The *Saeima*1 has adopted and

the President has proclaimed the following law:

**Trade Secret Protection Law**

**Chapter I**

**General Provisions**

**Section 1. Purpose of this Law**

The purpose of this Law is to ensure efficient protection of a trade secret, in particular against unlawful acquisition, use, or disclosure thereof.

**Section 2. Trade Secret and Trade Secret Holder**

(1) A trade secret is undisclosed information of an economic nature, technological knowledge, and scientific or any other information which conforms to all of the following 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;

3) the trade secret holder, under the circumstances, has taken appropriate and reasonable steps to maintain secrecy of the trade secret.

(2) The trade secret holder means 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.

**Section 3. Restrictions on and Exceptions for the Application of the Protection of a Trade Secret**

(1) Information which is related to the implementation of State administration functions or tasks and also – in the cases specified in laws and regulations – actions with State or local government financial resources or property cannot be regarded as a trade secret.

(2) In accounting, information and data which in accordance with laws and regulations are subject to inclusion in the reports of natural or legal persons performing economic activity cannot be regarded as a trade secret. All remaining information in accounting shall be regarded as a trade secret and shall be only available to auditors, tax administration, law enforcement authorities, courts and also other authorities in the cases specified in laws and regulations.

(3) The provisions of this Law in relation to measures, procedures, or legal remedies against the acquisition, use, or disclosure of a trade secret shall not be applied to the parties to a collective labour agreement, insofar as it concerns information required for entering into a collective labour agreement or amending thereof.

(4) Exceptions in relation to the application of the protection of a trade secret may be provided for in other laws and regulations.

**Chapter II**

**Acquisition, Use, and Disclosure of a Trade Secret**

**Section 4. Lawful Acquisition of a Trade Secret**

The acquisition of a trade secret shall be considered lawful if the trade secret has been obtained by any of the following means:

1) as a result of an independent discovery or creation process;

2) as a result of observation, study, disassembly, or testing of a product or object that is generally available to the public or the acquisition whereof has not been restricted by the trade secret holder;

3) employees or their representatives have exercised the right to obtain information and to consult in accordance with laws and regulations and the existing practice;

4) on the basis of a contract or a licence;

5) in a public procurement or within the scope of implementing other State administration functions or tasks;

6) a natural or legal person requests issuing thereof on the basis of the protection of essential public interests and the disclosure of the trade secret is proportionate to the potential harm to the trade secret holder;

7) any other way which, under the circumstances, conforms to honest commercial practices.

**Section 5. Unlawful Acquisition, Use, or Disclosure of a Trade Secret**

(1) Unlawful acquisition, use, or disclosure of a trade secret without the permission of the trade secret holder shall be an infringement of rights if it has occurred:

1) by unauthorised acquisition of information – by accessing such documents, objects, materials, substances, or electronic files which are administered by the trade secret holder and which contain or it could be reasonably presumed that they contain a trade secret and also misappropriating or copying such documents, objects, materials, substances, or electronic files;

2) when a person was aware of or, under the circumstances, he or she should have been aware of the unlawful acquisition, either directly or indirectly, of a trade secret, including from another person who used or disclosed the trade secret unlawfully;

3) as a result of an infringement of the obligation specified in a law or regulation or the contract, and also any other obligation not to disclose the trade secret or to restrict the use thereof;

4) in any other way which does not conform to honest commercial practices.

(2) A person shall not be held liable for unlawful acquisition, use, or disclosure of the trade secret if the trade secret has been acquired, used, or disclosed in any of the following cases:

1) to exercise the rights to freedom of expression and information, inter alia, in conformity with the freedom of media and variety of views, or to detect an infringement, abusive practice, or unlawful act if the alleged infringer has acted for the purpose of protecting the general interests of the public;

2) employees have disclosed the trade secret to their representatives if such disclosure to representatives is necessary for the purpose of performing the functions specified in laws and regulations;

3) to protect the lawful interests of persons specified in laws and regulations.

(3) The manufacture, offering, or placing on the market of such goods the design, characteristics, functioning, manufacturing process, or marketing whereof significantly benefits from an unlawfully acquired, used, or disclosed trade secret (hereinafter – the infringing goods), or the import, export, or storage of the infringing goods for the abovementioned purposes is also regarded as unlawful use of the trade secret if the person who carries out such activities was aware of or should have been aware of the unlawful acquisition or use of the trade secret.

**Section 6. Informing of a Trade Secret and the Protection Thereof**

(1) The trade secret holder, upon providing information to a natural or legal person, court, or State administration institution, shall indicate that such information is a trade secret and also inform of the necessity to ensure the protection of the trade secret.

(2) A trade secret is restricted access information within the meaning of the Freedom of Information Law until the trade secret holder informs in writing of termination of the trade secret status or when the relevant information has become generally known or available to other persons on a legal basis.

**Section 7. Limitation Period**

An action against a person who has acquired, used, or disclosed a trade secret unlawfully may be brought within three years from the date on which the trade secret holder became aware of or should have become aware of an unlawful acquisition, use, or disclosure of the trade secret.

**Chapter III**

**Legal Remedies**

**Section 8. Types of Legal Remedies**

(1) If unlawful acquisition, use, or disclosure of a trade secret is established in a case regarding the protection of a trade secret against unlawful acquisition, use, or disclosure, the trade secret holder has the right to request the application of the prohibition to perform certain activities and recovery of compensation for damages.

(2) The trade secret holder may request the application of one or several of the following legal remedies only concurrently with the legal remedies referred to in Paragraph one of this Section:

1) destruction or transfer of the materials containing a trade secret;

2) recall or withdrawal from the market of the infringing goods;

3) elimination of the infringing features of the infringing goods;

4) destruction of infringing goods;

5) publication of the judgment.

**Section 9. General Provisions for the Application of Legal Remedies**

Upon application of a legal remedy, the court shall assess the proportionality of the application of such remedy, considering the relevant circumstances, inter alia, where possible:

1) the value of the trade secret or other specific features of the trade secret;

2) the measures taken to protect the trade secret;

3) the conduct of the infringer in acquiring, using, or disclosing the trade secret;

4) the probability of further unlawful use or disclosure of the trade secret by the infringer;

5) the consequences of unlawful use or disclosure of the trade secret;

6) the legitimate interests of the parties, third persons, and the public;

7) the protection of fundamental rights.

**Section 10. Prohibition to Perform Certain Activities**

(1) Upon application of the prohibition to perform certain activities, the court shall determine:

1) a prohibition to use or disclose the trade secret;

2) a prohibition to manufacture, offer, place on the market, or use the infringing goods or to import, export, or store them for the abovementioned purposes.

(2) If the duration of the prohibition to perform certain activities is limited, the duration of the prohibition should be sufficient to eliminate any commercial or economic advantage which the infringer could have obtained as a result of the unlawful acquisition, use, or disclosure of the trade secret.

(3) If after entry into effect of a court judgment such circumstances set in which, either directly or indirectly, cannot be associated with the defendant and as a result of setting in of such circumstances the relevant information can no longer be regarded as a trade secret, the defendant is entitled to address the trade secret holder to ascertain about the loss of the trade secret status and the parties can agree in writing that the prohibition to perform certain activities specified in the judgment is no longer applicable to the defendant. If the trade secret holder fails to confirm in writing the loss of the trade secret status within a reasonable period of time, the defendant is entitled to bring an action to a court regarding removal of the prohibition to perform certain activities.

**Section 11. Conditions of Application of the Compensation for Damages**

(1) The trade secret holder is entitled to request a compensation for material damage and non-material damage incurred due to unlawful acquisition, use, or disclosure of a trade secret from the person who was aware or who should have been aware that he or she is committing an infringement of rights.

(2) Upon requesting a compensation for damages, the trade secret holder may request one of the following types of the compensation for damages for each infringement:

1) a compensation for loss;

2) a recovery of such amount (licence fee) which he or she could receive for granting the right to use the trade secret;

3) a recovery of such profit which due to the infringement has been obtained unfairly by the person who acquired, used, or disclosed the trade secret unlawfully.

(3) The amount of the compensation for non-material damage shall be determined by a court at its own discretion.

**Section 12. Provisions for the Application of Individual Legal Remedies**

(1) If the legal remedy specified in Section 8, Paragraph two of this Law is applied, the trade secret holder may, according to the selected legal remedy, request the court to determine:

1) full or partial destruction of such documents, objects, materials, substances, or electronic files which include a trade secret or are a trade secret, or, where appropriate, transfer of such documents, objects, materials, substances, or electronic files or parts thereof to the relevant trade secret holder;

2) recall or withdrawal from the market of the infringing goods, provided that such withdrawal does not undermine the protection of the relevant trade secret;

3) elimination of the infringing features of the infringing goods;

4) destruction of the infringing goods;

5) publication of information regarding the judgment (inter alia, full or partial publishing of the court judgment in mass media), provided that confidentiality of the trade secret is ensured, excluding or editing excerpts which contain the trade secret.

(2) The court, upon deciding on the application of the legal remedy referred to in Paragraph one, Clause 5 of this Section, in addition to the circumstances indicated in Section 9 of this Law shall also take into account whether information regarding the infringer would allow to identify the natural person and, if so, whether public disclosure of the abovementioned information is justified, in particular considering the potential harm which can be caused by such legal remedy to the privacy and reputation of the infringer.

**Section 13. Substitution of Legal Remedies with Pecuniary Compensation**

(1) The defendant has the right to request for pecuniary compensation in favour of the trade secret holder instead of the legal remedies referred to in Section 10, Paragraph one and Section 12, Paragraph one of this Law, provided that all of the following conditions are established:

1) during the use or disclosure of a trade secret the person concerned was not aware and he or she should not have been aware of the fact that the trade secret was obtained from another person who had used or disclosed it unlawfully;

2) the application of the relevant legal remedies would cause disproportionate harm to the defendant;

3) pecuniary compensation is a satisfactory remedy.

(2) The amount of the payable pecuniary compensation for the substitution of the legal remedy referred to in Section 10, Paragraph one of this Law may not exceed the amount of compensation which could be received by the trade secret holder for granting the right to use the trade secret for the period of time during which the use of the trade secret would be prohibited.

**Informative Reference to European Union Directive**

This Law contains legal norm arising from 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.

The Law shall come into force on 1 April 2019.

This Law has been adopted by the *Saeima* on 28 February 2019.

President R. Vējonis

Riga, 14 March 2019