

No. 7975

Law on Undisclosed Information

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ARTICLE 1.– Objectives. The objectives of this Law are as follows:

- (a) to protect undisclosed information related to industrial and trade secrets;
- (b) to help promote technological innovation and technology transfer and dissemination, for the mutual benefit of producers and users, in respect of technological expertise, in a manner conducive to social and economic welfare and a balance between rights and obligations.

ARTICLE 2.– **Scope of protection.** Undisclosed information related to industrial and trade secrets that are kept confidential by a natural person or legal entity to prevent information lawfully within their control from being disclosed to or acquired or used by others without their consent in a manner contrary to honest commercial practices, is hereby protected, provided that such information:

- (a) is secret insofar as it is not, as a body or in the precise configuration and assembly of its components, generally known or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;
- (c) has commercial value because it is secret.

“Undisclosed information” refers in particular to the nature, characteristics or purposes of goods and production methods or processes.

For the purposes of the first paragraph of this Article, “in a manner contrary to honest commercial practices” shall be defined inter alia by practices of non-fulfillment of contracts, breach of trust and incitement to the infringement or acquisition of undisclosed information by third parties who knew that acquisition involved such practices or who, through gross negligence, did not know.

Information considered undisclosed shall consist of documents, electronic or magnetic media, optical disks, microfilms, films or other similar elements.

ARTICLE 3.– **Competence of the Industrial Property Registry.** The materials referred to in the last paragraph of Article 2 of this Law shall be kept by the Industrial Property Registry, which forms part of the National Registry, in accordance with Law No. 5695 of May 28, 1975, on the Establishment of the Administrative Board of the National Registry. The Executive shall issue regulations for all matters relating to the deposit of data carriers containing information deemed undisclosed, and shall therefore take all necessary measures to prevent its disclosure to third parties.

ARTICLE 4.– Information excluded from protection. This Law shall not protect information that:

- (a) is in the public domain;
- (b) is obvious, on the basis of prior information, for a person skilled in the art;
- (c) has to be disclosed by legal provision or court order. Confidential information which meets the requirements of the first paragraph of Article 2 of this Law and has been provided to any authority, by the party holding it, where such information has been disclosed to obtain licenses, permits, authorizations, registrations or any other act of authority, as a formal condition, shall not be considered as entering the public domain. In any event, the respective authorities or entities shall keep such information confidential.

ARTICLE 5.– Authorization for use. Any person who keeps undisclosed information may transmit it to a third party or authorize him to use it. The authorized user may not disclose it by any means, unless he has agreed otherwise with the person who transmitted the information to him or authorized him to use it.

ARTICLE 6.– Responsibility. Anyone who has acted contrary to honest commercial practices and who, through his acts or practices, has used, acquired or disclosed confidential information without the holder's authorization shall be held responsible, as well as anyone who derives financial benefit from such acts or practices.

Any civil or criminal administrative proceedings relating to this Law shall be regulated by a subsequent law on procedures for enforcement of intellectual property rights.

ARTICLE 7.– Confidentiality in employment or business relationships. Any person who through his work, employment, position, the exercise of his profession or a business relationship has access to undisclosed information under the conditions indicated in the first paragraph of Article 2 of this Law and who has been specifically warned as to the confidential nature of such information shall refrain from using or disclosing it without the holder's consent, even where his employment relationship, the exercise of his profession or the business relationship has ceased. In contracts for the transmission of specialized technological expertise, technical assistance, provision of basic engineering or technologies, confidentiality clauses may be introduced to protect undisclosed information which meets the conditions referred to in the first paragraph of Article 2 of this Law. The liabilities established in this Article shall be regulated by a subsequent law.

ARTICLE 8.– Protection of data provided with a view to marketing approval for pharmaceutical or agrochemical products.

If, as a condition for securing approval to market new pharmaceutical or agrochemical products, applicants are required to produce a marketing license showing undisclosed test data, including data on safety and effectiveness, or other undisclosed information the preparation of which has entailed considerable efforts, the data in question shall be protected against any unfair commercial use and any disclosure, except where the use of such data is necessary to protect the public. If the said undisclosed information is disclosed, measures shall be taken to guarantee protection against any unfair commercial use.

The utilization of test data to protect the public shall include use by the competent authorities, in the case of studies provided for in the regulations on the registration of drugs or agrochemicals to prevent practices that may mislead consumers or to protect lives, health or human safety, or animal or plant life or the environment, provided that said information is not disclosed.

For the purposes of this Article, a “new product” shall be defined as one which does not contain a chemical entity that was previously approved in Costa Rica.

“Chemical entity” shall be defined as the functional group of the active ingredient which is responsible for the biocidal, physiological or pharmacological action. All polymorphs, isomers and other derivatives with parts joined to the chemical whole of which it is composed, such as ester, ether, salt, including salt with hydrogen or coordinated unions, complex or otherwise, shall be defined as a single chemical entity.

(as amended by Article 6 of Law No. 8686 of November 21, 2008)

ARTICLE 9.– Protection of undisclosed information in administrative or judicial proceedings. In any administrative or judicial proceedings in which any of the parties must reveal undisclosed information, the authority hearing the case shall take all necessary measures to prevent its disclosure to outside third parties. None of the parties to the proceedings may reveal or use such information.

ARTICLE 10.– Protection. Protection of undisclosed information shall not grant rights as with a patent. It shall be characterized by granting a limited right of ownership in respect of possession and usufruct, provided that the conditions indicated in the first paragraph of Article 2 of this Law are met.

ARTICLE 11.– Regulations. The Executive shall issue regulations under this Law within a period of 60 days following its publication.

In force from the time of its publication.