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Trade Secrets 2026

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Thailand: Law and Practice

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Tilleke & Gibbins

THAILAND

Law and Practice

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Tilleke & Gibbins is a leading Southeast Asian regional law firm with over 250 lawyers and consultants practicing in Cambodia, Indonesia, Laos, Myanmar, Thailand, and Vietnam. The firm provides full-service legal solutions to investors and high-growth companies that drive economic expansion in Asia, and helps to protect their economic and intellectual assets in the region. Tilleke & Gibbins' trade secrets practice is part of its highly regarded intellectual property practice, which regularly earns awards and recognitions for its consistent ability to help clients protect, commercialise, and enforce their rights over proprietary information. The firm's IP group includes lawyers and other specialists with backgrounds in chemistry, biology, computer science, food science, materials science, physics, and various other technical scientific fields. Established in Bangkok in 1890, Tilleke & Gibbins has since grown into the largest independent law firm in Thailand and a leading international firm across Southeast Asia.

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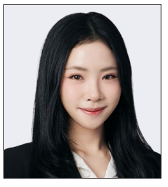

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1. Legal Framework

1.1 Sources of Legal Protection for Trade Secrets

The principal statute is the Trade Secrets Act B.E. 2545 (2002), as amended by the Trade Secrets Act (No. 2) B.E. 2558 (2015). Under Section 4, three ministers share responsibility for the Act: the Minister of Agriculture and Cooperatives, the Minister of Commerce, and the Minister of Public Health, each in relation to their respective areas. The Department of Intellectual Property (DIP) serves as the principal operational body, supporting the administration of the Trade Secrets Board. Disputes are heard by the Central Intellectual Property and International Trade Court (IP&IT Court).

The Civil and Commercial Code (CCC) governs contractual confidentiality obligations and tortious liability. The Computer Crimes Act B.E. 2550 (2007) applies where trade secrets are misappropriated through unauthorised access to computer systems. The Thai Penal Code, particularly the section on disclosure of professional secrets, may also be relevant, though its application to intangible trade information is limited. The Labour Protection Act B.E. 2541 (1998) may give rise to implied duties of confidentiality in the employment context. Thailand operates a unitary legal system; there is no local-level trade secret legislation, and the Trade Secrets Act is the lex specialis. In practice, these sources complement rather than conflict with each other.

1.2 What Is Protectable as a Trade Secret

Under the Trade Secrets Act, a “trade secret” is trade information that is not publicly known or accessible by persons normally connected with the information, derives commercial value from its secrecy, and is subject to appropriate protective measures by its controller.

“Trade information” is defined broadly to include any medium conveying facts or information, irrespective of form, and expressly encompasses formulas, patterns, compilations, programs, methods, techniques, and processes. The definition is technology-neutral and industry-agnostic. Both technical information (manufacturing processes, software, chemical formulas) and business information (customer lists, pricing strategies, financial data) can qualify, as can negative know-how such as failed research results, provided the three statutory elements are satisfied.

1.3 Examples of Trade Secrets

The Trade Secrets Act enumerates non-exhaustive illustrative categories: formulas, patterns, compilations or assembled works, programs, methods, techniques, and processes.

In Thai IP practice, courts and practitioners have recognised protection for:

- manufacturing processes and production techniques (eg, pharmaceutical formulations, food and beverage recipes);

- customer databases containing non-public purchasing history, pricing terms, or key contact details;
- proprietary software source code, algorithms, and system architectures;
- business strategies, pricing models, and financial projections;
- supplier terms and negotiated pricing;
- technical drawings, blueprints, and product specifications; and
- R&D data, including test results and negative know-how.

Information that is readily ascertainable from public sources or constitutes general industry knowledge will not qualify.

1.4 Elements of Trade Secret Protection

Under the Trade Secrets Act, three cumulative elements must be satisfied.

- secrecy – the information must not be publicly known or accessible by persons normally connected with it, assessed objectively by reference to the relevant industry or professional community;
- commercial value from secrecy – the information must derive its competitive or economic advantage from the fact that it is not publicly known; and
- appropriate protective measures – the controller must have taken affirmative steps to maintain confidentiality. Failure to demonstrate this element is fatal to the claim.

For CCC contractual claims, the elements are: existence of a valid confidentiality obligation, breach, and damage. For tortious claims under Section 420 of the CCC, the claimant must establish: a wrongful act, fault, damage, and causation. These causes of action may be pursued concurrently with a Trade Secrets Act claim.

1.5 Reasonable Measures

The requirement to take “appropriate measures to maintain secrecy” is embedded in the Trade Secrets Act’s definition of a trade secret and is a mandatory element – an owner who cannot demonstrate such measures will fail to establish that a trade secret exists. The standard is fact-specific; Thai courts consider the nature and sensitivity of the information, the size of the business, industry context, and risk of disclosure.

Measures generally regarded as appropriate include: written NDAs with employees and third parties; physical and IT access controls (encryption, passwords, access logs); confidentiality markings on documents; need-to-know access restrictions; and employee confidentiality training. Conversely, a complete absence of protective measures, sole reliance on informal oral understandings, or unrestricted employee access without any confidentiality framework is unlikely to satisfy the requirement.

1.6 Disclosure to Employees

Disclosure to employees does not itself destroy trade secret protection. The key question is whether the information remains non-public and whether the controller has maintained appropriate protective measures. Disclosure on a controlled, need-to-know basis for legitimate business purposes is generally permissible, provided that employment contracts include confidentiality obligations, access is limited to employees who need the information, and post-employment confidentiality obligations are clearly documented.

However, broad or indiscriminate disclosure to a large number of employees without an adequate confidentiality framework may undermine the secrecy requirement, as the information could be viewed as accessible to persons ordinarily connected with it.

1.7 Independent Discovery

The Trade Secrets Act expressly recognises two defences: independent discovery, where a person discovers another’s trade secret through their own invention or development using their own expertise; and reverse engineering, where a person discovers another’s trade secret by evaluating and analysing a widely known product obtained in good faith.

The reverse engineering defence may be waived by contract. It is unavailable where the person conducting the reverse engineering has expressly agreed otherwise with the owner or seller of the product. Anti-reverse-engineering clauses are therefore common and generally enforceable in Thai license agreements and NDAs. Neither defence eliminates the trade secret as against others. The trade secret remains enforceable against third parties who acquired it through improper means.

1.8 Computer Software, Artificial Intelligence and Technology

Thailand has no separate trade secret regime specifically for computer software, AI, or technology. The Trade Secrets Act applies equally to all trade information regardless of form or medium, and expressly includes programs within the definition of trade information, confirming that software is protected under the general framework.

However, the Computer Crimes Act (No. 2) B.E. 2560 (2017) provides supplementary criminal protection specifically relevant to technology-related trade secret misappropriation. It criminalises unauthorised access to computer systems, unauthorised interception of computer data, and unauthorised alteration or destruction of data. Where trade secrets are stolen through hacking, unauthorised system access, or electronic espionage, the Computer Crimes Act provides criminal penalties in addition to those available under the Trade Secrets Act.

Additionally, copyright protection under the Copyright Act B.E. 2537 (1994) may protect the expression of software (source code and object code), while trade secret protection extends to the underlying algorithms, methods, and techniques that copyright does not cover. The Personal Data Protection Act B.E. 2562 (2019) may also be relevant where trade secrets overlap with personal data, such as customer databases containing personal information.

1.9 Duration of Protection for Trade Secrets

Trade secret protection has no fixed statutory duration. It continues for as long as the information remains secret, has commercial value because it is secret, and is subject to appropriate protective measures. In principle, protection may therefore last indefinitely.

Once the information becomes public or generally known, the secrecy requirement is no longer met and protection is lost. The Act does not expressly distinguish between intentional and accidental disclosure; the test is objective. A limited accidental disclosure that does not make the information generally known may not defeat protection if the owner acts promptly to contain it, such as by seeking an injunction or requiring return of the materials. Controlled disclosure under NDAs or license agreements likewise does not destroy protection so long as confidentiality obligations are preserved.

1.10 Licensing

The Trade Secrets Act grants the owner the right to license another person to disclose, use, or deprive of a trade secret, and to stipulate terms and conditions for the maintenance of secrecy. Licensing does not itself destroy trade secret protection – the critical question is whether the information remains secret and appropriate protective measures are maintained.

Outright transfers (other than by inheritance) must be in writing and signed by both parties, with a default term of ten years. Although this formality is not expressly extended to licences, written licence agreements are essential in practice. To maintain protection when licensing, owners should: impose robust confidentiality and non-disclosure obligations on the licensee; restrict the scope of permitted use; require equivalent protective measures from the licensee; include audit rights; address return or destruction of materials on termination; and prohibit sublicensing without prior written consent.

1.11 What Differentiates Trade Secrets From Other IP Rights

Trade secret protection differs from other forms of Thai IP protection in several key respects:

- no registration – unlike patents (Patent Act B.E. 2522 as amended), trade marks (Trade Mark Act B.E. 2534 as amended), and designs, trade secrets require no registration or government examination. Protection arises automatically;
- no fixed term – trade secret protection is potentially indefinite, unlike patents, copyrights, and trade marks;
- broader subject matter – trade secrets can protect functional methods, business information, and negative know-how that may not meet the patentability threshold or fall outside copyright's expression/idea divide;

- inherent fragility – once secrecy is lost, protection is irreversibly destroyed (unlike registered rights, which subsist regardless of public knowledge); and
- enforcement burden – claimants must affirmatively prove all three elements of trade secret status; holders of registered IP rights benefit from a presumption of validity.

1.12 Overlapping IP Rights

Thai law does not prohibit claimants from asserting trade secret rights in combination with other IP rights in the same proceedings. The IP&IT Court has jurisdiction over all categories of IP disputes – trade secrets, patents, copyrights, and trade marks.

Common overlapping scenarios include: software disputes where copyright protects the code and trade secrets protect the underlying algorithms; product cases where a manufacturing process is a trade secret while the product is patent-protected; and databases attracting both copyright and trade secret protection.

The public disclosure requirement for patent registration is fundamentally incompatible with trade secret protection – an applicant who files a patent application will destroy the secrecy element for the disclosed information. Courts will also not permit double recovery for the same harm across multiple causes of action.

1.13 Other Legal Theories

Thai law provides several causes of action relating to trade secrets beyond statutory misappropriation, such as:

- breach of contract – where a party has executed an NDA or employment contract with confidentiality provisions, breach gives rise to a contractual damages claim under the CCC, independent of whether the information qualifies as a statutory trade secret.
- tort – the CCC imposes liability on any person who wilfully or negligently causes unlawful damage to another's rights. Trade secret misappropriation may constitute such a wrongful act.
- unfair competition – the Trade Competition Act B.E. 2560 (2017) may be relevant where systematic misappropriation forms part of a broader pattern of unfair business conduct.

1.14 Criminal Liability

The Trade Secrets Act imposes criminal penalties for specific acts.

- Section 33 criminalises the malicious public disclosure of another's trade secret in a manner causing it to cease being a secret (imprisonment not exceeding one year and/or a fine not exceeding THB200,000).
- Section 34 (as amended by the 2015 amendment) imposes liability on persons who hold trade secrets by virtue of their position under Section 15 (relating to drugs and agricultural chemical products) and unlawfully disclose or use them (imprisonment not exceeding two years and/or a fine not exceeding THB200,000).
- Section 35 penalises disclosure of confidential business facts obtained in the course of performing duties under the Act (imprisonment not exceeding one year and/or a fine not exceeding THB100,000).
- Section 36 extends liability to directors, managers, and responsible officers of legal entities.

The offences under Sections 33 and 36 are compoundable and may be settled by the Board. A trade secret owner may pursue concurrent civil and criminal claims; criminal proceedings do not bar civil actions for injunctive relief and damages under Sections 8 and 13.

1.15 Extraterritoriality

The Trade Secrets Act contains no express extraterritorial provision and as a general principle governs infringement occurring within Thailand. The IP&IT Court exercises jurisdiction where the infringing act was committed in Thailand or where the defendant is domiciled here.

Where misappropriation occurs partly in Thailand and partly abroad, Thai courts may assert jurisdiction over the Thai component. If a trade secret is misappropriated overseas but subsequently used or disclosed within Thailand, a claim may be brought in respect of the infringing acts occurring in Thailand.

Choice-of-law issues are governed by the Conflict of Laws Act B.E. 2481 (1938): tortious claims are generally subject to the law of the place of the tort (lex loci delicti), while contractual claims follow the governing law of the relevant agreement. Owners with cross-border operations should include governing law and jurisdiction clauses in all confidentiality agreements designating Thai law and the IP&IT Court (or Thai-seated arbitration) to ensure the Act's protections apply.

2. Misappropriation of Trade Secrets

2.1 The Definition of Misappropriation

Under the Trade Secrets Act, claims of misappropriation require the claimant to establish the existence of a protectable trade secret.

Misappropriation is broadly framed as the disclosure, deprivation, or use of a trade secret without the consent of the owner of the trade secret, in a manner contrary to honest trade practices, where the misappropriator knew or had reasonable cause to know that the act is contrary to honest trade practices. The concept extends beyond actual use and may encompass unauthorised deprivation or disclosure. Conduct considered contrary to honest trade practices includes, for example, breach of contract or inducement to infringe confidentiality, bribery, coercion, fraud, theft, espionage through electronics or other means, or receiving of stolen property. Legitimate acquisition through independent development or lawful reverse engineering does not constitute misappropriation under Thai law.

2.2 Employee Relationships

The statutory elements of a trade secret misappropriation claim do not differ where the alleged infringer is an employee or former employee.

Employee-related misappropriation claims typically involve alleged breaches of employment-related confidentiality obligations, misuse of confidential information after termination, or disclosure to competitors. Employee obligations in respect of trade secrets usually arise from employment agreements, confidentiality or non-disclosure agreements or clauses, internal policies, and training.

Such contractual and organisational measures are also relevant to establishing that the employer has taken appropriate measures to maintain secrecy, which is a core requirement for trade secret protection under the Trade Secrets Act. Thai case law and commentary demonstrate that the inability to prove adequate secrecy measures, even where confidentiality clauses exist, can undermine a misappropriation claim.

2.3 Joint Ventures

Thai law does not provide a specific statutory regime governing trade secrets in joint ventures. Trade secret protection in this context is addressed through the general framework of the Trade Secrets Act together with contractual arrangements between the parties. Where trade secrets are shared in joint ventures or similar collaborations, unauthorised use or disclosure may constitute misappropriation if it occurs without consent and in breach of contractual confidentiality or use restrictions, or is otherwise contrary to honest trade practices. Consequently, effective protection in joint ventures depends heavily on appropriate contractual safeguards and the implementation of consistent secrecy measures.

2.4 Industrial Espionage

Industrial espionage is not defined as a standalone offence under the Trade Secrets Act. However, conduct commonly associated with industrial espionage falls within the scope of trade secret misappropriation where it involves unauthorised disclosure, deprivation, or use of trade secrets. Examples include theft, fraud, bribery, coercion, espionage through electronics or other means, inducement to breach confidentiality, and receiving of stolen property. Such conduct may give rise to civil remedies, criminal liability, or both. Available civil remedies include interim and permanent injunctions (including seizure or destruction orders), monetary damages, account of profits, and punitive damages of up to two times the actual damages where the infringement was wilful or malicious and caused the trade secret to lose its secrecy.

In a civil suit for infringement of a manufacturing process that is a trade secret, the burden of proof may be reversed: it is presumed that the defendant infringes the trade secret if the controller can prove that the defendant's product is the same as the product produced using the controller's trade secret, unless the defendant proves otherwise. The court may also order that products manufactured through infringement be vested with the State or the controller of the trade secrets.

Criminal liability may arise where a person discloses another's trade secret to the public in a manner causing it to lose its secrecy, with malicious intent to damage the controller's business, punishable by imprisonment not exceeding one year, a fine of up to THB200,000, or both. The offence is compoundable.

3. Preventing Trade Secret Misappropriation

3.1 Best Practices for Safeguarding Trade Secrets

The Trade Secrets Act does not prescribe specific mandatory safeguards. Instead, it requires the controller of trade secret information to take "appropriate measures" to maintain secrecy, assessed on a case-by-case basis.

In practice, appropriate measures may include confidentiality and non-disclosure provisions in employment and commercial agreements, internal confidentiality and information security policies, periodic employee training, restricted access to sensitive information, document marking and classification, monitoring and auditing of access, physical security controls, and the use of NDAs with third parties.

More sensitive or technical trade secrets, such as source code, manufacturing processes, or formulas, generally require more stringent safeguards than general commercial information.

3.2 Exit Interviews

The scope and content of exit interviews are typically assessed on a case-by-case basis and may vary depending on the employee's role, the contractual obligations under the employment agreement, and the company's internal practices and culture. Although not mandated under Thai law, exit interviews are common as part of a broader trade secret protection strategy. Employers generally use exit procedures to remind departing employees of their ongoing confidentiality obligations, recover company property and access credentials, and confirm that no confidential information has been retained or disclosed.

In some cases, employers may also review system access activity prior to departure and seek written confirmations of compliance with confidentiality obligations. Some employers inquire about the nature and details of the departing employee's new position, particularly where the employee had access to sensitive trade secrets and the new role is with a competitor, as this may inform the employer's assessment of any potential risk of misappropriation and the need for any further protective measures. Such measures support the continued protection of trade secrets and may be relevant if enforcement action becomes necessary.

4. Safeguarding Against Allegations of Trade Secret Misappropriation

4.1 Pre-Existing Skills and Expertise

Protection is generally limited to information that meets the statutory definition of a trade secret. As a result, information that is generally known, publicly available, or no longer confidential does not qualify for protection under the Trade Secrets Act.

The Trade Secrets Act and relevant laws do not articulate a formal legal doctrine distinguishing an employee's general skills and experience from protectable trade secrets, nor does Thai law recognise or define a doctrine of "inevitable disclosure". Accordingly, disputes are assessed by reference to whether the specific information at issue qualifies as a trade secret under the statutory criteria and whether misappropriation can be established based on the facts, rather than on presumptions arising from the employee's role or future employment.

4.2 New Employees

When hiring employees from competitors, Thai practice generally focuses on risk management. Prior to hiring, employers may conduct due diligence on the candidate's existing obligations, including reviewing whether the candidate is subject to any noncompete, non-solicitation, or confidentiality agreements with the former employer, to assess potential exposure. Employers commonly seek contractual representations from new employees confirming that they have complied with prior confidentiality obligations and will not bring or use third party proprietary information. During onboarding, clear onboarding procedures, confidentiality acknowledgments, targeted training on trade secret obligations, restricted access to sensitive information, and well-implemented internal policies are commonly used to minimise the risk of trade secret misappropriation claims and to demonstrate good faith preventive measures.

5. Trade Secret Litigation

5.1 Prerequisites for Filing a Lawsuit

A civil lawsuit for trade secret misappropriation may be initiated once the claimant possesses a sufficient factual basis to allege that its trade secret has been disclosed, deprived, or used without consent in a manner contrary to honest trade practices.

No statutory prerequisites or preliminary procedural steps must be satisfied before commencing proceedings. Accordingly, claims may be filed directly with the IP&IT Court.

Nevertheless, the claimant should be adequately prepared to substantiate the core elements of the claim at the time of filing. In particular, the claimant should be in a position to:

- identify the trade secret with reasonable clarity and specificity;
- demonstrate that the information in question qualifies for protection under the Trade Secrets Act, including by establishing that reasonable measures were taken to maintain its secrecy; and
- set out a prima facie connection between the respondent's conduct and the alleged misappropriation.

5.2 Limitations Period

Trade secret claims in Thailand are subject to a dual limitation framework combining both a knowledge-based period and an absolute long-stop period.

Three-Year Knowledge-Based Period

No civil action may be brought more than three years from the date on which the trade secret owner becomes aware, or should reasonably have become aware, of both the infringement and the identity of the infringer. This period is therefore triggered not by the infringing act itself, but by the claimant's actual or constructive knowledge of the relevant facts.

Ten-Year Long-Stop Period

No action may be taken more than ten years from the date of the infringement. This long-stop period runs from the date of the infringing act itself and operates as an absolute cut-off, after which no claim may be initiated, irrespective of whether the trade secret owner was aware of the wrongdoing.

In practice, the two periods operate concurrently. A claim will be time-barred upon the expiry of whichever period elapses first. Accordingly, a trade secret owner who discovers an infringement promptly must act within three years of gaining that knowledge, while an owner who remains unaware of the infringement will, in any event, lose the right to bring a claim once ten years have passed from the date of the infringing conduct.

5.3 Initiating a Lawsuit

To commence a civil lawsuit for trade secret misappropriation, the claimant files a complaint with the IP&IT Court. The complaint must set out the parties, the trade secrets in issue, the facts constituting misappropriation, the legal basis of the claim, and the relief sought.

Where the claimant seeks an award of damages, the applicable court fee must also be paid at the time of filing. The complaint should describe the alleged confidential information with sufficient particularity to demonstrate that the claim is bona fide and to enable the court to assess the nature and scope of the asserted rights, while taking care to avoid unnecessary public disclosure of the substance of the trade secret itself.

Once the complaint has been accepted for filing, the court issues a summons, which is then served on the respondent. The matter thereafter proceeds through the court's established case management stages, which typically include mediation, the determination of disputed issues, and a main hearing, subject to any applications for interim measures that may be brought by either party during the course of proceedings.

5.4 Jurisdiction of the Courts

Trade secret disputes fall within the jurisdiction of the IP&IT Court, a specialised court established under the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court B.E. 2539 (1996). The IP&IT Court is staffed by judges and officers with expertise in technically complex disputes, including those involving confidential business information, and is equipped to hear applications for urgent interim relief such as injunctions to prevent the misappropriation or further disclosure of trade secrets.

The Central IP&IT Court, located in Bangkok, is formally designated to exercise jurisdiction over IP disputes arising in Bangkok and its surrounding provinces. Although the governing legislation contemplates establishing regional IP&IT Courts to serve other parts of the country, none have been established to date. As a result, the Central IP&IT Court serves as the sole forum for all IP disputes, including trade secret disputes, throughout Thailand.

5.5 Initial Pleading Standards

Thai law does not impose a heightened or particularised pleading standard for trade secret claims.

Under the Regulation for Intellectual Property and International Trade Cases B.E. 2566 (2023), the complaint is considered valid where it sets out the nature of the claim, the underlying factual allegations, and the relief sought. Accordingly, allegations grounded in circumstantial facts or inference, comparable in effect to pleading on "information and belief", are permissible provided they rest on identifiable facts and are not purely speculative.

Although there is no formal requirement of heightened particularity, the complaint must be sufficiently clear and detailed to enable both the court and the respondent to understand the case being advanced. Where any element of the plaint is unclear, the court retains the power to order the claimant to amend or furnish further particulars, and the respondent will be entitled to revise its defence in response.

In practice, the claimant is expected to identify, at a minimum:

- the nature of the alleged trade secret;
- the basis on which it qualifies for legal protection; and
- the circumstances under which the respondent obtained access to use or disclose the information.

While full evidentiary proof may be developed through subsequent procedural stages, the initial pleading must contain sufficient factual substance to advance the case beyond mere suspicion or conjecture.

5.6 Seizure Mechanisms

Thai law provides court-supervised mechanisms for the ex parte seizure and preservation of evidence in trade secret cases. These mechanisms function in a manner analogous to Anton Piller orders, permitting authorised entry into premises and the securing of relevant evidence without prior notice to the respondent. Such measures serve to prevent the destruction, concealment, or dissipation of critical evidence before the respondent becomes aware of the proceedings.

All seizure and preservation activities are carried out by the claimant itself, but strictly under the supervision of the Court. In practice, the execution of the order must be accompanied by the legal execution officer, the court officer, and the police.

To obtain such ex parte relief, the applicant must satisfy a stringent threshold, demonstrating:

- necessary technical data about the trade secret information;
- a prima facie case of trade secret misappropriation supported by detailed evidence;
- the respondent is in possession of relevant evidence or infringing materials; and
- a real and immediate risk that such evidence will be destroyed, concealed, or transferred if prior notice is given.

Given the intrusive character of the remedy and the absence of an inter partes hearing, the court will scrutinise the application with care and may require corroborating evidence beyond the applicant's own assertions.

These mechanisms are available at any stage before final judgment and may, in cases of genuine urgency, be granted before the substantive lawsuit is filed. Where such pre-lawsuit relief is obtained, the claimant is ordinarily required to commence the main proceedings within the period prescribed by the court, failing which the order is liable to be revoked.

The court may impose conditions on the grant of relief, including a requirement that the applicant furnish a security deposit or undertake damages sufficient to compensate the respondent if the order is subsequently found to have been unjustified.

5.7 Obtaining Information and Evidence

As a general principle, the burden rests on the claimant to gather and present sufficient evidence to support its trade secret claim. In practice, this means that an internal investigation is typically required at the outset to identify the relevant facts, secure available evidence, and assess the strength of the claim before initiating proceedings or seeking court intervention. Court mechanisms, therefore, serve primarily as a tool to assist in the collection and preservation of evidence, rather than as a substitute for the claimant's own fact-finding efforts.

Thai law provides a combination of court-supervised mechanisms for obtaining evidence in trade secret cases, both at the pre-action stage and during proceedings. To obtain such assistance, the claimant must first present sufficient preliminary evidence to demonstrate the relevance and necessity of the measures sought. At an early stage, a claimant may seek preservation or seizure of evidence through measures analogous to an Anton Piller order, as described above. During the proceedings, the parties may also request the court to issue summonses requiring witnesses to testify or produce documents.

The types of evidence relied upon in trade secret litigation include:

- evidence demonstrating the existence and confidential nature of the trade secret and the measures taken to protect it;
- evidence showing that the respondent has acquired, used, or disclosed the trade secret without authorisation; and
- evidence indicating that the respondent has obtained commercial benefit from such conduct.

Such evidence may include documentary records, internal communications, digital forensic evidence, access logs, employment agreements, and witness testimony.

5.8 Maintaining Secrecy While Litigating

In trade secret litigation, the protection of confidential information during proceedings is not automatic. A party seeking such protection must apply to the court for appropriate confidentiality measures under the Regulation for Intellectual Property and International Trade Cases B.E. 2566 (2023).

Upon receiving such a request, the court may order that portions of the proceedings be conducted confidentially. This may include excluding the public from hearings involving sensitive information and restricting the disclosure or publication of case-related details.

The court may also regulate the handling of confidential materials throughout the evidentiary process. Such regulation can encompass limiting access to certain documents, controlling how information is presented during hearings, and ensuring that sensitive details are not disclosed beyond what is necessary for the fair determination of the dispute. In practice, these measures allow fact-gathering and evidence-taking to be conducted confidentially to a meaningful extent.

Confidentiality under these measures is not, however, absolute. The court must balance the need to protect trade secrets against the opposing party's right to fully understand and challenge the evidence relied upon. While disclosure to the public and unrelated third parties can be restricted, the parties themselves will generally retain access to the relevant evidence, subject to appropriate safeguards imposed by the court.

5.9 Defending Against Allegations of Misappropriation

The most common defences in trade secret litigation in Thailand include challenging whether the information at issue qualifies as a trade secret under the Trade Secrets Act. Such challenges may include arguments that:

- the claimant is not the lawful owner or controller of the alleged trade secret;
- the information lacks demonstrable commercial value;
- the information is generally known or readily accessible to persons within the relevant industry;
- the trade secret owner does not apply any appropriate measure to maintain the secrecy of the information or such a measure is impractical to maintain it; or
- the information has already entered the public domain.

In addition to contesting trade secret status, respondents may dispute the alleged acts of misappropriation themselves, deny any unauthorised use or disclosure of the information, or challenge the existence and quantum of the damages claimed.

In practice, one of the most frequently successful defences in Thailand relates to the claimant's failure to demonstrate that adequate measures were taken to maintain the secrecy of the information. Thai courts place considerable emphasis on this requirement, and there is a substantial body of case law in which claims have been dismissed on the ground that the claimant did not implement reasonable and effective confidentiality measures. Particularly, even where confidentiality or non-disclosure agreements are in place, if the information is not treated as confidential in practice, the courts may conclude that the information does not qualify for protection as a trade secret.

5.10 Dispositive Motions

Under the Thai Code of Civil Procedure, the claimant or respondent can raise a question of law before trial that, if decided in that party's favour, could resolve the entire case or a significant issue therein without the need for further proceedings.

To do so, a party must demonstrate that the question it seeks to have determined is a pure question of law suitable for preliminary adjudication, and must identify a clear and discrete question of law that can be resolved independently of any disputed factual issues. The party must demonstrate that a decision on that question of law in its favour would make further trial of the case, or further trial of some important issues of the case, no longer required. If the court is satisfied on these points and decides the preliminary question, it may then proceed to dispose of the entire case, or only the relevant issues, by a single judgment or order.

5.11 Cost of Litigation

The cost of trade secret litigation in Thailand varies significantly depending on the complexity of the case. Key factors influencing overall cost include the technical nature of the confidential information at issue, the volume of digital evidence, the number of respondents, and the manner in which the alleged misappropriation occurred. Cases involving complex technical data or applications for urgent interim relief – such as evidence preservation orders – will typically incur substantially higher costs.

In general, both claimants and respondents should expect to incur the following types of expense:

- court fees, which are calculated based on the value of the claim and subject to statutory caps;
- legal fees for counsel;
- costs associated with evidence preparation, including document management and translation;
- digital forensic and IT-related costs, particularly where electronic data is central to the dispute;
- expert witness fees, where technical issues require specialist testimony; and
- investigation costs, especially in cases involving employee misconduct or unauthorised data extraction.

Additional costs may also arise from the execution of court orders, such as evidence preservation measures, which can involve court officers, third-party custodians, and related logistical expenses.

Contingency fee arrangements are not permitted under Thai law and are generally considered contrary to the professional conduct rules governing legal practice. Legal fees are therefore typically structured on a time-cost, fixed-fee, or capped fee basis. Certain success-based fee components may be permissible, provided they do not constitute a prohibited contingency arrangement in substance.

Third-party litigation funding is not recognised under Thai law and is generally considered contrary to public order and good morals. The Supreme Court has consistently held that agreements whereby a third-party funds litigation in exchange for a share of the proceeds – without having a direct interest in the underlying dispute – are void and unenforceable, on the basis that they represent an improper attempt to profit from another party's litigation.

6. Trial

6.1 Bench or Jury Trial

Trade secret cases in Thailand are decided by a panel of two professional judges and one associate judge in the specialist IP&IT Court. Thailand does not use jury trials in its judicial system.

6.2 Trial Process

Cases are determined based on both documentary evidence and witness testimony. The court evaluates written evidence alongside oral testimony from fact witnesses and, where appropriate, expert witnesses. All evidence must be formally admitted through the applicable evidentiary procedures in accordance with the governing procedural rules.

Proceedings are not determined solely on the papers; live witness examination remains a central feature, particularly where facts are in dispute or technical issues arise. The parties also advance their legal and factual arguments before the court, both in written submissions and through oral advocacy, as directed during the proceedings.

The duration of a case depends on its complexity, including the volume of evidence to be considered and the number of witnesses to be called. In general, the period from filing of a complaint to issuance of judgment is approximately one year, though more complex matters may take considerably longer.

6.3 Use of Expert Witnesses

Expert witnesses are permitted in Thai proceedings and are frequently employed in technically complex disputes. It is common for the claimant and the respondent to introduce their own expert witnesses to testify or give an opinion on technical issues. The court also has broad discretion to appoint a knowledgeable person or expert as the court's expert witness under the Regulation for Intellectual Property and International Trade Cases B.E. 2566 (2023). The expert witness can testify in any relevant field where such expertise would assist in the adjudication of the case. There is no strict requirement that the dispute fall within a particular subject-matter category; the use of expert evidence depends on the court's assessment of the issues and, where applicable, a party's request.

For an expert witness appointed by the court, testimony is primarily presented as written opinions. The appointed expert submits a written opinion addressing the issues specified by the court, which is then circulated to the parties for review. Where the court considers it necessary, it may request further written clarification from the expert. The parties are also entitled to submit rebuttal opinions from their own experts within a prescribed period. The presence of the court-appointed expert witness at the hearing is not required.

Expert witnesses introduced by the parties will be presented through the ordinary evidentiary process. A party may call its own expert to testify as part of its case, particularly where the technical issues in dispute are contested and require explanation or clarification through oral examination.

The cost of expert evidence varies with the field and the complexity of the issues involved, and may be significant in cases requiring detailed technical analysis or forensic examination.

7. Remedies

7.1 Preliminary Injunctive Relief

Preliminary injunctive relief is available under Thai law and is frequently sought in trade secret disputes to restrain ongoing or imminent misappropriation of confidential information. Such relief may be granted on an expedited basis, including on an ex parte basis where the circumstances warrant, particularly where there is a demonstrable risk that evidence may be destroyed or concealed, or that the trade secret may be further disseminated before notice can be given to the opposing party.

To obtain preliminary injunctive relief, the applicant must establish:

- a prima facie case of trade secret misappropriation;
- that the respondent is engaging in, or is imminently likely to engage in, infringing conduct; and
- that there is a genuine risk of irreparable harm such as continued misuse, loss of confidentiality, or erosion of the commercial value of the trade secret if the injunction is not granted.

The court will additionally assess the urgency of the application, whether the balance of convenience favours the grant of relief, and whether the relief sought is proportionate in the circumstances.

Applications for preliminary injunctive relief may be filed either prior to the substantive action or contemporaneously with the filing of the complaint. Where relief is granted before the main proceedings have been instituted, the applicant is ordinarily required to commence those proceedings within a period prescribed by the court. Failure to do so may result in the automatic revocation of the injunction.

The court may require the applicant to furnish a security deposit or bond as a condition of the grant of injunctive relief in order to compensate the respondent for any loss or damage sustained in the event that the injunction is subsequently found improper or unjustifiable. The quantum of the security is determined on a case-by-case basis, having regard to factors including the scope and breadth of the injunction and the potential adverse impact on the respondent's business operations.

Subject to some conditions, preliminary injunctions remain in effect pending the final determination of the substantive proceedings or until otherwise varied, discharged, or revoked by the court.

7.2 Measures of Damages

A successful claimant may seek damages for the injury caused by the infringement of its trade secret rights. Such damages are primarily compensatory in nature and must reflect the direct damage suffered by the claimant. To establish a claim, the claimant must demonstrate the existence of a trade secret, the act of infringement, the causal link between the infringement and the loss sustained, and the quantum of damages claimed.

Depending on the facts, damages may be assessed by reference to direct loss suffered, such as loss of sales or revenue, lost business opportunities, or the gains derived by the infringer. In particular, the court may take into account profits obtained by the respondent from or in connection with the infringement. Where such damage cannot be precisely quantified, the court may award an appropriate amount based on the circumstances of the case.

In addition, punitive damages may be awarded in limited circumstances. Where there is clear evidence that the infringement was carried out wilfully or maliciously, and such conduct results in the trade secret losing its confidential nature, the court may order the respondent to pay punitive damages, which may not exceed two times the amount of compensatory damages awarded.

A successful respondent does not typically recover damages merely for having been sued, but may obtain recovery of allowable litigation costs in accordance with general procedural principles.

7.3 Permanent Injunction

Permanent injunctive relief is available in Thailand for a successful plaintiff in trade secret cases. Where the court finds that trade secret infringement has occurred, it may order the defendant to cease further use, disclosure, or exploitation of the trade secret. The grant of an injunction is not, however, automatic. In circumstances where the court considers injunctive relief to be inappropriate, it may instead order the defendant to pay compensation and permit continued use of the trade secret for a specified period.

In addition to prohibitory relief, the court possesses broad powers to address infringing materials and products. A claimant may request the court to order the destruction or confiscation of materials, apparatus, tools, or equipment used in the infringement. Products manufactured through the use of misappropriated trade secrets and still in the respondent's possession may be ordered to be transferred to the claimant or vested in the State. Where possession of such products is itself unlawful, the court may order their destruction.

Thai law does not typically provide for injunctions that broadly restrict a former employee's subsequent employment. Courts are more likely to focus on prohibiting the use or disclosure of specific trade secrets rather than imposing a general restraint on a former employee's ability to work in a particular field or industry. A broader restriction on employment may, however, be enforceable where it is supported by a separate contractual basis such as a non-compete clause.

A permanent injunction generally remains in effect for so long as the trade secret retains its confidential status.

7.4 Attorney's Fees

Full recovery of attorneys' fees on an indemnity basis is not a feature of Thai civil litigation, including trade secret cases. While a successful party may recover certain court-awarded costs, these typically do not reflect the entirety of its actual legal expenditure. As a result, there is often a significant gap between the fees a party incurs and those it can recover through the court's costs order.

However, in practice, the claimant should submit evidence of its legal costs, including attorneys' fees, to the court for consideration. The court may, at its discretion, take such evidence into account and award additional compensation in relation to such costs, although such recovery remains limited and is not equivalent to full indemnity.

7.5 Costs

Successful claimants in Thai trade secret litigation may recover certain categories of court-awarded costs, including court fees, service fees, and other procedural expenses. Thai courts generally do not award the full range of costs that parties incur in prosecuting a claim; rather, recoverable costs are limited to those recognised under the applicable procedural rules, which typically fall well short of a party's total legal expenditure.

In contrast, a successful defendant may likewise seek an award of costs on substantially the same basis. There is no trade-secret-specific costs regime that distinguishes between claimants and respondents in this regard. The court retains discretion over whether and to what extent costs are awarded to the prevailing party.

The process for seeking costs follows standard Thai civil procedural rules. However, recovery of such costs is not automatic. The prevailing party must take further steps to enforce the judgment, including the cost award, through enforcement proceedings. If the losing party files an appeal or petition with the Supreme Court, the court requires that party to deposit the adjudged amount with the court to proceed with the appeal.

8. Appeal

8.1 Appellate Procedure

The appellate procedure in trade secret cases follows the general rules applicable to civil litigation in Thailand. Both claimants and respondents have the right to appeal an adverse judgment or order.

An appeal must be filed within one month from the date on which the judgment is granted. The court may grant extensions of this period for reasonable cause. Once an appeal has been submitted, the appellate court will consider the case on the basis of the trial record and the parties" written submissions.

The appellate process typically takes approximately 1–1.5 years, though this timeframe may vary depending on the complexity of the issues in dispute and the prevailing workload of the court.

Certain interlocutory orders are also subject to appeal, provided that the affected party has preserved its objections on the record. The availability of interlocutory appeals depends on the nature of the order in question and the applicable procedural rules.

Because trade secret cases fall within the exclusive jurisdiction of the IP&IT Court, the appellate framework is uniform. The same procedural rules and standards of review apply across all trade secret appeals within the IP&IT Court system.

8.2 Factual or Legal Review

Appeals courts in Thailand may review both factual and legal issues. Under the Civil Procedure Code, an appeal against a judgment of a court of first instance allows the Court of Appeal to reconsider the case on the record, encompassing both findings of fact and the application of law. However, the scope of appellate review is subject to certain statutory conditions.

The appellate court exercises broad revisory powers over the issues raised in the appeal, assessing both factual determinations and legal conclusions within the bounds of the record and the applicable procedural rules. The court may affirm, reverse, or vary the judgment of the lower court as it considers appropriate. In practice, while the appellate court gives due regard to the findings of the trial court, particularly on matters of witness credibility, it is not bound by them and retains full authority to reach its own conclusions on the evidence.

When appealing a final judgment, parties are not required to formally preserve issues in advance and may raise arguments on both facts and law in the appeal. However, with respect to interlocutory orders or procedural rulings made during proceedings, parties must have raised a timely objection on the record at the relevant stage. Additionally, any issue that was not pleaded or raised before the court of first instance may be considered a new issue that cannot be raised for the first time on appeal, unless it concerns a matter of public order.

Appeals in Thailand are primarily decided based on the written record and the parties' written submissions. There is no re-examination of witnesses at the appellate stage, and no further evidentiary hearings are conducted.

9. Criminal Offences

9.1 Prosecution Process, Penalties and Defences

Criminal prosecution for trade secret theft in Thailand may be initiated in two ways:

- by filing a direct criminal complaint with the IP&IT Court; or
- by lodging a complaint with the Royal Thai Police, which will investigate the matter and submit the case to the public prosecutor for consideration of indictment.

The public prosecutor will then determine whether sufficient evidence exists to bring the case before the IP&IT Court.

The prosecution and the complainant must prove beyond a reasonable doubt that the accused disclosed the trade secret to the public, acted with malicious intent, and that such disclosure caused the trade secret to lose its confidential nature. Thai courts interpret these elements strictly, particularly the requirement of "public disclosure", which significantly limits the availability of criminal remedies in many cases where misappropriation occurs through private use or selective disclosure rather than widespread publication.

Criminal penalties under Thai law may include fines and/or imprisonment, depending on the severity of the offence and the circumstances of the case. However, in practice, criminal enforcement is less commonly pursued compared to civil actions, given the high evidentiary burden and the narrow judicial interpretation of the statutory elements.

Defences in criminal trade secret cases generally mirror those available in civil proceedings, including arguments that the information does not qualify as a trade secret (eg, it is publicly known, readily ascertainable, or lacks commercial value), that reasonable measures to maintain secrecy were not implemented by the trade secret owner, or that there was no unauthorised use or disclosure. In addition, criminal cases allow for defences specific to the higher standard of proof, such as the absence of malicious intent or the absence of public disclosure as required by the statute.

10. ADR

10.1 Dispute Resolution Mechanisms

The principal ADR methods available in Thailand for resolving trade secret disputes are mediation and arbitration, each of which operates within a distinct legal and institutional framework.

Mediation may take place either before or after the commencement of litigation. Pre-litigation mediation can be initiated by filing a request with the court, while post-filing mediation is commonly encouraged and facilitated by the court during proceedings. Statements made and information exchanged during mediation are, in principle, inadmissible as evidence in subsequent litigation.

However, pre-litigation mediation is not always favoured in trade secret cases. The nature of these disputes frequently involves a risk of evidence dissipation, ongoing misappropriation, or strategic disadvantage if the respondent is alerted to the scope of the claimant's knowledge before formal proceedings are commenced. Private mediation services are arguable due to the absence of rules.

Mediation is generally the faster option, with most mediations concluding within a matter of weeks or a few months, depending on the complexity of the issues and the willingness of the parties to negotiate. Court-annexed mediation in the IP&IT Court is typically conducted at an early stage of proceedings and involves minimal additional cost beyond standard court fees.

Arbitration is available where the parties have agreed to submit disputes to arbitration, typically through a pre-existing arbitration clause in a commercial agreement. Arbitration in Thailand is governed by the Arbitration Act B.E. 2545 (2002). Proceedings may be administered by institutions such as the Thailand Arbitration Institute (TAI), which operates under the auspices of the Office of the Judiciary, or the Thai Arbitration Center (THAC). Ad hoc arbitration is also permissible under Thai law.

Arbitration timelines vary depending on the complexity of the dispute, the number of arbitrators, and the procedural rules of the administering institution. The costs of arbitration can be comparable to or higher than litigation, as they include arbitrator fees, institutional administration fees, and legal representation costs. However, the overall duration of arbitration is frequently shorter than that of court proceedings, particularly where the dispute would otherwise be subject to multiple levels of appeal.

Arbitration proceedings may be conducted on a confidential basis where the parties agree to confidentiality obligations, either in their arbitration agreement or under the procedural rules of the administering institution. Several rules contain flexible provisions that can support confidentiality of proceedings.

Arbitral tribunals seated in Thailand may grant provisional or interim measures where authorised under the applicable arbitration rules. Some rules recognise the power of arbitral tribunals to order interim measures of protection, including orders to preserve evidence or to maintain the status quo pending the arbitration outcome.

In addition, Thai law permits parties to apply for interim relief in support of arbitration, either before the arbitral tribunal is constituted or during the course of the arbitration. The IP&IT Court may grant temporary restraining orders, preliminary injunctions, or orders for the preservation of evidence in connection with trade secret disputes, regardless of whether the underlying dispute is subject to arbitration.

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