

The Development of the Concept of a Trade Secret in Latvian Law

Keywords: *the concept of a trade secret, holders of a trade secret, the Commercial Law, the Trade Secret Protection Law*

1. The notion of a trade secret, i.e. undisclosed information or material object of economic nature, is significant for Latvian Private Law. Until recently, trade secrets were regulated in the Commercial Law of Latvia. Only merchants (commercial companies and individual merchants registered in the Commercial Register) were entitled to trade secrets. In 2019 the Trade Secret Protection Law was introduced by the Saeima (the Parliament of Latvia). By adoption of the Trade Secret Protection Law, the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure was implemented in Latvia. Under the Trade Secret Protection Law any person can own a trade secret and claim legal protection of it.

2. In July 2021 the Saeima introduced few changes in the Commercial Law. Article 19 governing trade secrets was completely deleted from the Commercial Law. Thus, from 1 August 2021 onwards trade secrets in Latvia are governed by the Trade Secret Protection Law. However, the old regulation of the Commercial Law is still quite significant for understanding the concept of a trade secret. According to the deleted Article 19 a merchant could assign the status of a trade secret for objects of economic, technical or scientific nature and information. These objects had to correspond with a number features. Among other criteria, trade secrets had to be of an actual or potential financial or non-financial value, their coming at the disposal of another person had to cause losses to the merchant and they had to be kept in reasonable safety. Moreover, Article 19 was located in the chapter of the Commercial Law on merchant's enterprise. Under Article 18 of the Commercial Law, an enterprise is an organisational unit of economic nature that includes both tangible and intangible things belonging to a merchant, as well as other economic benefits (value), which are used by the merchant to perform commercial trade. Although trade secrets are no more expressly mentioned in the Commercial Law, they are economic benefits and as such part of an enterprise.

3. Despite the legal significance of trade secrets, court jurisprudence in Latvia in these matters is still limited. Understandably, the available judgments relate to the previous trade secret regulation in the Commercial Law. A merchant, according to the Supreme Court, is free to assign the status of a trade secret to objects of his choice. However, these objects should be kept secret since secrecy is necessary feature of a trade secret. Things or information widely known or published are not trade secrets. In another judgement the Supreme Court says: if a court or an institution, contrary to the standpoint of the merchant, do not view an object as a trade secret, such opinion should be well argued and, when necessary, based on expert's conclusions. Thus, the Supreme Court has assessed some important features of trade secrets. More court jurisprudence is yet to come, especially concerning the new regulation of trade secrets in the Trade Secret Protection Law.

4. Article 2 of the Trade Secret Protection Law defines a trade secret as an undisclosed information of economic nature, technological knowledge, or scientific or any other information which conforms to all of the following three requirements: 1) it is secret in the sense that it is not generally known among or available to persons who normally use such kind of information, 2) it has actual or potential commercial value because it is secret and 3) the holder, under the circumstances, has taken appropriate and reasonable steps to maintain secrecy of the trade secret. According to this law, a trade secret holder is any natural or legal person who has lawfully acquired the trade secret and is entitled to administer (control) it, inter alia, to use and disclose it. The Trade Secret Protection Law contains a set of rules on legal remedies against unlawful acquisition, use, or disclosure of a trade secret. These rules are much more detailed than the former very basic regulation of trade secret protection in the Commercial Law.

5. The Trade Secret Protection Law of Latvia which is based on EU Directive 2016/943 undoubtedly is a step forward in comparison with previous regulation of trade secrets in the Commercial Law. The wording of the Article 19 of the Commercial Law expressly associated trade secrets with merchants only. Under the new law trade secrets can be held by any person including entrepreneurs or self-employed persons who are not merchants. I.e. farmers, lawyers, doctors or other independent professionals. On the other hand, the complete deletion of the Article 19 from the Commercial Law was not necessary. The official explanation for this move was avoiding similarities and confusions. In reality, the deleted provisions were no obstacle to the Trade Secret Protection Law. Article 19 of the Commercial Law was an integral part of the legal provisions on merchant's enterprise and emphasised trade secrets as elements of such an enterprise.