

New Law on Trade Secrets Enters into Force in Kosovo

By Kujtesa Nezaj-Shehu, SDP KOSOVË, Kosovo

Kosovo's new Law on the Protection of Trade Secrets, which entered into force on June 14, 2022, is largely harmonized with the Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. The new law defines what trade secrets are, what constitutes their infringement, and the interim and final measures and remedies available in the event of infringement.

Definition

Trade secrets are defined as information that fulfills all the following criteria:

- It is secret in the sense that it is not, as a whole or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question;
- It has commercial value because it is secret; and
- It has been subject to reasonable steps to keep it secret by the person lawfully in control of the information.

Unlawful Acquisition, Use and Disclosure

The acquisition of a trade secret without the consent of its holder is considered infringement whenever achieved by:

- Unauthorized access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced; or
- Any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

The use or disclosure of a trade secret is considered unlawful whenever carried out without the consent of the trade secret holder by a person who is found to meet any of the following conditions:

- Having acquired the trade secret unlawfully;
- Being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
- Being in breach of a contractual or any other duty to limit the use of the trade secret.

The acquisition, use or disclosure of a trade secret is also considered unlawful whenever a person, at the time of the acquisition, use or disclosure, knew or ought to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully.

The production, offering or placing on the market of goods infringing a trade secret, or the import, export or storage of such goods for the purpose of offering or placing them on the market, as well as offering and providing services by which a trade secret is used is also considered an unlawful use of a trade secret, if the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully.

Interim and Final Measures

The trade secret holder can request that the court order any of the following interim measures against the alleged infringer:

- Cessation or temporary prohibition of use or disclosure of the trade secret;
- Prohibition of the production, offering, placing on the market, use, import, export or storage of infringing goods;
- Seizure or delivery to the trade secret holder of the suspected infringing goods, including imported goods, so as to prevent their entry into or circulation on the market.

Final measures and remedies in the event of infringement of trade secrets include:

- Cessation of infringement or prohibition of use and disclosure of a trade secret;
- Prohibition of the production, offering, placing on the market or use of infringing goods, or the import, export or storage of infringing goods for those purposes;
- Adoption of the appropriate corrective measures with regard to the infringing goods, such as depriving the goods of their infringing quality, their destruction or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question;
- Destruction of all or part of any document, item, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery to the trade secret holder of all or part of those documents, objects, materials, substances or electronic files;
- Damages; and
- Publication of the judgment.

The limitation period for claims related to misappropriation of trade secrets is six years counting from the moment when the trade secret holder became aware of the infringement or the damages caused by it, as well as the identity of the infringer.

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