

THE LAW ON PROTECTION OF UNDISCLOSED INFORMATION

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(consolidated text)

I. GENERAL PROVISIONS

Article 1

This Law shall govern the protection of undisclosed information, which represents a commercial secret, as a specific intellectual property right.

Article 2

Any person, whether domestic or foreign, natural or legal, shall be entitled to the protection of undisclosed information under this Law.

II. SUBJECT AND CONDITIONS OF PROTECTION

Article 3

For the purpose of this Law undisclosed information shall be any form or type of financial, business, scientific, technical, economic or engineering information, including the whole or any portion or phase of any process, procedure, formula, improvement, pattern, plan, design, prototype, code, compilation, program, method, technique, or listing of names, addresses or telephone numbers, whether tangible or intangible, stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

Article 4

(1) Undisclosed information shall be protected under this Law on the condition that it:

- 1) Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- 2) Has commercial value because it is secret; and
- 3) Has been subject to measures taken by the owner to keep the secrecy of the information.

- (2) Measures referred to in paragraph 1, subparagraph 3 of this Article shall include apparent physical inaccessibility of the information and procedures in place for designating and safeguarding of the undisclosed information.

Article 5

The owner of the undisclosed information shall be any natural or legal person who has the legal right to control the use of the information and to transfer such right.

Article 6

Undisclosed information acquired by the person without knowledge or notice that the information is secret at the time of acquisition, shall be entitled to protection under this Law.

III. UNLAWFUL ACQUISITION, USE AND DISCLOSURE OF UNDISCLOSED INFORMATION

Article 7

- (1) The following acts shall constitute wrongful acquisition, use, or disclosure the undisclosed information:
- 1) Acquisition, use or disclosure of such information in a manner contrary to honest commercial practices; or
 - 2) Use or disclosure of such information without the owner's express or implied consent; or
 - 3) Use or disclosure of such information by a person, who at the time of use or disclosure, knew or ought to have known that the information:
 - was received or obtained from or through a person who acquired the information in a manner contrary to honest commercial practices, or
 - was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or
 - was received or obtained from or through a person who owed a duty to the owner to maintain its secrecy or limit its use.
 - 4) Acquisition of such information by a person who knew or ought to have known that it was a undisclosed information, where such information was acquired by accident or mistake.
- (2) For the purpose of this Law, “a manner contrary to honest commercial practices” referred to in paragraph 1 of this Article shall include practices such as breach of contract, breach of confidence, fraud, unlawful acquisition, bribery, misrepresentation, commercial espionage, as well as the acquisition of the

undisclosed information by third persons who knew, or who ought to have known that such practices were involved in the acquisition.

- (3) The unlawful acquisition, disclosure, or use of undisclosed information shall include acquiring, disclosing, or using such information by any method from which the information can be perceived, reproduced, or otherwise communicated, either directly or indirectly.

IV. LAWFUL USE OF UNDISCLOSED INFORMATION

Article 8

- (1) The acquisition and/or use of undisclosed information protected under this Law without that person's express or implied consent shall be lawful if the information was acquired by fair, honest, and lawful means, in accordance with honest commercial practices, through the study, analysis, testing, decompilation, disassembly, observation, evaluation, and/or examination of publicly available records, research, studies, reports, and/or material objects that incorporate the information, unless such acquisition and/or use is prohibited by contract or applicable law or public policy.
- (2) A person who obtained the information in a manner referred to in paragraph 1 of this Article shall have the burden proof in any litigation.

V. UNDISCLOSED TEST OR OTHER DATA

Article 9

- (1) Disclosure and use for commercial purposes of undisclosed test or other data that are required to be submitted to any natural or legal person or government body, as the case may be, as a condition to issue a license for marketing of medicines or agricultural chemical products that utilize new chemical entities, shall be deemed as unlawful acquisition, use, or disclosure of undisclosed information.
- (2) The competent administrative authority, civil servant or an employee of the competent administrative authority must safeguard the data referred to in paragraph 1 of this Article as confidential.
- (3) Data referred to in paragraph 1 of this Article may be disclosed but only if:
 - 1) The competent authority determines that such disclosure is necessary to protect public health, environment, or the public interest; or
 - 2) Action is taken to ensure that prior to disclosure the data are protected against unfair commercial use; or
 - 3) The owner of the data expressly authorizes in writing the disclosure or use for commercial purposes.

- (4) Period of protection against unfair use for commercial purposes shall be determined and set by the authority responsible for issuance of a license for marketing of medicines and medical devices or agricultural chemical products, taking into account the time, effort, and money involved in origination and nature of the data.
- (5) The period referred to in paragraph 4 of this Article shall not be less than five years from the date of issuance of a license for placing into circulation of products referred to in paragraph 1 of this Article, in accordance with the Law on Medicines (RM Official Gazette No.80/04) and the Law on Medical Devices (RM Official Gazette No.79/04).
- (6) For the purposes of this Article, “unfair use for commercial purposes” shall include the use of data by any natural or legal person and/or government body in connection with analyzing, approving, or otherwise reviewing subsequent applications by third persons for issuance of a license for placing into circulation of pharmaceutical or agricultural chemical products that utilize new chemical entities.
- (7) During the period of protection, information referred to in paragraph 1 of this Article, including documents and/or other materials in which such data are incorporated, shall be exempt from public access even where such access is allowed under the provisions of the law governing public access to documents.

VI. CIVIL ACTION FOR PROTECTION OF UNDISCLOSED INFORMATION

Article 10

The owner of any undisclosed information shall have the right to initiate legal proceedings requesting the court to:

- 1) Order refraining from threatening acts and prohibit unlawful acquisition, use, or disclosure of such information;
- 2) Authorize disposal, seizure, destruction or modification of all items incorporating such information, including documents and/or other material in which such information is incorporated if the information can be perceived, reproduced, or otherwise communicated from such, either directly or with the aid of a machine or device;
- 3) Authorize measures which prevent the entry into domestic channels of commerce of imported items incorporating such information, including documents and/or other material in which such data is incorporated if the information can be perceived, reproduced, or otherwise communicated from such, either directly or with the aid of a machine or device;
- 4) Order the payment of damages, including actual loss and loss of profit. If the infringement was done intentionally or by gross negligence, the plaintiff may

- 5) Order the publication of the court's decision at the defendant's expense.

Article 11

The owner of the undisclosed information protected under this Law may request for an injunction from court that conditions future use of such undisclosed information upon payment of a reasonable fee for the period that shall not exceed the period of protection.

Article 12

- (1) At the request of the owner of the undisclosed information referred to in Article 3 of this Law who makes it credible that unlawful acquisition, use, or disclosure of the information or data is imminent, or that irreparable harm is likely to occur, or that there is a reasonable doubt that evidence of that will be destroyed or that it will be impossible to obtain it later, the court may order a provisional measure to secure evidence without prior notice or hearing of person from which the evidence is to be collected.
- (2) For the purposes of paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and questioning of witnesses and expert-witnesses.
- (3) The court order for provisional measures to secure evidence shall be served upon the person from whom evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

Article 13

In order to prevent violation of rights of the owner of undisclosed information referred to in Article 3 of this Law, the court may order a provisional measure of prohibition of placing into the channels of commerce or withdrawing from the channels of commerce of any goods incorporating such information or any goods manufactured based on such information.

Article 14

- (1) The provisional measures may be requested even before filing an action.
- (2) In the case referred to in paragraph 1 of this Article, the court order establishing the provisional measure shall contain the period in which the action has to be filed, which can not be less than 30 days from the day of execution of the provisional measure.
- (3) An appeal lodged against a court decision setting the provisional measure shall not stay the execution of such decision.

- (4) Provisional measures referred to in paragraph 1 of this Article shall cease to have effect where proceedings leading to a decision on the merits of the case are not initiated within a period referred to in paragraph 2 of this Article.

Article 15

The court may order the owner of undisclosed information to provide a security sufficient to protect the defendant and to prevent abuse of law.

Article 16

Where the provisional measures are revoked or where they lapse due to any act or omission by the owner, or where it is subsequently found that there has been no violation or threat of violation of the owner's right, the court shall have the authority to order the owner, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

Article 17

Prohibition of unlawful use of undisclosed information protected under this Law, shall cease to have an effect when such information is no longer entitled to protection.

VII. PRESERVATION OF SECRECY

Article 18

The courts and other competent authorities shall preserve the secrecy of undisclosed information protected under this Law. Obligation of preservation of secrecy includes *inter alia* holding *in camera* hearings, restricting access and use of such information and ordering any person involved in the proceedings not to disclose such information without prior court approval.

VIII. PENAL PROVISIONS

Article 19

- (1) Any administrative authority, commercial entity, other legal person or an entrepreneur that commits any act of unlawful acquisition, use or disclosure of undisclosed information referred to in Article 7 of this Law shall be fined for the offence in the amount equal to 200-300 minimal wages in Montenegro.
- (2) Where an offence referred to in paragraph 1 of this Article, is committed by a legal entity, responsible person in such entity shall be fined in the amount equal to 20 minimal wages in the Montenegro.

Article 20

- (1) Any materials suspected to be subject to an offence referred to in Article 18 of this Law may be seized until the end of the proceedings.
- (2) An appeal lodged against a decision referred to in paragraph 1 of this Article shall not stay the execution of that decision.

Article 21

- (1) Materials being subject to an offence, including documents and/or other material in which such information or data is incorporated by any from which the data can be perceived, reproduced, or otherwise communicated with the aid of a machine or device, shall be confiscated or destroyed, as the case may be. However, the owner of the undisclosed information shall be entitled to dispose of such objects in any other way found appropriate.
- (2) The magistrate may order the destruction of items used, or intended to be used, in any manner or part, to commit or facilitate committing of the offence taking into consideration the nature, scope, and proportionality of the use of such items in committing the offense.
- (3) Materials referred to in paragraphs 1 and 2 of this Article may be confiscated and destroyed even if they are not the property of the offender.
- (4) Materials referred to in paragraph 1 of this Article may be confiscated and destroyed even if the procedure was dismissed because it was not possible to administer the procedure due to the fact that the identity of an offender was not known or the offender was not reachable to competent authorities, or due to any other legal obstacles, save in the case where the time period within which the procedure may be initiated has elapsed.
- (5) Any proceeds obtained, directly or indirectly, as the result of an offence shall be confiscated.

Article 22

Where it was determined, after the appropriate proceedings have been performed, that the offence has not been committed, the owner of the materials seized referred to in Article 19 of this Law shall have the right to claim compensation of damages, at the expense of the state budget.

IX. FINAL PROVISION

Article 23

This Law shall come into force on the eighth day following its publication in the “Official Gazette of Montenegro”.