

**Law of the Republic of Moldova  
ON COMMERCIAL SECRET**

**No. 171-XIII of July 6, 1994  
(Official Gazette "Monitorul Oficial", November 10, 1994, No.13/ 126)**

The Parliament of the Republic of Moldova shall adopt this Law.

This Law sets up legal bases for the protection of the commercial secret on the territory of the Republic of Moldova, liability of natural and legal persons for its disclosure. The objective of the Law is to protect the commercial secrets and to prevent unfair competition during the economic activity.

**Chapter I  
GENERAL PROVISIONS**

**Article 1. The Concept of Commercial Secret**

1. Commercial secret implies information which is not state secret, pertaining to production, technologies, administration, financial activity and other activity carried out by the economic agent, the disclosure of which (communication, leakage) may prove injurious to the economic agent's interests.
2. Information constituting commercial secret is the property of the business agent, or is in the possession, use or at the disposal of the latter, within the limits specified by the agent in compliance with current legislation.

**Article 2. Requirements for the Information Constituting Commercial Secret**

1. Information constituting commercial secret shall meet the following requirements:
  - a) should be of real or potential value for the business agent;
  - b) should not be well-known or accessible according to the legislation;
  - c) should have a meaning that would comply with the implementation by the business agent of the relevant measures, necessary for keeping the information confidential, applying the system of information classification, working out internal regulations designed to keep the information in secret, corresponding marking of the documents and of other information carriers, organization of secret clerk activities;
  - d) should not be state secret and should not be protected by copyright or patented;
  - e) should not contain information about the negative activities of the natural and legal persons, which may prove injurious to the state interests.

**Article 3. Commercial Secret Disclosure**

Commercial secret disclosure implies intentional or unintentional actions carried out by the employees of the economic agent who have access to the information constituting commercial secret, which lead to premature disclosure, usage and uncontrolled dissemination of information.

**Chapter II  
SUBJECT AND OBJECT OF THE COMMERCIAL SECRET**

**Article 4. Subject of the Commercial Secret**

1. Subject of the commercial secret are natural and legal persons from the Republic of Moldova, as well as from other states.

(Paragraph 1 of Article 4 amended by Law no. 1079-XIV of June 23, 2000)

2. The state guarantees to the subject of the commercial secret the right to keep and protect it in the manner envisaged by the legislation.

## **Article 5. Objects of the Commercial Secret**

1. Objects of the commercial secret (know-how) are the economic interests and intentionally concealed information pertaining to various aspects and domains of the economy, such as production, administration, technical and scientific, financial activities carried out by the economic agent, protection of which is conditioned by competition interests and eventual jeopardizing of the agent's economic safety.

(Paragraph 1 of Article 5 completed by Law no. 1079-XIV of June 23, 2000)

2. Groundless attribution of the accessible information to the commercial secret shall be prohibited.

(Paragraph 2 of Article 5 introduced by Law no. 312-XV of June 28, 2001)

3. Contents and volume of information constituting commercial secret shall be defined by the business agent.
4. The following cannot be regarded as object of the commercial secret:
  - a) documents on establishment, as well as documents authorizing to practice business activities and some types of economic activity to be licensed;
  - b) information in the form of statistical reports, as well as reports on economic and financial activities and other data necessary for the verification of calculations correctness and tax payments and other mandatory payments;
  - c) documents pertaining to tax payments and other mandatory payments to the national public budget;

(Subparagraph (c), paragraph 4 of Article 5 in the version of Law no. 390-XV of July 20, 2001)

- d) documents proving solvability;
  - e) information pertaining to personnel number and structure, payroll, working conditions, as well as information pertaining to job vacancies;
  - f) information pertaining to environment pollution, infringement of antimonopoly legislation, violation of labor protection rules, marketing of goods dangerous for the consumers' health, as well as other infringements of legislation and the size of the caused prejudice.
5. The following cannot be regarded as object of the commercial secret of the state and municipal enterprises before privatization and during the process of privatization:
    - a) the amount of property and funds of the enterprise;
    - b) investment of funds in profitable assets (securities) of the other enterprises, in obligations and loans, in joint ventures' equities;
    - c) loan obligations, commercial and other obligations of the enterprise, which proceed from legislation, and from the concluded contracts;
    - d) contracts with private enterprises.
  6. Documents and information belonging to economic agents and financial institutions about banking account operations, including those related to discounts on reciprocal financial obligations, as well as documents confirming the actions performed cannot be regarded as object of the commercial secret of the fiscal authorities and other state control authorities.

(Paragraph 6 of Article 5 introduced by Law no. 390-XV of July 20, 2001)

## **Article 6. Competence and Liability of Subjects of the Commercial Secret**

1. The manner of commercial secret protection under this Law conditions shall be set up by the business agent or by the appointed executive, who shall announce it to the employees who have access to information constituting commercial secret.
2. Infringement by the executive officers of the manner of commercial secret protection, set up by the business agent, or by an executive appointed by him, shall entail legal responsibility.

3. The business agent shall be personally liable for providing necessary conditions ensuring the commercial secret keeping.
4. The business agent shall be personally liable for attributing accessible information to the commercial secret.

(Paragraph 4 of Article 6 introduced by Law no. 312-XV of June 28, 2001)

5. The state shall provide assistance to the business agent in creating necessary conditions ensuring the commercial secret keeping.

### **Chapter III**

## **PROTECTION OF THE COMMERCIAL SECRET AND ACCESS TO IT**

### **Article 7. The Mechanism of Setting up Ways for Commercial Secret Protection**

The subject of the commercial secret shall work out instructions and regulations on ensuring of the commercial secret keeping, which shall specify:

- a) Contents and amount of information constituting commercial secret;
- b) The way of attribution of the notice “commercial secret” to information, works and articles and elimination of this notice therefrom;
- c) The procedure of offering access to the economic agent’s employees and persons involved in its activity to the information constituting commercial secret;
- d) The way of using, recording, keeping and marking of documents, other information carriers and articles which object constitutes a commercial secret;
- e) Organization of control on the manner the information containing commercial secret is used;
- f) The procedure of assuming reciprocal obligations by the economic agents regarding the commercial secret keeping while signing contracts for carrying out some joint activities;
- g) The way of imposing disciplinary measures and penalties, foreseen by the legislation, on the employees who disclosed the commercial secret;
- h) Make the economic agent’s official responsible for keeping the commercial secret safe.

### **Article 8. Obligations of the Economic Agent’s Employees Regarding the Commercial Secret Keeping**

1. The employees of the economic agent having access to information constituting commercial secret shall assume the following obligations:
  - a) to keep the commercial secret which they shall get to know in the process of work and shall not disclose it unless authorized to do so in a due manner, provided that the information constituting commercial secret was not known to them before, or was not transmitted to them by a third person without the obligation to keep its confidentiality;
  - b) to comply with the requirements of instructions, regulations or provisions regarding the ensuring of the commercial secret keeping;
  - c) where strangers try to obtain from them information constituting commercial secret, to announce immediately the relevant executive or the relevant subdivision of the economic agent;
  - d) to keep the commercial secret of the economic agents with whom they have business relations;
  - e) not to use the commercial secret for practicing some activities, which being regarded as competitive, may cause prejudice to the economic agent;
  - f) in case of resignation or dismissal, to pass all information carriers constituting commercial secret (manuscripts, rough copies, documents, drawings, magnetic tapes, punched cards, punched tapes, discs, diskettes, printed stuff, photo and cinema films, samples, materials, etc.) which were at their disposal, to the relevant executive or to the relevant subdivision of the economic agent.

2. The above mentioned obligations shall be assumed in written form on signing the labor contract or any other contract, or in the process of its implementation.

#### **Article 9. Specialized Subdivisions for Commercial Secret Protection**

1. With the view to provide protection of the commercial secret of the big economic agents, special subdivisions with a secret regime may be created, the functions and powers of which shall be reflected in the relevant instructions, regulations and provisions.
2. The legal order protection bodies and other government bodies shall provide assistance to the economic agent's secret regime subdivisions in the course of carrying out the entrusted functions.

#### **Article 10. Commercial Secret Protection in the Course of the Economic Agents' Interaction**

1. During the period when the economic agents maintain economic and commercial, technical and scientific, financial and other business relations, including with foreign partners, the contracting parties shall promptly stipulate the character and contents of information constituting commercial secret, as well as reciprocal obligations regarding the commercial secret keeping in conformity with the current legislation.
2. Where a contract is concluded with a foreign partner, the conditions of keeping the activity's confidentiality shall meet the legal requirements of the country where the contract is concluded, unless otherwise provided by the interstate agreements.

#### **Article 11. Access to Commercial Secret**

1. Access to commercial secret is open to persons appointed by the business agent.
2. State control and order protection bodies, in compliance with the powers legally provided regarding control and supervision, shall have the right, within the limits of their competence, to get acquainted, based on a written application, with information constituting commercial secret, including with information of the financial institutions, and draw up relevant documents which shall permit opening of documents proving legislation infringements.

(Paragraph 2 of Article 11 completed by Law no. 390-XV of July 20, 2001)

3. The chief executives of these bodies shall be legally responsible for the disclosure of information constituting the commercial secret of the economic agent.
4. Other bodies and organizations, including mass media, shall not have the right to request information constituting commercial secret from the economic agent.

#### **Article 12. Obligations of Natural and Legal Persons Who Have Access to Information Constituting a Commercial Secret**

1. Natural and legal persons, including official representatives of state controlling or supervisory authorities, who have access to information constituting a commercial secret, shall be obliged to strictly respect the requirements referring to its non-disclosure, to prevent the information leakage to third parties, its use or acquisition by the third parties without the owner's consent and in a way contrary to fair trade practices (annulment of contract, breach of confidence and inducement to breach, acquisition of secret information by third parties who knew that such an acquisition would imply unfair trade practices, or in regard of whom such unfair trade practices were testified, or were grossly negligent or ignoring that such practices were involved in the acquisition), so long as such information:
  - a) is secret in the sense that is not, in its integrity 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 commercial value because it is secret; and
  - c) has been subject to reasonable provisions for keeping it secret made by the person lawfully in control of the information.

- 2) Where authorization for marketing of pharmaceutical or agricultural chemical products, which include new chemical substances, is conditioned by disclosure of secret data resulting from tests or other secret data, which imply a considerable effort to be proved, these data shall be protected against any unfair commercial use and against any disclosure, except where disclosure is necessary to protect the public, or where steps are taken to ensure that the data are protected against unfair commercial use.

(Article 12 in the version of Law no. 1079/XIV of June 23, 2000)

### **Article 13. Limits of Access to Commercial Secret in the Court of Justice and in the Arbitration Court**

1. In the process of judicial consideration of various disputes, access of the Court of Justice, the Arbitration Court and the third persons to the objects constituting commercial secret shall be permitted only to the extent of direct connection to the subject matter of the dispute, where the economic agent presents itself either as a plaintiff or as a defendant. Legitimate interests related to the protection of industrial and commercial secrets of all parties shall be considered upon submission of adequate evidence.

(Paragraph 1 of Article 13 completed by Law no. 1079-XIV of June 23, 2000)

2. Unrestricted access of the Court of Justice and the Arbitration Court to accounting records and to other commercial documents shall be allowed in the following cases:
  - a) initiation of lawsuits in case of bankruptcy and liquidation of the economic agent;
  - b) disputes concerning the right of succession or the division of the common effects of spouses;
  - c) disputes between the founders of the economic agent.

### **Article 13/1. Consulting Foreign Authorities on Commercial Secret Assurance**

With the view to eliminate alleged violations of laws and regulations of a foreign country, resulting from the actions of citizens of the Republic of Moldova or persons domiciled in the Republic of Moldova, any authority of the foreign country shall be entitled to request that responsible authorities of the Republic of Moldova provide them with publicly non-confidential information of relevance to the matter in question, and with other information available, provided that the domestic law is respected and a mutually satisfactory agreement concerning the respect of the confidentiality of such information is concluded.

(Article 13/1 introduced by Law no. 1079-XIV of June 23, 2000)

### **Article 14. Reasons for Determining of Commercial Secret Disclosure**

Transmission of information constituting commercial secret to third persons shall entail penalties, disciplinary, administrative and criminal liability stipulated by legislation, provided that the information disclosed was kept by the economic agent in secret, that it was duly entrusted to the person who disclosed it without the authorization to do so, and such disclosure prejudiced the economic agent.

### **Article 15. Liability for Commercial Secret Disclosure**

1. Violation of this Law and of other normative acts pertaining to the commercial secret by the natural and legal persons shall entail legal responsibility in compliance with the current legislation.

2. Employees of economic agents, of state organizations, as well as the persons who illicitly received or appropriated information constituting commercial secret shall be obliged to reimburse the damages caused to the economic or business agent.

President of the Republic of Moldova

Mircea SNEGUR

Chisinau, July 6, 1994

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