

[In the framework of a negotiation for a cross-investment agreement between the State of Northland and the Republic of Coastland, the text of the Law on Trade Secrets was drafted jointly by experts appointed by the governments of the two states before being approved respectively and separately by the parliaments of these two states. As a result, the Law on Trade Secrets of Coastland and the Law on Trade Secrets of Northland are identical.]

LAW ON TRADE SECRETS

CHAPTER I: Subject Matter, Scope, and Definitions

Article 1. Subject Matter and Scope

1. This Law lays down rules for the protection of trade secrets against unlawful acquisition, use, and disclosure.
2. A civil action for misappropriation of a trade secret may be brought if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.
3. This Law shall not affect the exercise of the right to freedom of expression and information, including media freedom and pluralism.
4. Nothing in this Law shall restrict the mobility of employees, particularly by limiting their use of information that does not constitute a trade secret or limiting their use of experience and skills honestly acquired in the normal course of their employment.

Article 2. Definitions

For the purposes of this Law:

1. **'Trade secret'** means information which meets all of the following requirements:
 - (a) it 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;
 - (b) it has commercial value because it is secret, and its unlawful acquisition, use, or disclosure is likely to harm the interests of the person lawfully controlling it; and
 - (c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
2. **'Trade secret holder'** or **'owner'** means any natural or legal person lawfully controlling a trade secret.
3. **'Misappropriation'** means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was derived from or through a person who had used improper means to acquire the trade secret, or acquired under circumstances giving rise to a duty to maintain secrecy or limit its use; or

(iii) before a material change of the position of the person, knew or had reason to know that the information was a trade secret and that knowledge had been acquired by accident or mistake.

4. **'Improper means'** includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

5. **'Infringing goods'** means goods, the design, characteristics, functioning, production process, or marketing of which significantly benefits from trade secrets unlawfully acquired, used, or disclosed.

CHAPTER II: Acquisition, Misappropriation, and Exceptions

Article 3. Lawful Acquisition and Means

1. The acquisition of a trade secret shall be considered lawful when obtained by any of the following means:

(a) Independent discovery or creation.

(b) Observation, study, disassembly, or testing of a product or object that has been made available to the public or is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret. Reverse engineering or independent derivation shall not be considered improper means.

(c) Exercise of the right of workers or workers' representatives to information and consultation in accordance with law.

(d) Any other practice which, under the circumstances, is in conformity with honest commercial practices.

2. The acquisition, use, or disclosure of a trade secret shall be considered lawful to the extent that such acquisition, use, or disclosure is required or allowed by law.

Article 4. Unlawful Acquisition, Use, and Disclosure

1. Acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful whenever carried out by:

(a) Unauthorized access to, appropriation of, or copying of any documents, materials, or electronic files lawfully under the control of the trade secret holder, containing the trade secret or from which it can be deduced.

(b) Any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

2. The production, offering, or placing on the market of infringing goods, or the importation, export, or storage of infringing goods for those purposes, shall also be considered unlawful use of a trade secret where the person carrying out such activities knew, or ought to have known, that the trade secret was used unlawfully.

Article 5. Exceptions and Immunity

1. An application for measures or remedies shall be dismissed where the alleged acquisition, use, or disclosure of the trade secret was carried out for the purpose of:

(a) Exercising the right to freedom of expression and information; or

(b) Revealing misconduct, wrongdoing, or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest.

2. An individual shall not be held criminally or civilly liable for the disclosure of a trade secret that is made in confidence to a governmental official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law.

3. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may use the trade secret information in the court proceeding, provided the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

4. Employers shall provide notice of the immunity set forth in this Article in any contract or agreement with an employee (including contractors or consultants) that governs the use of a trade secret. If an employer does not comply with this notice requirement, the employer may not be awarded exemplary damages or attorney fees against the employee to whom notice was not provided.

CHAPTER III: Remedies and Procedures

Article 6. General Provisions and Limitation Period

1. Measures, procedures, and remedies shall be fair and equitable, effective and dissuasive, proportionate, and avoid the creation of barriers to legitimate trade.

2. A civil action may not commence later than three years after the date on which the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. A continuing misappropriation constitutes a single claim.

Article 7. Confidentiality in Legal Proceedings

1. All persons participating in legal proceedings relating to the unlawful acquisition, use, or disclosure of a trade secret (including parties, lawyers, court officials, witnesses, and experts) shall not be permitted to use or disclose any trade secret or alleged trade secret identified by the judicial authorities as confidential. This obligation shall remain in force after the legal proceedings have ended.
2. The competent judicial authorities shall take specific measures to preserve confidentiality, including:
 - (a) Restricting access to any document containing trade secrets submitted by the parties or third parties to a limited number of persons.
 - (b) Restricting access to hearings, when trade secrets may be disclosed, and the corresponding record or transcript.
 - (c) Making available a non-confidential version of any judicial decision, in which passages containing trade secrets have been removed or redacted.
3. The limited number of persons having access shall be no greater than necessary and shall include, at least, one natural person from each party and the respective lawyers or representatives of those parties.
4. The court shall take appropriate action to protect the person against whom an order is directed from publicity about the order and any seizure.

Article 8. Injunctions and Corrective Measures

1. The competent judicial authorities may grant an injunction to prevent any actual or threatened misappropriation.
2. The injunction order shall not prevent a person from entering into an employment relationship, and any conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows.
3. The judicial authorities may order corrective measures with regard to infringing goods, including:
 - (a) Prohibition of the production, offering, placing on the market, or use of infringing goods, or their importation, export, or storage.
 - (b) Recall of the infringing goods from the market.
 - (c) Destruction of the infringing goods or, where appropriate, their withdrawal from the market.
 - (d) Destruction or delivery up of all or part of any document or electronic file containing or embodying the trade secret.

4. The duration of cessation or prohibition measures shall be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful conduct.

5. The judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying an injunction or corrective measure if:

- (a) The person concerned, at the time of use or disclosure, did not know or ought not to have known that the trade secret was obtained unlawfully;
- (b) Execution of the measures would cause that person disproportionate harm; and
- (c) Pecuniary compensation appears reasonably satisfactory.

Article 9. Provisional and Precautionary Measures, Including Seizure

1. The competent judicial authorities may order provisional and precautionary measures, including: (a) The cessation or prohibition of the use or disclosure of the trade secret on a provisional basis. (b) The seizure or delivery up of the suspected infringing goods. (c) Making the continuation of the alleged unlawful use of a trade secret subject to the lodging of guarantees intended to ensure compensation of the trade secret holder (provided disclosure of the trade secret in return for guarantees is not allowed).

2. Civil Seizure in Extraordinary Circumstances: Based on an affidavit or verified complaint, the court may issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret, but only in extraordinary circumstances and upon *ex parte* application.

3. The court may not grant an *ex parte* seizure application unless it finds that:

- (a) An order issued pursuant to standard equitable relief (like an injunction) would be inadequate because the party against whom the order would be issued would evade, avoid, or otherwise not comply with such an order.
- (b) An immediate and irreparable injury will occur if seizure is not ordered.
- (c) The harm to the applicant outweighs the harm to the legitimate interests of the person against whom seizure is ordered and substantially outweighs the harm to any third parties.
- (d) The person obtaining the order must provide adequate security for the payment of damages resulting from a wrongful or excessive seizure.

4. Seizure orders shall provide for the narrowest seizure of property necessary to achieve the purpose and direct that the seizure minimizes interruption of legitimate business operations. Any seized materials shall be taken into the custody of the court. The court may appoint a special master to locate and isolate misappropriated trade secret information.

5. The court shall set a date for a hearing not later than seven days after the seizure order has issued.

Article 10. Damages

1. The court shall order an infringer who knew or ought to have known that he, she, or it was engaging in unlawful conduct to pay the trade secret holder damages appropriate to the actual prejudice suffered.
2. When setting damages, the court shall take into account all appropriate factors, such as lost profits suffered by the injured party, any unfair profits made by the infringer, and, where appropriate, moral prejudice caused.
3. Alternatively, the court may set damages as a lump sum based on the amount of royalties or fees which would have been due had the infringer requested authorization to use the trade secret.
4. If the trade secret is willfully and maliciously misappropriated, the court may award exemplary damages in an amount not more than twice the amount of the damages awarded for actual loss and unjust enrichment.
5. If a claim of misappropriation is made in bad faith, or if the trade secret was willfully and maliciously misappropriated, the court may award reasonable attorney's fees to the prevailing party.

Article 11. Publication of Judicial Decisions and Sanctions

1. The court may order appropriate measures for the dissemination of information concerning the decision, including publishing it in full or in part, at the expense of the infringer.
2. Any measure involving publication shall preserve the confidentiality of trade secrets. The court must also consider whether publication would disproportionately affect the privacy and reputation of a natural person.
3. The court may impose effective, proportionate, and dissuasive sanctions on any person who fails or refuses to comply with measures adopted pursuant to this Law, including the possibility of imposing recurring penalty payments.