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In focus: Law on Protection of Trade Secrets

On 27 May 2021, the National Assembly of the Republic of Serbia adopted the Law on Protection of Trade Secrets (hereinafter: the “**Law**”), which entered into force on 5 June 2021.

Prior to adoption of this Law, the previous Law on the Protection of Trade Secrets (“Official Gazette of RS”, No. 72/11) was in force for ten years, but in order to harmonize regulations with EU legislation, and especially with Directive 2016/943, it was necessary to adopt a new law governing the subject matter.

In accordance with the above, the Law defines a trade secret as information that cumulatively meets the following conditions:

- represent a secret because they are not generally known in whole or in terms of the structure and set of their constituent parts or easily accessible to persons who in the course of their activities usually come into contact with this type of information;
- have commercial value because they represent a secret;
- the person who legally controls them has taken appropriate measures in the given circumstances to preserve their secrecy

Deemed as an appropriate measure to preserve the confidentiality of trade information is, among other things, the

drafting of an internal act on handling trade secrets and specifying the circle of persons and their rights and obligations when handling trade secrets. Therefore, it is recommended that persons wishing to legally protect confidential information draft the said act.

In order to expand the concept of trade secret, it is no longer a necessary prerequisite that the use of a specific secret can achieve economic benefit and cause damage to the holder of the trade secret.

The law makes a distinction between legal and illegal acquisition, i.e. use and disclosure of a trade secret, so the above actions are considered legal if they lead to acquiring of a trade secret in one of the following manners:

- 1) by independent discovery or creation;
- 2) by observing, studying, disassembling or testing a product or object which has been made available to the public or which is lawfully in the country of the information provider (reverse engineering) which is not bound by a legally valid obligation to restrict the acquisition of trade secrets, or which is not bound by a legally valid obligation to prohibit reverse engineering;
- 3) exercising the right of employees or employee representatives to information and consultation in accordance with special regulations;

- 4) other action that is in the circumstances of the specific case in accordance with good business practices.

damage, he can also request compensation for non-material damage.

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In addition to the above, important novelties and provisions of this Law relate to:

- limited provision of the protection of trade secrets of a foreign legal entity, i.e. only in case when it arises from international agreements applicable in Serbia or on the basis of the principle of reciprocity;
- fining entrepreneurs and individuals who illegally obtain, use or disclose trade secrets, in addition to legal entities and responsible persons in them who have so far been exclusively fined, in order to discourage as many persons as possible to illegally obtain trade secrets;
- extension of the deadlines for filing a lawsuit for the protection of trade secrets, so that the lawsuit can be filed within one year from when the plaintiff learned of the violation and person suspected of violating the trade secret, or within five years from the day of the violation or from the day of the last violation. The previous deadlines were six months, i.e. three years;
- expanding the circle of persons authorized to file a lawsuit for the protection of trade secrets, so that in addition to the holder of the business secret, the licensee may also file a lawsuit, if authorized to do so by agreement or law and under the general rules on compensation of damages.
- specifying the concept of compensation of damages that the holder of a trade secret, i.e. the licensee, has the right to claim through a lawsuit, so that now, in addition to compensation for material