

The Law of the Republic of Tajikistan "On commercial Secrets"

This Law shall govern relations arising in connection with the attribution of information to a commercial secret, transfer of such information, protection of its confidentiality for the purpose of providing the balance of interests between the holders of such information constituting a commercial secret and other parties, including the state, on the market of goods, works and services,

Article 1. Legislation of the Republic of Tajikistan on Commercial Secrets

The legislation of the Republic of Tajikistan on commercial secrets shall be based on the Constitution of the Republic of Tajikistan and shall consist of this Law and other legislative acts of the Republic of Tajikistan, as well as international legal acts recognized by the Republic of Tajikistan.

Article 2. The Scope of Application of This Law

The scope of application of this Law shall include the relations connected with information, its transfer and protection of its confidentiality for the purpose of procuring the balance of interests of the holders of such information.

The provisions of this Law shall not apply to data comprising a state or bank secrets.

Article 3. Basic Terms

The basic terms used in this Law shall be as follows:

- a commercial secret shall mean a confidentiality of the information enabling its holder under the existing or the probable conditions to increase revenues, to avoid unjustified expenditures, to retain the position on the market of goods, works and services, or to derive another commercial benefit;

- information comprising a commercial secret shall mean information of scientific and technical, technological, production, financial and economic character or any other information of an actual or a potential commercial value because it is unknown to the third persons, to which there is no free access on lawful grounds and with respect to which the holder of such information has introduced the regime of commercial secrets;

- a regime of commercial secret shall mean legal, organizational, technical and other measures taken by the holder of the information comprising a commercial secret, on protection of its confidentiality;

- a holder of the information comprising a commercial secret shall mean a person who is in possession of the information comprising a commercial secret and who restricts access to such information on lawful grounds and institutes in respect of such information a regime of commercial secret;

- an access to the information comprising a commercial secret shall mean the familiarization of legal entities and natural persons with the information comprising a commercial secret, with the consent of its holder or, on other grounds, on the condition of preservation of the confidentiality of such information;

- transfer of the information comprising a commercial secret shall mean the transmission of the information comprising a commercial secret and recorded on a material medium by its

holder over to a counteragent on a contractual basis in the scope and under the terms specified under a contract;

- a counteragent shall mean a party to a civil law contract to which the holder of the information comprising a commercial secret transferred that information;

- disclosure of the information constituting a commercial secret shall mean an action or inaction as a result of which the information constituting a commercial secret, in any possible form (either oral, written or any other form, including with the use of technical means) becomes known to third persons without consent of the holder of such information or contrary to a labor or civil law contract.

Article 4. The Right of Attribution to the Information to the Information Comprising a Commercial Secret and Methods for Obtaining Such Information

1. The right to attribute information to the information comprising a commercial secret and to determine a list and composition of that information shall belong to the holder of such information with regard for the provisions of this law.

2. The information obtained independently by a person shall be deemed as having been acquired legally, notwithstanding the fact that the content of such information may coincide with the content of the information constituting a commercial secret, the holder of which is a different person.

3. The information comprising a commercial secret acquired from the holder of such information on a contractual basis or on any other legal grounds, shall be deemed as having been acquired by legal methods.

4. The Information comprising a commercial secret the holder of which is another person, shall be deemed as having been acquired illegally when the acquisition of such information was effected by intentional overcoming of the measures towards provision of its confidentiality adopted by the holder of the information comprising a commercial secret and also when the recipient of such information either knew or had sufficient evidence to assume that such information constitutes a commercial secret whose holder is other person and that the person transferring such information has no legal grounds to transfer that information.

Article 5. Information That May Not Constitute Commercial Secret

The regime of commercial secret may not be instituted by a person in respect of the following information:

a) Contained in constituent documents of a legal entity, documents confirming the making of entries on legal entities and individual entrepreneurs in the relevant state registers;

b) Contained in documents giving the right to conduct entrepreneurial activity;

c) Regarding the composition of property of a state unitary enterprise, a government agency, and on utilization by them of funds of corresponding budgets;

d) Regarding pollution of the environment, the condition of fire safety, sanitary-epidemiological and radiation situation, safety of food products and other factors adversely affecting provision of the safe functioning of production facilities, security of each citizen and security of the population as a whole;

e) On the composition of employees, system of labor remuneration, on the indices of job-related traumatism and occupational morbidity, as well as on availability of vacancies;

f) On arrears of wages and on other social payments by employers;

g) On violations of the legislation of the Republic of Tajikistan and facts of instituting proceedings for commission of such offences;

h) On the terms of contests or auctions for privatization of objects of state property, on state purchases, on labor and services;

i) On the income and of the structure of non-profit organizations, on the amount and composition of their property, on the number and remuneration of employees, on the use of unpaid labor of citizens in the activity of non-profit organizations;

j) On a list of persons entitled to act without a power of attorney on behalf of a legal entity;

k) Obligation of disclosure of which, or impermissibility of restricting access to which is prescribed under other laws of the Republic of Tajikistan.

Article 6. The Provision of the Information Constituting a Commercial Secret

1. The holder of the information comprising a commercial secret shall, upon a motivated request of a state power body, a local executive state authority, provide free of charge the information comprising a commercial secret. The motivated request shall be signed by a duly authorized official, contain a statement of purpose and legal grounds for the requested information comprising a commercial secret and also time limits for provision of such information, unless otherwise provided under the legislation of the Republic of Tajikistan.

2. In case of refusal of the holder of the information comprising a commercial secret to provide it to a state authority body, the latter shall have the right to require that information by judicial means.

3. The holder of the information comprising a commercial secret, as well as the state authority bodies that acquired such information shall, under paragraph 1 of this Article, be obligated to provide such information at the request of the court, prosecution agencies, pretrial investigation, regarding the cases being processed by them, in accordance with the procedure and on the grounds provided for by the legislation of the Republic of Tajikistan.

4. The documents supplied to the bodies, specified under paragraphs 1 and 3 of this Article, and containing the information constituting a commercial secret shall bear a "Commercial secret" stamp, indicating its holder (in case of legal entities - full denomination and location, in case of individual entrepreneurs – family name, first name, patronymic of the citizen being an individual entrepreneur and place of residence).

Article 7. Rights of the Holder of the Information Constituting a Commercial Secret

1. The rights of the holder of the information comprising a commercial secret shall arise from the moment of establishment of a regime of commercial secret with regard to such information in accordance with Article 10 of this Law.

2. The holder of the information comprising a commercial secret shall have the right to:

a) Establish, change, and cancel in writing the regime of commercial secret in accordance with this Law and civil legal contract;

b) Use the information constituting a commercial secret for one's own needs in a manner not contrary to the legislation of the Republic of Tajikistan;

c) Authorize or prohibit access to the information constituting a commercial secret, determine the order and conditions for access to that information unless the current legislation establishes a different procedure;

d) Put on the market the information comprising a commercial secret on the basis of contracts providing for a clause for protection of confidentiality of information;

e) Require from legal entities and natural persons who acquired access to the information constituting a commercial secret and state authority bodies and local state authority who were provided the information constituting a commercial secret, to observe obligation to protect its confidentiality;

f) Require from persons who acquired access to the information constituting a commercial secret as a result of actions performed accidentally or by mistake, to protect

confidentiality of that information;

g) Enforce his rights with the procedure prescribed by law in case of disclosure, illegal acquisition or illegal use by a third party of the information constituting a commercial secret, as well as to require indemnification of damages caused in connection with violation of his rights.

Article 8. Holder of the Information Constituting a Commercial Secret Obtained within the Framework of Employment Relationships

1. The holder of the information constituting commercial secret acquired within the framework of employment relationships shall be the employer.

2. In the event that an employee in connection with the fulfillment of his employment obligations or a specific task of the employer obtained a result capable of legal protection as an invention, a utility model, an industrial design, a topology of integrated circuit, a computer program or a data base, the relations between the employee and the employer shall be regulated in accordance with the legislation of the Republic of Tajikistan.

Article 9. Procedure for Establishing the Regime of Commercial Secret when Performing State Contract for State Needs

In a state contract for performing scientific research, development and other works for state needs the volume of data recognized as confidential shall be specified, as well as the issues concerning establishment of the regime of commercial secret in respect of the information obtained shall be settled.

Article 10. Protection of the Confidentiality of the Information Comprising a Commercial Secret

1. Measures on protection of the confidentiality of information taken by its holder shall include the following:

- a) Definition of a list of the information constituting a commercial secret;
- b) Use of a commercial secret in certified means of protection of information;
- c) Restriction of access to the information constituting a commercial secret by establishing a procedure for handling that information and for control over compliance with that procedure;
- d) Providing the list of persons who acquired access to the information constituting a commercial secret and (or) persons to whom that information was furnished;
- e) Regulation of relations in using the information constituting a commercial secret by employees on the basis of labor contracts and by counteragents on the basis of civil law contracts;
- f) Affixing upon material media (documents) containing the information constituting a commercial secret of a "Commercial secret" stamp specifying the holder of that information (in case of legal entities - a full denomination and place of location, in case of individual entrepreneurs – family name, first name, patronymic of the citizen being an individual entrepreneur and place of residence).

2. Regime of commercial secret shall be deemed as having been established following the adoption by the holder of the information constituting a commercial secret of measures specified under paragraphs a) and b) of Part 1 of this Article.

3. An individual entrepreneur being the holder of the information constituting a commercial secret and having no employees with whom labor contracts were concluded shall take measures to protect the confidentiality of the information specified under paragraph 1 of this

Article, except for items a) and c), and also provisions of item e) concerning regulation of labor relations.

4. In addition to the measures specified under paragraph 1 of this Article, the holder of the information constituting a commercial secret shall have the right to use, as appropriate, means and methods of technical protection of the confidentiality of that information, other measures not contradictory to the legislation of the Republic of Tajikistan.

5. Measures to protect the confidentiality of information shall be recognized as reasonably sufficient, provided that:

a) Access to the information constituting a commercial secret by any persons without the consent of its holder is excluded;

b) Provision is made for the use of the information constituting a commercial secret by employees and transfer of same to counteragents without violating the regime of commercial secret.

6. The regime of commercial secret may not be used for purposes contradicting the requirements of protection of the fundamentals of the constitutional system, morality, health, taxation, rights and legitimate interests of other persons, guaranteeing defense of the country and security of the state.

Article 11. Protection of Confidentiality of Information Within the Framework of Labor Relations

1. For the purpose of protection of the confidentiality of information the employer shall be obligated to:

a) Familiarize, against the signature, the employee whose access to the information constituting a commercial secret is necessary for him to fulfill his labor obligations with a list of the information constituting a commercial secret, the holder of which is the employer and his counteragents;

b) Familiarize, against the signature, the employee with the regime of commercial secrecy established by the employer and with measures of liability for violation of same;

c) Create necessary conditions for the employee enabling him to comply with the regime of commercial secrecy established by the employer.

2. Access of the employee to the information constituting a commercial secret related to his labor obligations shall be carried out only with the consent of the employer.

3. With a view to protect the confidentiality of information, the employee shall be obligated:

a) To observe the regime of commercial secret established by the employer;

b) Not to disclose the information constituting a commercial secret the holder of which is the employer and his counteragents, and not to use that information for personal aims without their consent;

c) Not to disclose the information constituting a commercial secret the holder of which is the employer and his counteragents, and not to use that information for personal aims without their consent, after termination of labor contract within the period of time provided for by the agreement between the employer and employee, which was concluded during the term of validity of the labor contract, or during three years after termination of the labor contract, if the said agreement has not been concluded;

d) To compensate a damage done if the employee is guilty of disclosure of the information constituting a commercial secret that became known to him in connection with performance by him of his labor obligations;

e) To transfer to the employer, upon termination or dissolution of a labor contract, material media of information, being in the employee's use, which contain the information constituting a commercial secret.

4. The employer shall have the right to require compensation of damages done by a person terminated his labor relations in case where that person is guilty of the disclosure of the information constituting a commercial secret access to which he acquired in connection with performance by him of his labor obligations, if the disclosure of such information followed during a period established in accordance with item c) of paragraph 3 of this Article.

5. Caused damages or losses shall not be compensated by an employee or a person terminated his labor relations, if the disclosure of the information constituting a commercial secret was the consequence of force majeure, paramount necessity, or non-fulfillment of duty to provide the regime of commercial secret by the employer.

6. A labor contract with the head of the organization shall provide for his obligation to ensure protection of the confidentiality of the information the holder of which is the organization and its counteragents, and for responsibility to ensure protection of its confidentiality.

7. The head of the organization shall indemnify the organization for damages caused by his guilty actions in connection with violation of the legislation of the Republic of Tajikistan on commercial secrets. At that, damages shall be determined by the action of the holder in accordance with the civil legislation.

8. The employee shall have the right to appeal by judicial means illegal institution of the regime of commercial secret in respect of the information to which he acquired access in connection with performance by him of his labor obligations.

Article 12. Protection of Confidentiality of Information within the Framework of Civil Legal Relationships

1. The relations between the holder of the information constituting a commercial secret and his counteragent in part concerning protection of the confidentiality of the information shall be regulated by law and contract.

2. The contract shall determine the conditions for protection of confidentiality of information, including in the case of reorganization or liquidation of one of the parties to the contract in accordance with civil legislation, as well as obligation of counteragents on compensation of damages in the event of the disclosure of such information in contravention of the agreement.

3. Unless otherwise provided for by the contract between the holder of the information constituting a commercial secret and a counteragent, the latter, according to the legislation of the Republic of Tajikistan, shall determine means for protection of the information constituting a commercial secret, transferred to him under the contract.

4. The counteragent shall be obligated to inform the holder of the information constituting a commercial secret without delay about the act committed by the counteragent or the act that become known to him of disclosure or threat of disclosure, illegal receipt or illegal use of information constituting a commercial secret by third party.

5. The holder of the information constituting a commercial secret transferred by him to the counteragent, may not disclose the information constituting a commercial secret, as well as terminate protection of its confidentiality before termination of the term of validity of the contract, unless otherwise established by the contract.

6. The party who did not ensure protection of confidentiality of the information transferred according to the contract, in accordance with the terms of the contract, shall be obligated to compensate to other party for losses, unless otherwise provided for by the contract.

Article 13. Protection of Confidentiality of Information when Providing Thereof

1. The state authority bodies and local self-government bodies shall, in accordance with this Law and other laws of the Republic of Tajikistan, be obligated to create conditions providing for protection of the confidentiality of information transferred to them by legal persons or individual entrepreneurs.

2. The officials of the state authority bodies, local state authorities, bodies of local self-government, government employees of the said bodies shall have no right to disclose or transfer to other persons the information constituting a commercial secret that became known to them by virtue of performance of official (professional) duties in the absence of consent of the holder of the information constituting a commercial secret, except in cases provided for by this Law, and also shall have no right to use that information for lucrative or other personal aims.

Article 14. Liability for Violation of This Law

The persons violating the provisions of this Law shall be made liable in accordance with the legislation of the Republic of Tajikistan

Article 15. Procedure Coming into Force of This Law

This Law shall come into force after its official publication

President
of the Republic of Tajikistan

Emomaly Rahmon

Dushanbe
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