24528, February 13, 1998)

4) If not constrained by an enforceable non-compete agreement, may workers use knowledge acquired in the course of earlier employment in their new employment?

yes

If yes, is there any distinction between the types of knowledge they can use?:

Even if an employee is not constrained by an enforceable non-compete clause, the employee would still be deemed to owe a duty of confidence based on the principle of good faith and trust , in the case of trade secrets. As such, the employee may face criminal and civil liability, including injunction. If the knowledge in question is not considered trade secrets, the company may not have any recourse against the employee absent a non-compete or confidentiality agreement with the employee.

5) Are certain employees subject to a higher obligation of confidentiality / non-use?

yes

If so, which employees, and what is the rationale for any distinction between employees?:

The courts would consider the role of the employee at the company. Senior employees may be subject to a more onerous obligations than other employees as they would have been privy to more important information of the company. For example, a company's directors and senior management may be subject to higher obligation of confidentialtiy and a non-compete clause in their employment agreement may be enforce while the same clause may be found void for junior employees.

Aspect (ii) - Ensuring confidentiality during Court proceedings

6) What measures or provisions are available to preserve the secrecy of trade secrets during Court proceedings?

The issue of ensuring protection of trade secrets during litigation is a universal concern in most jurisdictions, and Korea is not an exception by any means. As a mechanism for ensuring protection of trade secrets, the trade secret proprietors have access to all the four options listed above to a varying degree. In the context of civil proceedings, the trade secrets proprietor may, upon establishing the trade secret nature of the information, (i) refuse to testify regarding trade secrets; (ii) refuse to submit trade secrets as evidence (or submit to the court's eyes only); (iii) obtain a protection order from the court on evidence and court records (complete restriction or redacted version to the public); or (iv) obtain a court order for confidentiality obligation between all parties involved in litigation.

For example, do trade secret proprietors have access to the following mechanisms to preserve the secrecy of a trade secret during proceedings (subject to the Court's discretion to allow/disallow such access):

a) restricted access to the hearing and / or evidence;

b) disclosure of evidence only to the legal representatives of the opponent, but not to the opponent themselves;

c) non-confidential versions of documents being provided to all except authorised individuals;

d) only non-confidential parts of any judgment / decision publicly available?

7) If such (or similar) measures are available, do they apply by default, or must the trade secret holder submit sufficient evidence to convince the Court that the information merits protection?

As indicated in the above answer to question 6, the measures are available upon request by the trade secret holder and upon establishing *prima facie* evidence of trade secret and show the information merits protection by the court.

8) Whether or not such measures are available, does the Court restrict the defendant's or claimant's use - after the proceedings have terminated - of the information they gain during the proceedings?

Only upon the request of the trade secret proprietor and upon the court's order of confidentiality obligation would the other party be restricted from using the subject trade secrets disclosed during the proceedings. Such obligation would continue even after the conclusion of the court proceedings and would only expire upon request by the trade secret holder. Violation of such the confidentiality order may be subject to imprinsonment not exceeding 5 years or a fine not exceeding KRW 50 million.

Aspect (iii) - Valuation of loss

9) Are damages available as a remedy for trade secret violation?

yes

If so please answer the following sub-questions::

a) how (if at all) is that value diluted by publication?

If the trade secret is lawfully disclosed to the public by the holder or a third party, the trade secret holder may still claim damages against the exisitng misappropriator but the calculation damages stops at the point of public disclosure.

If the trade secret is unlawfully made public by the misappropriator, the misappropriator will be estopped from claiming public disclosure as defense to limit the damages claim.

It should be noted that the courts view that trade secret protection period is not permanent, but rather time limited taking into consideratio the time it would take a competitor to lawfully develop the subject trade secret.

b) how are those damages quantified? Specifically, is allowance made for loss of profits; unjust enrichment; and /or what the trade secret holder would or might have charged as a reasonable royalty fee or licence?

The Trade Secret Protection Act provides that (i) where the infringer has sold or transferred a good containing the trade secret, the trade secret holder may be entitled to the amount that is calculated by multiplying the transferred amount with the presume profit the trade secret holder would

otherwise have but for the misappropriation; or (ii) reasonable royalty the trade secret holder may be able to charge for the use of the trade secrets.

c) can damages be awarded for moral prejudice suffered by the trade secret holder? If so, how is moral prejudice defined, and how are such damages quantified?

no

If not please comment.:

"Moral prejudice" is not a concept available under the Korean law. There has been cases at the Supreme Court where damages for moral prejudice was claimed, the court found that any "moral prejudice" or "emotional harm" would be compensated by way of a damages relief for misappropriation of trade secrets. A claim for "moral prejudice" could be granted as a special damages if the infringer knew or ought to have known that such damage would result from the misappropriation. (Supreme Court Decision, 96 Da 31574, November 26, 1996)

d) If so, how is moral prejudice defined and how are such damages quantified?

Aspect (iv) - Proving infringement

10) What elements must be proved to establish violation of a trade secret?

In order to establish violation of trade secrets it must be substantiated with evidence that (i) the subject information is trade secret; and (ii) the subject act constitutes misappropriation of trade secret within the meaning ascribed under the Trade Secret Protection Act.

1. Trade secretThe Trade Secret Protection Act provides three requirements to establish trade secret: (a) that the information must be kept secret; (b) that the information must have independent economic value; and (c) that the information was maintained as secret. The one claiming protection as trade secret must establish these three elements.
2. Misappropriation of trade secret

Upon establishing that the information constitutes trade secret, Article 2(3) of the Trade Secret Protection Act further provides that to claim misappropriation of said trade secret, the holder must prove that the act falls under the following enumerated acts.

(a) An act of acquiring trade secrets by theft, deception, coercion or other improper means (hereinafter referred to as "act of improper acquisition"), or subsequently using or disclosing the trade secrets improperly acquired (including informing any specific person of the trade secret while under a duty to maintain secrecy; hereinafter the same shall apply);

(b) An act of acquiring trade secrets or using or disclosing the trade secrets improperly acquired, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;

(c) An act of using or disclosing trade secrets after acquiring them, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;

(d) An act of using or disclosing trade secrets to obtain improper benefits or to damage the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;

(e) An act of acquiring trade secrets, or using or disclosing them with the knowledge of the fact that they have been disclosed in the manner provided in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;

(f) An act of using or disclosing trade secrets after acquiring them, with the knowledge of the fact that they have been disclosed in a manner provided in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;

11)	What additional elements must be proved (if any) for a trade secret violation in comparison to a breach of confidence, to the extent those are different types of violations?

As already explained above, unlike a breach of confidence, the trade secret proprietor needs to establish with objective evidence that the information in question is (i) a trade secret and (ii) that the infringer has conducted one of the enumerated acts.

12)	Can constructive knowledge of a trade secret by an ex-employee or a new employer be imputed, e.g. if the subject-matter of that ex-employee's work was closely linked to the trade secret?

yes

If so, in what circumstances? :

It is the courts position that the knowledge of trade secrets by ex-employee or acquisition of trade secrets by the new employer may be imputed taking into consideration various circumstances.

In principle, the claimant (the trade secret holder) must establish that the ex-employee had possession (or knowledge) of the trade secret. However, that may not be easily accomplished in reality. As a result, courts may impute knowledge or possession of the trade secrets by considering circumstantial evidence such as the period of employment, role at the company, access to trade secrets, the relationship of the employee with the new company, etc.[1][#_ftn1] For example, if a company, which lacks any significant research accomplishment, recruits the ex-employee and then develops a technology identical to that of the former company within a short span of time, the courts may conclude

that either the ex-employee or the new company has knowledge (or possession) of the trade secrets.

[1][#_ftnref1] Supreme Court Decision, 2002 Ma 4380, July 16, 2003.

13)	Does your jurisdiction provide for discovery?
	no

14)	Does the burden of proof switch to the defendant if the applicant is able to demonstrate, to a certain level of probability, that there has been a violation?
	no

15)	Does your law provide for any other methods for securing evidence, such as seizures or ex parte measures?
	yes If so, what requirements must be fulfilled in order for the measure to be ordered and what safeguards are in place to prevent abuse?: Article 18 of the Trade Secret Protection Act categorizes misappropriation of trade secrets as a criminal act thereby permitting the investigating authority to conduct a search and seizure on a warrant pursuant to Article 215 of the Criminal Procedure Act. Article 375 of the Civil Procedure Act also provides for a search and seizure process when there is a threat of evidence being destroyed; however, this procedure is rarely used as a method of collecting evidence.

16)	Where seizure is available, for what purposes can it be used? To secure evidence, to prevent items entering into circulation or for other reasons?
	The search and seizure method explained above is available for the purpose of securing evidence.

II. Policy considerations and proposals for improvements of the current law

Aspect (i) - Overlaps with restraint of trade

17)	Should limits be placed on the protection of trade secrets to avoid unlawful restraints on trade?
	yes If so, what limits? : Limits should be placed on trade secret protection to avoid unlawful restraints on trade. There is a conflicting interest of the employee’s constitutional right to employment and the company’s right to protect its trade secrets. A balance must be struck between the two and all circumstances must be considered, including the employment contract and the balance of power between the company and the ex-employee. A contract cannot be completely relied on as there is often a power imbalance in employment setting. Under this backdrop, the Korean courts do not enforce a non-compete clause on a wholesale level, but rather determines the appropriateness of its existence and the duration of the

same in light of all circumstances surrounding the employment and the resignation that followed.

18)	Should different obligations of confidence / non-use apply to different employees? Why/why not?
	Yes. As discussed in previous questions, the level of confidence obligation should vary depending on the role of the employee at the former company. Each employee would be exposed to trade secrets of the company on varying levels. Some employees are privy to more important information of the company due to their higher position in the company. It would be unfair to confer the same level of confidential obligation all employee when the information each employee is exposed can vary significantly at the expense of violating each employee's constitutional right to employment.

Aspect (ii) - Ensuring confidentiality during Court proceedings

19)	Should a defendant, who is sued unsuccessfully for a trade secret violation, and who learns of the trade secret during the course of the litigation, be required to not use the trade secret after the proceedings? Why/why not?
	Yes. Indeed the trade secret information acquired during the course of litigation should not be permitted to use by a defendant after the conclusion. That would go wholly against the goal of the initial court proceedings to begin with. Generally, the parties to a trade secret misappropriation case are in the same or similar industry (or expected to), if a defendant is free to use the trade secrets obtained during litigation, the defendant would have gained an advantage, which it otherwise would not have had. Also, it is possible that the plaintiff would be deterred from claiming trade secret misappropriation for fear of disclosing its trade secrets. In the effort to prevent such dysfunctional effects of a trade secret misappropriation lawsuit, the Trade Secret Protection Act provides for the plaintiff to seek an order of the court imposing confidentiality obligation on all the parties involved in the lawsuit thereby precluding the possibility of trade secret usage by the defendant.

20)	Should such obligations of confidentiality attach to information that the defendant developed independently prior to the trade secret proceedings, or develops independently after the trade secret proceedings? Why/why not?
	No. An information already developed independently by the defendant or later developed independently by the defendant is not considered the plaintiff's trade secrets. Conferring such confidentiality obligation on the defendant indiscriminantly may have the effect of preventing the defendant from competiting with the plaintiff in the industry and restraining competition. As such, care must be had in scruitinizing the information that is covered by the confidentiality order before the order is made by the court.

Aspect (iii) - Valuation of loss

21)	Should damages as a remedy be available by default, or only where injunctive relief is (a) not possible, (b) adequate, or (c) not necessary? If by default, why?
	yes

If yes please answer the following sub-questions::

a) only where injunctive relief is not possible?

no

If not please comment.:

b) only where injunctive relief is not adequate

no

If not please comment.:

c) only where injunctive relief is not necessary?

no

If not please comment.:

d) If by default, why?

Damages should be an available remedy by default. Under Korean law, injunctive relief and damages relief are two separate headings of reliefs. The injunctive relief purports to stop current misappropriation or prevent a future misappropriation of trade secrets. The objective of the damages award, on the other hand, is to compensate the damages suffered by the trade secret misappropriation that has already happened. Therefore, one cannot replace the other.

Aspect (iv) - Proving infringement

22) Should constructive knowledge of a trade secret by an ex-employee be imputed to their new employer?

yes

If yes, in what circumstances? :

If the possession or acquisition of the former company's trade secrets is already established, then the knowledge or possession of the same by the new employer should be imputed where there is evidence that the ex-employee is in the identical position and role to his/her former employment and the new employer is a competitor of the former employer.

23) Availability of pre-action evidence orders and seizure orders.

a) Should pre-action evidence preservation orders be available?

yes

If so, should the hearings to decide whether or not to grant them be able to take place ex parte?:

While the plaintiff has the burden of proof in a trade secret misappropriation case, it is difficult to provide objective evidence to that effect in reality as they are mostly in the possession and control of the defendant. As such, for more effective protection of trade secrets, a system of evidence preservation or collection should be made available to the party seeking protection prior to commencing the lawsuit. It is possible in Korea to collect evidence through the criminal search & seizure process (as discussed previously); however, in principle, evidence collected in the criminal proceedings is not permitted to be used in civil proceedings. If such system becomes implemented, ex parte procedure would be essential to prevent discarding or destruction of critical evidence by the defendant.

b)	Should pre-action evidence seizure orders be available?
	yes If so, should the hearings to decide whether or not to grant them be able to take place ex parte?: See item a) above.

24)	What if the claimant learns of new trade secrets (of the defendant) during the course of a seizure?
	As the search and seizure process is not an opportunity for a fishing expedition, the search and seizure should be limited to evidence necessary for the case at hand. As such, even if new trade secrets were discovered during the course of a sezure, such information should not be offered as evidence during the criminal or civil proceedings as it has no relevant to the case at hand and possibly cause damage to the defendant.

III. Proposals for harmonisation

25)	Is harmonisation in this area desirable?
	Yes.

If yes, please respond to the following questions without regard to your national or regional laws. Even if no, please address the following questions to the extent you consider your national or regional laws could be improved.

Aspect (i) - Overlaps with restraint of trade

26)	Please propose principles for the circumstances in which trade secret enforcement actions should fail, because such actions would be de facto restraints of trade.
	Where the trade secret enforcement infringes on the employee’s constitutional right of employment or where the trade secret enforcement excessively limits market competition, the remedies available for trade secrets misappropriation should not be granted.

27)	What relief should courts give when a trade secret violation has occurred or is about to occur, but an enforcement action is barred as a restraint of trade?
	When an enforcement is barred as a restraint on trade, the courts could prescribe that the former employee be enjoined from using or disclosing the subject trade secrets and also award damages. If the trade secrets are in tangible form of documents or drawings, for example, the courts may order such documents to be returned to the claimant or destroyed.

28)	Should employees subject to a stricter obligation of confidentiality be released from that duty in certain circumstances? If so, in what circumstances?
	No. Where the former employee was in a higher position within the company and privy to important

information requiring a stricter confidentiality obligation, violation of such may have detrimental impact on the company. As such, stricter obligation on such former employee should not be lifted before the end of the obligatory period.

Aspect (ii) - Ensuring confidentiality during Court proceedings

29)	What protection for trade secrets should be available during Court proceedings, and what conditions should be satisfied for that protection to be given?

Following protection should be afforded during pendancy of court proceedings:

(i) *in camera* procedure

Where the protection of trade secrets is at the heart of the court proceedings, evidence that contain trade secrets should be provided to the court only and restricted from access by the other party.

(ii) confidentiality order

Upon establishing that some court documents contain a party's trade secrets, a court order of confidentiality may be obtained preventing the parties to use such information other than for the purpose of the lawsuit.

(iii) closed hearing

Given that the information about the claimant's trade secrets will likely be discussed in detail during the hearing, the claimant should be able to seek a court order to have the hearing closed to the public.

30)	If an enforcement action fails (e.g. because the defendant had independently developed the secret information and did not misappropriate it), what type(s) of confidentiality or non-use obligation, if any, should continue or cease to apply?

No obligation of confidentiality or non-use should apply to the defendant who has prevailed in the trade secret misappropriation action.

Aspect (iii) - Valuation of loss

31)	Please propose the principles for quantifying damages for trade secret violations.

Under Korean law, the trade secret holder has the burden to establish its claimed amount in damages. However, given that Korea does not employ the US-styled discovery process, it is often difficult to accurately quantify the damage and for reason of keeping its business secret undisclosed, the claimant is often unwilling to submit the necessary documents to support the claimed damages amount. As a result, courts often use its discretion to award damages. It would be of benefit and eliminate courts error in exercising its discretion to allow for the US-styled discovery process in Korea.

32)	Should courts award moral damages?
	no

Aspect (iv) - Proving infringement

33)	What measures to secure or preserve evidence should be available?
	As discussed above, there should be process of expeditiously preserving evidence prior to or during the lawsuit for more effective protection of trade secrets. It is contemplated that this process should be outside the criminal search and seizure process.

34)	What restrictions should apply to the use of seized evidence by the claimant?
	As search and seizure limits one constitutional rights, it should be restricted to the scope of the case at hand. Only the relevant evidence should be seized and conducted pursuant to a warrant.

Summary

1. **Current law and practice** In South Korea, trade secrets are afforded protection through the concerted efforts of both the legislative system and contractual mechanism. The Unfair Competition Prevention and Trade Secret Protection Act (hereinafter the "Trade Secret Protection Act") provides protection to trade secrets upon satisfying the three-part test stipulated under the Trade Secret Protection Act. However, given the lack of the US style discovery process and search and seizure mechanism being limited in scope in Korea, proving infringement may be challenging. The commercial mechanism, on the other hand, provides protection to trade secrets in the employment context where the non-competition clause in an employment contract prohibits an employee from moving to a competitor of its former employer taking with him/her trade secrets acquired from the former employer. While there is an obvious conflicting interests of a company's right to enjoy protection of its trade secrets and the employee's constitutional rights to employment, the courts have thus far been able to strike a balance taking into consideration a number of factual circumstances.
2. **Policy considerations and proposals for improvements of the current law** Where the trade secret protection claim is largely a game of evidence, the balance of power is disproportionately against the claimant as the respondent has most critical evidence to prove infringement. As such, a new mechanism or a legal principle should be implemented to lessen the burden of proof or allow evidence preservation process. Also, a stricter mechanism and sanction must be put in place to protect trade secrets from being disclosed during court proceedings. Those trying to protect valuable information from being infringed should not be deterred from bringing a claim in court for fear of having its trade secrets disclosed during court proceedings. In the age of globalization where information is freely exchanged worldwide and borders are becoming a mere regulator of traffic flow, harmonization of laws and regulations regarding trade secrets protection is preferred to offer a uniform protection to all entities in all jurisdictions.

Please comment on any additional issues concerning trade secrets you consider relevant to this Working Question.