

OVERVIEW OF NATIONAL AND REGIONAL TRADE SECRET SYSTEMS

RUSSIAN FEDERATION

1. Sources of Law

The main sources of trade secret protection in the Russian Federation¹ can be found in the Civil Code², the Federal Law No. 98-FZ of July 29, 2004, on Trade Secrets (Trade Secret Law)³. Further, provisions relating to trade secrets may be found, amongst others, in the Federal Law No. 135-FZ of July 26, 2006, on the Protection of Competition (Competition Law)⁴ and the Criminal Code⁵.

2. Definition of a trade secret

Chapter 75 of the Civil Code regulates protection of manufacturing secret (know how). According to Article 1465 par. 1 of the Civil Code, a manufacturing secret (know how) is defined as information of any nature (production, technological, economic, organizational and others) about the results of intellectual activities in the area of science and technology and about the methods of carrying out professional activities. Such information must have a real or potential commercial value due to its not being known to third parties, not freely accessible to third parties on lawful basis, and the holder of such information must take reasonable measures aimed at keeping it confidential, in particular, by way of introducing a trade secret regime.

According to Article 1465 par. 2 of the Civil Code, where law⁶ or any other legal act requires mandatory disclosure of data or prevents restricting access to data, such data are not deemed a production secret.

The provisions of the Trade Secret Law apply to trade secret information with commercial value due to secrecy (Article 1.1). Article 3.2, which, in general, reflects, Article 1465 par. 1 of the Civil Code, provides a definition of trade secrets. Article 1.3. of the Trade Secret Law clarifies that the Law does not apply to information classified as state secrets. Article 5 of the Trade Secret Law lists certain types of information that cannot be protected as trade secrets.

Article 10 par. 1 of the Trade Secret Law provides measures that should be taken by trade secret holders to maintain confidentiality, including:

- establishment of a list of information constituting a trade secret;
- restricting access to trade secret information by establishing procedures for the handling this information and monitoring compliance with these procedures;
- keeping records of persons who have accessed the information constituting a trade secret and/or persons to whom such information was provided or transferred;
- regulating relations regarding the use of information constituting a trade secret by employees based on employment contracts and by contractors based on civil law contracts;

¹ This document aims to provide an overview (June 2024). It is not a complete review of the legal situation and case law. For further information, interested readers may consult: Alexandrov, Evgeny and Goryachev, Ilya, Trade Secrets - Russia (April 22, 2021). *les Nouvelles* - Journal of the Licensing Executives Society, Volume LVI No. 2, June 2021, Available at SSRN: <https://ssrn.com/abstract=3832155>; Evgeny Alexandrov in *Trade Secrets throughout the World* (Jager *et. al.*), 2023, Chapter 32.

² Available at: <https://www.wipo.int/wipolex/en/legislation/details/22547>.

³ Federal Law No. 98-FZ of July 29, 2004, on Trade Secrets (as amended up to Federal Law No. 35-FZ of March 12, 2014) available at: <https://www.wipo.int/wipolex/en/legislation/details/15707>.

⁴ Federal Law No. 135-FZ of July 26, 2006, on the Protection of Competition (as amended up to Federal Law No. 11-FZ of February 17, 2021) available at: <https://www.wipo.int/wipolex/en/legislation/details/20816>.

⁵ Available at: https://www.wto.org/english/thewto_e/acc_e/rus_e/wtacrus58_leg_362.pdf.

⁶ A reference is made to Article 5 of the Trade Secret Law.

- inclusion of the "Trade secret" stamp with an indication of the holder of such information in physical carriers or documents containing trade secret information.

3. Scope of trade secret protection

According to Article 1466 par. 1 of the Civil Code, a production secret confers an exclusive right to use it in accordance with Article 1229 of the Code in any manner not conflicting with a law (exclusive right to a production secret), including the case of manufacturing articles and implementing economic and organizational solutions. The owner of the production secret may dispose of the said exclusive right.

Article 1466 par. 2 of the Civil Code states that a person that has become an owner of the information constituting the content of the protected production secret in a *bona fide* manner and independently of other owners of the production secret acquires an independent exclusive right to this production secret.

4. Exceptions

The right of a person who independently acquired the contents of production secrets of others in a *bona fide* manner is described in Section 3, above.

5. Civil remedies including provisional measures

According to Article 14(1) of the Trade Secret Law, Violation of this Law entails disciplinary, civil, administrative, or criminal liability in accordance with the legislation of the Russian Federation.

A damage claim is available in case of unauthorized use, disclosure, and dissemination of an exclusive right to a production secret according to Article 1472 of the Civil Code. Further, according to Art.6.1(6) of the Trade Secret law, the holder of information constituting a trade secret has the right to protect their rights in accordance with the law in the event of disclosure, illegal acquisition, or illegal use of the information constituting a trade secret by third parties, including the right to seek compensation for damages caused by the violation of their rights.

6. Criminal sanctions

According to Article 183 of the Russian Criminal Code:

- Illegal gathering of commercial secret by bribery or stealing documents, making threats or by other illegal activities; or
- Unauthorized disclosure or use of the information constituting the commercial secret; constitutes a crime, whereby the punishments may vary from fines and correction works up to imprisonment depending on the specific circumstances of the case.

7. Trade secret protection in judicial proceedings

Article 13 of the Trade Secret Law generally sets conditions an obligation for public authorities, state bodies, local authorities to create that protect the confidentiality of information made available to them. In commercial proceedings, it is possible to file a motion in commercial proceedings, claiming that the hearings shall be conducted without access of the general public to the court room, in case where commercial secrets may be disclosed during the proceedings. If granted, only the parties and their attorneys will be present. Further, it is possible to delete privileged information from the publicly available files.⁷

⁷ Evgeny Alexandrov and Ilya Goryachev, *loc. cit.*, p.130.

8. Procedural provisions

There is no specialized Court for disputes relating to trade secrets. The general provisions in the Civil Procedure Code, Commercial Procedure Code, Code on Administrative Offences or Criminal Procedure are applied according to the facts of the case.⁸

Accordingly, as for civil remedies, the claimant must prove ownership of the information and its confidential nature, as well as gather evidence of the respondent's activities regarding the use or dissemination or disclosure of information or its use outside the contractual boundaries.⁹ Similarly, following the general rule, an action to enforce claims for breach of confidential information may be brought within three years from the date on which the plaintiff learned or should have learned of the infringement and the identity of the infringer.¹⁰

⁸ *Ibid.*, p. 127.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 129.