

Logaras & Associates

Intellectual Property
New trade secrets law

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Trade secrets and confidential business information are critically important to the growth, competitiveness and innovative performance of businesses. In the current globalised market, characterised by increasingly pressing and extensive competition, intangible assets are capable of providing a competitive advantage to all sorts of companies and business sectors. Where innovation does not fulfil the requirements of patentability, trade secrets become a pivotal tool for companies to protect their business knowledge¹.

Trade secrets – Greek Law 4605/2019

Long after the expiration of the deadline to transpose Directive (EU) 943/2016 on the protection of undisclosed know-how and business information (trade secrets) against the unlawful acquisition, use and disclosure thereof, Greece enacted in April 2019 L. 4605/2019, which, among other provisions, defines for the first time the term of ‘trade secrets’ and sets out the conditions for their protection. The new provisions are incorporated in the Greek Industrial Property Law, which under the previous regime, afforded limited protection to industrial trade secrets.

Definition

Before the enactment of L.4605/2019, no definition of ‘trade secret’ existed, which has made it difficult for companies to prove that certain information and/or data qualifies as ‘trade secret’ and owners had to rely mainly on the provisions of Unfair Competition Law and the Greek Industrial Property Law. Hence, the most significant provision introduced by L. 4605/2019 is the definition of a trade secret, which is described as being the information that meets the following criteria: a) is secret, in the sense that, either as a whole or as per its specific content or layout, is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, b) has commercial value because it is secret, and c) it has been subject to

reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Reasonable steps

Particular attention has to be drawn to the third condition, which did not exist before and sets a higher bar for an information to qualify as trade secret. More specifically, right holders will be required to demonstrate actively steps and measures taken to protect their trade secrets rather than just relying on the intention to keep the information confidential.

Such measures may range from non-disclosure agreements (NDAs) and non-use agreements, licence and know-how agreements for the commercial transfer and lawful exploitation of technology, to internal procedures and policies regarding the designation, access, segregation and storing of trade secrets, as well as non-competing clauses in employment and consultancy agreements and technical security measures for protecting the unlawful acquisition of confidential business information, such as use of passwords and decryption methods. In addition, prosecution measures in case of misappropriation, especially when the latter is imminent, will demonstrate the owner's reasonable efforts to keep the information secret.

Enforcement of rights on trade secrets

The new law grants a variety of legal instruments and remedies to right holders for the protection of their trade secrets, ranging from precautionary measures to Court orders and restitution measures. In addition, owners are entitled to full compensation in case of misappropriation of their trade secrets, based on their actual damages and loss of profits, as well as moral damages. Alternatively, Courts may award a flat compensation on the basis of royalties or other fees that the offender would have to pay in case he was granted a license to use the trade secret.

Court proceedings

For the first time, Courts may take measures to safeguard the secrecy of proceedings and the confidential nature of trade secrets. Such measures include:

- i) restriction, partially or entirely, of access to documents containing trade secrets or alleged trade secrets submitted by the parties or third parties to a limited number of persons,
- ii) restriction of access to hearings and minutes thereof, when trade secrets or alleged trade secrets may be disclosed, to a limited number of persons and
- iii) making available to any person not included in the restricted number of persons above, a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted.

Lawful acquisition

The law sets out the circumstances under which the acquisition of trade secrets is lawful, such as the independent discovery, reverse engineering, the exercise of the right of workers or workers' representatives to information and consultation in accordance with EU law and national legislation and practices.

Recommended actions

Following the enactment of L.4605/2019, right holders must set out or revise their IP policy, to effectively protect and prevent misappropriation of their IP assets, including trade secrets as defined by law.

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