

Unofficial Translation

TRADE SECRETS ACT,  
B.E. 2545 (2002)<sup>1</sup>

—————  
BHUMIBOL ADULYADEJ, REX;  
Given on the 12<sup>th</sup> Day of April B.E. 2545;  
Being the 57<sup>th</sup> Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on trade secrets;

This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which section 29, in conjunction with section 31, section 35, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

**Section 1.** The Act is called the “Trade Secrets Act B.E. 2545 (2002)”.

**Section 2.** This Act shall come into force after the expiration of ninety days from following the date of its publication in the Government Gazette.<sup>2</sup>

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<sup>1</sup> Translated by Ms. Vipatboon Klaosontorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

<sup>2</sup> Published in the Government Gazette, Volume 119, Part 36a, Page 22, dated 23rd April B.E. 2545 (2002))

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**Section 3.** In this Act:

“Trade Secrets” means trade information which has not yet widely known or not yet accessible amongst the persons who are related to such information. It is the information which is useful commercially as it is a secret and it is the information which a commercially trade secret controller uses appropriate measure to maintain its secrecy;

“Trade Information” means any medium which conveys statement, story, fact or any other medium to convey the mentioned and irrespective of the form it is in. It shall mean formula, form, compilations or assembled works, programs, methods, techniques, or processes;

“Production” means making, mixing, compounding or transforming and it shall mean reforming or packaging;

“Sell” means to dispose, distribute, give away or exchange for commercial benefit and this shall include possession with the intent to sell;

“Drug” means drugs under the law on drugs;

“Agricultural chemical product” means a chemical used in agriculture and this shall include chemical used for sanitization or elimination of insects, animals or plants which could damage agriculture;

“Owner of trade secrets” means a person who discovers, invents, complies or create trade information which is a trade secret without infringing trade secrets of others or a person who has the right in test result or trade information which is a trade secret and it shall include the transferee under this Act;

“Controller of Trade secrets” means owner of trade secrets and it shall include a person who possesses, controls or maintains trade secrets;

“Court” means intellectual property and international trade court under the law on the establishment of the intellectual property and international trade court and its procedure;

“Board” means Trade Secrets Board;

“Member” means member of the Trade Secrets Board;

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“Competent Officer” means any person appointed by the Minister to perform the duties under this Act;

“Director General” means the Director General of the Department of Intellectual Property. It shall also include any person assigned by the Director General of the Department of Intellectual Property;

“Minister” means the Minister who has charge and control of this Act.

**Section 4.** The Minister of Agriculture and Co-operative, the Minister of Commerce and the Minister Public Health shall take charge of this Act and have the power to appoint officers, prescribe Ministerial Regulations and Rules for the enforcement of this Act in relation to their responsibilities.

Such Ministerial Regulation and Rules shall come into force after the publication in the Government Gazette.

## CHAPTER I

### Protection of Trade Secrets

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**Section 5.** Trade secrets are transferable.

Owner of trade secrets shall have the right to disclose, deprive of use or use such trade secrets or allow other people to disclose, deprive of use, or use such trade secrets. He or she may establish conditions in order to maintain the secrecy of trade secrets.

Transfer of trade secrets under paragraph one which is not an inheritance shall be conducted in writing with signatures of transferor and transferee. If there is no time period specified in the contract to transfer, it shall be deemed to cover a period of ten years.

**Section 6.** Infringement of right in trade secrets under this Act shall mean: the act of disclosure, deprivation of use or use of trade secrets without being given consent by the

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owner of trade secrets. Such manner is contradictory to the honest commercial practice. The infringer must know or has a reasonable ground to know that such act is contradictory to the mentioned practice.

The manner which is contradictory to the honest commercial practice under paragraph one include a breach of contract, infringement or any other act which is an inducement to infringe confidentiality which is based on trust, bribery, intimidation, coercion, fraud, theft, receiving of stolen property or espionage through electronics or other means.

**Section 7.** Any of the following acts conducted on trade secrets shall not be deemed to be an infringement of rights in trade secrets:

(1) disclosure of use of trade secrets which a person has received it through a juristic act without knowing or without a reasonable ground to know about such trade secrets that another party to the contract has infringed the right in trade secrets of others;

(2) disclosure or use of trade secrets by a governmental agency which supervise the maintenance of trade secrets in the following cases:

(a) when it is necessary to protect health or safety of the public or;

(b) when it is necessary for the benefit of the public where its purpose is not for a commercial one and in such case, the governmental agency which supervise the maintenance of such trade secrets or a governmental agency or a person involved who has the trade secrets has proceed in accordance with the procedure to protect such trade secret from being used in unfair trading activities;

(3) a free discovery which means a discovery of trade secret of others by which a person discovers use invention or making it from his or her knowledge and skills or;

(4) a reverse engineering which means a a discovery of trade secret of others by which a person discovers assesses and critically studies a generally known product in order to find a process which such product was invented, produced or developed. However, in such case, the person who assesses and critically studies must obtain that product in good faith.

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An act under (4) may not be referred to if a person who conducts a reverse engineer has expressed entered into an agreement as otherwise with the owner of trade secret or seller of the reverse engineered product.

**Section 8.** When there is clear evidence stating that any person infringes or is going to conduct any act which will infringe trade secrets, the controller of trade secrets infringed or about to be infringed shall have the following rights:

(1) to request the court for an interim injunction or to temporarily stop such infringement;

(2) to file a case before the court for an injunction and file for a compensation from the person who infringes the right in trade secrets.

Rights under (1) may be acted prior to a file of a case before the court under (2).

**Section 9.** Before exercise the rights under section 8, a controller of trade secrets infringed or about to be infringed and the party may agree to submit the dispute concerning trade secrets to the Board for conciliation or mediation. However, such submission shall not prejudice the right of either party to resolve the dispute through arbitration or litigation in court should the conciliation or mediation fail to settle the dispute.

Submission and procedure to consider conciliation or mediation of the Board under paragraph one shall be in accordance with rules and procedures prescribed in the Ministerial Notification.

**Section 10.** No case shall be filed concerning an infringement of rights of trade secret when the limitation of three years has lapsed. The time limitation begins from the day the controller of trade secrets infringed know of the infringement and knows the identity of the wrongdoer. However, this shall not exceed ten years from the day of infringement.

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## CHAPTER II

## Consideration of cases concerning trade secrets

**Section 11.** When a controller of trade secret file a case before the court for an injunction under section 8(2), and if the court rules that there is an infringement of rights of trade secrets but there is an extra circumstance which is not appropriate to grant such order, the court may consider an order where the infringer must pay compensation for the appropriate amount and specify that that person shall continue to use that trade secret for the amount of time the court sees fit.

In the case where the court grants an order under section 8(2) stating for a discontinue infringement of trade secrets, if that trade secret has been disclosed widely or have ceased to be trade secrets later on, the person enjoined by the court can file a petition to have the order rescinded.

In the case where the court grants an order under section 8(2), the controller of trade secrets may ask the court to grant an order to destroy or confiscate materials, apparatus, tools or other equipments used in the infringement of trade secrets.

A product made from an infringement of trade secrets which its ownership is still vested in the infringer shall dissolve on the state or on the controller of trade secret as the court orders or if the possession of such product is an offence under the law, the court may order for a destruction of such product.

**Section 12.** In the case where a controller of trade secrets where such secret is on the production process of product files a case before the case against the infringer in a civil case, if the controller of trade secrets can prove that the product which the infringer produced is the same as the product produced by the production process which is his or her trade secret, it shall be assumed that the infringer uses the trade secret to produce such product except if the infringer has proven otherwise.

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**Section 13.** In determining compensation when there is a file of the case before court under section 8(2), the court is empowered to apply the following rules:

(1) besides of determining compensation in respect of actual loss, the court may order the infringer to return benefits derived from or in relation to the infringement by calculating it together with the compensation;

(2) in the case where it is not possible to determine compensation under (1), the court may determine compensation to the controller of trade secrets for the amount the court sees fit;

(3) in the case where it appears to have a clear evidence that the infringement of trade secrets was conducted willfully or maliciously which results in such trade secret being ceased to be trade secrets, the court may order the infringer to pay for punitive damages in addition to what the court determined under (1) or (2) but not exceeding two time of the compensation under (1) or (2).

**Section 14.** The enforcement of rights through court for protection of trade secrets and the procedure for trade secret litigation besides of what is in this Act shall be governed by the law establishing the intellectual property and international trade court and the procedure on considering intellectual property and international trade cases.

### CHAPTER III

#### Maintenance of trade secrets by governmental agencies

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**Section 15.** In the case where the law requires an applicant for production, importation, exportation or sale of agricultural drugs or chemical which uses new chemicals to submit information with the application to governmental agencies and if the information whether or not wholly or partly is a trade secret concerning the result of the test or any other information relating to production, discovery or creativity with a great deal of effort and the

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applicant has request the governmental agency to maintain its secrecy, the governmental agency shall have duties to maintain such trade secret from being disclosed, deprived of or used in unfair trading activities as prescribed by the Ministerial Rules.

The Rule under paragraph one shall, at least, contains the following conditions:

- (1) conditions in request submitted to governmental agencies for maintenance of trade secrets;
- (2) details of testing result and information that is qualified as trade secrets;
- (3) time limitation of the maintenance of trade secrets;
- (4) method of maintenance of trade secrets by considering the type of technology and the testing result or secret information and;
- (5) duties and responsibilities of governmental officials in the maintenance of trade secrets.

#### CHAPTER IV

#### Trade Secrets Board

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**Section 16.** There shall the Trade Secrets Board consisting of chairperson and members of not exceeding thirteen persons appointed by the Council of Ministers from people who are specialized in the field of science, engineering, industry, agriculture, pharmaceutical, international trade, economics, law or any other fields which is useful for the execution of this Act. Amongst these people, there shall be an appointment of, at least, six qualified person from the private sector.

The Director General shall be secretary.

The Board may appoint government official of the Department of Intellectual Property of no less than two people as assistants to secretary.

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**Section 17.** The chairperson and members shall not be in a position or being a person having interest in partnerships, companies or other business organizations.

**Section 18.** The chairperson and members under section 16 shall hold an office for a term of four years.

In the case where the chairperson or member vacates an office before the expiration of term, or in the case where the Council of Ministers appoints an additional member during the time where appointed members are still in office, the appointee whom he or she replaces or in addition of the position shall be in office for the remaining time of the existing appointed Board members.

The chairperson or a member who vacates office upon expiration of term shall be re-appointed but not more than one consecutive term.

**Section 19.** In addition to vacating office on the expiration of term, a member of the Board vacates office upon:

- (1) death;
- (2) resignation;
- (3) being removed by the Council of Ministers;
- (4) malfeasance, dishonesty or incompetence;
- (5) being bankrupt;
- (6) being incompetent or quasi-incompetent;
- (7) having been sentenced by a final judgment of the Court to a term of imprisonment except for an offence committed through negligence or a petty offence;
- (8) a conduct not permitted under section 17.

**Section 20.** At a meeting of the Board, the presence of not less than one-half of existing members is required to constitute a quorum.

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In the case where the chairperson cannot be present at a meeting or unable to perform his or her duties, the existing members shall select one member to preside over the meeting.

A resolution of a meeting shall be by a majority of the votes. In casting votes, each member shall have one vote. In case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote and is the decisive vote.

The chairperson or member who has interest in the matter considered shall not participate the meeting in such matter.

**Section 21.** The Board shall have the following duties and powers:

- (1) to propose opinion on policies and measures in protection of trade secrets and policies on transfer of technology relating to trade secrets to the Minister of Commerce to consider for submission to the Council of Ministers;
- (2) to provide advice or consultation to the Minister in issuance of Ministerial Regulations and Rules under this Act;
- (3) to conduct conciliation or mediation relating to trade secrets as requested by the parties;
- (4) to perform any other acts as prescribed by law as powers and duties of the Board.

**Section 22.** The Board may appoint sub-committee to consider, decide or perform any act as assigned by the Board.

Section 20 shall apply to meeting of the sub-committee *mutatis mutandis*.

**Section 23.** For the execution of this Act, except in the case under section 21 (3), the Board shall have power to order, in writing, any person to give statement or information or to deliver documents or materials for its consideration as necessary.

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An order under paragraph one shall specify clear details about the matter which the Board wishes to request such person to give statement or information or to deliver documents or materials.

**Section 24.** Subpoena, notification or any other letter sent to any person for the execution of this Act shall be sent via registered mail with receipt address to the domicile, place of residence, or place of business of that person or by any other means prescribed by the Board.

In the case where it cannot be sent by the mentioned means under paragraph one or such person has left the Kingdom, the letter may be affixed in a place where it is easy to be noticed at the domicile, place of residence, or place of business of that person or at a house where such person last appears in the house registration under the law on civil registration, or by publication in the newspaper in that locality.

When the above-mentioned means of delivery has been conducted, it shall be deemed that the recipient has received the message

The methods of delivery of subpoena, notification or any other letters and rights of objection of a person who has interest shall be as prescribed in the Rule by the Board and published in the Government Gazette.

**Section 25.** Department of Intellectual property shall have powers and duties in the execution of trade secrets under this Act and is responsible for administration, meetings, research studies, and other operation relating to the work of the Board including responsibilities to execute the Board's resolutions, to coordinate with other relevant entities concerning the performance of duties under this Act and to perform any other functions as assigned by the Board.

**Section 26.** For the execution of this Act, the chairperson and board members shall be competent officials under the Criminal Code.

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CHAPTER V  
Competent officials

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**Section 27.** In performing the duties concerning criminal cases under this Act, competent officials shall have the following powers:

(1) to enter a building, office, factory, warehouse or vehicle of any person for the purpose of searching or examining when there is a reasonable doubt that such goods obtained or produced from the wrongdoing or was a part for committing an offence under this Act and there is a reasonable ground to believe that it would be too late if waiting for the search warrant to be granted, document or articles relating to the offence may be moved or destroyed. However, this is during sunrise and sunset or during working hours of such place;

(2) to seize or to confiscate, for a period of not exceeding three months, documents or objects relating to the offence for the purpose of legal proceedings when there is a reasonable doubt that an offence according to this Act is committed;

**Section 28.** In performing duties of a competent official, a person concerned shall provide convenience as appropriate.

**Section 29.** In performing duties under section 27, a competent official shall present any person concerned his identification card.

The identification card under paragraph one shall be in accordance with the form prescribed by the Minister.

**Section 30.** In performing the duties under this Act, a competent official shall be an official under the Criminal Code.

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## CHAPTER VI

## Penalties

**Section 31.** Any person who obstructs the performance of duty of the competent official under section 27 shall be liable to imprisonment for a term of not exceeding one year or to a fine not exceeding twenty thousand baht or to both.

**Section 32.** Any person who fails to provide convenience to the competent official in the course of performance of duty under section 28 shall be liable to imprisonment for a term of not exceeding one month or to a fine not exceeding two thousand baht or to both.

**Section 33.** Any person who discloses trade secrets of others to the public in a manner which results in trade secret being ceased to be a secret with malicious intent to cause damage to the business of the controller of trade secrets, whether or not by publication, audio or image broadcasting or by any other means shall be liable to imprisonment for a term of not exceeding one year or to a fine not exceeding two hundred thousand baht or to both.

**Section 34.** Any person who has duties to maintain trade secret in accordance with the Rule prescribed under section 15 paragraph one unlawfully discloses or use such secret for his or her own benefit or for the benefit of others shall be liable to imprisonment for a term of between five to ten years or to a fine of between one to two million baht or to both.

**Section 35.** Any person who discloses facts concerning business of the controller of trade secrets which should normally be kept secret which he or she has obtained or known of during the course of performance of duty under this Act shall be liable to imprisonment for a term of between five to seven years or to a fine of between five hundred thousand to one

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million baht or to both except for a disclosure during the course of official duty or made for the benefit of investigation or legal proceedings.

Any person who discloses facts, which have been obtained or aware of as a result of his or her engagement in official duty, investigation or legal proceedings, shall be subject to the same liability.

**Section 36.** In the case where the offender liable is a juristic person, if the offence of such juristic person came from an order, act, failure to order or failure to act which is a duty of the Board, manager or any person who is responsible for the operation of such juristic person, that person shall be liable for the punishment prescribed for such offence as well.

**Section 37.** The offence under section 33 and section 36 is a compoundable offence.

**Section 38.** For the offence under section 33 and section 36, the Board shall have powers to impose a fine on the offenders and in this matter, the Board shall have powers to assign the sub-committee, Director-General, investigation official or competent official to impose a fine and the Board may specify rules in imposing fine or any conditions to the assignee as sees fit.

Under the application of provision of paragraph one, for the investigation, if the investigation official finds that an offender under this Act and such person agrees to a fine, the investigation official shall submit the matter to the Board or the person assigned by the Board to impose a fine under paragraph one within seven days from the day that that person has agreed to a fine.

When the offender has paid a fine within the specified time period, the case shall be considered as close under the provision of the Criminal Procedure Code.

If the offender does not consent to the fine, or after the consent, he fails to pay the fine within the specified period, the case shall proceed.

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**Transitory Provision**

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**Section 39.** This Act shall not be applied to any disclosure, derived of, or use of trade secrets before the Act comes into force.

Any product which was produced, imported or exported before this Act comes into force and it is a product which violates this Act, the possessor shall dispose of or export such product within one year from the day that this Act has come into force.

Countersigned

Police Lieutenant Colonel Thaksin Shinawatra  
Prime Minister

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