

A yellow envelope is shown at an angle, partially open. On the front flap, there is a red, distressed-style stamp that reads "TRADE SECRETS" in bold, uppercase letters. To the right of the stamp, a metal fastener with two red circular ends is visible, securing the flap. The envelope is set against a white background.

**TRADE
SECRETS**

NEW LAW ON PROTECTION OF TRADE SECRETS

JPM

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NEW LAW ON PROTECTION OF TRADE SECRETS

By harmonizing the system of protection of trade secrets with the relevant regulations of the European Union - Directive 2016/943 EU of the European Parliament and of the Council of Europe of 8 June 2016 on the protection of undisclosed knowledge and practice and business information (trade secrets) from illegal obtaining, use and disclosure (hereinafter: Directive 2016/943 EU) and Directive 2004/48 /EC of the European Parliament and of the Council of Europe of 29 April 2004 on the enforcement of intellectual property rights (hereinafter: Directive 2004/48 EC), after 10 years, the new Law on Protection of Trade Secrets in the Republic of Serbia is adopted (hereinafter: Law).

On May 27, 2021, the National Assembly of the Republic of Serbia adopted the Law on the Protection of Trade Secrets, which replaced the previously valid Law from 2011. The Law entered into force on June 5, 2021, except for the provisions of Article 17, item 1 in the part related to the application of European Union regulations, that will apply from the date of accession of the Republic of Serbia to the European Union.

While drafting the text of the Law, it was concluded that, for the reason of usefulness, it is necessary to pass a completely new Law, instead of amending the current one, in order for the system of protection of trade secrets to be harmonized with the relevant EU regulations.

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The amendments that occurred with this Law, primarily relate to the specification of the notion of protection of trade secrets, i.e. making a clearer distinction between what is considered legal and what is considered illegal obtaining, using and disclosing of trade secrets, since a lot of room for different interpretations was left in the previous Law. It also prescribes technical and organizational conditions for persons who are obliged to take reasonable measures to preserve the secrecy of trade secrets.

Reasonable measures are defined as drafting of an internal Rulebook on handling trade secrets, persons involved and their rights and obligations, measures of physical and electronic access protection, marking documents with the mark “trade secret”, concluding confidentiality agreements, signing confidentiality statements, etc.

The major novelty in the new Law is a more detailed regulated procedure for a lawsuit in terms of determining the violation and damage compensation. The deadline for filing a lawsuit is now one year, with the statute of limitation increased from 3 years to 5 years as of the date of violation.



TOP SECRET

Given the importance of trade secrets for companies and creating market advantages by maintaining trade secrets, in accordance with the principles applied in the EU, i.e. Directive 2016/943 EU and Directive 2004/48 EC, the adoption of a new law will certainly create greater legal certainty with its more concrete solutions in relation to the Law from 2011.

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Furthermore, by exhaustively listing all temporary measures, an opportunity was given to a person suspected of violating a trade secret, by which he can continue to use a trade secret, provided that he provides bail to secure compensation for damage to the holder of the trade secret. By posting bail, the right to disclose a trade secret is not exercised.

In addition to provisions relating to types of temporary measures and opportunities for persons suspected of violating a trade secret, temporary measures may now be imposed against intermediaries whose services are used by third parties to illegally obtain, use or disclose a trade secret.

In order to harmonize with other regulations such as the Constitution, international regulations, the Law on Advocacy and other special laws, there is a list of situations in which the provisions of this Law on measures and legal remedies are not applied.

The concept of foreign natural and legal persons is defined in a specific way, so their rights in terms of protection of trade secrets are exercised in accordance with international agreements applicable in the Republic of Serbia, i.e. in accordance with the principle of reciprocity. Such simple definition of their status leaves room for different interpretations.

Finally, this Law introduces fines for business offenses for entrepreneurs and individuals, so an entrepreneur can be fined from RSD 50,000 to RSD 500,000, or a natural person from RSD 20,000 to RSD 150,000. Penalties for misdemeanours in respect of legal entities and responsible persons in the legal entity remained unchanged.



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