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The Concept and Conditions for Legal Protection of a Trade Secret and a Know-How

There is no special law in the Republic of Kazakhstan that regulates the protection of trade secrets. Moreover, the legislation of the Republic of Kazakhstan does not provide for an exhaustive definition of the term 'trade secret'. The provisions on trade secrets are differentiated through various regulatory legal acts, which causes some inconvenience in determining how far the definition of trade secrets can extend.

Attempts to adopt a separate law on trade secrets in the Republic of Kazakhstan were made in the early 2000. The draft law of the Republic of Kazakhstan 'On Trade Secrets' was submitted for consideration by the the Parliament of the Republic of Kazakhstan in accordance with the Resolution of the Government of the Republic of Kazakhstan No. 1104, dated 25 July 2000. For unknown reasons, however, this draft law was withdrawn in 2001.

Pursuant to Article 126.1 and Article 1017.1 of the Civil Code of the Republic of Kazakhstan (hereinafter - the 'Civil Code'), a trade secret comprises valuable information that includes production secrets (know-how), production technology, management model, as well as ways and methods to increase profits.

At the same time, the enterprise cannot include any information into the list of trade secret objects. This issue requires selective and thoughtful approach, meeting the following three main criteria:

- ▶ the information must have actual or potential commercial value for the enterprise;
- ▶ the information must be unknown to third parties;
- ▶ a trade secret regime must be established for the information.

The trade secret objects may also include information on business entities and their areas of activity, as well as production, management, scientific, technical, and financial and economic information about the company's activities. Please note that Kazakhstan's legislation does not provide for a specific list of objects that cannot be classified as trade secrets.

Laws in some countries expressly provide a list of information that does not belong to trade secrets, such as:

- ▶ the Charter of a legal entity, as well as documents that entitle to engage in business activity (state registration certificate, licenses, patents);
- ▶ information on the employment, information on all vacant jobs (vacancies), on the forthcoming employees' release, their number and categories, and on the creation of additional jobs;
- ▶ information on the working conditions and labour safety at workplaces, violations of the established labour safety and hygiene standards, industrial injuries;
- ▶ information on the ecological state, compliance with the established sanitary and epidemiological standards of fire, technical safety and other facilities and equipment that pose a threat to the life and health of the population;
- ▶ information on violations of law;
- ▶ other information freely accessible according to legislative acts.

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