

LAW NO. 08/L-076

ON THE PROTECTION OF TRADE SECRETS

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves:

LAW ON THE PROTECTION OF TRADE SECRETS

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose**

1. This Law aims to regulate the protection against unlawful acquisition, use and disclosure of trade secrets.
2. This law is in accordance with (EU) Directive 2016/943 of the European Parliament of 8 June 2016 on the protection of undisclosed know-how and business information - trade secrets against their unlawful acquisition, use and disclosure.

**Article 2
Scope**

1. This law applies to undisclosed know-how and business information - trade secrets that have a prospective effect within the territory of the Republic of Kosovo.
2. The provisions of this law shall not affect:
 - 2.1. the exercise of the right to freedom of expression and information including respect for the freedom and pluralism of the media in accordance with the Constitution of the Republic of Kosovo;
 - 2.2. the application of legislation in force rules, requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets, to the public or to administrative or judicial authorities for the performance of the duties of those authorities;
 - 2.3. implementation of the rules of the legislation in force, which require from the institutions and national public bodies the disclosure of the information presented by the businesses;
 - 2.4. the autonomy of social partners and their right to enter into collective agreements, in accordance with the applicable legislation.
3. Provisions of this Law shall not offer any ground for restricting the mobility of employees. In particular, in relation to the exercise of such mobility, the implementation of the provisions of this law shall not offer any ground for:
 - 3.1. limiting employees' use of information that does not constitute a trade secret as defined in Article 3, paragraph 1., sub-paragraph 1.3. this law;
 - 3.2. limiting employees' use of experience and skills honestly acquired in the normal course of their employment;
 - 3.3. imposing any additional restrictions on employees in their employment contracts other than restrictions imposed in accordance with legislation in force.

Article 3 Definitions

1. The terms used in this Law shall have the following meaning:

- 1.1. **Ministry** – responsible Ministry for Industry, Entrepreneurship and Trade;
- 1.2. **Industrial Property Agency** (hereinafter “IPA”)- Executive Agency established within the Ministry of Industry, Entrepreneurship and Trade;
- 1.3. **Trade secret** - information which meets all of the following requirements:
 - 1.3.1. it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - 1.3.2. it has commercial value because it is secret;
 - 1.3.3. it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
- 1.4. **Person** - natural person, legal person and other persons;
- 1.5. **Natural person** - any person who has the citizenship of the Republic of Kosovo, the citizenship of a foreign state or a stateless person;
- 1.6. **Legal person** - a public or private entity, association or other business organization that has the status of a legal person in accordance with the legislation in force for business organizations and any other legislation applicable in the Republic of Kosovo or another state;
- 1.7. **Other persons** – business organizations established under the legislation in force in Kosovo or a foreign state that do not have the status of a legal person;
- 1.8. **Industrial Property right** - includes:
 - 1.8.1. trademark;
 - 1.8.2. industrial design;
 - 1.8.3. copyright or related rights;
 - 1.8.4. geographic indicators;
 - 1.8.5. designation of origin;
 - 1.8.6. patent;
 - 1.8.7. a certificate of supplementary protection for medical products according to the legislation in force;
 - 1.8.8. a supplementary protection certificate for plant products according to the legislation in force;
 - 1.8.9. right of plant variety;
 - 1.8.10. topography of semiconductors production;
 - 1.8.11. useful model as far as it is protected as intellectual property right by the legislation in force; and
 - 1.8.12. trade name as far as it is protected as intellectual property by applicable law.
- 1.9. **Trade secret holder** - any natural or legal person lawfully controlling a trade secret;
- 1.10. **Infringer** - any natural or legal person who has unlawfully acquired, used or disclosed a trade secret;

1.11. **Infringing goods** - goods, the design, characteristics, functioning, production process or marketing of which significantly benefits from trade secrets unlawfully acquired, used or disclosed.

CHAPTER II ACQUISITION, USE OR DISCLOSURE OF TRADE SECRETS

Article 4 Acquisition, use and lawful disclosure of trade secrets

1. The acquisition of a Trade Secret will be considered lawful when the trade secret is obtained by any of the following means:

1.1. independent discovery or creation;

1.2. observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;

1.3. exercise of the right of workers or workers' representatives to information and consultation in accordance with national laws and practices;

1.4. any other practice which, under the circumstances, is in conformity with honest commercial practices.

2. The acquisition, use or disclosure of a trade secret shall be considered lawful to the extent that such acquisition, use or disclosure is required or allowed by legislation in force

Article 5 Unlawful acquisition, use and disclosure of trade secrets

1. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful, whenever carried out by:

1.1. unauthorised 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;

1.2. any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

2. The use or disclosure of a trade secret shall be 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:

2.1. having acquired the trade secret unlawfully;

2.2. being in breach of a confidentiality agreement or any other duty not to disclose the trade secret;

2.3. being in breach of a contractual or any other duty to limit the use of the trade secret.

3. The acquisition, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, 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 within the provision of paragraph 2. of this Article.

4. The production, offering or placing on the market of goods infringing trade secret, or the importation, export or storage of goods infringing trade secret for those purposes, shall also be considered an unlawful use of a trade secret where the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully within the provision of paragraph 2. of this Article.

Article 6 Exemptions

1. Every application for the measures, procedures and legal remedies provided for in this law is dismissed where the acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

- 1.1. for exercising the right to freedom of expression and information as set out in the Constitution, including respect for the freedom and pluralism of the media;
- 1.2. for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest;
- 1.3. disclosure by employees before their representatives as part of the lawful exercise of functions by those representatives, in accordance with applicable law, provided that such disclosure was necessary for the exercise of functions;
- 1.4. for the purpose of protecting a legitimate interest recognised by the applicable law.

Article 7 Competent courts

For all cases of measures, procedures and means provided in this law, the competent court decides in accordance with the legislation in force.

CHAPTER III MEASURES, PROCEDURES AND REMEDIES

Article 8 General obligations

1. Measures, procedures and remedies against the unlawful acquisition, use and disclosure of trade secret are initiated before the competent court.
2. The measures, procedures and remedies referred to in paragraph 1. of this Article are:
 - 2.1. be fair and equitable;
 - 2.2. not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;
 - 2.3. be effective and dissuasive.

Article 9 Proportionality and abuse of process

1. The measures, procedures and remedies provided in Articles 11 to 17 of this Law shall be applied in a manner that:
 - 1.1. are proportionate;
 - 1.2. avoid the creation of barriers to legitimate trade in the internal market; and
 - 1.3. provide for safeguards against their abuse.
2. The competent court, upon the request of the respondent, may apply appropriate measures, where an application concerning the unlawful acquisition, use or disclosure of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings abusively or in bad faith. Such measures may, as appropriate, include awarding damages to the respondent due to the violation of personal rights.
3. The measures provided for in paragraph 1. of this Article may be drafted in a special court procedure.

Article 10 Limitation period

1. The right to compensation for damages and legal actions for the measures, procedures and

lawsuits provided for in Articles 11 to 17 of this law, terminates when the six-year (6) term expires from the moment when the holder of trade secret is informed of the violation or damages and related to the person responsible for compensation.

2. For calculation of the deadlines from paragraph 1. of this Article, the provisions of the respective Law on Obligational Relationships shall apply.

Article 11

Preservation of confidentiality of trade secrets in the course of legal proceedings

1. Any person participating in legal proceedings or who has access to documents which form part of those legal proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent court has identified as confidential and of which the participants have become aware as a result of such participation in the procedure or access in the case file.

2. The obligation referred to in paragraph 1. of this Article shall remain in force also after the legal proceedings have ended. However, such obligation shall cease to exist in any of the following circumstances:

2.1. where the alleged trade secret is found, by a final decision, not to meet the requirements set out in Article 3 paragraph 1., sub-paragraph 1.2. of this Law;

2.2. where over time, the information in question becomes generally known among or readily accessible to persons within the circles that normally deal with that kind of information.

3. Competent court may, on a reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. These measures shall at least include:

3.1. the possibility of restricting access to any document containing trade secrets or alleged trade secrets submitted by the parties or third parties, in whole or in part, to a limited number of persons;

3.2. the possibility of restricting access to hearings, when trade secrets or alleged trade secrets may be disclosed, and the corresponding record or transcript of those hearings to a limited number of persons;

3.3. the possibility of making available a non-confidential version of any judicial decision, in which passages containing trade secrets have been removed or redacted, to any person other than those comprised in the limited number of persons referred to in sub-paragraph 3.1. and 3.2. of this Article.

4. The number of persons referred to in sub-paragraph 3.1. and 3.2. of paragraph 3. of this Article no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings

5. When deciding on the measures referred to in paragraph 2. of this Article and assessing their proportionality, the court shall take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.

6. Any processing of personal data is carried out in accordance to the relevant Law on protection of personal data.

Article 12

Provisional and precautionary measures

1. The court at the request of the trade secret holder may order any of the following provisional and precautionary measures against the alleged infringer:

1.1. the cessation, the temporary prohibition of the use or disclosure of the trade secret;

1.2. the prohibition of the production, offering, placing on the market, use, the importation, export or storage of goods infringing the trade secret;

1.3. the seizure or delivery of the suspected infringing goods, including imported goods to prevent their entry into, or circulation on, the market.

2. As an alternative to the measures referred to in paragraph 1. of this Article, the court may decide that the continuation of the alleged unlawful use of a trade secret be subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder. Disclosure of a trade secret in return for the lodging of guarantees shall not be allowed.

Article 13 **Conditions of application and safeguards**

1. The court is entitled, in respect of the measures referred to in Article 12 of this Law, to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves with a sufficient degree of certainty that:

1.1. a trade secret exists;

1.2. the applicant is the trade secret holder; and

1.3. the trade secret has been acquired unlawfully, is being unlawfully used or disclosed, or unlawful acquisition, use or disclosure of the trade secret is imminent.

2. The competent court in deciding on the granting or rejection of the application shall take into account the specific circumstances of the case, including:

2.1. the value and other specific features of the trade secret;

2.2. the measures taken to protect the trade secret;

2.3. the conduct of the respondent in acquiring, using or disclosing the trade secret;

2.4. the impact of the unlawful use or disclosure of the trade secret;

2.5. the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;

2.6. the legitimate interests of third parties;

2.7. the public interest; and

2.8. the safeguard of fundamental rights.

3. The measures referred to in Article 12 of this law are revoked or otherwise cease to have effect, upon the request of the respondent, if:

3.1. the applicant does not initiate legal proceedings leading to a decision on the merits of the case before the court, within a reasonable period determined by the court ordering the measures, unless otherwise provided by law, or if the reasonable deadline is not determined by the court, then the initiation of the procedure must begin within a period not exceeding the deadline of thirty (30) calendar days; or

3.2. the information in question no longer meets the requirements of paragraph 1., sub-paragraph 1.2. of Article 3 of this Law, for reasons that cannot be attributed to the respondent.

4. The competent court may make the granting of the measures provided for in Article 12 of this Law conditional on the provision of adequate security or equivalent security by the applicant intended to provide compensation for any damage that the respondent may suffer and, where appropriate, any other person affected by the measures.

5. Where the measures referred to in Article 12 of this Law are revoked on the basis of the paragraph 1, sub-paragraph 1.1. of this Article, where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no unlawful acquisition, use or disclosure of the trade secret or threat of such conduct, the court shall have the authority to order the applicant, upon the request of the respondent or of a damaged third party, to provide the respondent, or the damaged third party, appropriate compensation for any damage caused by those measures.

Article 14

Decisions and corrective measures

1. When a court with a judicial decision decides and finds that there has been unlawful acquisition, use or disclosure of a trade secret, then, at the request of the applicant, may order one or more of the following measures against the infringer of the trade secret:

1.1. the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret;

1.2. the prohibition of the production, offering, placing on the market or use of goods infringing trade secret, or the importation, export or storage of goods infringing trade secret for those purposes;

1.3. the adoption of the appropriate corrective measures with regard to the goods infringing trade secret;

1.4. the 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 up to the holder of the trade secret all or part of those documents, objects, materials, substances or electronic files.

2. The corrective measures defined in paragraph 1., sub-paragraph 1.3. of this Article include:

2.1. withdrawal of the infringing goods from the market, and when appropriate donate them to charities;

2.2. removing the features of infringing goods that violate trade secret;

2.3. destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question.

3. The court is entitled to decide that the measures referred to in paragraph 1., sub-paragraph 1.2. and 1.3. of this Article be carried out at the expense of the infringer of the trade secret, unless there are particular reasons for not doing so. Those measures shall be without prejudice to any damages that may be due to the trade secret holder by reason of the unlawful acquisition, use or disclosure of the trade secret. In all other cases, the provisions of respective Law on Contested Procedure shall apply.

Article 15

Conditions of application, safeguards and alternative measures

1. In considering an application for the adoption of the orders and corrective measures provided for in Article 14 of this Law and assessing their proportionality, the court shall take into account the specific circumstances of the case, including:

1.1. the value or other specific features of the trade secret;

1.2. the measures taken to protect the trade secret;

1.3. the conduct of the infringer in acquiring, using or disclosing the trade secret;

1.4. the impact of the unlawful use or disclosure of the trade secret;

1.5. the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties; the legitimate interests of third parties;

1.6. the public interest; and

1.7. the safeguard of fundamental rights.

2. Where the court limits the duration of the measures referred to in paragraph 1., sub-paragraph 1.1. and 1.2. of Article 14 of this law, such duration shall be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, use or disclosure of the trade secret.

3. The measures referred to in paragraph 1., sub-paragraph 1.1. and 1.2. of Article 14 this law shall be revoked or otherwise cease to have effect, upon the request of the respondent, if the information in question no longer meets the requirements of paragraph 1. sub- paragraph 1.2., of

Article 3 of this law for reasons that cannot be attributed directly or indirectly to the respondent.

4. At the request of the injured party to be subject to the measures provided for in Article 14 of this Law, the court may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

4.1. the person concerned at the time of use or disclosure neither knew nor ought, under the circumstances, to have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully;

4.2. execution of the measures in question would cause that person disproportionate harm; and

4.3. pecuniary compensation to the injured party is considered reasonably satisfactory.

5. Where pecuniary compensation is ordered instead of the measures referred to in paragraph 1., sub-paragraph 1.1. and 1.2., of Article 14 this law it shall not exceed the amount of taxes or fees which would have been due, had that person requested authorisation to use the trade secret in question, for the time period for which use of the trade secret could have been prohibited.

Article 16 **Damages**

1. Upon the request of the injured party, the court may order an infringer who knew or ought to have known that he or she it was engaging in unlawful acquisition, use or disclosure of a trade secret, to pay the trade secret holder actual damages suffered as a result of the unlawful acquisition, use or disclosure of the trade secret.

2. Liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer may be limited where they act without intent.

3. When setting the damages referred to in paragraph 1. of this Article, the court shall take into account all appropriate factors, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.

4. Alternatively, the court may, in appropriate cases, set the damages as a lump sum on the basis of elements such as, at a minimum, the amount of tax or fees which would have been due, had the infringer requested authorisation to use the trade secret in question.

Article 17 **Publication of judicial decisions**

1. In legal proceedings initiated for the unlawful acquisition, use or disclosure of a trade secret, the court is entitled, at the request of the applicant and at the expense of the trade secret infringer, order appropriate measures for the dissemination of the information concerning the decision, including publishing it in full or in part.

2. Any measure referred to in paragraph 1. of this Article shall preserve the confidentiality of trade secrets as provided for in Article 11 of this law.

3. In deciding whether to order a measure referred to in paragraph 1. of this Article, and when assessing its proportionality, the court shall take into account, where appropriate, the value of the trade secret, the conduct of the infringer in acquiring, using or disclosing the trade secret, the impact of the unlawful use or disclosure of the trade secret, and the likelihood of further unlawful use or disclosure of the trade secret by the infringer of the trade secret.

4. The court shall take into account whether the information on the infringer of trade secret would enable the identification of a natural person and, if so, then the publication of that information would be justified, in particular in the light of the possible harm that such measure may cause to the privacy and reputation of the infringer of the trade secret.

CHAPTER IV **SANCTIONS AND TRANSITIONAL PROVISIONS**

Article 18 **Punitive provisions**

1. A fine in the amount of five hundred (500) to one thousand five hundred (1,500) Euros shall

be imposed to a natural person who during the exercise of his commercial activity, acts in contradiction with the provisions of Article 5 of this law.

2. A fine in the amount of six hundred (600) to one thousand eight hundred (1,800) Euros shall be imposed to the responsible person of the legal person, who acts in contradiction with the provisions of Article 5 of this law.

3. A fine in the amount of one thousand (1,000) to three thousand (3,000) Euros shall be imposed to a natural person who carries out individual business, and who during the exercise of his commercial activity, acts in violation of the provisions of Article 5 of this law.

4. A fine in the amount of three thousand (3,000) to nine thousand (9,000) Euros shall be imposed on a legal person who during the exercise of his commercial activity, acts in violation of the provisions of Article 5 of this law.

5. A fine in the amount of four hundred (400) to one thousand two hundred (1,200) Euros shall be imposed to a natural person, who acts in contradiction with the provisions of Article 11 of this law.

6. A fine in the amount of six hundred (600) to one thousand eight hundred (1,800) Euros shall be imposed on the responsible person of the legal entity, who acts in violation of the provisions of Article 11 of this law.

7. A fine in the amount of one thousand (1,000) to three thousand (3,000) Euros shall be imposed to a natural person who carries out individual business and acts in violation of the provisions of Article 11 of this law.

8. A fine in the amount of two thousand (2,000) to six thousand (6,000) Euros shall be imposed on the legal entity, who acts in contradiction with the provisions of Article 11 of this law.

9. A fine in the amount of six hundred (600) to one thousand eight hundred (1,800) Euros shall be imposed to a natural person, who acts in violation of the provisions of Article 12 of this law.

10. A fine in the amount of five hundred (500) to one thousand five hundred (1,500) Euros shall be imposed on the responsible person of a legal person, who acts in violation of the provisions of Article 12 of this law.

11. A fine in the amount of one thousand (1,000) to three thousand (3,000) Euros shall be imposed to the natural person carrying out individual business, who acts in contradiction with the provisions of Article 12 of this law.

12. A fine in the amount of three thousand (3,000) to nine thousand (9,000) Euros shall be imposed on a legal entity, who acts in violation of the provisions of Article 12 of this law.

13. A fine in the amount of six hundred (600) to one thousand eight hundred (1,800) Euros shall be imposed to a natural person, who acts in violation of the provisions of Article 14 of this Law.

14. A fine in the amount of five hundred (500) to one thousand five hundred (1,500) Euros shall be imposed on the responsible person of a legal entity, who acts in violation of the provisions of Article 14 of this Law.

15. A fine in the amount of one thousand (1,000) to three thousand (3,000) Euros shall be imposed to a natural person exercising individual business, who acts in violation of the provisions of Article 14 of this Law.

16. A fine in the amount of three thousand (3,000) to nine thousand (9,000) Euros shall be imposed on a legal person, who acts in violation of the provisions of Article 14 of this Law.

Article 19 **Entry into force**

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 08/L-076
11 May 2022

Promulgated by Decree No. DL-151/2022 dated 25.05.2022 President of the Republic of Kosovo Vjosa Osmani-Sadriu