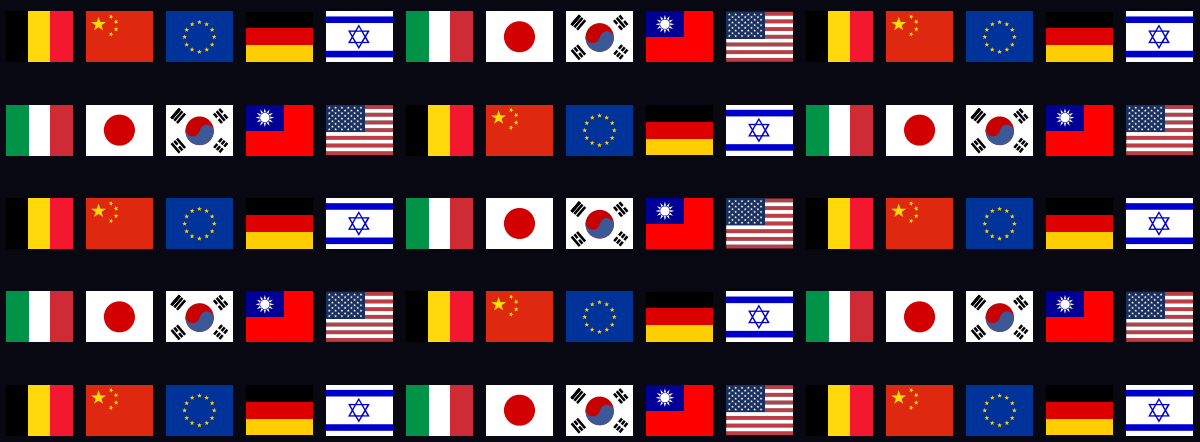
TRADE SECRETS

Japan



LEXOLOGY
Getting The Deal Through

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Trade Secrets

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Quick reference guide enabling side-by-side comparison of local insights, including protection; misappropriation; enforcement; remedies; and recent trends.

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PROTECTION

Legislation and legal definition

What legislation governs the protection of trade secrets in your jurisdiction? How is a 'trade secret' legally defined?

The Unfair Competition Prevention Act (the Act) governs the protection of trade secrets. The Civil Code also applies to more general aspects, such as the statute of limitations and tort and contract law principles.

A 'trade secret' is defined in the Act as 'a production method, sales method, or any other technical or operational information useful for business activities that is kept secret and is not publicly known'.

Law stated - 07 September 2022

Ownership

How is ownership of a trade secret established?

Under the Act, the concept of 'ownership' of a trade secret is not recognised. Instead, those (persons or entities) whose business interests have been, or are threatened to be, infringed on by misappropriation or illegal disclosure shall have the right to seek an injunction.

In practice, the scope of those persons or entities qualified for such injunction right is usually identical to those (persons or entities) who lawfully keep the trade secret in secrecy (for convenience, such persons or entities are referred to as 'holders' of trade secrets hereinafter).

Law stated - 07 September 2022

Secrecy

What criteria are used to establish the state of secrecy of a trade secret before misappropriation or disclosure?

To qualify as a 'trade secret' protected under the Act, information must be kept secret by the holder. The holder's subjective intention to keep the information as a secret alone is not sufficient to meet this requirement. The information must be actually and objectively kept secret by appropriate measures that are deemed reasonable in the circumstances in a way that the holder's intention can be objectively recognised. Also, the information must not be publicly accessible or obtainable by a third party with reasonable efforts (including by easy reverse engineering).

In practice, the following factors are often taken into consideration:

- whether the access to the information is limited; and
- whether the person who does access the information can recognise that the information is a secret.

Also, the following circumstances would support the secrecy of information:

- marking as 'confidential';
- storage in cabinets that can be locked;
- control by passwords;
- creation of a list of trade secrets; and

- execution of a confidentiality agreement.

Law stated - 07 September 2022

Commercial value

How is the commercial value of a trade secret established?

The element of commercial value does not require the holder to use the information actually in an ongoing business activity, but the holder must show that the information is at least potentially useful from objective standards for business activities in the future. To establish this requirement, rights holders can offer testimonies by their employees, submit a written statement by its employee to that effect, or argue that the nature of the information itself supports commercial value.

Law stated - 07 September 2022

Protective measures

What criteria are used to determine whether the rights holder has adopted reasonable protective measures to prevent disclosure and misappropriation of trade secrets?

Under Japanese law, taking protective measures is not an independent requirement, but rather is incorporated in the element of secrecy.

Law stated - 07 September 2022

Best practices

What best practices and internal policies should rights holders consider to ensure maximum protection of their trade secrets?

The element that rights holders most often have difficulties in proving is the state of secrecy. Best practices would be to take protective measures as robustly as practicable, including:

- to implement internal information security policies and regulations;
- to ensure that employees have executed an employment agreement that contains confidentiality clauses, or a separate confidentiality agreement;
- to ensure that you execute a confidentiality agreement with your business partners;
- to control access to confidential information by IDs, passwords and physical measures (eg, cabinets that can be locked), and limit access to employees who really need to know confidential information;
- to mark confidential information as ‘secret’ or ‘confidential’, or prepare a list of confidential information if marking is not practicable;
- to encourage employees not to leave confidential information on desks or other places visible from outside;
- to track use, transmission and copy of confidential information; and
- to respond to information leakage swiftly.

Law stated - 07 September 2022

MISAPPROPRIATION

Definition

What constitutes misappropriation of trade secrets?

Misappropriation of trade secrets is a part of the broader concept of 'unfair competitions' defined in the Unfair Competition Prevention Act (the Act). Unfair competitions involving trade secrets include the following categories:

1. acquiring a trade secret by theft, fraud, duress or any other wrongful method (collectively, 'wrongful acquisition'), or using or disclosing a trade secret acquired through wrongful acquisition. The latter includes disclosure to a specific third party in confidence;
2. acquiring a trade secret with the knowledge, or without the knowledge due to gross negligence, that wrongful acquisition was involved with such trade secret, or using or disclosing a trade secret acquired in that way;
3. using or disclosing an acquired trade secret after becoming aware, or failing to become aware due to gross negligence, that wrongful acquisition was involved with such trade secret;
4. using or disclosing a trade secret disclosed by the business operator holding such trade secret for the purpose of acquiring an illicit gain or causing damage to the holder;
5. acquiring a trade secret with the knowledge, or without the knowledge due to gross negligence, that the trade secret is disclosed through improper disclosure or that improper disclosure was involved with such trade secret, or using or disclosing a trade secret acquired in that way. 'Improper disclosure' is defined as disclosure of a trade secret as described in (4) or in breach of a legal duty to maintain its secrecy;
6. using or disclosing an acquired trade secret after becoming aware, or failing to become aware due to gross negligence, that improper disclosure was involved with such trade secret; and
7. selling, delivering, displaying for the purpose of sale or delivery, exporting, importing or providing through telecommunication a product produced by using a technical trade secret in a way described in (1) to (6). This does not include cases where a transferee of such product engages in any of the foregoing acts if the transferee is not aware without gross negligence that the product was produced through such improper use of technical trade secret.

Law stated - 07 September 2022

Exclusions

Are any activities explicitly excluded from the scope of trade secret misappropriation?

The protection does not apply to cases where a person who acquired a trade secret in connection with a transaction uses the trade secret obtained through the transaction within the scope of authority to use, if that person does not know without gross negligence that wrongful acquisition or improper disclosure was involved with such trade secret.

Because the definition of unfair competition only targets the exploitation of someone else's information, it does not contain independent discovery, which means that trade secrets are not protected against independent discovery. Also, because the definition only catches wrongful acquisition, improper disclosure and exploitation of trade secrets wrongfully acquired or improperly disclosed, reverse engineering is also lawful as long as the analysed information has been properly acquired.

Although there is no statutory exception to whistleblowing activities, information about illegal activities or information violating the public order is not commercially valuable, and thus is excluded from trade secrets.

Law stated - 07 September 2022

Elements of misappropriation

How can the rights holder prove trade secret misappropriation?

If the information leakage is directly traceable, the rights holder can submit the signs of the leakage such as email, an internet log of the relevant transmission and a record of facsimile. The rights holder can also offer testimonies (or written statements of facts) by someone who did, witnessed or heard about the act of misappropriation or was in charge of the relevant information management system.

If an act of misappropriation is conducted in a secret and untraceable way, the rights holder should consider proving:

- that its products or the business activities manufactured or conducted with its trade secrets are unique;
- that the misappropriator's products or activities are identical or substantially similar to the rights holder's products or activities, or could not be realised without referring to the rights holder's trade secrets; and
- that the misappropriator has the opportunity to access the rights holder's confidential information.

To mitigate the difficulties of proving misappropriation by use of trade secrets, the Act provides a presumption: if a technical trade secret of methods for manufacturing products or evaluating or analysing information has been acquired in violation of the Act, and the acquirer has manufactured such products that can be manufactured with that secret or provided services of evaluation or analysis of information with that secret, then the acquirer is presumed to have misappropriated that secret by using it.

Law stated - 07 September 2022

Burden of proof

How is the burden of proof distributed in trade secret misappropriation claims?

In civil lawsuits involving trade secret misappropriation claims, the rights holder owes the burden of proof for the misappropriation of the trade secret at issue. More specifically, the rights holder is required to prove the following facts:

- secrecy of the trade secret;
- unavailability of the information to the public;
- commercial value; and
- the act of misappropriation.

If the rights holder seeks monetary damages, the rights holder must additionally establish:

- an intention or negligence of the misappropriator;
- the amount of damages incurred; and
- the causation between the misappropriation and the damages.

On the other hand, the burden of proof is on the alleged misappropriator with respect to:

- the statute of limitations;
- abuse of right or bad faith;

- negligence of the rights holder (which could reduce the amount of damages); and
- an exception to trade secret protection.

In practice, the alleged misappropriator is required to provide reasonable explanations and submit evidence as to how and why it has obtained the information at issue. The failure to do so may cause the judge to suspect that the alleged misappropriator has misappropriated a trade secret.

Law stated - 07 September 2022

Extraterritorial acts

Can acts taking place outside your jurisdiction support a charge of trade secret misappropriation?

With respect to tort claims based on trade secret misappropriation, there are several views as to whether the Act applies to extraterritorial acts. One view that has been adopted by several court decisions is that whether the Act applies to extraterritorial acts is determined pursuant to the general conflict of laws rule regarding torts, which provides that the law of the place where the result of the wrongful act occurred (or, if the occurrence of the result at such place was ordinarily unforeseeable, the law of the place where the wrongful act was committed) shall apply. According to this view, the Act may apply to extraterritorial acts of misappropriation if the result of the misappropriation occurred in Japan.

With respect to the criminal aspects of trade secret misappropriation, the Act specifically sets forth criminal sanctions against certain extraterritorial acts of misappropriation of trade secrets held by a rights holder doing business in Japan.

Law stated - 07 September 2022

ENFORCEMENT PROCEEDINGS

Causes of action

What causes of action are available and commonly asserted against misappropriation and unauthorised disclosure of trade secrets in your jurisdiction?

Tort, unjust enrichment and breach of contract (if such contract exists) are commonly asserted causes of action.

Under the Unfair Competition Prevention Act (the Act) and the Civil Code, an act of trade secret misappropriation is considered to be a type of tort. Also, it is considered unjust enrichment because the misappropriator is benefited with economical gain from improper use of the rights holder's trade secret.

Also, if the misappropriator and the rights holder have a contract (eg, an employment agreement, service agreement, licence agreement and franchise agreement), and the contract expressly or implicitly provides a duty of confidentiality, an act of misappropriation may constitute a breach of contract.

Law stated - 07 September 2022

Court jurisdiction

What criteria are used to establish the courts' jurisdiction over trade secret disputes? Are there any specialist courts for the resolution of trade secret disputes?

The following are the situations where Japanese courts have international jurisdiction over trade secret cases. These

rules are set forth in the Code of Civil Procedure , namely:

- where the defendant is a natural person and the domicile or, if the domicile is unknown, the residence, is in Japan. If both the domicile and the residence are unknown, or the defendant has no residence, where the defendant had been domiciled in Japan before the lawsuit was filed (unless the defendant established a domicile outside Japan thereafter);
- where the defendant is an entity and its primary office is in Japan. If the entity has no primary office or its location is unknown, where its representative or someone principally in charge of its business is domiciled in Japan;
- where the defendant has an office in Japan and the lawsuit relates to that office;
- where the defendant is doing business in Japan and the lawsuit relates to that business;
- where the object of the claim (ie, the information at issue) is in Japan, or an asset subject to seizure in preparation for the payment of monetary damages is in Japan;
- where the act of misappropriation took place in Japan or the damage to the plaintiff realised in Japan; and
- in breach of contract cases, where the place of performance of the contract is in Japan.

The Code of Civil Procedure does not provide any exclusive jurisdiction of specialist courts. Therefore, within the territory of Japan, a plaintiff can file a lawsuit in a court that has jurisdiction over the defendant or the claim according to general rules for civil lawsuits (eg, a court that has jurisdiction over the place of domicile of the defendant, the place of the act of misappropriation or the place of realisation of loss or damage to the plaintiff).

It is noted, however, that, if a lawsuit can be filed in a court located in the eastern half of Japan, the Tokyo District Court has jurisdiction too. Similarly, the Osaka District Court has jurisdiction over cases that can be filed in a court located in the western half of Japan. This is to allow parties to choose the Tokyo District Court and the Osaka District Court, which have special divisions that exclusively handle intellectual property related cases.

Law stated - 07 September 2022

Procedural considerations

What is the typical format and timetable of proceedings?

Typically, it takes approximately six to 12 months from filing a complaint to obtain a final decision at the first instance. The first court hearing is typically held around 30 to 40 days after the complaint is filed, and subsequent hearings are typically held every 30 to 40 days. Before each hearing date, the court usually instructs either party or both parties to submit briefs and supporting evidence to rebut the counterparty's previous arguments. After both parties have almost exhausted their written arguments and documentary evidence, if the court finds it necessary to examine witnesses, a hearing date for witness examinations is set. Typically, before or after such witness examinations, the presiding judge discloses to the parties the court's tentative findings and thoughts on the merit of the case and encourages the parties to make an amicable settlement in the court proceeding.

Law stated - 07 September 2022

Limitation periods

What limitation periods apply for trade secret misappropriation claims?

The right to seek damages arising from torts extinguishes:

1. if the right is not exercised within three years after the rights holder or its legal representative becomes aware of

the misappropriator and the damage caused; or
2. 20 years from the time of the tortious act.

In the case of continuous misappropriation, Japanese law deems that an act of misappropriation takes place and the loss or damage corresponding to it realises every day. Therefore, even if a part of the claim that accrued more than three years or 20 years before the commencement of the lawsuit has been extinguished by the statute of limitations, the rest of the claim can still be exercised.

The right to seek an injunction of continuous misappropriation extinguishes in the case of (1) above, or 20 years from the commencement of the continuous misappropriation.

The Civil Code provides that the right to seek contractual remedies extinguishes:

1. five years after the claimant becomes aware that it can exercise the right; or
2. 10 years after the right becomes exercisable.

Point (1) does not apply to claims that accrued on or before 31 March 2020, or claims whose underlying contract was executed on or before 31 March 2020.

The same limitation periods apply to unjust enrichment claims.

Law stated - 07 September 2022

Secondary liability

To what extent can someone be liable for inducing or contributing to trade secret misappropriation? Can multiple parties be joined as defendants in the same suit?

A person who induces or contributes to trade secret misappropriation is liable to the same extent the primary misappropriator is liable. Such person could be subject to an injunction, and must pay monetary damages to the rights holder jointly and severally with the primary misappropriator. All such parties can be joined as co-defendants in one lawsuit, but the rights holder can opt to file separate lawsuits against such parties as long as it does not constitute double-dipping.

An act of inducing or contributing to a breach of contract by someone else may constitute an independent tort, and a person who is engaged in such act may be held liable as a tortfeasor.

Law stated - 07 September 2022

Obtaining and preserving evidence

What mechanisms are available to obtain and preserve evidence from defendants and third parties in trade secret litigation?

A party may move for a court order obliging the other party to produce documents held by the other party that are necessary for proving misappropriation or calculating the amount of damages. A failure to comply with the order does not lead to any sanctions, but may cause the judge to suspect that the party is trying to conceal certain facts

unfavourable to such party.

The same set of rules apply to the submission of objects (eg, accused products) for inspection by the court.

The court may, upon a motion by a party to a lawsuit, order an expert to give his or her opinion on the calculation of damages. The parties will be obliged to provide explanations necessary for the opinion.

A party may move for a court to issue a request for voluntarily producing documents. This is used when a third party (non-party to the lawsuit), especially a public agency, corporation or legal entity holds the relevant documents. Although this is not a legally binding order, such a third party often voluntarily fulfils the request because the request is made in the name of the court.

A party may move for a court order obliging the other party or a third party to produce documents held by it. A violation may lead to certain sanctions, and all documents except certain exempted documents are subject to this order. However, because documents containing technical or occupational secrets are listed as one of the exempted categories of documents, the rights holder should usually rely on the production of documents under the Act instead.

The same set of rules applies to the submission of objects (eg, accused products) for inspection by the court.

To preserve relevant evidence before a lawsuit is filed, a party may file a petition for an examination of evidence in advance.

For example, if the misappropriator is expected to destroy data once a lawsuit is filed, the judge may visit its factory and record the data stored there.

Law stated - 07 September 2022

Expert evidence

What rules and standards govern the admissibility of expert evidence?

Expert evidence is theoretically admissible as long as it is relevant and the court considers it necessary; but, in practice, expert evidence is not often used by parties in Japanese lawsuits. Whether expert evidence is admitted in a particular lawsuit and (even if admitted) the evidential power thereof is up to the court's discretion.

Law stated - 07 September 2022

Confidentiality during litigation

What measures may the court and litigants take to protect trade secrets during litigation?

Under the Code of Civil Procedure, a party may move for a court decision to prohibit persons other than the parties from inspecting or making copies of the case records (which are generally available to the public for inspection) on the ground that the records contain a trade secret.

The Act provides that the court may issue a protective order to preserve the secrecy of trade secrets contained in briefs and evidence. The addressees of such order could be: the parties, the parties' respective representatives, officers,

employees, attorneys and litigation assistants.

The moving party must make a prima facie showing that the use of such trade secret for purposes other than to carry out the lawsuit or the disclosure of such trade secret would harm the party's business activities using such trade secret. A person who violates a protective order will be subject to criminal sanctions, namely, imprisonment for up to five years or a fine of up to ¥5 million, or both.

If it is expected that a witness (including the parties or its representatives who take the stand) would not be able to give sufficient testimony regarding trade secrets because of the harm to business activities of a party caused by the testimony, and it is impossible to render an appropriate judicial decision on whether there has been a misappropriation without such testimony, the court may conduct such testimony in a non-public hearing upon the consent of all the judges constituting the panel.

Law stated - 07 September 2022

Defences

What defences are available and commonly asserted against trade secret misappropriation claims?

Typical defences include the following:

- existence of publicly available information similar to the trade secret;
- independent discovery; and
- lawful acquisition.

Technically speaking, these are not 'defences' because the rights holder bears the burden of proving that these elements do not exist. However, in practice, the alleged misappropriator is required to provide reasonable explanations and submit evidence as to why its act does not constitute a misappropriation.

Less common defences include:

- statute of limitations;
- abuse of right or bad faith;
- negligence of the rights holder – this could reduce the amount of damages depending on the degree of contribution; and
- an exception to protection.

Law stated - 07 September 2022

Appeal

What avenues of appeal are available following an adverse decision in a civil suit? Is new evidence allowed at the appeal stage?

A district court decision can be appealed to a high court that has jurisdiction over the place where the district court sits. A high court reviews both the finding of facts and the application of law.

A high court decision can be appealed to the Supreme Court:

- as of right if there is a fundamental defect in the decision or in the procedure (eg, a violation of constitutional law, illegal formation of the court panel, lack of international jurisdiction and lack or inconsistency of reasons for the decision); or
- as a petition to accept the appeal if the high court decision conflicts with a prior Supreme Court decision (if there is no Supreme Court decision on point, a high court decision) or if there is an important legal issue in the case.

The Supreme Court only reviews legal issues.

Parties can submit new evidence at the high court stage, though not at the Supreme Court stage. However, a high court may dismiss such evidence or relevant arguments:

- if the submission is untimely (ie, could have been submitted earlier, including in the district court proceedings);
- due to the submitting party's intentional failure or gross negligence; and
- if the submission would seriously delay the completion of the lawsuit.

Law stated - 07 September 2022

Costs

What is the typical cost range of a trade secret misappropriation suit? Can a successful litigant recover costs and attorneys' fees?

The cost would consist of the court costs (primarily stamp fees) and attorneys' fees. The court fees depend on the economic value of the suit. Attorneys' fees vary depending on an arrangement with a law firm.

A successful litigant may recoup court costs (eg, stamp fees to file a complaint and witness fees) by initiating a separate proceeding to calculate their amount. A successful rights holder can recoup a part of his or her attorneys' fees as a part of the damage incurred by the rights holder. In practice, the amount of such attorneys' fees granted by the courts as a part of the rights holder's damage is usually up to around 10 per cent of the proved amount of damage (eg, the lost profit of the rights holder, excluding the attorneys' fees) incurred by the rights holder due to the misappropriation of the trade secret at issue.

Law stated - 07 September 2022

Litigation funding

What litigation funding options are available?

Contingent fees are permitted as long as they are reasonable. A combination of fixed fees (payable upon the commencement of the case) and contingent fees (a certain percentage of the amount of award) is common in Japanese practice, aside from time charge.

The Code of Civil Procedure provides that payment of court fees can be delayed upon a court's decision if a party to a lawsuit is suffering economic difficulties. Also, Japan Legal Support Centre provides economic support to persons who do not have enough money to pay attorneys' fees.

Law stated - 07 September 2022

Alternative dispute resolution

What alternative dispute resolution (ADR) methods are available to resolve trade secret disputes?

In Japan, it is very typical for a court to recommend settlement within court proceedings. Typically, after several court hearings, at which each party submits written arguments and evidence, the presiding judge discloses to the parties the court's tentative findings and thoughts on the merit of the case, and encourages both parties to agree to an amicable resolution.

Mediation by court is governed by the Civil Conciliation Act. The mediation panel is composed of three mediators, one of which is a judge and the other two are former judges, lawyers and other persons experienced in or knowledgeable about dispute resolution. If the parties reach an agreement, the agreement can be enforced in the same way as a binding court decision.

If both parties agree, they can request mediation at the Tokyo District Court or the Osaka District Court, where the panel consists of judges and lawyers experienced in the field of intellectual property law.

If both parties agree, they can also refer a dispute to a resolution by arbitration. The party that has won a favourable arbitral award may enforce it with the involvement of a court under the Arbitration Act .

Law stated - 07 September 2022

Enforcement risks

To what extent may enforcement of trade secret rights expose the rights holder to liabilities such as unfair competition?

The protection of trade secrets under the Act and the Civil Code does not override or affect the application of other laws, including the Antimonopoly Act. An exercise of a right over trade secrets in violation of other laws would be prohibited, though such a case is rare.

Law stated - 07 September 2022

REMEDIES

Injunctions

Under what circumstances can a rights holder obtain a preliminary or final injunction in a civil suit for trade secret misappropriation?

Under the Unfair Competition Prevention Act (the Act), if a rights holder of a trade secret proves that its business interest has been, or is threatened to be, infringed due to misappropriation, the rights holder can obtain a final injunction against such misappropriation.

Besides, a breach of contract can be a ground for a final injunction. Specifically, if a rights holder of a trade secret proves that the misappropriator owes a contractual duty of confidentiality with regard to the trade secret and the misappropriator has breached such duty, the rights holder may obtain a final injunction by reason of the breach of contract.

Preliminary injunctions are available under the Civil Provisional Remedies Act .

To obtain a preliminary injunction, a rights holder must make a prima facie showing of:

- that the rights holder has the right to seek a final injunction (which corresponds to the requirements for a final injunction); and
- the necessity of a preliminary injunction, which is, substantial detriment or imminent danger that would occur to the rights holder if a preliminary injunction were not issued.

Also, in most cases, courts require the rights holder to post a bond.

Law stated - 07 September 2022

Damages

What rules and criteria govern the award and calculation of damages for trade secret misappropriation?

The Act provides three ways to calculate damages:

- if a certain product misappropriates a trade secret of the rights holder, the profit per unit of the rights holder's product that could have been sold by the rights holder (if the misappropriation had not occurred), multiplied by the number of the misappropriator's products that have been actually sold, can be used as the amount of damages. If the misappropriator proves that the rights holder could not have sold a certain number of products for any reason (eg, actual sales of the misappropriator are because of its own marketing efforts; or there are competitive alternatives in the market), the amount of profit corresponding to such number shall be excluded from the aforementioned amount of damages;
- if the misappropriator has made a profit through an act of misappropriation of a trade secret, such profit can be presumed to be the amount of damages incurred by the rights holder. The misappropriator may rebut the presumption by proving that its profit has been brought by something other than the trade secret, such as the misappropriator's marketing efforts, brand image and the quality of the products or services irrelevant to the misappropriated trade secrets; and
- the rights holder can also seek damages equal to the amount of reasonable royalties for the use of the relevant trade secrets.

Also, if the rights holder has proved that certain loss or damage has resulted, but it is extremely difficult to prove the amount, the court may determine a reasonable amount of damages.

Law stated - 07 September 2022

Other civil remedies

Are any other civil remedies available for wilful trade secret misappropriation?

No additional civil remedies are available under Japanese law.

Law stated - 07 September 2022

Criminal remedies

What criminal remedies are available for trade secret misappropriation? Under what circumstances will they be awarded, and what procedural issues should be considered when seeking them?

Criminal remedies are available, but only in limited situations. First, criminal sanctions apply only to intentional acts, and not negligence. Second, the Act requires certain additional elements for criminal punishment, such as the purpose of wrongful gain, the purpose of causing damage to the rights holder, a violation of the duty of information management and an act of fraud. Domestic misappropriation that satisfies these additional requirements is punishable by imprisonment up to 10 years or a fine up to ¥20 million, or both. Certain types of unlawful acquisition of trade secrets for use in a foreign country, unlawful disclosure of trade secrets to a person in a foreign country or acts of misappropriation of trade secrets located in Japan that are conducted in a foreign country, are punishable by imprisonment up to 10 years, a fine up to ¥30 million or both.

A rights holder whose trade secret has been misappropriated can file an offence report with the police, or, as a formal complaint to express its intention to request criminal punishment, a criminal complaint with the police or prosecutor's office. However, whether and how the police or the prosecutor's office handles and determines the case is left to their discretion. Also, the investigation and case records are published only after the completion of the criminal case, and the criminal case itself could take a large amount of time. Criminal remedies are not necessarily helpful in recovering from the loss or damage caused by the misappropriation.

The Act provides for several measures to protect trade secrets in criminal proceedings, including an order to avoid mentioning contents of trade secrets in a public courtroom, limitation of questions in testimonies, non-public testimonies and attorney's-eyes-only disclosure of evidence.

Law stated - 07 September 2022

Administrative remedies

What administrative remedies are available for trade secret misappropriation? Under what circumstances will they be awarded, and what procedural issues should be considered when seeking them?

Administrative remedies are not available for misappropriation of trade secrets under Japanese law.

Law stated - 07 September 2022

UPDATE AND TRENDS

Key developments and future prospects

What were the key judicial, legislative, regulatory and policy developments of the past year in relation to the protection and enforcement of trade secrets? What are the prospects for future developments?

In 2019, an amendment to the Unfair Competition Prevention Act came into effect, which has newly introduced protections of technical and business data accumulated and controlled for the purpose of provision to third parties, even when such data is not qualified as a 'trade secret'. Examples include data concerning the operation of machines collected by data analytics companies, driving data stored in car manufacturers, and mobility data collected by

smartphone carriers with Global Positioning System information. Such data is often provided to a third party and used for marketing, improvement of services or other business purposes, but would not necessarily be qualified as a 'trade secret' owing to lack of secrecy.

Law stated - 07 September 2022

Jurisdictions

Belgium	ALTIUS
China	GEN Law Firm
European Union	Freshfields Bruckhaus Deringer
Germany	COHAUSZ & FLORACK
Israel	Gilat Bareket & Co, Reinhold Cohn Group
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