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THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN

MINISTRY OF COMMERCE AND INDUSTRIES

**DRAFT LAW ON PROTECTION OF TRADE SECRETS  
2013(1392)**

**Law on Protection of Trade Secrets**

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# **Law on Protection of Trade Secrets**

## **Chapter One General Provisions**

### **Basis**

#### **Article 1:**

This Law is enacted under Article forty seven of the Constitution of the Government of the Islamic Republic of Afghanistan.

### **Objectives**

#### **Article 2:**

The objectives of this Law are to protect trade secrets by prohibiting the acquisition, use or disclosure of those secrets through misappropriation.

## **Chapter Two Trade Secrets**

### **Trade Secrets**

#### **Article 3:**

1. For purposes of this Law, any information will be considered a trade secret if:
  - 1) It is secret in the sense that it is not, as a whole or in the precise way the components are put together, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question;
  - 2) It has commercial value because it is a secret; and
  - 3) It has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
  
2. The existence of a trade secret is not negated merely because an employee or other person has acquired the constituent information without express or specific notice that it is a trade secret if, under all the circumstances, the employee or other person knew or ought to have known that the owner of the information intended or expected the secrecy of the type of information comprising the trade secret to be maintained.

## **Misappropriation**

### **Article 4:**

1. The owner of a trade secret, or other natural or legal persons having such information lawfully within their control, will have the right to prevent any person from misappropriating that trade secret.
2. The acquisition, use, or disclosure of a trade secret by any person in a manner contrary to honest commercial practices and/or without the owner's consent shall constitute misappropriation of that trade secret.
3. For purposes of this Article, the following will be considered contrary to honest commercial practices:
  - 1) breach of contract;
  - 2) breach of confidence or inducement thereof;
  - 3) theft;
  - 4) bribery;
  - 5) misrepresentation of a fact or identity;
  - 6) espionage through electronic or other means; and
  - 7) any acquisition of a trade secret by third parties who knew, or were seriously negligent in failing to know, that dishonest commercial practices were involved in the acquisition.
4. The discovery of information comprising a trade secret by independent invention or reverse engineering will not be considered contrary to honest commercial practices.

## **Protection of Undisclosed Data Submitted to Governmental Authority**

### **Article 5:**

Where a governmental authority, as a condition of approving the marketing of pharmaceutical or agricultural chemical products utilizing new chemical entities, requires the submission of undisclosed test or other data whose origination involves a considerable effort and which concerns the safety and efficacy of a pharmaceutical or agricultural chemical product which has not been previously approved, that authority will:

- 1) not permit unauthorized third parties to market a product based on this new chemical entity, using the approval granted to the party submitting the undisclosed data. This prohibition remains in place for a period that begins on the date of approval and lasts five years for a pharmaceutical product and ten years for an agricultural chemical product; and
- 2) protect such undisclosed data against disclosure:
  - (i) except where necessary to protect the public, or
  - (ii) unless steps are taken to ensure that the data are protected against unfair commercial use.

## **Chapter Three Penalties**

### **Injunctive Remedies**

#### **Article 6:**

1. The courts have the authority to enjoin misappropriation of trade secrets.
2. In appropriate circumstances, the courts may order affirmative acts to protect trade secrets.
3. The courts will, upon petition, terminate an injunction when the information to which it relates has ceased to remain a trade secret within the meaning of Article 3 of this Law. However, the injunction may be continued for an additional reasonable period of time in order to eliminate any commercial advantage that otherwise would be derived from the misappropriation.

### **Damages**

#### **Article 7:**

1. The courts have the authority to order a violator of this Law to pay any injured party damages adequate to compensate for the injury sustained because of the violation. The courts may also order a violator to pay damages based on his unjust enrichment, caused by misappropriation, which is not taken into account in computing compensatory damages.
2. In the alternative, the courts may, in appropriate circumstances, order payment of a reasonable royalty for a violator's unauthorized disclosure or use of a trade secret.
3. In cases involving willful and malicious misappropriation, the courts may award punitive damages in an amount up to twice any award made under paragraphs (1) and (2) of this Article.
4. The courts also have the authority to order a violator to compensate an injured party for his expenses, which may include appropriate attorney's fees.

### **Indemnification**

#### **Article 8:**

1. The courts may order a party at whose request enforcement measures were taken, and who has abused enforcement procedures, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.
2. In such a case, the courts shall also have the authority to order the applicant to pay the defendant's expenses, which may include appropriate attorney's fees.

## **Confidentiality**

### **Article 9:**

In any proceeding involving alleged trade secrets, the courts must preserve the confidentiality of such trade secrets by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding private hearings including all parties to the action, sealing the records of the action, and ordering any person involved in the proceeding not to disclose such trade secrets without prior judicial approval.

## **Chapter Four Miscellaneous Rules**

### **Applicability and Non-Discrimination**

#### **Article 10:**

1. The provisions of this Law apply equally to nationals of Afghanistan and to nationals of other countries with which Afghanistan has concluded a treaty for the protection of intellectual property.
2. The provisions of this Law apply equally to nationals of countries other than those referenced in paragraph (1) of this Article, who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of those countries.
3. The term “nationals” shall include both legal and natural persons.

### **Enactment of Regulations**

#### **Article 11:**

The Ministry of Commerce and Industries will cause to be published in the Official Gazette those Regulations necessary for the implementation of the provisions of this Law.

### **Date of Enforcement**

#### **Article 12:**

This Law will come into force upon signature of the President and publication in the Official Gazette.