

## Confidentiality and your business in the Middle East



**By Takamasa Makita and Sara Khoja**

Every business holds information that it regards as commercially sensitive and confidential. The issue for employers is how to manage this. In the United Arab Emirates, employees are under obligations in respect of handling information. According to *Federal Law 5 of 1985* (UAE Civil Code), for instance, "the employee must keep the industrial or trade secrets of the employer, including after the termination of the contract, as required by the agreement or by custom" (Article 905). Meanwhile, *Law No 8 of 1980* (UAE Labour Law) provides that an employee may be terminated without notice or the payment of end of service gratuity where he reveals the secrets of his employer (Article 120), whilst Article 379 of *Federal Law 3 of 1987* (UAE Penal Code) also provides that it is a criminal offence for an individual to use a third party's information without consent. Corresponding provisions of Articles 120 and 379 exist in Saudi Arabia and Qatar.

Where the protection of confidential information is involved, any relevant employment contract should impose obligations on an employee: (i) to act honestly towards the employer and use his skill and knowledge in the employer's best interests; (ii) to disclose to the employer all information relevant to the business; (iii) not to make secret profits from the business; (iv) to respect the confidentiality of the employer's commercial information; and (v) not to compete with the business. These last two obligations should apply both during the employment and for an appropriate period of time and geographical area after it ceases.

Termination of employment for misuse of confidential information will require the employee to have received proper notification on what constituted confidential information and what was his or her permitted use of such information. It is important to

distinguish between confidential information and information which is part of the skill and knowledge of the employee. An employer may be able to claim damages from an employee who misuses its confidential information.

Both the Qatar Financial Centre and the Dubai International Financial Centre have data protection legislation modelled on the European Union's *Data Protection Directive*, the *Data Protection Regulations 2005* and the *Data Protection Law No 1 of 2007*. These set out rules under which personal data may be collected and held, with the owner or the subject of this data having a right of access and a right to ensure details are accurate or corrected if wrong. This legislation also sets restrictions on the lawful transfer of data by the organisation holding the data. Special restrictions apply to sensitive personal data, for example, relating to an individual's health.

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Article 282 of the UAE Civil Code provides that an individual or entity will be responsible for any act by him causing harm to others and that such an act shall be compensated. Such are the broad terms of this Article that it could well extend to the negligent or careless disclosure of a third party's confidential information.

As a matter of good corporate governance, multinational organisations operating across jurisdictions would be wise to put in place appropriate systems and audit measures in respect of information governance

(complicated further where the organisation outsources information services). Such a system will identify: (i) what information is kept by the business; (ii) where data enters the organisation, where it is held and how it is used; (iii) how long it is being held; and (iv) the potential risks of disclosure or misuse.

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