



Information Alert

THE SPANISH TRADE SECRET LAW

The Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure obliged all Member States to implement all necessary laws, regulations and administrative provisions to comply with its provisions.

In compliance with said Directive, last February 6th, the Trade Secret Law was passed in Spain and is expected to be published in the Official State Gazette in the next few days and to enter into force within a 20-day period from its publication.

Up to date, there was no specific regulation for this type of know-how in Spain, despite the economic importance that this asset represents for companies. In fact, it was merely covered only in a case by case basis based on contractual terms or by several provisions throughout the

whole of the Spanish legal system, such as article 13 of the Spanish Unfair Competition Act or articles 278 and 279 of the Criminal Code.

Consequently, this new law seeks to provide legal certainty and a specific legal protection for trade secrets.

Under this law, trade secrets are defined as any type of information or knowledge (know-how), including technological, scientific, industrial commercial, organisational or financial information, which is secret, has business value and has been subject to reasonable measures taken by its owner to keep it secret.

The law differentiates between the licit use (independent discovery or creation; 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 for the trade secret;

exercise of the right of workers or any other practice which, under the circumstances, is in conformity with honest commercial practices) from those cases which constitute a violation of a trade secret (i.e. unauthorised access to, appropriation of, or copying of documents, objects, materials, substances, electronic files or others, that contains the trade secret or that allows to infer it or any other act that could be against to fair commercial acts)

Moreover, co-ownership, transferability and licensing of trade secrets is admissible.

As for the legal actions in defence of trade secrets, the new law lists all civil actions that can be brought against the infringers, such as the declaration of the violation of the trade secret, the cessation or prohibition of the acts of violation of the trade secret, the prohibition of manufacturing, offering, marketing or using infringing goods and the removal of those goods, the damages compensation and the advertising of the infringement, among others.

Furthermore, this law establishes that both the trade secret holder or the trade secret licensee (with some special requirements) can undertake legal actions against the infringers and commercial courts will be the ones who dealt with actions related to trade secrets.

This law clearly establishes the requirements in relation preliminary injunctions and fact-finding proceedings under the Patent Act are particularly important.

Finally, there is a 3-year statute of limitations period fixed from the date in which the holder or the trade secret licensee could have undertaken legal actions.

With these provisions, Spain will comply with the Trade Secrets Directive and hopefully will provide a more adequate legal protection to trade secrets and innovation.

For any further information, please get in contact with:



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