

**Law of the Kyrgyz Republic No. 27 of March 30, 1998, on
Commercial Secrets (as amended by Law of No. 83 of June 26, 1998)**

TABLE OF CONTENTS

	<i>Article</i>
Chapter I:	General Provisions
	Definition of Commercial Secrets..... 1
	Requirements to the Information Constituting a Commercial Secret..... 2
	Unauthorized Disclosure of a Commercial Secret 3
Chapter II:	Subjects and Objects of a Commercial Secret
	Subjects of a Commercial Secret 4
	Objects of a Commercial Secret..... 5
	Competence and Liability of Subjects of a Commercial Secret..... 6
Chapter III:	Protection of a Commercial Secret and Access to it
	The Mechanism Determining the Procedure of Protecting Commercial Secret..... 7
	Obligations of Employees of an Economic Entity to Safeguard a Commercial Secret 8
	Specialized Subdivisions for Commercial Secrets Protection 9
	Commercial Secret Protection in Interaction of Economic Entities 10
	Access to a Commercial Secret..... 11
	Obligations of Physical Persons and Legal Entities Having Access to Commercial Secrets 12
	Limited Disclosure of a Commercial Secret in Court and in Arbitration Court..... 13
	Basis for Determining the Fact of Disclosing Commercial Secret..... 14
	Liability for Commercial Secret Disclosure..... 15
	Enforcement of the Present Law. 16

Bishkek,
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The present law is to define the legal framework for the protection of commercial secrets on the territory of the Kyrgyz Republic.

The objective of the present law is to provide protection to commercial secrets and to prevent unfair competition in the economic operations [activities].

**Chapter I
General Provisions**

Definition of Commercial Secrets

1.—(1) Commercial secrets shall be recognized as confidential information that does not constitute state secrets, related to manufacturing, technological and managerial tools, financial and other operations [activities] of an economic entity disclosure of which may damage its interests.

(2) Information which is a commercial secret shall be recognized to be the property of an economic entity or to be in its possession, exploitation and disposal within the limits set forth by it pursuant to the legislation.

Requirements to the Information Constituting a Commercial Secret

2. The information constituting a commercial secret shall meet the following requirements:

- (a) to be of actual or potential value to an economic entity;
- (b) not to be publicly known or publicly accessible pursuant to the legislation;
- (c) to be appropriately labeled in accordance with the measures designed and undertaken by an economic entity to protect confidentiality through a system of classification of the aforementioned information, through the development of internal restricted usage rules, introduction of an appropriate marking of documents and other data carriers, the streamlining of a data usage, storage and entry process.

Unauthorized Disclosure of a Commercial Secret

3. Unauthorized disclosure of a commercial secret shall be recognized as intentional actions committed by employees of an economic entity in possession of the data composing a commercial secret, or committed by other physical persons or legal entities who have access to commercial information, that have entailed premature disclosure, uncontrolled use and distribution, which have resulted in the encroachment upon the rights of the economic entity.

(as amended of the Law of the KR of June 26, 1998, #83)

Chapter II **Subjects and Objects of a Commercial Secret**

Subjects of a Commercial Secret

4.—(1) Physical persons and legal entities of the Kyrgyz Republic, as well as foreign physical persons and legal entities, involved in entrepreneurial operations on the territory of the Kyrgyz Republic shall be recognized subjects of a commercial secret.

(2) The State shall safeguard [guarantee] the right of the subject of a commercial secret to keep and protect it pursuant to the procedures provided by the legislation.

Objects of a Commercial Secret

5.—(1) Intentionally concealed economic interests and data on various issues and areas of the production and economic, managerial, scientific and technological, and financial operations of an economic entity, the protection of which is based on the competition considerations and the potential jeopardy to the economic safety of an economic entity shall be recognized objects of a commercial secret.

(2) The content and the volume of data constituting commercial secret shall be determined by an economic subject.

(3) The following information shall not be recognized as objects of a commercial secret:

- (a) founding (charter) documents, as well as other documents authorizing to conduct entrepreneurial operations and several types of economic [businesses] activities subject to licensing (a charter, decision to establish an enterprise and the founders' contract, registration certificates, licenses and patents);

(b) data on the statutory standards for statistical reporting, as well as financial and operational reporting and other data required in order to audit the accrued and paid taxes, as well as other mandatory payments;

(c) documents on payment of taxes and other mandatory payments;

(d) solvency proving documents;

(e) data on the number and composition of employees, their salaries and labor conditions, as well as availability of vacancies;

(f) data on environment pollution, violation of the anti-monopoly law, in compliance with the labor safety rules, sale of products hazardous to the health of consumers, as well as other infractions of the legislation and the size of the damage caused;

(g) information on the participation of state enterprises officials in organizations involved in entrepreneurial operations.

Competence and Liability of Subjects of a Commercial Secret

6.—(1) Pursuant to the present law, the procedures for protection of a commercial secret shall be determined by an economic entity or by the chief executive officer appointed by it who is to, accordingly, inform the employees, having access to the information composing a commercial secret.

(2) Infringement by employees of the economic entity or other physical persons of the protection procedure for commercial secret established by the entrepreneurial activity or by its appointed chief executive officer shall bear responsibility provided by the legislation.

(3) The subject of entrepreneurial activity shall be personally liable for provision of the necessary conditions to ensure confidentiality of a commercial secret.

(4) The State shall assist an economic entity in the establishment of the necessary conditions to provide safety of the commercial secret.

Chapter III Protection of a Commercial Secret and Access to it

The Mechanism Determining the Procedure of Protecting Commercial Secret

7. Subjects of a commercial secret shall develop guidelines and regulations to provide for confidentiality of a commercial secret, which are to stipulate the following:

(a) the content and volume of information constituting a commercial secret;

(b) the procedures of conferring of the signature stamp “The secret of the enterprise” to the information, works and production and for removal of it;

(c) the procedure of accessing the employees of the economic entity, as well as persons involved in its activity to the information constituting a commercial secret;

(d) the procedure of using, registering, storing and marking of the documents [paperwork] and other data carriers, products, information on which constitutes a commercial secret;

(e) arranging control over procedure of using the information composing a commercial secret;

(f) the procedure of taking mutual commitments by economic entities to preserve the commercial secret when concluding an agreement on taking joint actions;

(g) the procedure of applying disciplinary, material measures to punish employees who have disclosed a commercial secret;

(h) imposing responsibility for providing safety of a commercial secret on an official of the economic entity.

Obligations of Employees of an Economic Entity to Safeguard a Commercial Secret

8.—(1) Employees of an economic entity having access to the information constituting a commercial secret shall be obligated to:

(a) safeguard a commercial secret that has become known to them in the course of work and not to disclose it without authorization awarded in the established order provided that the information composing the secret has not been known to them before or has not been received by them from a third party without any commitment to keep it confidential;

(b) comply with the requirements spelled out in the regulations, orders and guidelines designed to ensure confidentiality of a commercial secret;

(c) immediately report to the appropriate official or the corresponding unit of an economic entity in cases when outsiders take attempts to obtain information that constitutes commercial secret;

(d) safeguard commercial secrets of other economic entities with who they maintain business relations;

(e) not to use their knowledge of a commercial secret to carry out operations that as a competing action may inflict damage on the economic entity;

(f) transfer all data [information] carriers composing a commercial secret (manuscripts, drafts, documents, designs, tapes, punched cards and tapes, diskettes, print-outs, cinema and phone films, models, materials and others) in their possession to the appropriate official or the corresponding department of an economic entity in case they are redundant/laid-off.

(2) These obligations shall be assumed in writing when entering into a labor or any other kind of agreement, or in the process of its execution.

Specialized Subdivisions for Commercial Secrets Protection

9.—(1) In order to provide protection of commercial secrets, economic entities may organize specialized regime units, functions and authorities of which are defined in the relative/appropriate policies, regulations and orders.

(2) The law enforcement agencies and other governmental bodies shall assist specialized regime units of economic entities in carrying out functions vested in them.

Commercial Secret Protection in Interaction of Economic Entities

10.—(1) Negotiating parties (economic entities), including foreign partners, shall specifically determine the content, the composition of data making up a commercial secret, as well as mutual obligations to provide for its confidentiality pursuant to the legislation in carrying out trade and economic, scientific and technological, currency and financial, and other relations [operations].

(2) When entering into an agreement with a foreign partner, confidentiality terms shall be in compliance with the legislation of a country where the agreement is entered into, unless otherwise provided by intergovernmental agreements.

Access to a Commercial Secret

11.—(1) Employees the range of whom is determined by the subject of entrepreneurial activity shall have access to commercial secrets.

(2) The state controlling bodies and other law enforcement agencies based on their authority to supervise and control provided by the legislation shall have the right within their competence and based on a written request to familiarize themselves with information composing a commercial secret.

(3) Seizure of documents on information composing a commercial secret shall be sanctioned by the public prosecutor or his/her deputy and in accordance with the procedure agreed upon with the heads of a relevant institution. Seizure shall be effectuated upon a well-grounded resolution of an investigator.

(4) The officials of these bodies shall bear statutory liability for disclosure of information constituting a commercial secret of an economic entity.

Obligations of Physical Persons and Legal Entities Having Access to Commercial Secrets

12.—(1) Physical persons and legal entities, including executives of the state controlling and supervising bodies, having access to commercial secrets shall be obligated to strictly follow the requirements in respect of its confidentiality and to prevent its leakage of the information to the economic entity's competitors.

(2) Transfer of information constituting commercial secret to other persons may be carried out upon the decision or with the consent of the leader of an economic entity either free-of-charge or for a fee. The person who has received information composing a commercial secret may use it without the right to disclose it to third parties, if otherwise is not provided by the agreement.

Limited Disclosure of a Commercial Secret in Court and in Arbitration Court

13.—(1) In the course of trial of different disputes, courts, arbitration courts and third parties shall be entitled to familiarize themselves with only those parts of objects of commercial secrets that are directly connected with the essence of the dispute in which an economic entity acts either as a plaintiff or as a defendant.

(2) Courts and arbitration courts shall have unlimited access to accounting ledgers and other commercial information only in cases of:

- (a) initiating legal proceedings on bankruptcy or liquidation of an economic entity;
- (b) disputes related to legal succession/inheritance and division of property between spouses;
- (c) disputes between the founders of an economic entity.

Basis for Determining the Fact of Disclosing Commercial Secret

14. Transfer of the information composing a commercial secret to third parties shall entail the effectuation of disciplinary, material, administrative and criminal liability provided that information in question has been kept privileged by an economic entity and entrusted to the person who has been provided with the information without any authorization to disclose it and, therefore, there are losses incurred.

(as amended Law of the KR of June 26, 1998 # 83)

Liability for Commercial Secret Disclosure

15.—(1) In accordance with the legislation, physical and legal entities shall be made liable if found in breach of this law and other normative acts on commercial secrets.

(2) Employees of economic entities, state bodies, as well as individuals, who have illicitly received information composing a commercial secret or seized it, shall be obligated to indemnify for the losses caused to an economic entity or to a subject of entrepreneurship.

Enforcement of the Present Law

16. The present Law comes into force from the moment of publication. (“Erkin Too—Free Mountains”, April 10, 1998, # 43—44)

President of the Kyrgyz Republic
A. Akaev

Adopted by the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic
March 2, 1998
