

FEDERAL LAW NO. 98-FZ OF JULY 29, 2004 ON COMMERCIAL SECRECY (with the Amendments and Additions of February 2, December 18, 2006, July 24, 2007)

Passed by the State Duma on July 9, 2004

Endorsed by the Federation Council on July 15, 2004

Article 1. Goals and Scope of this Federal Law

1. The present Federal Law regulates relations, involved in the establishment, amendment and termination of the regime of commercial secret with respect to information comprising manufacturing secrets (know-how).

2. The provisions of this Federal Law shall apply to information constituting a commercial secret, regardless of a medium on which it is recorded.

3. The provisions of this Federal Law shall not apply to data classified by the established procedure as a commercial secret that are subject to the provisions of the laws of the Russian Federation on state secrecy.

Article 2. Laws of the Russian Federation on commercial secrecy

The laws of the Russian Federation on commercial secrecy comprise the Civil Code of the Russian Federation, this federal law and other federal laws.

Article 3. Basic notions used in this federal law

For purposes of this Federal law use shall be made of the following basic notions:

1) **commercial secret** means a regime of information confidentiality enabling its possessor under the existing or the probable conditions to increase revenues, to avoid unjustified outlays, to retain the position on the market of commodities, works and services, or to derive another commercial benefit;

2) **information comprising a commercial secret (a production secret)** means information of any character (production, technical, economic, organizational, etc.), including that on the results of intellectual activity in the scientific and technical area, as well as information on the methods for the performance of professional activity of an actual or a potential commercial value because it is unknown to the third persons, because the third person have no free access to it on lawful grounds and with respect to which the possessor of such information has introduced the regime of commercial secrets;

3) abrogated from January 1, 2008;

4) **holder of information constituting a commercial secret** means a person who is in possession of information constituting a commercial secret and who restricted access to such information and instituted in respect of such information a regime of commercial secrecy;

5) **access to information constituting a commercial secret** means the familiarisation of certain persons with information constituting a commercial secret, with the consent thereto of its holder or, on other legal grounds, on the condition of preservation of the confidentiality of such information;

6) **transfer of information constituting a commercial secret** means the passing of information constituting a commercial secret and recorded on a material medium by its holder over to a counteragent on a contractual basis in the scope and under the terms specified under a contract including a provision obliging the counteragent to take relevant measures to provide for the confidentiality of same as is prescribed by the contract;

7) **counteragent** means a party to a civil law contract to which the holder of information constituting a commercial secret transferred that information;

8) **supply of information constituting a commercial secret** means making the information constituting a commercial secret and recorded on a material medium available by its holder to the state power bodies, other state authorities, and bodies of local self-government with the objective to enable them to perform their respective functions;

9) **disclosure of information constituting a commercial secret** means an action or inaction as a result of which information constituting a commercial secret, in any eventual form (either oral, written or any other form, including with the use of technical means) becomes known to third persons without consent thereto of the holder of such information or contrary to a labour or civil law contract.

Article 4. Right to classify information as information constituting a commercial secret and methods of obtaining that information

1. The right to classify information as information constituting a commercial secret and to determine a list and make-up of that information shall belong to the holder of such information with due regard for the provisions of this Federal law.

2. Abrogated from January 1, 2008;

3. Information constituting a commercial secret obtained from the holder of such information on a contractual basis or on any other legal grounds, shall be deemed as having been obtained by legal methods.

4. Information constituting a commercial secret the holder of which is another person, shall be deemed as having been obtained illegally when the obtainment of such information was effected by intentional overcoming of the measures towards provision of its confidentiality adopted by the holder of information constituting a commercial secret and also when the recipient of such information either knew or had sufficient evidence to assume that such information constitutes a commercial secret whose holder is other person and that the person transferring such information has no legal grounds to transfer that information.

Article 5. Data that may not constitute a commercial secret

The regime of commercial secrecy may not be instituted by persons conducting entrepreneurial activity in respect of the following data:

- 1) available in constituent documents of legal entities, documents confirming the making of entries on legal entities and individual entrepreneurs in the relevant state registers;
- 2) available in documents giving the right to conduct entrepreneurial activity;
- 3) regarding the composition of property of state-run or municipal unitary enterprises, and government agencies and on utilisation by them of funds of corresponding budgets;
- 4) regarding pollution of the environment, the condition of fire safety, sanitary-epidemiological and radiation situation, safety of food products and other factors adversely affecting the safe functioning of production facilities, security of each citizen and security of the population as a whole;
- 5) on the numbers, make-up of employees, system of labour remuneration, terms and conditions of labour, including labour safety measures, on the indices of on-the-job injuries and occupational diseases, on availability of vacancies;
- 6) on debts of employers in paying wages and salaries and on other social payments;
- 7) on violations of the legislation of the Russian Federation and facts of instituting proceedings for commission of such offences;
- 8) on the terms of contests or auctions for privatisation of projects of state or municipal property;
- 9) on the amount and structure of incomes of non-profit organisations, on the amount and make-up of their property, on their incomes, on the numeric strength and remuneration of work of their employees, on the use of uncompensated labour of citizens in the activity of non-profit organisations;
- 10) on a list of persons entitled to act without a power of attorney on behalf of a legal entity;
- 11) obligation to disclose data which, or impermissibility of restricting access to data which is prescribed under other federal laws.

Article 6. Supply of information constituting a commercial secret

1. The holder on information constituting a commercial secret shall, upon a motivated request of a state power body, other state authority, body of local self-government, furnish them on an uncompensated basis with information constituting a commercial secret. The motivated request shall be signed by a duly authorised official, contain a statement of purpose and legal grounds for requested information constituting a commercial secret and also time limits for supply of such information, unless otherwise is provided under federal laws.

2. Upon refusal of the holder of information constituting a commercial secret to furnish it to a state power body, other state authority or body of local self-government, the agencies shall have the right to ask for that information via a court.

3. The holder of information constituting a commercial secret and also state power bodies, other state authorities and bodies of local self-government that acquired such information shall, under Part 1 of this Article, be obligated to furnish such information at the request of courts of law, investigating agencies, agencies in charge of a pretrial inquest regarding cases handled by them, by the procedure and on the grounds as stipulated under the legislation of the Russian Federation.

4. The documents to be supplied to the bodies specified under Parts 1 and 3 of this Article and containing information constituting a commercial secret shall bear a "Commercial secret" stamp, indicating its holder (in case of legal entities - full denomination and location, in case of individual entrepreneurs - surname, first name, patronymic of the citizen being an individual entrepreneur and place of residence).

Article 7. Abrogated from January 1, 2008

Article 8. Abrogated from January 1, 2008

Article 9. Abrogated from January 1, 2008

Article 10. Protection of the confidentiality of information

1. Measures to protect the confidentiality of information adopted by its holder shall include as follows :

- 1) defining a list of information constituting a commercial secret;
- 2) limitation of access to information constituting a commercial secret by establishing a procedure for handling that information and for control over compliance with that procedure;
- 3) keeping record of persons who acquired access to information constituting a commercial secret and (or) persons to whom that information was furnished or transferred;
- 4) regulation of relations in using information constituting a commercial secret by employees on the basis of labour contracts and by counteragents on the basis of civil law contracts;
- 5) affixing upon material media (documents) containing information constituting a commercial secret of a "Commercial secret" stamp specifying the holder of that information (in case of legal entities - a full denomination and place of location, in case of individual entrepreneurs - surname, first name, patronymic of citizen being an individual entrepreneur and place of residence).

2. Regime of commercial secrecy shall be deemed as having been instituted following the adoption by the holder of information constituting a commercial secret of measures specified under Part 1 of this Article.

3. An individual entrepreneur being the holder of information constituting a commercial secret and having no employees with whom labour contracts were made shall take measures to protect the confidentiality of information specified under Part 1 of this Article, except for Items 1 and 2 and also provisions of Item 4 concerning regulation of labour relations.

4. Along with the measures specified under Part 1 of this Article, the holder of information constituting a commercial secret shall have the right to use, if need be, means and methods of technical protection of the confidentiality of that information, other measures not conflicting with the legislation of the Russian Federation.

5. Measures to protect the confidentiality of information shall be recognised as reasonably sufficient, provided:

- 1) excluded is access to information constituting a commercial secret by any persons without the consent thereto of its holder;
- 2) provision is made for the use of information constituting a commercial secret by employees and transfer of same to counteragents without violating the regime of commercial secrecy.

6. The regime of commercial secrecy may not be used for purposes contradicting the requirements of protection of the fundamentals of the constitutional system, morality, health, rights and legitimate interests of other persons, guaranteeing defense of the country and security of the state.

Article 11. Protection of the confidentiality of information within the framework of labour relations

1. With the objective to protect the confidentiality of information the employer shall be obligated:

- 1) to familiarise against receipt the employee whose access to information constituting a commercial secret is essential for him to fulfil his labour obligations with a list of information constituting a commercial secret, the holder of which is the employer and his counteragents;
- 2) to familiarise against receipt the employee with the regime of commercial secrecy established by the employer and also with measures of liability for violation of same;
- 3) to create for the employee necessary conditions enabling him to comply with the regime of commercial secrecy established by the employer.

2. Access of the employee to information constituting a commercial secret shall be effected with his consent thereto unless that is stipulated under his labour obligations.

3. With a view to protect the confidentiality of information, the employee shall be obligated:

- 1) to observe the regime of commercial secrecy established by the employer;
- 2) not to disclose information constituting a commercial secret the holder of which is the employer and his counteragents and not to use that information for personal aims without their consent thereto;
- 3) abrogated from January 1, 2008;
- 4) abrogated from January 1, 2008;
- 5) to transfer to the employer upon termination or dissolution of a labour contract, material media of information being used by the employee that contain information constituting a commercial secret.

4. Abrogated from January 1, 2008.

5. Abrogated from January 1, 2008.

6. A labour contract with the head of organisation shall provide for his obligation to guarantee protection of the confidentiality of information the holder of which is the organisation and its counteragents and for responsibility to guarantee protection of its confidentiality.

7. Abrogated from January 1, 2008.

8. The employee shall have the right to appeal judicially illegal institution of the regime of commercial secrecy in respect of information to which he acquired access in connection with performance by him of his labour obligations.

Article 12. Abrogated from January 1, 2008

Article 13. Protection of the confidentiality of information as it is passed over

1. The state power bodies, other state authorities, and bodies of local self-government shall, in accordance with this Federal law and other federal laws, be obligated to create conditions providing for protection of the confidentiality of information passed over to them by legal persons or individual entrepreneurs.

2. The officials of the state power bodies, other state authorities, bodies of local self-government, civil or municipal servants of the said bodies shall have, in the absence of consent thereto of the holder of information constituting a commercial secret, no right to disclose or transfer to other persons, state power bodies or other state authorities, bodies of local self-government information constituting a commercial secret that became known to them by virtue of performance of official obligations, except for instances provided under this Federal law and also have no right to use that information for mercenary or other personal aims.

3. In case of infringement of the confidentiality of information by officials of the state power bodies, other state authorities, bodies of local self-government, by civil or municipal servants of said bodies, those persons shall bear responsibility in accordance with the legislation of the Russian Federation.

Article 14. Responsibility for violation of this Federal law

1. Violation of this Federal law shall entail disciplinary, civil law, administrative or criminal liability as is envisaged under the legislation of the Russian Federation.

2. An employee who in connection with performance of his labour obligations acquired access to information constituting a commercial secret, the holder of which is the employer or his counteragents, shall, upon deliberate or careless disclosure of that information, in the absence in the actions of that employee of elements constituting an offence, bear disciplinary liability in accordance with the legislation of the Russian Federation.

3. The state power bodies, other state authorities, or bodies of local self-government that acquired access to information constituting a commercial secret shall bear vis-a-vis the holder of information constituting a commercial secret, civil-law liability for disclosure or illegal use of that information by their officials, or civil or municipal servants of said bodies to whom it became known in connection with performance by them of their official (in-service) obligations.

4. The person who used information constituting a commercial secret and who had no sufficient grounds to treat the use of that information as illegal, including acquired access to such information either accidentally or by mistake, may not under this Federal law be brought to account.

5. At the request of the holder of information constituting a commercial secret, person specified in Part 4 of this Article shall be obligated to take measures to protect the confidentiality of the information. Upon refusal of that person to take such measures, the holder of information constituting a commercial secret shall have the right to claim that his rights be duly protected judicially.

Article 15. Responsibility for non-provision of information constituting a commercial secret to the state power bodies, other state authorities, bodies of local self-government

Failure of the holder of information constituting a commercial secret to comply with the lawful requests of the state power bodies, other state authorities, bodies of local self-government regarding the supply to them of information constituting a commercial secret and also hindering the officials of those bodies to receive such information shall entail liability as is envisaged under the legislation of the Russian Federation.

Article 16. Transitory provisions

The stamps affixed prior to entering into force of this Federal law, on material media indicating the availability therein of information constituting a commercial secret shall retain their validity, provided measures to protect the confidentiality of the said information have been brought into accord with the requirements of this Federal Law.

President of
the Russian Federation

V. Putin

Moscow, the Kremlin
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