

NJORD Latvia: trade secrets law came into force in Latvia

Last year, the Latvian government developed a draft law to implement Directive (EU) 2016/943 of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (the Trade Secrets Directive).

On 1 April 2019, the corresponding national Law on Protection of Trade Secrets (the Trade Secrets Law) came into force aiming to ensure an effective protection of trade secrets, in particular, protection against unlawful acquisition, use and disclosure of the trade secrets made by other persons.

Previously, only one article in Latvian Commercial Law (Article 19) dealt with the protection of trade secrets. According to this article, the status of a commercial secret may be assigned by a merchant only for such matters of economic, technical or scientific nature and information, which complies with all the following features: it is contained in the undertaking of the merchant or is directly related thereto; it is not generally accessible to third parties; it is of an actual or potential financial or non-financial value; its coming at the disposal of another person may cause losses to the merchant; the merchant has taken reasonable measures corresponding to a specific situation to preserve secrecy.

This article, of course, could not ensure the same level of protection of the trade secrets as provided by the Trade Secrets Directive, so the new Trade Secrets Law will have a significant impact on the existing understanding of these legal issues.

The Trade Secrets Law extends a range of objects to be protected as trade secrets: as stipulated in the Trade Secrets Directive, it allows to protect information, such as sketches, designs, formulas, business plans and strategies, clients' lists, etc. Also, the new law provides exclusions and limitations for the application of the term trade secret and the Trade Secrets Law.

Whereas the Commercial Law is applicable only to merchants (with some exceptions), Article 2(2) of the Trade Secrets Law stipulates that a holder of a trade secret is any natural or legal person who has lawfully obtained a trade secret and is entitled to control it, including to use and disclose it. This means that the obligation to protect the trade secret can be applicable to the employees, who may also be recognised as holders of the employer's trade secrets.

Article 7 of the Trade Secrets Law stipulates that the duration of the limitation period applicable to the claim against a person who has unlawfully obtained, used or disclosed a trade secret is three years from the day when the holder of a trade secret knew about, or ought to have known about, such unlawful obtaining, use or disclosure of the trade secret. Such limitation period complies with the limitation period stipulated in the Commercial Law in regard to the claim arising from a commercial transaction.

The Trade Secrets Law contains a list of the provisional and protection measures that the trade secrets holder is empowered to request by the court.

The corresponding changes regarding the trade secrets cases were made in the Civil Procedure Law as well. The amendments include the provision that a court case on the protection against unlawful acquisition, use and disclosure of the trade secrets shall be examined by the Vidzeme Suburb Court of Riga as a court of specific jurisdiction, and the case should be conducted by the claimant himself (or his lawful representative, if it is a legal person) or by an attorney-at-law (i.e. it is no option to issue a power of attorney for any other individual); as well as the provisions to protect the information that contains a trade secret within the case materials, procedure examination of the case, etc.

Currently, the Ministry of Justice is planning not only to examine case law and the general application of the new Trade Secrets Law, but to pay special attention to cases on claims against the employees. While the Trade Secrets Directive gives an opportunity to Member States to limit the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer where they act without intent, Latvia has not used this derogation: the national Civil Law already establishes several types of faulty actions and responsibility for damages, whereas Article 87 of the national Trade Law stipulates the provisions for release of an employee from civil liability for losses caused to an employer. However, since there is not much case law available on the employer's claims on trade secrets infringement, the Ministry of Justice will analyse whether any amendments will be necessary concerning the new regulations introduced by the Trade Secrets Directive.



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