

**Translation from Finnish**

**Legally binding only in Finnish and Swedish**

**Ministry of Economic Affairs and Employment, Finland**

**Trade Secrets Act**

*(595/2018)*

By decision of Parliament, the following is enacted:

**Section 1**

**Scope of application**

This Act lays down provisions on the protection of trade secrets and technical instructions related to business activities.

**Section 2**

**Definitions**

For the purposes of this Act:

1) *trade secret* means information:

- a) which is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons who normally deal with the kind of information in question;
- b) which has financial value in the business activities owing to a characteristic referred to in subparagraph a); and
- c) the lawful holder of which has taken reasonable steps to protect it;

2) *trade secret holder* means any natural or legal person lawfully controlling a trade secret;

- 3) *product infringing a trade secret* means a good or service the design, characteristics, functioning, production process or marketing of which significantly benefits from an unlawfully acquired, used or disclosed trade secret.

### **Section 3**

#### **Unlawful acquisition of a trade secret**

A trade secret may not be unlawfully acquired or attempted to be acquired.

The acquisition of a trade secret is unlawful if carried out by:

- 1) unauthorised appropriation;
- 2) unauthorised copying, reproduction, observation or other processing of any documents, objects, materials, substances or electronic files containing a trade secret or from which a trade secret can be deduced; or
- 3) other conduct contrary to honest commercial practices than that referred to in paragraph 1 or 2.

The acquisition of a trade secret is also unlawful if the person, at the time of the acquisition of a trade secret, either knew or ought to have known that the trade secret was obtained directly or indirectly from a person who was using or disclosing the trade secret unlawfully in a manner referred to in section 4.

The acquisition of a trade secret is not unlawful if carried out by:

- 1) independent discovery or creation;
- 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 duty to limit the acquisition of the trade secret;
- 3) exercise of employees or employees' representatives of their right to information and consultation; or

- 4) other practice in conformity with honest commercial practices than that referred to in paragraphs 1–3 of this subsection.

#### **Section 4**

##### **Unlawful use and disclosure of a trade secret**

A trade secret may not be unlawfully used or disclosed by a person having acquired the trade secret unlawfully in a manner referred to in section 3, subsection 2 or 3.

A trade secret may not be unlawfully used or disclosed by a person having obtained information about the trade secret:

- 1) when acting as a member of the supervisory board or board of directors, managing director, auditor or liquidator of an entity or foundation or in a role comparable to these;
- 2) in conjunction with enterprise restructuring proceedings;
- 3) when performing a task for another person or otherwise in a confidential business relationship;
- 4) in a manner other than that referred to in paragraphs 1–3 if bound by an agreement or obligation restricting the right to use or disclose the trade secret.

Anyone who has obtained information about a trade secret while employed by another may not unlawfully use or disclose that trade secret during his or her term of service.

A trade secret may not be unlawfully used or disclosed by a person who knows or ought to know that the trade secret was obtained directly or indirectly from a person who was using or disclosing the trade secret unlawfully.

The production, offering or placing on the market of products infringing a trade secret and the importation, export and storage of products infringing a trade secret for those purposes shall be considered an unlawful use of a trade secret where the

person knows or ought to know that the product in question is a product infringing a trade secret.

## **Section 5**

### **Revealing misconduct and exercising the right to freedom of expression**

Notwithstanding the provisions of sections 3 and 4, the acquisition, use or disclosure of a trade secret is not unlawful where the trade secret was acquired, used or disclosed for the purpose of protecting the general public interest to reveal misconduct or illegal activity. Nor is the acquisition, use or disclosure of a trade secret unlawful where it does not exceed what can be regarded as acceptable exercise of freedom of expression.

## **Section 6**

### **Disclosing a trade secret to an employee's representative**

Notwithstanding the provisions of section 4, the disclosure of a trade secret is not unlawful where an employee discloses a trade secret to a shop steward, elected employee representative or another representative of the employee under law or a collective agreement where the disclosure of the trade secret is necessary for the performance of the representative's duties under law or a collective agreement.

## **Section 7**

### **Unlawful use and disclosure of technical instructions**

Technical operating instructions or technical operating models (*technical instructions*) that are not in the public domain may not be unlawfully used or disclosed by a person who has been entrusted with them for the purpose of performing work or a task or otherwise for business purposes.

Technical instructions may not be unlawfully used or disclosed by a person who knows or ought to know that the technical instructions he or she has been entrusted

with were obtained directly or indirectly from a person who was disclosing the instructions unlawfully.

The production, offering or placing on the market of products infringing technical instructions and the importation, export or storage of products infringing technical instructions for those purposes shall be considered an unlawful use of technical instructions where the person knows or ought to know that the product in question is a product infringing technical instructions.

The provisions of sections 5 and 6 on the use and disclosure of a trade secret also apply to technical instructions.

The provisions of sections 8–11 on prohibiting the use and disclosure of trade secrets, imposing injunctions on a provisional basis, imposing corrective measures and paying compensation for use as well as on damages relating to trade secrets apply to prohibiting the use and disclosure of technical instructions, imposing injunctions on a provisional basis, imposing corrective measures and compensation for use as well as on damages relating to technical instructions.

## **Section 8**

### **Injunction and corrective measures**

A court of law may, at the request of the holder of a trade secret, impose a person who, in a manner contradictory to provisions of section 3 or 4, has acquired or disclosed a trade secret or used it with:

- 1) a prohibitory injunction to refrain from engaging in an act infringing a trade secret or from continuing or repeating an act infringing a trade secret;
- 2) a mandatory injunction to withdraw a product infringing a trade secret from the market or to have it modified or destroyed;

- 3) a mandatory injunction to destroy all or part of any documents, objects, material, substances or electronic files containing or embodying a trade secret or deliver up all or part of them to the holder of the trade secret.

A prohibitory injunction concerning the disclosure or use of a trade secret may also be imposed on a person who has obtained information about a trade secret in circumstances referred to in section 4, subsections 2–4 where it is evident that he or she has taken measures for the unlawful disclosure or use of the trade secret.

A prohibitory injunction or corrective measure may not cause harm to the respondent, the rights of others or public interest that is disproportionate to the interest protected and to other circumstances relating to the injunction request. A prohibitory or mandatory injunction shall be enforced by notice of a conditional fine unless this is unnecessary on special grounds. The Act on Conditional Fines (1113/1990) applies to the imposition of and the order to pay a conditional fine also where the conditional fine is imposed by a general court of law.

## **Section 9**

### **Provisional injunction**

An injunction referred to in section 8, subsection 1, paragraph 1 above may be imposed on a provisional basis whereby the injunction remains in force until a final decision has been taken on the matter. Where the injunction applies to the production, offering or placing on the market of alleged infringing products or to their importation, export or storage for those purposes, the seizure or delivery up of the products may be ordered in conjunction with the imposition of the injunction.

A provisional injunction may be imposed where the applicant can demonstrate that it is probable that:

- 1) a trade secret exists;
- 2) the applicant is the trade secret holder; and

3) his or her right is being infringed or an infringement is imminent.

A provisional injunction may not cause harm to the respondent, the rights of others or public interest that is disproportionate to the interest protected and to other circumstances relating to the injunction request. The provisions of chapter 7 of the Code of Judicial Procedure (4/1734) and chapter 8 of the Enforcement Code (705/2007) on applying for, ordering and enforcement of precautionary measures apply otherwise to applying for, ordering and enforcement of provisional injunctions. Where a provisional injunction applies to a disclosure of a trade secret, chapter 8, section 3 of the Enforcement Code does not, however, apply.

## **Section 10**

### **Compensation for use**

A court of law may, at the request of the respondent, order the payment of compensation for use to the holder of the trade secret instead of ordering an injunction or corrective measures referred to in section 8 if:

- 1) the respondent at the time of commencing the use of the trade secret neither knew nor ought to have known that the trade secret was obtained from a party that was using or disclosing the trade secret unlawfully;
- 2) execution of the injunction or corrective measure would cause the respondent disproportionate harm; and
- 3) the compensation for use to the holder of the trade secret is assessed as reasonable.

Compensation for use shall not exceed the amount of royalties or other fees due were the respondent authorised to use the trade secret for the period of time for which use of the trade secret could be prohibited.

## **Section 11**

### **Indemnity and damages**

Any person who intentionally or negligently uses a trade secret in violation of section 4 is obliged to pay the holder of the trade secret a reasonable indemnity for the use of the trade secret as well as damages for any injury caused by the infringement.

Any person who intentionally or negligently acquires or discloses a trade secret in violation of section 3 or 4 is obliged to pay damages to the holder of the trade secret for any injury caused by the infringement.

If the negligence referred to in subsection 1 or 2 is slight, the damages may be adjusted.

Provisions on liability for damages for loss caused by an employee to the employer are laid down in chapter 12, section 1 of the Employment Contracts Act (55/2001). Furthermore, chapter 4 of the Tort Liability Act (412/1974) and the provisions of chapter 3 of the Act on vicarious liability of employers for injury or damage caused to a third party apply to the liability of employees and public officials.

## **Section 12**

### **Publication of judicial decisions**

In a civil matter pertaining to an infringement against this Act, a court of law may, at the request of the applicant, order that the respondent must compensate for any costs caused to the applicant from dissemination by the applicant of information concerning a legally valid decision stating that the respondent infringed this Act. The order may not be issued if the dissemination of information is restricted elsewhere by law. When considering the issue and content of an order, the court of law shall take into account the general significance of publication, the nature and extent of the infringement, the costs arising from publication and any other factors affecting the matter. If the information on a natural person allows him or her to be identified, the information may be published only if the publication is justified, in particular in the

light of the possible harm that it may cause to the privacy and reputation of the person concerned.

The court of law orders the maximum amount of any reasonable publication costs to be paid by the respondent and the time limit for the publication. The applicant is not entitled to receive compensation if the information about the judicial decision has not been published within the time limit determined by the court of law beginning when the decision gained legal force.

### **Section 13**

#### **Period for bringing claims in certain cases**

A claim concerning the imposition of an injunction or corrective measures shall be initiated within five years of the date on which the holder of a trade secret became aware of the infringement of the trade secret and of the infringer, but not later than within ten years of the date of infringement.

### **Section 14**

#### **Restrictions to parties' right of access within legal persons**

Where judicial proceedings pertain to unlawful acquisition, use or disclosure of a trade secret and a party is a legal person, the court of law may, at the request of another party, order that, when applying the Act on the Publicity of Court Proceedings in General Courts (370/2007), only a limited number of natural persons within the legal person have the right to be informed as a party about trial documents containing a trade secret, or take part in oral proceedings where a trade secret is presented. The issue of the order is conditional upon the court having, in order to protect a trade secret, ordered that a trial document or its part be kept secret and decided to hold the oral proceedings wholly or in necessary part without the presence of the public and that access among a number of natural persons greater than the limited number to the information ordered to be kept secret would

cause significant detriment or harm to the interests for the protection of which the information has been ordered to be kept secret.

If the court's decision is ordered to be kept secret to the extent that it contains information relating to a trade secret and if the number of the natural persons who within the legal person have the right of access as a party to information about a document containing a trade secret or to take part in oral proceedings has been restricted in the manner referred to in subsection 1, also the right of access as a party to a decision containing information to be kept secret may, under the same conditions at the request of another party, be restricted to apply only to a limited number of natural persons.

A request referred to above in subsections 1 and 2 shall not, however, be accepted if it could jeopardise the parties' right to a fair trial.

Having heard the parties, the court shall designate the natural persons who have the right referred to in subsections 1 and 2.

Chapter 6 of the Act on the Publicity of Court Proceedings in General Courts applies, as appropriate, to a decision made under this section.

## **Section 15**

### **Misappropriation of technical instructions**

Any person who, in order to obtain a financial benefit for himself or herself or for another person or to harm another person, in violation of section 7, subsection 1 intentionally discloses technical instructions or uses technical instructions shall be sentenced, unless a more severe penalty is provided elsewhere by law, to a fine for *misappropriation of technical instructions*.

Any person who for a purpose referred to in subsection 1 intentionally in violation of section 7, subsection 2 or 3 discloses technical instructions or uses technical

instructions knowing that the technical instructions were obtained from a person having acquired the technical instructions unlawfully or that the product in question is a product infringing technical instructions shall also be sentenced for misappropriation of technical instructions.

## **Section 16**

### **Right to bring charges**

The prosecutor has the right to bring charges for the misappropriation of technical instructions only if an injured party reports the offence for prosecution.

## **Section 17**

### **Reference to the Criminal Code**

The penalty for business espionage is laid down in chapter 30, section 4, for violation of a business secret in chapter 30, section 5, for misuse of a business secret in chapter 30, section 6 of the Criminal Code (39/1889) and for secrecy offence in chapter 38, section 1 and for secrecy violation in chapter 38, section 2 of the Criminal Code.

## **Section 18**

### **Competent court of law**

Claims under private law referred to in this Act are considered by a district court. A claim under private law against a legal person or a natural person carrying out business activities may, however, be also considered by the Market Court in compliance with the provisions on these civil matters laid down in the Market Court Proceedings Act (100/2013).

## **Section 19**

### **Experts**

In a matter pertaining to the unlawful acquisition, use or disclosure of a trade secret, the district court may be assisted by a maximum of two experts. A person referred to in chapter 17, section 10, subsection 2 of the Courts Act (673/2016) may act as an expert.

An expert shall provide a written statement on the questions made by the district court to him or her. An expert has the right to make questions to the parties and witnesses. Prior to deciding on the matter, the district court shall provide the parties with an opportunity to comment on the statement of an expert.

The provisions of chapter 17, section 22 of the Courts Act on fees for expert members apply to fees for experts.

## **Section 20**

### **Transitional provision and entry into force**

This Act enters into force on August 15, 2018.

The provisions of law in force at the time of the entry into force of this Act apply to acts conducted before the Act's entry into force.

Matters initiated before this Act's entry into force are considered by a court of law in compliance with the provisions in force at the time of the entry into force of the Act.