

TRADE SECRETS ACT

B.E. 2545 (2002)*

BHUMIBOL ADULYADEJ, REX

Given on the 12th Day of April B.E. 2545;

Being the 57th Year of the Present Reign.

Title Published on 23 April 2002 Definition**

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to enact the law on trade secrets;

Being aware that this Act contains certain provisions restricting the rights and liberties of persons, in respect of which section 29, in conjunction with section 31 section 35 section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act shall be called the "Trade Secrets Act B.E. 2545".

Section 2. This Act shall come into force after the expiry of ninety days from the date of its publication in the Government Gazette.

Section 3. Under this Act:

"Trade Secrets" means trade information not yet publicly known or not yet accessible by persons who are normally connected with the information. The commercial values of which derive from its secrecy and that the controller of the trade secrets has taken appropriate measures to maintain the secrecy.

• A.D. does not appear in the original text and is added for the benefit of easy reference only.

•• Margin notes do not appear in the original text and are added for the benefit of easy reference only.

“Trade Information” means any medium that conveys the meaning of a statement, facts, or other information irrespective of its method and forms. It shall also include formulas, patterns, compilations or assembled works, programs, methods, techniques, or processes.

“Manufacture” means making, mixing, compounding or transforming. It shall also include the changing of form or division for packaging.

“Sale” means disposing, distributing, giving or exchanging for commercial purposes. It shall also include possession with the intent to sell.

“Drug” means any drug under the law governing drugs.

“Agricultural Chemical Product” means any chemical product used for agricultural purposes including chemical products used in sterilizing or repelling of insects animals or plants that may cause damage to agriculture.

“Owner of Trade Secrets” means the person who discovered, invented, compiled or created the trade information that is a trade secret without infringing someone else’s trade secrets or infringing the rightful holder of the testing result or trade information that is a trade secret. It shall also include the transferee under this Act.

“Controller of Trade Secrets” means the owner of trade secrets. It shall also include the possessor, controller, or caretaker of the trade secrets.

“Court” means intellectual property and international trade court under the legislation governing the establishment of the intellectual property and international trade court and its procedure.

“Board” means the Trade Secrets Board.

“Member” means member of the Trade Secrets Board.

“Competent Officer” means any person appointed by the Minister to perform the duties under this Act.

“Director General” means the Director General of the Department of Intellectual Property. It shall also include any person assigned by the Director General of the Department of Intellectual Property.

“Minister” means the Minister who is in charge of this Act.

Section 4. The Minister of Agriculture and Co-operative, the Minister of Commerce and the Minister Public Health shall take charge of this Act and have the power to appoint officers, issue Ministerial Regulations and Rules for the enforcement of this Act in relation to their responsibilities.

The said Ministerial Regulations and Rules shall take effect after the publication in the Government Gazette.

Chapter I

Protection of Trade Secrets

Section 5. Trade secrets are transferable. 2

The trade secrets owner is entitled to disclose, deprive of, or use the trade secrets, or license someone else to disclose, deprive of, or use the trade secrets. He may also stipulate any terms and conditions for the maintenance of the secrecy.

The transfer of trade secrets under paragraph one, except by way of inheritance, shall be made in writing signed by the transferor and transferee. If no time period is specified in the contract, it shall be deemed to cover a period of ten years.

Section 6. The infringement of trade secret rights under this Act are the act of disclosure, deprivation or usage of trade secrets without the consent of the owner in a manner contrary to honest trade practices. In so doing, the infringer must be aware of or has reasonable cause to be aware that such act is contrary to honest trade practices.

Acts contrary to honest trade practices under paragraph one shall include breach of contract, infringement or inducement to infringe confidentiality, bribery, coercion, fraud, theft, receiving of stolen property or espionage through electronics or other means.

Section 7. Any of the following acts against trade secrets shall not be considered an infringement:

(1) Disclosure or use of trade secrets by a person who has obtained the trade secrets through a transaction without knowing or having reasonable cause to know that the other party to the transaction obtained the trade secrets through the infringement thereof.

(2) Disclosure or use of trade secrets by state agency which is responsible for their maintenance in the following circumstances:

(a) When it is necessary for the protection of public health or safety; or,

(b) When it is necessary for the benefit of other public interests with no commercial purpose.

In such case, the state agency which is responsible for the maintenance of trade secrets, or other state agency or person concerned who has access to the trade secrets has taken reasonable steps for the protection of the trade secrets from being used in unfair trading activities.

(3) Independent discovery i.e. discovery of a trade secret belonging to others by the researcher's own method of invention or development through his own expertise; or,

(4) Reverse engineering i.e. discovery of a trade secret belonging to others by means of evaluation and analysis of a widely-known product with the intention to discover the method by which such product is invented, manufactured or developed, provided that the product was obtained in good faith by the person who conducted the evaluation and analysis.

The act under (4) cannot be raised as a justification if the person who conducted reverse engineering expressly agreed otherwise with the owner of trade secrets or seller of the product.

Section 8. Where there is clear evidence that an infringement of trade secrets has been committed or is imminent, the affected or imminently to be affected controller of trade secrets has the following remedies:

(1) Petition the court for an interim injunction, temporarily to stop the infringement of trade secrets, and;

(2) File an action in the court for a permanent injunction, permanently to stop the infringement of trade secrets and claim damages from the wrongdoer.

The petition under (1) may be filed prior to the action under (2).

Section 9. Before taking any action under section 8, the controller of trade secrets who is affected or imminently to be affected by the infringement of trade secrets and the other party may agree to submit the dispute concerning trade secrets to the Board for conciliation or mediation. However, such submission shall not prejudice the right of either party to resolve the dispute through arbitration or litigation in the competent court should the conciliation or mediation fail to settle the dispute.

The filing of request and procedure for conciliation or mediation of the Board under paragraph one shall be governed by the rules and methods prescribed in the Ministerial Regulation.

Section 10. No cases of trade secrets infringement shall be brought after three years from the date where the controller of trade secrets knows of the infringement and of the infringer, however, the period shall not exceed ten years from the date of infringement.

Chapter II

Procedure for Trade Secrets Infringement

Section 11. Where the controller of trade secrets files an action for injunction under section 8(2), and the court finds infringement of trade secrets but there are special circumstances where injunction should not be granted, the court may order the infringer to pay appropriate compensation to the controller of trade secrets and set appropriate time period for the use.

In case where the court grants an injunction under section 8(2) stopping further infringement of the trade secrets, and if at a later stage, the trade secrets have been disclosed to the public or have ceased to be trade secrets, the person enjoined by the court can file a petition to have the order rescinded.

In an action for injunction under section 8(2), the controller of trade secret may request the court to order the destruction or confiscation of materials, apparatus, tools or other equipments used in the infringement of trade secrets.

The products that are manufactured by the infringement of trade secrets and are still vested in the ownership of the infringer shall be vested with the State or with the controller of trade

secrets as so ordered by the court. In case where the possession of such product is illegal, the court may order its destruction.

Section 12. In a civil suit filed by the controller of trade secrets for an infringement of manufacturing process that is a trade secret, unless the contrary can be proved by the defendant, it shall be presumed that the defendant infringes the alleged trade secrets in manufacturing the product, if the controller can prove that the product manufactured by the defendant is the same as the product produced by using the controller's trade secrets.

Section 13. In determining the measure of damages where an action under section 8 (2) has been filed, the court is empowered to apply the following rules:

(1) In addition to the damages for the actual damage suffered, the court may include in the damages for the plaintiff, account of profits accrued from or in connection with the infringement by the infringer.

(2) In case where the court is unable to measure the damages under (1), it may order such amount of damages to the controller of trade secrets, as it deems appropriate.

(3) In case where there is clear evidence that the infringement of trade secrets is conducted willfully or maliciously causing the trade secrets to cease the quality of secrecy, the court is empowered to order the infringer to pay punitive damages in addition to the amount of damages granted under (1) and (2). However, the punitive damages shall not exceed two times the amount of damages under (1) or (2).

Section 14. In addition to the provisions of this Act, the enforcement of rights through court for protection of trade secrets and the procedure for trade secret litigation shall be governed by the legislation establishing the intellectual property and international trade court and its procedure.

Chapter III

Maintenance of Trade Secrets by State Agencies

Section 15. In cases where the law requires the applicant for a permit to manufacture, import, export or sale of drugs or agricultural chemical products with new chemical substance to file information supporting the permit; and if such information, either wholly or in part is trade secrets in the form of testing result, or other information regarding its preparation, discovery

or creation which has involved in a great deal of effort, and the applicant has requested the state agencies to maintain the trade secrets, the state agencies concerned shall have the duties to maintain the trade secrets from being disclosed, deprived of or used in unfair trading activities, in accordance with the regulations prescribed by the Minister.

The regulations under paragraph one shall, as minimum requirements, contain the following provisions:

- (1) Conditions of request submitted to state agencies for maintenance of trade secrets;
- (2) Details of testing result and information that is qualified as trade secrets;
- (3) Period of time for which trade secrets are to be maintained;
- (4) Method for maintenance of the trade secrets, taking into consideration the type of technology and testing result or confidential information; and,
- (5) Duties and liabilities of state officials in the maintenance of trade secrets.

Chapter IV

The Trade Secrets Board

Section 16. There shall be a Trade Secrets Board, comprising of a chairman and not more than thirteen members, to be appointed by the Cabinet. The Board shall possess expertise in science, engineering, industry, agriculture, pharmacology, international trade, economics, law or other fields beneficial for the functioning under this Act. At least six members of the Board shall be appointed from private sectors.

The Director General shall be the secretary of the Board.

The Board may appoint not more than two officers from the Department of Intellectual Property as assistant secretary.

Section 17. Chairman and member of the Board shall not hold any position or possess any interest in partnerships, companies or other business organizations.

Section 18. The term of office for the Chairman and members of the Board under section 16 shall be four years.

In case where the Chairman or any member of the Board vacates the office before the expiry of his term, or in case where the Cabinet appoints an additional member to the Board during

the term of the existing Board, the member so appointed shall serve only the remaining term of the existing Board.

Chairman or member of the Board whose term has expired may be re-appointed for not more than one additional consecutive term.

Section 19. Apart from expiry of term of office, Chairman or member of the Board shall vacate the office in the following circumstances:

- (1) Death.
- (2) Resignation.
- (3) Order by the Cabinet.
- (4) Malfeasance, dishonesty or incompetence.
- (5) Declared bankrupt.
- (6) Declared an incompetent or quasi-incompetent person under the Civil and Commercial Code.
- (7) Serving imprisonment term by a final judgment, except where the punishment is for an act of negligence or petty offence.
- (8) Violation of section 17.

Section 20. The Board shall compose of not less than half of its members to form a quorum in a meeting.

In case where the Chairman is absent or is unable to perform his duty, the members who are present shall select a chairman among them.

Resolution of the meeting shall be made by majority vote. Each member has one vote. If the votes are equal, the Chairman shall cast an additional vote as the decisive vote.

Chairman or member of the Board shall not participate in a meeting where a matter, which he has an interest in, is under consideration.

Section 21. The Board shall have the following powers and duties:

- (1) Present its views on policies and measures for protection of trade secrets as well as policies on trade secrets aspects of transfer of technology to the Minister of Commerce for submission to the Cabinet.
- (2) Give advice and consultation to the Minister in relation to the issuance of Ministerial

Regulations and other regulations under this Act.

(3) Conduct conciliation or mediation involving trade secret disputes as requested by the parties.

(4) Perform other functions within the scope of its duties as prescribed by law.

Section 22. The Board may appoint a sub-committee to consider, make decision, or perform any duty, as it shall assign.

The provisions of section 20 shall apply, mutatis mutandis, to the meeting of the sub-committee.

Section 23. Except in the case of section 21(3), in performing the duties under this Act, the Board has the power to subpoena any person for questioning, submitting of documents or any materials necessary for its consideration.

The order under paragraph one shall state clearly the matter under consideration for which the Board requires the information, documents or materials requested.

Section 24. Any subpoena, notifications or communications in writing, sent under this Act shall be effected by registered mail with receipt addressed to the domicile, place of residence or business of the recipient, or by any other means to be determined by the Board.

If the delivery cannot be effected in accordance with paragraph one, or the recipient has left the Kingdom, the delivery shall be effected by posting the same at a clearly visible site at the domicile, place of residence or business, or at the house where the recipient's name last appears in the house registration under the law governing civil registration, or by publication in the newspaper in that locality.

When the above-mentioned means of delivery has been effected, it shall be deemed that the recipient has received the message.

The method of service of subpoenas, notifications, or communications and the right of objection of any interested person shall be governed by the regulations to be determined by the Board and published in the Government Gazette.

Section 25. The Department of Intellectual Property has the general powers and duties to perform concerning trade secrets under this Act, and in particular to be responsible for administration, meetings, research, and other activities of the Board. It shall also have the powers and duties to execute the Board's resolutions, to coordinate with other relevant entities concerning the performance of duties under this Act and to perform other functions assigned by the Board.

Section 26. In performing their duties under this Act, Chairman and members of the Board shall be officials under the Criminal Code.

Chapter V

Competent Officer

Section 27. In performing his duty concerning a criminal case under this Act, A competent officer shall have the following powers:

- (1) Enter a building, place of business, place of manufacture, place of storage, or any vehicle for search or inspection during sunrise and sunset or its business hours, where there is reasonable doubt that certain objects were obtained or produced by the commission of an offence or were used in the commission of an offence under this Act, and there is reasonable ground to believe that the documents or objects relating to the offence shall be removed or destroyed as a result of delay in obtaining a search warrant.
- (2) Seize or attach any documents or objects relating to an offence for no longer than three months, for the purpose of a legal action in case where there is reasonable suspicion that an offence under this Act has been committed.

Section 28. In carrying out its duties, the competent officer shall be accorded with reasonable cooperation from the persons involved.

Section 29. In carrying out its duties under section 27, the competent officer shall present his identity card to the persons involved.

The identity card under paragraph one shall be in the form prescribed by the Minister as published in the Government Gazette.

Section 30. In carrying out its duties under this Act, the competent officer shall be considered an official under the Criminal Code.

Chapter VI

Penalties

Section 31. Whosoever obstructs the action of a competent officer under section 27 shall be liable to imprisonment not exceeding one year, or fine not exceeding twenty thousand baht, or both.

Section 32. Whosoever not giving reasonable cooperation to the competent officer in carrying out its duties under section 28 shall be liable to imprisonment not exceeding one month, or fine not exceeding two thousand baht, or both.

Section 33. Whosoever discloses a trade secret of other person to the public in the manner which causes the trade secret to cease as a secret, with malicious intent to cause damage to the business of the controller of trade secrets, whether by publication through documents, audio or video broadcasting, or disclosure by any other means, shall be liable to imprisonment not exceeding one year or fine not exceeding two hundred thousand baht, or both.

Section 34. Whosoever, by virtue of his position to preserve trade secrets in accordance with the regulation issued under section 15 paragraph one, unlawfully discloses or uses such trade secrets for his own or some one else's benefit, shall be liable to imprisonment from five to ten years, or fine from one to two million baht, or both.

Section 35. Whosoever, by the performance his duty under this Act, shall obtain or being aware of any facts concerning the business of a controller of trade secrets which should normally be kept confidential, discloses such facts shall be liable to imprisonment from five to seven years, or fine from five hundred thousand to one million baht, or both. It is an exception where the disclosure is made in the performance of his official duty or where the disclosure is made for the benefit of investigation or legal proceedings.

Whosoever discloses facts, which have been obtained or aware of as a result of his engagement in official duty, investigation or legal proceedings shall be subject to the same liability.

Section 36. If the offender is a legal entity and the offence is committed through the instruction, act, noninstruction or omission that is the duty of the director, manager, or any person responsible for the management of the legal entity, such person shall be subject to the liability prescribed for such offence.

Section 37. The offence under section 33 and section 36 is a compoundable offence.

Section 38. The Board has the authority to settle the offence under section 33 and section 36 by imposing a fine on the offender. In this respect the Board shall have the power to assign a sub-board, the Director-General, an inquiry official, or a competent officer to settle the offence by stipulating settlement rules or conditions for the assignee, as it deems appropriate.

Subject to paragraph one, if the inquiry official in an investigation finds that a person commits an offence under this Act and such person consents to settle the offence, the inquiry official shall forward the matter to the Board or the person assigned by the Board for settlement within seven days from the date that such person expresses his consent to settle.

Upon payment of a fine in the amount stipulated in the settlement within the prescribed period, the case shall be considered closed in accordance with the Criminal Procedure Code.

If the offender does not consent to the settlement, or after the consent, he fails to pay the fine within the prescribed period, the case shall proceed.

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If the offender does not consent to the settlement, or after the consent, he fails to pay the fine within the prescribed period, the case shall proceed.

Transitional Provision

Section 39. This Act shall not apply to the disclosure, deprivation or use of trade secrets prior to the coming into effect of this Act.

The proprietor of goods, which were manufactured, imported or exported prior to the coming into effect of this Act and are in violation of the provisions of this Act, shall dispose of or export those goods within one year from the date of the coming into force of this Act.

Countersigned by:

Thaksin Shinawatra

Prime Minister

NOTE: - The reason for the promulgation of this Act being: Whereas it is the policy of Thailand to promote free trade and prevent unfair trade practices, coupled with the fact that tortuous liabilities under Thai law have not yet covered liabilities for violation of trade secrets; it is therefore necessary to enact the present Act of Parliament.