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**THE LAW ON PROTECTION OF  
CONFIDENTIAL INFORMATION**

**I. GENERAL PROVISIONS**

**Article 1**



- (2) For the purpose of this Law, “a manner contrary to honest commercial practices” referred to in paragraph 1 of this Article shall include practices such as breach of contract, breach of confidence, fraud, unlawful acquisition, bribery, misrepresentation, commercial espionage, as well as the acquisition of the confidential information by third persons who knew, or who ought to have known that such practices were involved in the acquisition.
- (3) The unlawful acquisition, disclosure, or use of confidential information shall include acquiring, disclosing, or using such information by any method from which the information can be perceived, reproduced, or otherwise communicated, either directly or indirectly.

#### **IV. LAWFUL USE OF CONFIDENTIAL INFORMATION**

##### **Article 8**

- (1) The acquisition and/or use of confidential information protected under this Law without that person’s express or implied consent shall be lawful if the information was acquired by fair, honest, and lawful means, in accordance with honest commercial practices, through the study, analysis, testing, decompilation, disassembly, observation, evaluation, and/or examination of publicly available records, research, studies, reports, and/or material objects that incorporate the information, unless such acquisition and/or use is prohibited by contract or applicable law or public policy.
- (2) A person who obtained the information in a manner referred to in paragraph 1 of this Article shall have the burden proof in the litigation.

- 1) the competent authority determines that such disclosure is necessary to protect or promote public health, the environment, or the public interest; or
  - 2) action is taken to ensure that prior to disclosure the data are protected against unfair commercial use; or
  - 3) the owner of the data expressly authorizes in writing the disclosure or use for commercial purposes.
- (4) Period of protection against unfair use for commercial purposes shall be determined and set by the authority responsible for issuance of a license for marketing of medicines and medical devices or agricultural chemical products, taking into account the time, effort, and money involved in origination and nature of the data.
- (5) The period referred to in paragraph 4 of this Article shall not be less than five years from the date of issuance of a license for placing into circulation of products referred to in paragraph 1 of this Article.
- (6) For the purposes of this Article, “unfair use for commercial purposes” shall include the use of data by any natural or legal person and/or government body in connection with analyzing, approving, or otherwise reviewing subsequent applications by third persons for issuance of a license for placing into circulation of pharmaceutical or agricultural chemical products that utilize new chemical entities.
- (7) During the period of protection, information referred to in paragraph 1 of this Article, including documents and/or other materials in which such data is incorporated, shall be exempt from public access even where such access is allowed under the provisions of the law governing public access to government documents.

## **VI. CIVIL ACTION FOR PROTECTION OF CONFIDENTIAL INFORMATION**

### **Article 10**

The owner of any confidential information shall have the right initiate legal proceedings requesting the court to:

- 1) to order refraining from threatened unlawful acquisition, use, or disclosure of such information, or to prohibit ongoing acts that constitute, unlawful acquisition, use, or disclosure of such information or data:
- 2) to authorize disposal, seizure, destruction or modification of all items incorporating such information or data, including documents and/or other material in which such data is incorporated if the data can be perceived, reproduced, or otherwise communicated from such, either directly or with the aid of a machine or device;

- 3) to authorize measures which prevent the entry into domestic channels of commerce of imported items incorporating such information or data, including documents and/or other material in which such data is incorporated if the data can be perceived, reproduced, or otherwise communicated from such, either directly or with the aid of a machine or device;
- 4) to authorize the payment of damages, including actual loss and loss of profit. If the infringement was done intentionally or by gross negligence, the plaintiff may request the payment of damages in the amount equal to the threefold amount of customary remuneration that would have been paid had the information been used lawfully;
- 5) to require publication of the court's decision at the defendant's expense.

#### **Article 11**

The owner of the confidential information protected under this Law may request for an injunction from court that conditions future use of such undisclosed information or data upon payment of a reasonable fee for the period that shall not exceed the period of protection.

#### **Article 12**

**Article 14**

- (1) The provisional measures may be requested even before filing an action.
- (2) In the case referred to in paragraph 1 of this Article, the court order establishing the provisional measure shall contain the period in which the action has to be filed, which can not be less than 30 days from the day of execution of the provisional measure.
- (3) An appeal lodged against a court decision setting the provisional measure shall not stay the execution of such decision.
- (4) Provisional measures referred to in paragraph 1 of this Article shall cease to have effect where proceedings leading to a decision on the merits of the case are not initiated within a period referred to in paragraph 2 of this Article.

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**Article 15**

The court may order the owner of confidential information to provide a security sufficient to protect the defendant and to prevent abuse of law.

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**Article 16**

Where the provisional measures are revoked or where they lapse due to any act or omission by the owner, or where it is subsequently found that there has been no violation or threat of violation of the owner’s right, the court shall have the authority to order the owner, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

**Article 17**

Prohibition of unlawful use of confidential information protected under this Law, shall cease to have an effect when such information or data is no longer entitled to protection.

**VII. PRESERVATION OF SECRECY**

**Article 18**

The courts and other competent authorities shall preserve the secrecy of confidential information protected under this Law. Obligation of preservation of secrecy includes *inter alia* holding *in camera* hearings, restricting access and use of such information and ordering any person involved in the proceedings not to disclose such information without prior court approval.

## VIII. PENAL PROVISIONS

### Article 19

- (1) Any administrative authority, commercial entity, other legal person or an entrepreneur that commits any act of unlawful acquisition, use or disclosure of confidential information referred to in Article 7 of this Law shall be fined for the offence in the amount equal to 200-300 minimal wages in the Republic.
- (2) Where an offence referred to in paragraph 1 of this Article, is committed by a legal entity, responsible person in such entity shall be fined in the amount equal to 20 minimal wages in the Republic.

### Article 20

- (1) Any materials suspected to be subject to an offence referred to in Article 18 of this Law may be seized until the end of the proceedings.
- (2) An appeal lodged against a decision referred to in paragraph 1 of this Article shall not stay the execution of that decision.

### Article 21

- (1) Materials being subject to an offence, including documents and/or other material in which such information or data is incorporated by any from which the data can be perceived, reproduced, or otherwise communicated with the aid of a machine or device, shall be confiscated or destroyed, as the case may be. However, the owner of the confidential information shall be entitled to dispose of such objects in any other way found appropriate.
- (2) The magistrate may order the destruction of items used, or intended to be used, in any manner or part, to commit or facilitate committing of the offence taking into

(5) Any proceeds obtained, directly or indirectly, as the result of an offence shall be forfeited.

#### **Article 22**

Where it was determined, after the appropriate proceedings were performed, that the offence has not been committed, the owner of materials seized referred to in Article 19 of this Law shall have the right to claim damages, on the expense of the state.

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### **IX. FINAL PROVISION**

#### **Article 23**

This Law shall come into force on the eighth day following its publication in the Official Gazette of the Republic of Montenegro.