Article Content

Title： Trade Secrets Act CH

Amended Date： 2020-01-15

Category： Ministry of Economic Affairs (經濟部)

Article 1 This Act is enacted to protect trade secrets, maintain industrial ethics and order in competition, and balance societal and public interests. Matters not provided for in this Act shall be governed by other laws.

Article 2 The term " trade secret " as used in this Act shall mean any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations, and also meet the following requirements:
1.It is not known to persons generally involved in the information of this type;
2.It has economic value, actual or potential, due to its secretive nature; and
3.Its owner has taken reasonable measures to maintain its secrecy.

Article 3 If a trade secret is the result of research or development by an employee during the performance of employment, the trade secret shall belong to the employer unless otherwise provided for in a contract, and in which case the contract shall prevail.
If a trade secret is the result of research or development by an employee other than during the performance of employment, the trade secret shall belong to the employee. However, if the trade secret is the result of utilizing the employer's resources or experience, the employer may make use of such a trade secret in the employer's business after paying a reasonable compensation to the employee.

Article 4 Where one provides funding and contracts another to conduct research or development that resulted in a trade secret, the ownership of the trade secret shall be determined by the terms of the contract. If the ownership is not specified in the contract, the trade secret shall belong to the contracted party; however, the contracting party shall be entitled to make use of such trade secret within the contracting party's business.

Article 5 Where a trade secret is the result of joint research or development by two or more parties, the respective shares in the ownership of the trade secret shall be determined by contract. In the absence of a contract, an equal share of the ownership shall be presumed.

Article 6

A trade secret may be assigned in whole or in part, or jointly owned. Any use or disposition of a jointly-owned trade secret shall be unanimously approved by all co-owners in the absence of a contractual provision. However, no co-owner shall refuse consent without proper justification. No co-owner may assign its share of the ownership without the consent of the remaining co-owners , unless otherwise provided for in a contract, and in which case the contract shall prevail.

Article 7 An owner of a trade secret may grant a license to another for the use of the trade secret. The territory, term, contents, methods of use or other matters in connection with the license shall be determined by the contract between the parties.
The licensee as referred to in the preceding paragraph shall not sub-license the licensed trade secret without the consent of the trade secret owner. No co-owner shall grant a license to another for the use of the jointly-owned trade secret without the unanimous consent of the remaining co-owners. However, no co-owner shall refuse consent without proper justification.

Article 8 A trade secret shall not be used as the subject matter of a pledge or compulsory execution.

Article 9 No government employee shall use or disclose without due cause any trade secrets of others known or obtained through the performance of his official duties. No parties, representatives of the parties, advocates, expert witnesses, witnesses, and other parties related to the case shall use or disclose without due cause any trade secrets of others, known or obtained by virtue of a judicial investigation or proceeding. The provision of the preceding paragraph shall apply mutatis mutandis to arbitrators and other relevant parties involved in arbitration matters.

Article 10 Any of the following acts shall be deemed as a misappropriation of a trade secret:
1. To acquire a trade secret by improper means;
2. To acquire, use, or disclose a trade secret as defined in the preceding item knowingly or unknowingly due to gross negligence;
3. To use or disclose an acquired trade secret knowing, or not knowing due to gross negligence, that it is a trade secret as defined in item one;
4. To use or disclose by improper means a legally acquired trade secret; or
5. To use or to disclose without due cause a trade secret to which the law imposes a duty to maintain secrecy
The term "improper means " as referred to in the preceding paragraph shall mean theft, fraud ,coercion, bribery, unauthorized reproduction ,breach of an obligation to maintain secrecy ,inducement of others to breach an obligation to maintain secrecy, or any other similar means.

Article 11 If a trade secret is misappropriated, the injured party may request for the removal of such misappropriation. If there is a likelihood of misappropriation ,a prevention may be requested .

When requesting for a remedy available under the preceding paragraph, the injured party may request for the destruction or other necessary dispositions of products generated from the misappropriation or items used exclusively in the misappropriation.

Article 12 One who intentionally or negligently misappropriates another's trade secret shall be liable for damages. If two or more parties jointly misappropriate, such parties shall be jointly and severally liable. The right to claim for damages as referred to in the preceding paragraph shall be extinguished if the right is not exercised within two (2)years from the date when the owner of the right has knowledge of both the act of misappropriation and the identity of the party liable for the damages ,or within ten (10) years from the act of misappropriation.

Article 13 An injured party may choose any of the following provisions to request for damages in accordance with the preceding Article:
1.To make a claim based upon Article 216 of the Civil Code. However, if the injured party is unable to prove the amount of damages, the party may take as damages the amount of profits normally expected from the use of the trade secret minus the amount of profits earned after the misappropriation; or
2.To request for the profits earned through the act of misappropriation from the one who misappropriated. However, if the one who misappropriated is unable to prove the costs or the necessary expenses, the total income gained from the act(s) of misappropriation shall be deemed the profits .
Based on the provisions set forth in the preceding paragraph, if an act of misappropriation is found to be intentional, the court may, at the request of the injured party and by taking into consideration the circumstances of the misappropriation, award an amount greater than the actual damages, provided that the amount shall not exceed three times the amount of the proven damages.

Article 13-1 Any person committing an act falling under any of the following circumstancesfor the purpose of an illicitgain for himself/herself or for a third person, or inflicting a loss onthe holder of a trade secret shall be sentenced to a maximum of 5 years imprisonment or short-term imprisonment, in addition thereto, a fine between NT$1 million and NT$10 million may be imposed:
1. Acquiring a trade secret by an act of theft, embezzlement, fraud, threat, unauthorized reproduction, or other wrongful means, or using or disclosing a trade secret so acquired.
2. Committing an unauthorized reproduction, usage, or disclosure of a trade secret known or possessed.
3. Failing to delete or destroy a possessed trade secret as the trade secret holder orders, or disguising it.
4. Any person knowingly acquires, uses or discloses a trade secret known or possessed by others is under circumstances prescribed in the preceding 3 subparagraphs.

An attempt to commit a crimespecifiedin the preceding paragraph is punishable.
In case a fine is to be imposed, if the gain obtained by the offender exceeds the maximum fine, such fine may be increased within the extent of 3 times of the gain.

Article 13-2 Any person committing a crime prescribed in the first paragraph of the preceding article for the purpose of using the trade secretin foreign jurisdictions, mainland China, Hong Kong, or Macau shall be sentenced to imprisonment between 1 year and 10 years, in addition thereto, a fine between NT$3 million and NT$50 million may be imposed.
An attempt to commit a crimespecified in the preceding paragraph is punishable.
In case a fine is to be imposed, if the gain obtained by the offender exceeds the maximum fine, such fine may be increased within the extent of 2 to 10 times of the gain.

Article 13-3 Prosecution for a crime specified in Article 13-1maybe instituted only upon a complaint.
The filing or withdrawal of a complaint against one of several co-offenders shall not be considered to be a filing or withdrawal ofacomplaint against the others.
In case a civil servant or a former civil servant who knows or possesses others' trade secrets within the scope of his/her authority or employment and intentionally commits a crime prescribed in the preceding 2 articles shall be sentenced to the punishment prescribed for such an offense by increasing it up to one half.

Article 13-4 Where the representative of a juristic person, the agent,employee or any other staff of a juristic person or natural person commits any of the crimes prescribed in Article 13-1 or 13-2 in the course of business, not only the actor,but the juristic person or the natural person shall be punished with the fine prescribed in the Article. However, if the representative of a juristic person or natural person has done his/her utmost to prevent a crime from being committed, the juristic person or natural person shall not be punished.

Article 13-5 An unrecognized foreign juridical person may file a complaint, initiate a private prosecution, or institute a civil suit in respect of matters governed by this Act.

Article 14 To try trade secrets suits, the court may establish a special tribunal or appoint a designated person(s) to administer the case. If assertions or defenses advanced by parties to a litigation relate to trade secrets, and at the request of the parties, the court may, as it deems appropriate, close the trial to the public and/or restrict access to the files of the litigation related information.

Article 14-1

A prosecutor investigating a trade secret case may, if he/she deems it necessary, issue an investigation confidentiality protective order to the suspects, the defendants, the victims, the complainants, the agents ad litem, the defense attorneys, expert witnesses, witnesses, or other associated persons having access to the investigation contents.

The person(s) subject to the investigation confidentiality protective order must not engage in the following acts in respect of the investigation contents:

1. Usage for purposes other than the investigation procedures; and
2. Revealing contents to the person(s) not subject to the investigation confidentiality protective order.

The provisions as set forth in the preceding paragraph shall not apply to the person(s) subject to the investigation confidentiality protective order who has already acquired or possessed the investigation contents prior to the investigation.

Article 14-2 An investigation confidentiality protective order shall be issued in writing or verbally. Where the order is issued verbally, the person(s) it is issued to shall be notified in person and a recordation thereof shall be made. A trade secret owner shall be afforded an opportunity to express opinions. The order in writing shall be produced within seven days.

The order in writing as set forth in the preceding paragraph shall be served upon the person(s) subject to the investigation confidentiality protective order and a notification thereof shall be made to the trade secret owner(s). Prior to serving and notification, the trade secret owner(s) shall be afforded opportunities to express opinions. This will not apply where the trade secret owner(s) has already been afforded opportunities to express opinions pursuant to the provisions of the preceding paragraph.

Where it is issued in writing, the order takes effect on the day it is served upon the person(s) subject to the investigation confidentiality protective order. Where the order is issued verbally, it takes effect at the time the notification thereof is made.

An investigation confidentiality protective order shall clearly record the following items:

1. The person(s) subject to such order;
2. The investigation contents that should be kept confidential;
3. The prohibited or restricted acts as stipulated in Paragraph 2 of the preceding article; and
4. The consequences of violating the order.

Article 14-3 During the investigation, if the duty of confidentiality is extinguished or if it is necessary to amend the contents of the order, the prosecutor may ex officio cancel or amend his/her investigation confidentiality protective order.

If the deferred prosecution or non-prosecution is finalized for a case or if part of the investigation confidentiality protective order is not within the scope of the prosecution, the prosecutor may ex officio or upon request by the person(s) subject to the order, cancel or amend his/her investigation

confidentiality protective order.
The prosecutor cancelling or amending the investigation confidentiality protective order pursuant to the preceding two paragraphs may afford the person(s) subject to such order and the trade secret owner(s) opportunities to express opinions. The cancelling or amending disposition shall be made in writing and served upon the person(s) subject to the order and the trade secret owner(s).
After a case is being prosecuted, the prosecutor shall notify the trade secret owner(s) and the person(s) subject to the investigation confidentiality protective order of the order's involvement in the effect of the prosecution and its scope, as well as of the rights and interests associated with the confidentiality preservation order and the investigation confidentiality protective order. The trade secret owner(s) or the prosecutor may, pursuant to the provisions of the Intellectual Property Case Adjudication Act, file a request with the court for the issuance of a confidentiality preservation order. The investigation confidentiality protective order within the scope of the prosecution shall, within the scope of a motion, lose its effectiveness on the date a ruling granting a confidentiality preservation order in investigation becomes final.
After a case is being prosecuted, if the trade secret owner(s) or prosecutor does not file a request with the court for the confidentiality preservation order within 30 days from the day the action case has been pending to court, the court may, upon request by the person(s) subject to the confidentiality protective order or the prosecutor, cancel the investigation confidentiality protective order. The investigation confidentiality protective order that is involved in the effect of the prosecution and its scope shall, within the scope of cancellation allowed for by the court, lose its effectiveness starting from the date on which a court ruling becomes final.
Prior to finalizing its ruling, the court shall consult the trade secret owner(s) and prosecutor. The ruling as set forth in the preceding paragraph shall be served upon the trade secret owner(s), the person(s) subject to the investigation confidentiality protective order, and the prosecutor.
The person(s) subject to the investigation confidentiality protective order or the trade secret owner(s) may petition the prosecutor's ruling as set forth in Paragraphs 1 and 2. The prosecutor, the person(s) subject to the investigation confidentiality protective order, or the trade secret owner(s) may file an interlocutory appeal against the court ruling as set forth in Paragraph 5.
The provisions in Articles 403 through 419 of the Code of Criminal Procedure shall apply mutatis mutandis to the petition and interlocutory appeal procedures as set forth in the preceding paragraph.

Article 14-4

A person violating an investigation confidentiality protective order shall be punished by imprisonment for up to three years, short-term imprisonment, and/or a fine of up to NT$1 million.
The preceding paragraph shall apply where the violation of the investigation confidentiality protective order occurs in other countries, China, Hong Kong, or Macau, regardless whether the offense is punishable or not under the law of the land where the crime is committed.

Article 15 A foreign national's trade secret(s) will not receive protection in the R.O.C., if the foreign national's home country does not conclude with the ROC an international treaty for protection of trade secret(s), or a treaty or an agreement for reciprocal protection of trade secret(s), or does not provide protection to the trade secrets owned by R.O.C. nationals.

Article 16 This Act shall come into force from the date of promulgation.