

(Translation)

Unofficial Translation*

THE TRADE SECRETS ACT

B.E.2545

BHUMIBOL ADULYADEJ, REX.

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

Being the 57th Year of the Present Reign

His Majesty King Bhumibol Adulyadej has the Royal Proclamation to announce that:

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

This Act contains certain provisions relating to the limitation of individual's rights and liberties which is permitted by virtue of the provisions of laws under Section 29 together with Section 31, Section 35, Section 48 and Section 50 of the Constitution of the Kingdom of Thailand.

Therefore, His Majesty the King Bhumibol Adulyadej has graciously been pleased to enact this Act, with the advice and consent of the Parliament, as follows:

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

Section 2¹ This Act shall come into force when a period of ninety days as from the date following the date of its publication in the Government Gazette has been elapsed.

Section 3 In this Act:

"Trade Secrets" means trade information not yet publicly known or not yet accessible by persons who are normally connected with such information and those commercially useful due to its secrecy, and it shall also include the information that the controller of the trade secrets has taken appropriate measures to maintain its secrecy;

"Trade Information" means any medium that conveys meanings of statements, facts, or other information through whatever methods and forms, and it shall also include formulas, patterns, compiled or assembled works, programs, methods, techniques, or processes;

¹ The Government Gazette, Volume 119 Section 36A, Page 22 dated 23rd April 2002

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“Manufacturing” means making, mixing, cooking or transforming, and it shall also include the changing of form or prepackaging;

“Sale” means distribution or exchange for commercial purposes, and it shall also include availability for sale;

“Drugs” means any drugs under the law on drugs;

“Agricultural Chemical Products” means any chemical products used for agricultural purposes, and it shall also include chemical products used for disinfection or elimination of insects, animals or plants that may cause damage to the agriculture;

“Owner of Trade Secrets” means the person who discovered, invented, compiled or created the trade secret information without infringement of rights in trade secrets of others, or the person who has lawful rights in the test results or in the trade secret information someone else’s trade secrets or infringing the rightful holder of the testing result or trade information, and it shall also include the transferee of rights under this Act;

“Controller of Trade Secrets” means the owner of trade secrets, and it shall also include the possessor, controller, or caretaker of the trade secrets;

“Court” means the Intellectual Property and International Trade Court under the law governing the establishment of and procedures for the intellectual property and international trade court;

“Committee” means the Trade Secrets Committee;

“Member” means member of the Trade Secrets Committee;

“Competent Official” means the person appointed by the Minister for the execution of this Act;

“Director-General” means the Director-General of the Department of Intellectual Property, and it shall also include the person designated by the Director-General of the Department of Intellectual Property;

“Minister” means the Minister taking charge under this Act;

Section 4 The Minister of Agriculture and Cooperatives, the Minister of Commerce and the Minister Public Health shall take charge under this Act and shall have powers to appoint competent officials, to issue Ministerial Regulations and rules for the execution of this Act in relation to their respective powers and duties.

Ministerial Regulations and rules shall come into force upon their publication in the Government Gazette.

CHAPTER 1 PROTECTION OF TRADE SECRETS

Section 5 Trade secrets are transferable.

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The owner of trade secrets shall be entitled to disclose, take or use the trade secrets, or allow others to disclose, take or use the trade secrets by stipulating any conditions for confidentiality of such trade secrets.

The transfer of trade secrets under Paragraph 1, except by way of inheritance, shall be made in writing and signed by the transferor and transferee. In case, a period time is not prescribed in the Transfer Agreement, it shall be regarded that such transfer of trade secrets shall be made within a period of ten years.

Section 6 Violation of rights in trade secrets under this Act shall include actions of disclosure, taking or use of trade secrets without consent from the owner of such trade secrets and against the best commercial practice; provided that the violator shall be aware or shall have a reasonable cause to be aware that such action is against the best commercial practice.

Actions against the best commercial practice under Paragraph 1 shall include breach of contracts, violation or inducement to violate the confidentiality, bribery, coercion, cheating and fraud, theft, receiving of stolen property or espionage through electronic method or any other methods.

Section 7 Any of the following actions against trade secrets shall not be considered violation of rights in trade secrets:

(1) Disclosure or use of trade secrets by a person who has obtained the trade secrets through a juristic act without knowing or having a reasonable cause to know that the other party to the contract obtained the trade secrets by means of violation of the trade secrets of others;

(2) Disclosure or use of trade secrets by a state agency which has taken care of such trade secrets, in the following cases:

(a) In case of necessity for protection of public health or safety; or,

(b) In case of necessity for other public interests without any commercial purpose; and in such case, the state agency which has taken care of such trade secrets, or other state agency or the related person 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 such as the discovery of trade secrets of others; whereas, the discoverer has used the method of invention or development with knowledge and expertise of such discoverer; or

(4) Reverse engineering such as the discovery of trade secrets of others; whereas, the discoverer has evaluated, studied and analyzed a generally known product with the intention to discover the method by which such product is invented, manufactured or developed, provided that the person who conducted the evaluation and analysis must obtain such product in good faith.

Action under (4) may not be cited as an excuse, in case, the person who conducted reverse engineering expressly otherwise executed an agreement with the owner of trade secrets or the seller of products that were conducted with reverse engineering.

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Section 8 When there is clear evidence that any person has violated or being about to take any action in violation of rights in trade secrets, the controller of trade secrets whose rights have been violated or being about to be violated shall have their rights, as follows:

(1) Request the Court to order such person to suspend or refrain from violation of rights in trade secrets on a temporary basis; and

(2) Enter an action in the Court requesting the Court to issue an order to prohibit such person from violation of rights in trade secrets and to claim compensation from the violator of rights in trade secrets;

Rights under (1) may be exercised prior to the entry of an action under (2).

Section 9 Before exercising the rights under Section 8, the controller of trade secrets whose rights in trade secrets have been violated or being about to be violated and the other party may agree to refer the dispute relating to trade secrets to the Committee for conciliation or mediation, thus, without prejudicing the rights of such controller of trade secrets and the other party to refer the dispute to arbitration or to refer the case to the Court, in case, the conciliation or mediation of such dispute may not be agreed.

The submission of application and procedures for conciliation or mediation of the Committee under Paragraph 1 shall be in accordance with the criteria and methods as prescribed in Ministerial Regulations.

Section 10 No cases of violation of rights in trade secrets shall be entered in the Court when a period of three years as from the date when the controller of trade secrets whose rights have been violated has been aware of such violation and the violator of rights, has been elapsed, thus, not exceeding ten years as from the date of violation of rights.

CHAPTER 2

PROCEEDINGS RELATING TO TRADE SECRETS

Section 11 When the controller of trade secrets has entered an action in the Court requesting the Court to issue an order under Section 8 (2), and the Court has adjudicated that there is a violation of rights in trade secrets but there are special circumstances that are deemed inexpedient to issue an order as requested, the Court may order such violator of rights to pay a proper amount of compensation and such person may continue using the trade secrets for a period of time as the Court may think fit.

In case, the Court has issued its order under Section 8(2) to prohibit any prolonged violation of rights in such trade secrets, and in case, such trade secrets have been disclosed to the general public or have been later dilapidated, the person who is subject to the Court's order prohibiting the violation of rights in trade secrets, shall be entitled to submit an application to the Court for cancellation of such order.

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In the application for the Court's order under Section 8 (2), the controller of trade secret may also request the court to order for destruction or confiscation of materials, tools, utensils and equipment used in the violation of rights in trade secrets.

For products made out of the violation of rights in trade secrets and still owned by the violator, the ownership thereof shall be vested in the State or in the controller of trade secrets as per the Court's order, or in case, the possession of such products is illegal, the Court may order to destroy such products.

Section 12 In case, the controller of trade secrets in terms of production processes has entered a civil action against the violator of rights in trade secrets, and has proved that the products manufactured by the violator are similar to the products manufactured by using the production processes which are its trade secrets, it shall be presumed that the violator has used such trade secrets in the manufacturing of such products, unless otherwise proved by the violator.

Section 13 When there is an entry of action under Section 8 (2), the Court shall be empowered to determine compensation as per the following criteria:

(1) In addition to the determination of compensation for the actual damage occurred, the Court may order the violator of rights in trade secrets to return the benefits obtained from or resulting from the violation thereof, which shall be included in such compensation;

(2) In case, the compensation under (1) may not be determined, the Court may determine the compensation to the controller of trade secrets as per the amount that the Court may think fit;

(3) In case, there is clear evidence that the violation of rights in trade secrets is willfully conducted or with the intent to defame, causing the dilapidation of such trade secrets, the Court shall be empowered to order the violator to pay additional compensation as punishment from the amount fixed by the Court under (1) or (2), but not exceeding two times of the compensation under (1) or (2);

Section 14 In addition to the provisions of this Act, the exercise of judicial rights for protection of trade secrets and the proceedings relating to the trade secrets shall be in accordance with the law governing the establishment of and proceedings for the intellectual property and international trade court.

CHAPTER 3

MAINTENANCE OF TRADE SECRETS BY STATE AGENCIES

Section 15 In case, it is prescribed by law that an applicant for permission to manufacture, import, export or sell drugs or agricultural chemical products using new chemical substance, shall present the supporting data of the application for permission to the state agency, in case, the whole or part of such data is the trade secret in the manner of test results or any other data which has been provided, discovered or created with great efforts, and the application for permission has set forth that the state agency shall be obliged to maintain such trade secrets, then, such state agency shall be obliged to maintain such trade secrets and to prevent them from disclosure, taking or unfair commercial use thereof, thus, in accordance with the regulations prescribed by the Minister.

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The regulations under Paragraph 1 shall at least contain the following provisions:

- (1) Conditions of request submitted to state agencies for maintenance of trade secrets;
- (2) Details of test results and data treated as trade secrets;
- (3) Period of time for maintenance of trade secrets;
- (4) Method for storage of trade secrets by taking account of types of technology and the test results or confidential data; and
- (5) Duties and responsibilities of government officials relating to the maintenance of trade secrets.

CHAPTER 4 THE TRADE SECRETS COMMITTEE

Section 16² A committee called the “Trade Secrets Committee”, shall be established, consisting of:

- (1) Permanent Secretary for Commerce as the Chairperson;
- (2) Director-General of the Department of Intellectual Property as the Vice Chairperson;
- (3) Director-General of the Department of Agriculture and the FDA Secretary-General as members;

(4) Specialized members of the Committee appointed by the Cabinet from those who have knowledge, abilities, expertise and experiences in agriculture, information technology and communication, laws, commerce, medicine, pharmaceutical sciences, sciences, engineering, economics, industries or any other fields of study in favor of the performance of duties under this Act, totally not exceeding eleven people; meanwhile, at least six of them shall be appointed from eminent persons in the private sector;

The Committee shall appoint government officials from the Department of Intellectual Property as secretary and assistant secretary.

Section 17³ (Repealed).

Section 18⁴ Specialized members of the Committee shall be in office for a term of four years.

² Section 16 as amended by the Trade Secrets Act (No.2) B.E.2558.

³ Section 17 as repealed by the Trade Secrets Act (No.2) B.E.2558.

⁴ Section 18 as amended by the Trade Secrets Act (No.2) B.E.2558.

In case, any specialized member of the Committee has vacated the office before the term in office expires, or in case, the Cabinet has appointed an additional member to the Committee during the existing term in office of the appointed members, the additional or replacement member so appointed shall be in office for the remaining term of the appointed members.

When the term in office under Paragraph 1 has expired and new specialized members of the Committee have not yet been appointed, then, the specialized members of the Committee who have vacated the office at the end of the term may still be in office for continuous operation of work until the newly appointed specialized members of the Committee shall assume the office.

Specialized members of the Committee who have vacated the office at the end of the term may be reappointed for not exceeding two consecutive terms.

Section 19⁵ In addition to vacating the office at the end of the term, a specialized member of the Committee shall vacate the office upon:

- (1) Death.
- (2) Resignation.
- (3) The Cabinet's order.
- (4) Indiscretion, malfeasance or defective competency.
- (5) Bankruptcy.
- (6) Incompetence or quasi-incompetence.
- (7) Having been sentenced by a final judgment to imprisonment, except for offences committed by negligence or petty offences.

Section 20 In a meeting of the Committee, at least one half of the total members of the Committee shall be present to constitute a quorum.

The Chairperson of the Committee shall act as the Chairman of the Meeting, in case, the Chairperson of the Committee is absent or unable to perform his or her duties, the Vice Chairperson shall act as the Chairman of the Meeting; in case, the Chairperson and the Vice Chairperson are absent or unable to perform their duties, members of the Committee who are present in the Meeting shall select one member as the Chairman of the Meeting.⁶

Resolutions of the Meeting shall be made by majority votes. One member shall have one vote. In case of a tie, the Chairman of the Meeting shall have one additional and casting vote.

Any stakeholder member of the Committee shall be prohibited to participate in the meeting on such matter.⁷

⁵ Section 19 as amended by the Trade Secrets Act (No.2) B.E.2558.

⁶ Section 20 Paragraph 2 as amended by the Trade Secrets Act (No.2) B.E.2558.

⁷ Section 20 Paragraph 4 as amended by the Trade Secrets Act (No.2) B.E.2558.

Section 21 The Committee shall have powers and duties, as follows:

(1) Present its opinions on policies and measures for protection of trade secrets and policies on transfer of technology relating to the trade secrets to the Minister of Commerce for consideration and submission to the Cabinet;

(2) Give advice or consultation to the Minister relating 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) Take any other actions within the scope of its powers and duties as prescribed by law.

Section 22 The Committee may appoint a subcommittee to consider, make decision, or take any action as assigned by the Committee.

The provisions of Section 20 shall, mutatis mutandis, apply to meetings of the subcommittee.

Section 23 Regarding the performance of duties under this Act, except for the case under Section 21(3), the Committee shall be empowered to issue a written order to demand any person to make a statement or to give data or to send document or any materials for consideration as may be necessary.

Such order under Paragraph 1 shall be clearly specified with details in any matter that the Committee has required such person to make a statement or to give data or to send document or materials for consideration.

Section 24 Any letters of calling, written notices or any other letters to any person for the execution of this Act shall be sent via response-registered mail and addressed to the domicile, place of residence, or business office of the recipient, or by any other methods as prescribed by the Committee.

In case, such letters cannot be sent by such methods as mentioned in Paragraph 1, or the recipient has left the Kingdom, then, such letters shall be posted at a conspicuous place at the domicile, place of residence, or business office of the recipient, or at the house where the recipient's name is latest included in the house registration under the law governing civil registration, or by means of publication in local newspapers.

When such letters have been sent via the above-mentioned methods, it shall be regarded that the recipient has received such letters.

The method of service of letters of calling, written notices or any other letters and the rights of objection of any stakeholders shall be in accordance with the regulations as prescribed by the Committee and published in the Government Gazette.

Section 25 The Department of Intellectual Property shall have powers and duties of general operations relating to trade secrets under this Act, and shall be responsible for general administration, meetings, researches and other activities of the Committee and for actions in accordance with the Committee's resolutions, coordination with the related agencies for the execution of this Act and for other actions as assigned by the Committee.

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Section 26⁸ For the execution of this Act, members of the Committee shall be officials under the Criminal Code.

CHAPTER 5 COMPETENT OFFICIALS

Section 27 Regarding the performance of duties concerning criminal cases under this Act, competent officials shall have their powers, as follows:

(1) Enter buildings, business offices, manufacturing facilities, storage facilities or any vehicles for searching or inspection during sunrise and sunset or during the operating hours of such places, when there is a reasonable cause to suspect that the articles 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 cause to believe that the documents or articles relating to the commission of such offence may be removed or destroyed before a warrant of search shall be obtained.

(2) Seize or attach any documents or articles relating to the commission of offence for not exceeding three months, thus, for the purpose of case proceedings, in case, there is reasonable cause to suspect that there is the commission of offense under this Act.

Section 28 Regarding the performance of duties of the competent officials, the related parties shall provide reasonable convenience therein.

Section 29 Regarding the performance of duties under Section 27, the competent officials shall present their identification cards to the related parties.

Identification cards under Paragraph 1 shall be as per the form prescribed by the Minister as published in the Government Gazette.

Section 30 For the execution of this Act, the competent officials shall be the government official under the Criminal Code.

CHAPTER 6 STIPULATED PENALTY

Section 31 Whosoever has obstructed the performance of duties of competent officials under Section 27 shall be imprisoned for not exceeding one year, or shall be fined for not exceeding twenty thousand Baht, or both.

⁸ Section 26 as amended by the Trade Secrets Act (No.2) B.E.2558.

Section 32 Whosoever has failed to provide convenience to the competent officials who have performed their duties under Section 28 shall be imprisoned for not exceeding one month, or shall be fined for not exceeding two thousand Baht, or both.

Section 33 Whosoever has disclosed trade secrets of others to the general public in the manner which causes the dilapidation of such trade secrets, or with the intent to defame the controller of trade secrets or to cause damage to the business operation of the controller of trade secrets, either by means of advertising with documents, audio or video broadcasting, or disclosure by any other means, shall be imprisoned for not exceeding one year, or shall be fined for not exceeding two hundred thousand Baht, or both.

Section 34⁹ Whosoever, by virtue of his or her position to maintain trade secrets as per the regulations issued under Section 15 Paragraph 1, has unlawfully disclosed or used such trade secrets for his or her own benefits or for others' benefits, shall be imprisoned for not exceeding two years, or shall be fined for not exceeding two hundred thousand Baht, or both.

Section 35 Whosoever has disclosed any matter of facts relating to businesses of the controller of trade secrets which should normally be concealed; and such matter of facts was obtained or ascertained by such person due to the execution of this Act, shall be imprisoned for not exceeding one year, or shall be fined for not exceeding one hundred thousand Baht, or both, except for disclosure thereof for performance of governmental services or for the benefit of inquiry or case proceedings.¹⁰

Whosoever has obtained or ascertained any matter of facts from any person under Paragraph 1 resulting from performance of governmental services or inquiry or case proceedings and has disclosed such matter of facts shall be subject to the same punishments.

Section 36 In case, the offender is a juristic person and the offence is committed through the instruction, action, non-instruction or omission of duties of the managing director or any person responsible for the operation of such juristic person, such person shall be subject to the punishments as provided for such offence.

Section 37 Offences under Section 33 and Section 36 shall be compoundable offences.

Section 38 The Committee shall be empowered to impose fines for offences under Section 33 and Section 36. For this purpose, the Committee shall be empowered to designate a subcommittee, the Director-General, an inquiry official, or a competent official to impose fines by prescribing the criteria for imposition of fines or any conditions to the designated person, as it may think fit.

⁹ Section 34 as amended by the Trade Secrets Act (No.2) B.E.2558.

¹⁰ Section 35 Paragraph 1 as amended by the Trade Secrets Act (No.2) B.E.2558.

Subject to Paragraph 1, regarding the inquiry, in case, the inquiry official has found that any person has committed an offence under this Act, and such person consented to the imposition of fines, then, the inquiry official shall forward the matter to the Committee or to the person designated by the Committee for imposition of fines, thus, within seven days from the date when such person has given his or her consent to the imposition of fines.

When the offender has settled the payment of fines as per the amount imposed within the time limit, then, it shall be regarded as settlement of the offence as per the provisions of the Criminal Procedure Code.

In case, the offender has failed to give his or her consent to the imposition of fines, or has given his or her consent thereto but has failed to settle payment of fines within the prescribed period of time, then, the competent official shall proceed with the case.

TRANSITIONAL PROVISION

Section 39 This Act shall not apply to the disclosure, seizure or use of trade secrets prior to the date when this Act has come into force.

The goods which were manufactured, imported or exported prior to the date when this Act has come into force, and were in breach of the provisions of this Act, shall be sold or exported by the possessors within one year as from the date when this Act has come into force.

Counter-Signature:

Police Lieutenant Colonel Thaksin Shinawatra

Prime Minister

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Note:- Reason for promulgation of this Act: Whereas, Thailand has its policy to promote free trade and to prevent unfair trade practices; in addition, Thailand's law on liability for wrongful acts of officials does not cover the liability for violation of trade secrets; therefore, it is necessary to enact this Act.

The Trade Secrets Act (No.2) B.E.2558¹¹

Note:- Reason for promulgation of this Act: Whereas, the Trade Secrets Act B.E.2545 contains certain provisions obstructing the appointment and performance of duties of members of the Trade Secrets Committee; moreover, punishments prescribed for the caretakers of trade secrets and the disclosers of facts which are acquired or known from the operation of work under this Act are not in conformity with the current situations; and it is deemed expedient to amend those provisions to be more suitable; therefore, it is necessary to enact this Act.

Office of Justice Affairs

Prepared by: Kritsadayuth
18th February 2015

¹¹ The Government Gazette, Volume 132 Section 6A, Page 1 dated 5th February 2015

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