

THE LAW ON THE PROTECTION OF TRADE SECRETS

CHAPTER I

GENERAL PROVISIONS

Subject Matter

Article 1

This Law regulates the legal protection of trade secret against all acts of unfair competition.

Within the meaning of the provisions of this Law, information which enjoys protection as trade secrets in the meaning of the provisions of this Law are considered to be in particular: financial, economic, business, scientific, technical, technological, production data, studies, results of research including formula, plan, project prototype, code, model, compilation, program, method, technique, procedure, internal information or instruction etc. , regardless how saved or compiled.

Article 2

Every resident or foreign natural or legal person has the right to protect trade secrets in compliance with the provisions of this Law.

Every person legally controlling the use of a trade secret, on the basis of this Law, is considered to be the holder of a trade secret.

Information which are not considered as the trade secret

Article 3.

Trade secret is not considered to be information which has been denoted as a trade secret for the sake of covering a criminal act, abuse of discretion or abuse of official position or other illegal act or acting of domestic or foreign natural or legal person.

As the trade secret in the meaning of this Law it is not possible to protect information for which it has been stipulated in special laws that they do not represent a trade secret.

CHAPTER II

SUBJECT MATTER AND CONDITIONS OF PROTECTION

Concept of a trade secret and conditions of protection

Article 4

Within the meaning of the provisions of this Law, the trade secret is considered to be any information which has commercial value because it has not been generally known or available to third parties who could realize economic benefit by using it or communicating it, and which has been protected by its holder by appropriate measures in compliance with the law, the business policy, the contracting obligations or the appropriate standards for the sake of keeping its secrecy, which communication to the third person could cause damage to the holder of the trade secret.

The trade secret, is also considered to be:

- 1) the undisclosed test data or other data whose creation requires certain effort and expenses, filed to the government bodies for the sake of getting permission to market the medicaments and/or medical devices or means for the protection of plants using new chemical components as well as for the sake of getting permission to market biocide products.;
- 2) other data proclaimed as trade secrets on the basis of a specific law, other regulation or act of the business company, or the decision of a competent authority passed on the basis of a law.

The protection of data from paragraph 2, point 1 of this article is closely regulated by special laws regulating conditions and procedure for the marketing of medicaments and medical devices, registration, control, transfer, import and implementation of devices

for the protection of plants in agriculture and forestry, or conditions and procedures for marketing biocide products.

Trade secret which contains data of interest for the Republic of Serbia is considered secret data and is protected in accordance with the stipulations of the law protecting the secrecy of data.

Measures of protection of the trade secret

Article 5

Measures of protection of the trade secret from article 4, paragraph 1 of this Law are determined in compliance with the evaluation of risk from the illegal acquisition, use and disclosure of the information representing a trade secret.

Article 6

The duration of protection

The protection of a trade secret lasts as long as the information representing the trade secret is being kept confidential.

CHAPTER III

ACQUISITION, USE AND DISCLOSURE OF THE TRADE SECRET

Legal acquisition, use and disclosure of a trade secret

Article 7

The holder of a trade secret and may transfer the right of use of that trade secret to another person.

Acquisition, use or disclosure of information representing a trade secret to other persons is allowed without the agreement of the owner, if it has been legally performed and in a manner which is not in opposition to the fair business practice.

In the case of dispute, the person that claims to have legally obtained or disclosed information representing a trade secret and that it uses them in a legal way in compliance with the provisions of the paragraph 2 of this Article, has an obligation to prove that.

Illegal acquisition, use and disclosure of a trade secret

Article 8

Every action undertaken in the framework of industrial or commercial activities, which ends up with the disclosure, acquisition or utilization by other persons of the information representing a trade secret, without the authorization of the owner of the trade secret and in a manner contrary to the law and fair business practice, shall be considered as an act of unfair competition.

The manner contrary to the fair business practice implies every action undertaken with the aim of competition on the market which is contrary to the fair practice and which causes damage or may provoke damage to the competitor or other natural or legal person, in particular:

- 1) breach of contract,
- 2) misuse of trust,
- 3) industrial or commercial espionage,
- 4) fraud,
- 5) solicitation to any act mentioned in items 1-4 of this Paragraph;
- 6) acquisition of information which are considered to be trade secret by persons that knew or had obligation to know that these information are considered trade secret and that they have been obtained from their holder in the manner described in the items 1-5 of this Paragraph and that it has been acquired from the person that legally owns its.

Use or Disclosure of Secret Information Submitted for Procedure of Approval of Marketing

Article 9.

Any act or practice, in the course of industrial or commercial activities, consisting or resulting in the unfair commercial use or disclosure of data from the art. 4. par. 2. item 1. of this law shall be considered an act of unfair competition.

Data from art. 4. par. 2. item 1. of this law can be disclosed only if:

1) the body competent for the issuing of license for the marketing of medicaments or substances for the protection of plants, or biocides or the government body competent for the access to information of public importance establishes that such disclosure is necessary for the protection of the public or

2) the measures have been undertaken which ensure that data are protected from unfair commercial use before their disclosure, or

3) that holder of data expressly permits in writing their disclosure of honest use in the commercial purposes.

Article 10

Every resident or foreign natural or legal person who, on the basis of the Law, controls the trade secret, has the right to prohibit other persons the unauthorized disclosure or utilization of the trade secret in a manner contrary to the fair business practice.

Violation of trade secret is considered to be every illegal acquisition, disclosure or utilization of the trade secret in the meaning of article 8 paragraph 1 and article 9 paragraph 1 of this Law.

The communication of information from article 4 of this Law is not considered to represent an act of violation, if it has been done for the benefit of the competent bodies or the public exclusively to indicate that there exists an act punishable by the Law.

CHAPTER IV

CIVIL LAW PROTECTION OF THE UNDISCLOSED INFORMATION

Legal Action Against the Infringement of Trade Secret

Article 11

In the case of infringement of the trade secret, the holder of the trade secret may sue any person before the Court for infringing the trade secret in the meaning of Article 10 Paragraph 2 of this Law, and demand:

- 1) the termination of all acts that may lead to the illegal acquisition, utilization or disclosure of the trade secret and the prohibition of the illegal acquisition, utilization or disclosure of data which represent a trade secret,
- 2) prevention of entering the channels of commerce and/or seizure and withdrawal from the channels of commerce, alteration or destruction of all objects containing data which represent trade secret, if such data can be seen or transferred directly or indirectly,
- 3) compensation of damages, including the real damage and the missing profit, and if the infringement on has been done intentionally, or by gross negligence, the plaintiff may, instead of indemnity for material damage, claim up to threefold amount of usual remuneration that would have been paid had the concrete protected subject-matter been used lawfully;
- 4) exclusion of that person from the business company, if that person is a member of the business company,
- 5) termination of employment if that person has been employed in the legal person.
- 6) the publication of the sentence in the public gazette at the expense of the defendant.

When passing the decision on the demands from Paragraph 1 item 1-3 of this Article, the Court particularly takes into the consideration the balance between the seriousness of the violation and the interest of third parties.

Judicial procedure following the legal suit from paragraph 1 of this Article is urgent.

Judicial procedure following the legal suit from paragraph 1 of this Article is subjected to the provisions of the law regulating the civil litigation.

Legal person is under obligation to secure protection to the person, who acting conscientiously and in good faith indicates to the competent bodies the existence of information from article 4 of this Law.

Time Limit for Starting Legal Action Against the Violation of Trade Secret

Article 12

The appeal against the violation of trade secret can be filed in the period of six months from the date when the plaintiff discovered the violation and the violator, and at the latest in the period of three years from the date when the violation was first committed.

Provisional measure

Article 13

At the request of the person that makes probable to the Court that the trade secret he legally controls has been violated, or is likely to be violated, the Court may pass a provisional measure of seizure or exclusion from the channels of commerce of all objects containing the trade secret or resulting in the violation of the trade secret, all means for the production of these objects, or the Court may pass the measure of prohibition of actions initiating the violation or enabling performance of the violation of the trade secret.

Procedure following request from paragraph 1 of this Article is subjected to the provisions of the law regulating executive procedure.

Securing of evidence

Article 14

At the request of the person that makes probable to the Court that the business secret it legally controls is violated, or is likely to be violated, as well as that there are justifiable doubt that the proof shall be destroyed, or that it will be impossible to obtain such proof later, the Court may in the case of urgency initiate the securing of evidence without previous notification or hearing of the person from whom the evidence is being collected.

Securing of evidence in the meaning of Paragraph 1 of this Article is considered to be the surveillance of facilities, vehicles, books, documents, data bases, etc, the confiscation of objects and documents, the blocking of bank accounts, confiscation of cash and stocks, the questioning of witnesses and expert witnesses, as well as the undertaking of other measures in compliance with the legislative regulating the execution procedure.

The Court decision on the securing of evidence is being handed over to the person from whom the evidence is being collected at the moment of the collecting of evidence, and the absent person is informed about it as soon as possible.

Procedure following the request from paragraph 1 of this Article is subjected to the provisions of the Law regulating executive procedure.

Article 15

The provisional measures from Article 13 and the securing of evidence from Article 14 of this Law can be demanded from the Court before initiating the legal suit against the violation of the trade secret, under the condition that the legal suit is filed within the period of 30 days from the date of passing the decision on the ordainment of the provisional measure, or the ordainment of the decision on the securing of evidence.

Appeal against the decision where the Court passes provisional measure from the Article 12 of this Law or the securing of evidence from Article 13 of this Law, does not postpone the execution of the decision.

Indemnity Award

Article 16

At the request of the defendant, in the case of the violation of the trade secret, when procedure has been initiated for the grant of the provisional measure, or for the securing of evidence, the Court may determine, at the expense of the plaintiff, a certain financial amount as indemnity award providing the request has not been grounded.

The obligation of providing information

Article 17

The Court may order the guilty person that violated a trade secret to give information on the third parties that participated in the violation of the trade secret and their channels of distribution.

The person from paragraph 1 of this Article who does not meet the obligation implying providing relevant information is held responsible for the resulting damage.

CHAPTER V

PRESERVATION OF CONFIDENTIALITY

Article 18

Courts and other competent bodies have the obligation to preserve the confidentiality of the undisclosed information protected in compliance with the provisions of this Law and other regulations regulating the protection of secrecy of the court procedure.

CHAPTER VI
PENAL PROVISIONS

Corporate Offence

Article 19

The business company, or any other legal person that violates the trade secret, in a manner described in Article 9 of this Law, shall be punished for corporate offence by a fine in the amount of 100,000 to 3,000,000 dinars.

For the acts from paragraph 1 of this Article, any responsible person in the business company or other legal person, shall be punished for corporate offence by a fine in the amount of 50,000 to 200,000 dinars.

Objects serving for committing the corporate offence and object utilized for committing of corporate offence from the paragraph 1 of this Article shall be confiscated, and the objects of committing the corporate offence shall also be destroyed.

Objects serving for committing the corporate offence are considered to be all documents or materials containing data which represent trade secret, if such data can be seen or transferred directly or indirectly.

The decision pronouncing the punishment for the executor of the corporate offence from paragraph 1 of this Article is publicly announced in the daily press.

VII FINAL PROVISION

Article 20

This Law enters into force on the eight day from the date of publishing in the “Official Gazette of the Republic of Serbia”.