

LAW ON TRADE SECRET

CHAPTER I

INTRODUCTORY PROVISIONS

Subject

Article 1.

This law shall regulate the legal protection of a trade secret against all actions of dishonest competition.

The information to be protected as a trade secret within the meaning of this law shall particularly include: financial, economic, business, scientific technical, technological and production information, studies, research results, including a formula, drawing, plan, design, prototype, code, pattern, compilation, program, method, technique, process, communication or instruction of internal character, etc., regardless of the manner in which they are kept or compiled.

Article 2.

A domestic or foreign natural or legal person shall be entitled to the protection of a trade secret in accordance with the provisions of this law

A person who controls the use of a trade secret by law shall be considered a holder of a trade secret.

Information not considered a trade secret

Article 3.

Information designated as a trade secret in order to cover up a criminal offence, overstep authorization or abuse the official position, or any other illegal act or conduct of a domestic or foreign natural and legal person shall not be considered a trade secret.

Information defined by the specific laws as information not constituting a trade secret shall not be protected as a trade secret within the meaning of this law.

CHAPTER II

SUBJECT AND CONDITIONS OF PROTECTION

Definition of a trade secret and conditions of protection

Article 4.

Any information that has or may have a commercial value shall be considered a trade secret within the meaning of this law because it is not generally known or available to third parties, which may derive economic benefit from using or communicating it, and which is protected by its holder by adequate measures in accordance with the law, business policy, contractual obligations or adequate standards in order to preserve its confidentiality, and whose communication to a third party may cause damage to the holder of a trade secret.

The following shall also be considered a trade secret:

1) undisclosed information on tests or other information whose creation demands a considerable effort and which is submitted to the state authorities for obtaining a license for placing on the market medicines that is medical devices or agricultural chemical products using new chemical compounds, as well as for obtaining documents permitting placement of biocidal products on the market;

2) other data declared trade secrets on the basis of a specific law, other regulation or a document of the legal person.

The protection of information referred to in paragraph 2, item 1 of this Article shall be regulated in more detail by separate laws governing the conditions and procedure for placing medicines and medical devices on the market, registration, control, trade, import and application of plant protection devices in agriculture and forestry or conditions and procedures for placing biocidal products on the market.

A trade secret containing information of interest to the Republic of Serbia shall be considered classified information and be protected according to the provisions of the Law on Classified Information.

Trade secret protection measures

Article 5.

The trade secret protection measures referred to in Article 4, paragraph 1 of this law shall be determined in accordance with the risk assessment for obtainment, use and disclosure of information constituting a trade secret.

Protection period

Article 6.

The protection by means of a trade secret designation shall last as long as information constituting such a secret is protected as confidential.

CHAPTER III

OBTAINMENT, USE AND DISCLOSURE OF INFORMATION CONSTITUTING A TRADE SECRET

Legal obtainment, use and disclosure of information constituting a trade secret

Article 7.

A holder of a trade secret may transfer the right to use a trade secret to another person.

Obtainment, use or disclosure of information constituting a trade secret to other persons shall be permitted even without an explicit or implicit consent of the holder, if it is done in accordance with the law that is in a manner which does not contravene good business practices.

In case of a dispute, a person that maintains that it has obtained or disclosed information constituting a business secret or has used the above information legally in accordance with the provisions of paragraph 1 of this article shall be under obligation to prove it.

Illegal obtainment, use and disclosure of information constituting a trade secret

Article 8.

Any action taken within industrial or commercial activities resulting in disclosure, obtainment or use of information constituting a trade secret by another person without a consent of the holder of such a trade secret and in a manner which contravenes the law and good business practices shall be considered an act of dishonest competition.

Any action taken with the aim of creating competition on the market which causes or may cause damage to a competitor or other natural or legal person shall be considered in contravention to good business practices, namely:

- 1) breach of contractual provision on trade secret protection
- 2) abuse of business partners' trust
- 3) industrial or commercial espionage
- 4) fraud
- 5) inducement to any of the actions referred to in item 1)-4) of this paragraph
- 6) obtainment of information constituting a trade secret by third parties which are aware or had a duty to be aware that such information constitutes a trade secret and that it has been obtained from the person having a legal possession of that secret.

Use and disclosure of information on tests and results of researches

Article 9.

Any action taken within the industrial or commercial activities consisting of and resulting in use, which is contrary to the good business practices, or any disclosure of information referred to in Article 4., paragraph 2., item 1) of this law shall be considered an act of dishonest competition.

Information referred to in Article 4. paragraph 2. item 1) of this law may be disclosed only provided that:

- 1) the authorities responsible for issuing documents permitting placing on the market of medicines or medical devices using new chemical compounds or of biocidal

products or the authority responsible for registration of agricultural chemical products using new chemical compounds or the state authority responsible for exercising the right to access information of public importance determine that such disclosure is necessary for the protection of the public; or

2) actions were taken before disclosure of such information to ensure its protection against any use contrary to good business practices;

3) the holder of such information has agreed explicitly in writing to its disclosure.

Article 10.

Any domestic or foreign physical and foreign natural and legal person which is by law in control of a trade secret shall be entitled to forbid other persons to obtain, disclose or use a business secret in an authorized manner and contrary to good business practices.

Any illegal obtainment, disclosure or use of a trade secret within the meaning of Article 8, paragraph 1. and Article 9., paragraph 1. of this law shall be considered a violation of a trade secret.

Communicating information referred to in Article 4 of this law shall not be considered a violation of a trade secret, if it is done solely for the purpose of making the competent authorities and the public aware of the existence of an act punishable by law.

CHAPTER IV

CIVIL LAW PROTECTION OF A TRADE SECRET

Charges for a violation of a trade secret

Article 11.

In case of a violation of a trade secret, the holder of a trade secret may initiate the proceedings before the court by filing charges against any person which has committed a violation of a trade secret within the meaning of Article 10, paragraph 2 of this law, as well as demand the following:

1) termination of actions which may lead to illegal obtainment, use or disclosure of a trade secret, and forbiddance of illegal obtainment, use or disclosure of the information constituting a trade secret,

2) prevention of marketing, or seizure and withdrawal from the market, modification or destruction of all items containing information constituting a trade secret, if it is possible to directly or indirectly see or carry such information,

3) prevention of import of products containing information constituting a trade secret, if it is possible to directly or indirectly see or carry such information;

4) compensation for damage, including the actual damage and lost profit, and if a violation has been committed on purpose, instead of compensation for property damage, the prosecutor may demand a compensation in an amount not exceeding the

triple value of the usual compensation, which would have been received for that particular form of using protected items if such use had been legal;

5) exclusion of that person from company membership, if such a person is a company member;

6) termination of employment relationship with that person, if such a person is employed by a legal person;

7) publication of the judgment in the media at the cost of the defendant.

When taking a decision on the demands referred to in paragraph 1., item 1)-4) of this article, the court shall particularly take into account commensuration between the seriousness of the violation and interests of third parties.

The proceedings following the charges referred to in paragraph 1. of this Article shall be conducted under the urgent procedure.

The provisions of the law regulating litigation proceedings shall apply to the proceedings following the charges referred to in paragraph 1 of this Article.

Filing charges referred to in paragraph 1 of this Article shall not rule out and stipulate a possibility of terminating employment relationship in accordance with the law regulations employment relations.

The legal person shall provide protection to the person who acted conscientiously and in good faith and made the competent authorities aware of the existence of the information referred to in Article 4 of this law.

Time limit for filing charges for a violation of a trade secret

Article 12.

The charges for a violation of a trade secret may be filed within six months from the day when the prosecutor was made aware of the violation and perpetrator, but not beyond the period of three years from the day when the violation was committed

Temporary measure

Article 13.

At the request of a person pointing to the probability of damage that may occur due to unauthorized obtainment, disclosure or use of a trade secret by another person, the court may impose a temporary measure to seize or withdraw from the market items containing a trade secret or items created by violating a trade secret, devices for producing such items, or impose a prohibitive measure to discontinue commenced activities, which cause or may cause a violation of a business secret.

The provisions of the law regulating the enforcement proceedings shall apply to the proceedings following the request referred to in paragraph 1.

Securing of evidence

Article 14.

At the request of the person pointing to the probability of damage that may occur due to unauthorized obtainment, disclosure or use of a trade secret, as well as to the existence of a reasonable suspicion that the pertinent evidence will be destroyed or impossible to obtain later on, the court may carry out the securing of evidence without previously notifying or hearing a person from whom such evidence is to be gathered.

Such securing of evidence shall involve a search of premises, vehicles, books and documents, blocking of bank accounts, confiscation of ready money and securities, examination of witnesses and expert witnesses, as well as taking other measures in accordance with the law governing the enforcement proceedings.

The person from which evidence is to be gathered shall be served with a court decision to impose the securing of evidence at the time of gathering such evidence, and in case of the person's absence, as soon as such service is possible.

The provisions of the law regulating the enforcement proceedings shall apply to the proceedings following the request referred to in paragraph 1 of this Article.

Article 15.

The temporary measure referred to in Article 13 and the securing of evidence referred to in Article 14 of this law may be requested even before filing charges for a violation of a trade secret provided that the charges are filed within 30 days from the day when a decision to impose temporary measures or a decision to impose the securing of evidence was taken.

An appeal against the court decision to impose the temporary measure referred to in Article 13 of this law or the securing of evidence referred to in Article 14 of this law shall not postpone the enforcement of such a decision.

Provision of security deposit

Article 16.

At the request of the person against whom the charges have been filed for a violation of a trade secret or the proceedings initiated for imposing the temporary measure or the securing of evidence, the court may, at the cost of the prosecutor, determine an adequate monetary amount as a security deposit in case the request is ungrounded.

Obligation to provide information

Article 17.

The court may order a person that has committed a violation of a trade secret to provide information on third parties involved in the violation of the trade secret and on their distribution channels.

The person referred to in paragraph 1. of this article which fails to comply with the obligation to provide information shall bear a responsibility for the resulting damage .

CHAPTER V

PRESERVATION OF SECRECY

Article 18.

The courts and other competent bodies shall take adequate measures for preserving secrecy of undisclosed information protected in accordance with the provisions of this law and other regulations governing the preservation of secrecy of the court proceedings.

CHAPTER VI

PENAL PROVISIONS

Economic offence

Article 19.

A company or other legal person which violates a trade secret in a manner referred to in Article 8, paragraph 1 and Article 9 paragraph 1 of this law shall be punished for an economic offence with a fine in an amount ranging from RSD 100.000 to 3.000.000.

A responsible person of a company or another legal person shall be punished with a fine in an amount ranging from RSD 50.000 to 200.000 for the offence referred to in paragraph 1 of this Article.

Objects of the commission of the economic offence referred to in paragraph 1 of this Article shall be seized whereas items resulting from the commission of the above economic offence shall be destroyed.

Documents or materials containing information constituting a trade secret shall be considered objects of the commission of an economic offence, if it is possible to directly or indirectly see or transmit such information.

The judgment pronounced on the perpetrator of the economic offence referred to in paragraph 1 of this Article shall be publicly released.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 20.

This law shall enter into force on the eight day from its publication in the Official Gazette of the Republic of Serbia.