



## TAIWAN NEWSLETTER

UNION PATENT SERVICE CENTER

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### Taiwan Trade Secret Act revised and promulgated on January 15, 2020

Taiwan's Trade Secret Act was established in January of 1996. After its amendment in 2013 to adopt criminal penalties, Legislative Yuan (Parliament) recently passed a partial amendment to this Act on December 31, 2019, and the revised Trade Secret Act was then announced by the President on January 15, 2020.

The term "trade secret" stipulated under this Act shall mean any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations, and shall also meet three requirements: 1) it is not known to persons generally involved in the information of this type; 2) it has economic value, actual or potential, due to its secretive nature; and 3) its owner has taken reasonable measures to maintain its secrecy.

The new amendment to the Act introduces a "confidentiality order for investigation" system to strengthen the protection of trade secret during investigation proceedings. The amendment also provides more complete protection on foreigners' trade secret, such as an unrecognized foreign juristic person may file a complaint, initiate a private prosecution, or institute a civil lawsuit, and extends the reciprocity principle between the foreign national's home country and Taiwan which both acceded to an international treaty.

Despite of the criminal penalties in Trade Secret Act of 2013, many companies were still reluctant to file a lawsuit against an alleged party because it is afraid that more trade secret would be disclosed during the investigation, or prosecutors would need more time and efforts to conduct the investigation due to the limited evidences. To prevent such a second-time leak issue and offer a better protection environment of trade secret in Taiwan, the above mentioned "confidentiality order for investigation" is introduced in the Revised Trade Secret Act of 2020, and highlighted as follows:

1. A prosecutor may, if necessary, issue a confidentiality order *ex officio* during the investigation.
2. A person subject to a confidentiality order shall not use the investigation information for purposes other than the investigation, or disclose such information to any person not subject to a confidentiality order.
3. A confidentiality order shall be issued in writing or verbally, and a trade secret owner shall be afforded an opportunity to make observations.

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4. Procedures to cancel or change a confidentiality order, and the relation between a confidentiality order and a court order to preserve confidentiality are also stipulated.
5. A person violating a confidentiality order shall be liable to imprisonment for a period not exceeding three years, and/or a fine not exceeding NT\$1 million.

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