Chapter 32

Russia

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§ 32:1 Brief introduction to the legal system of Russia

The Russian legal system is based on the principles typical for the Roman Germany family of Law where the main law is a statutory act. This legal system fundamentally differs from the English Saxon family of Law in which the precedent law plays the main role in disputes settlement. In jurisdiction of Russia the judgments are not the sources of law and in general the courts cannot refer to or be directly guided by decisions issued by other courts.

However, it is very common for the Russian courts of lower instances, when investigating a case, to take into account the Resolutions of higher courts, e.g. Supreme Court of the Russian

Federation which handles a certain number of cases such as reviewing the cases as second cassation, as well as in supervisory order or consideration of the cases connected with challenging laws and other cases of special competence. The Russian legal system does not allow the courts to apply resolutions of the courts of higher instances as legal acts, but the Russian procedural legislation allows the courts to refer to resolutions of the Plenum of the Supreme Court of the Russian Federation (as well as resolutions of the Supreme Commercial Court merged to the Supreme Court) in their judgments (Article 170.4 of the Commercial Procedural Code of the Russian Federation).

§ 32:2 Trade secrets applicable laws

The Chapter 75 "Right to secrets of production (know-how)" of the Civil Code of the Russian Federation (hereinafter "CC") which entered into force on January 1st, 2008, included know-how in the list of intellectual property subject-matters which enjoy legal protection in Russia.

The following laws also regulate the issues connected with trade secrets inter alia:

— Constitution;
— Criminal Code;
— Labor Code;
— Law "On commercial secret";
— Law "On Information, Protection of Information and Information Technologies";
— Law "On Protection of Competition."

§ 32:3 Legal protection of trade secrets

According to Article 1465 of the CC a secret of production (know-how) is:

> *Information of any type (relating to production, technology, economy, organization, and other), including information on the results of intellectual activity in the area of science and technology and also information on means of conducting professional activity that has actual or potential commercial value by virtue of its being unknown to third persons, to which third persons do not have free access on a lawful basis and with respect to which the holder of such information has taken reasonable measures to preserve its confidentiality, including by way of introduction of a commercial secrecy regime.*

In Russian legislation the definitions of the terms "secret of production (know-how)" and "trade secrets" are used as synonyms and mean information of a certain kind which shall enjoy protection in Russia if it meets legal requirements described below (hereinafter these terms are considered as equivalents).

First, a secret of production is certain information relating to production, technology, economy, organization, etc., including information on the results of intellectual activity. So, the term "secret of production" or "know-how" is not limited to information regarding the manufacturing process, but also includes different information meeting the requirements stipulated in Article 1465 of the CC.

Secondly, such information should have actual or potential commercial value due to its being unknown to third parties. This means that such information should allow the owner to increase income, avoid unnecessary expenses, or get other commercial profit, and it should be unknown to third parties, otherwise such information loses its value.

Thirdly, third persons do not have free access to such information on a lawful basis. The law provides that information which constitutes a secret of production (know-how) shall be available to third persons on a legal basis only, e.g. based on a contract with the possessor of such information. The holder of such information may undertake possible measures in order to avoid disclosure of the information, otherwise the information may lose its protection as a trade secret.

It should be noted that the law does not oblige the holder of the confidential information which constitutes a trade secret to introduce a regime of commercial secrecy as a condition for protection of the trade secret. However, it is indeed advisable to proceed this way since the main purpose of the regime of commercial secrecy is to prevent unlawful access to the confidential information and limit the number of persons having access to the information, otherwise the information cannot be regarded as a trade secret.

According to the Law "On commercial secret" (Article 10) the following measures must be undertaken by the holder to protect his confidential information:

a) limitation of access to information constituting a commercial secret by establishing a procedure for handling that information and for control over compliance with that procedure;
b) keeping record of persons who acquired access to information constituting a commercial secret and/or persons to whom that information was handed over or transferred;
c) regulation of relations in using information constituting a commercial secret by employees on the basis of labour contracts and by counteragents on the basis of civil law contracts; and
d) affixing upon tangible medium containing information constituting a commercial secret a stamp—"Commercial secret"—with indication of the holder of that information.

The possibility of such measures is also envisaged in Para 2 of Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights—"*ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967),*" *according to which "natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices" provided that such information "has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.*" At that, according to the Russian law, under such reasonable steps the following should be considered:

1) limitation of access of any third persons to information which constitutes a trade secret without the consent of its owner;
2) permission to use such information by personnel employed by the holder of the information and transfer it to third parties with no breach of the established regime of commercial secrecy.

Thus, the regime of commercial secrecy is deemed to be established only upon taking the measures above (items a-d).

However, in spite of the mentioned regulations it should be noted that there is a list of information which cannot enjoy protection as trade secrets. According to the Law "On commercial secret" (Article 5) information cannot be regarded as trade secret that is:

1) contained in constituting documents of a legal entity, the documents confirming entering records about legal entities and private entrepreneurs in corresponding state registers;
2) contained in the documents allowing entrepreneurial activity;
3) on the structure of the property belonging to the state or municipal unitary enterprise or state institution, and on their using the funds of corresponding budgets;
4) on pollution of environment; fire safety conditions; sanitary, epidemiological, and radiation conditions; food staff safety; and other factors affecting safe functioning of industrial projects, and personal and public safety of the population;
5) on the number, the structure of employees, wage system, labor conditions, including labor protection, on industrial accident and occupational diseases figures, and on job vacancies;
6) on the employers' indebtedness under wage payment and other social payments;

7) on violation of the Russian Federation legislation and on facts of bringing to justice for commitment of such violations;
8) on conditions of competitions or auctions for privatization of state or municipal property;
9) on the size and the structure of income of non-profit companies, on the size and structure of their property, on their expenses, on the number and labor remuneration of their employees, on using unpaid labor of citizens in the activities of non-profit companies;
10) on the list of persons empowered to act on behalf of a legal entity without a power of attorney;
11) on an obligation to disclose data, or impermissibility of restricting access to data, which is prescribed under other federal laws.

§ 32:4 Legal protection of trade secrets—Exclusive right to information that constitutes a trade secret

According to Article 1466 of the CC, the exclusive right to know-how is granted to its holder. The exclusive right includes the right to use a secret of production (know-how) in any manner not contrary to the law, including when manufacturing articles and realization of economic and organizational solutions shall belong to the possessor of the secret of production (know-how).

In theory, the "exclusive right" is understood as a kind of monopoly right which allows the holder of such exclusive right to prevent other third parties from the use of the protected subject matter (e.g. trademark) without permission of the right holder. However, the mentioned rule stipulated in Article 1466 does not establish the same kind of monopoly with respect to know-how and as follows from Para 2 of Article 1466 of the CC a person that has in good faith and independently from other holders of the know-how became the holder of information constituting the content of the protected know-how shall acquire an independent exclusive right to that know-how.

Another distinction of the exclusive right to know-how from the exclusive rights to other traditional intellectual property subject-matters is a term within which this subject-matter enjoys legal protection in Russia. For instance, the term of validity of a trademark in Russia is 10 years and this term may be extended every 10 years; the maximum term of validity of an invention patent is 20 years (can be extended for a term up to 5 years for a certain type of inventions). However, another approach is applied in the law with respect to trade secrets and Chapter 75 of the IV Part of the CC envisages that the exclusive right to the trade secrets shall be effective as long as the confidentiality of the in-

formation of which it consists is maintained and from the time of loss of confidentiality of the respective information, the exclusive right to the secret of production shall be terminated for all right holders.[1]

§ 32:5 Legal protection of trade secrets—Turnover of trade secrets

As has been mentioned above, the right holder, in order to maintain the confidentiality of information (know-how or trade secret), must undertake all possible measures in order to avoid disclosure of the information. At the same time the Law "On Commercial Secret" provides that third parties may obtain access to such information on the following legal basis:

— disclosure of information to employees;
— give access to information to state authorities;
— give access to information based on a contract.

The last provision may be carried out on the basis of the civil law agreements, including assignment, license agreement, pledge, R&D, etc. It should be also noted that according to the position of the Supreme Court of the Russian Federation and Supreme Commercial Court of the Russian Federation,[1] know-how cannot be considered as a subject matter which could be used in civil transactions, but the exclusive right to know-how can be.

Assignment is envisaged in Article 1468 of the CC according to which *"by a contract of the assignment of the exclusive right to a secret of production, one party (the right holder), transfers or undertakes to transfer the exclusive right belonging to him to a secret of production in full to the other party, the recipient of the exclusive right to this secret of production."*

At that it is necessary to mention that due to the nature of the subject-matter the assignor in fact does not lose possession of the information which, for instance may remain in his memory. Therefore, in order to protect the assignee's interest the Law provides that, in case of assignment of the exclusive right to the know-how, the assignor shall be obligated to preserve the confidentiality of the know-how until the expiration of the term of protection of the exclusive right to the know-how, e.g. due to its disclosure by the assignor.

[Section 32:4]

[1]Article 1467 of the Part IV of the CC.

[Section 32:5]

[1]Joint Resolution of the Supreme Court of the Russian Federation and Supreme Commercial Court of the Russian Federation "On some issues connected with appliance of the Part I of the Civil Code of the Russian Federation" No.6/8 dated 01/07/1996.

In case the right holder does not want to lose his rights and title in the know-how the parties may conclude a license agreement which allows the right holder to grant a license to use know-how on a certain territory. Moreover, according to the rules regarding license agreements stipulated in Article 1469 of the CC the license agreement may be concluded for a certain period of time or without indication of the term at all. In this case in order to terminate the agreement the interested party (licensor or licensee) must notify the other party about his/her intention to terminate the agreement no later than six months before the termination date. At the same time the parties may establish longer term in the agreement.

Since the exclusive right to know-how is quite "fragile" and totally depends on maintenance of its secrecy the CC provides that both licensor and licensee must maintain the confidentiality of the information within the whole period of validity of the license agreement. Moreover, according to Para 2 of Article 1469 of the CC, the licensee must keep the information secret until termination of the exclusive right to the know-how.

In certain circumstances the right holder may be requested by the state authorities to provide them with documents which may contain information constituting trade secrets (know-how) by their substantiated request which must be signed by an authorized official, contain the purpose specified and legal grounds of request of information making trade secret, and the term of granting of such information. In this case no agreement (e.g. license) should be granted to such state authorities and the information should be disclosed based on the written request only.

In case the right holder refuses submission of the information to a state authority that authority shall have the right to obtain that information by court procedure. Besides, according to Article 6 of the Law "On Commercial Secret," the right holder is obliged to provide secret information on request of the courts, prosecutory bodies, bodies for preliminary investigation, investigatory bodies concerning the cases in their proceeding, in the procedure and under the grounds stipulated by the legislation of the Russian Federation. In order to observe the requirements regarding maintenance of the confidentiality of the information and avoid disclosure of such information, the documents containing information which is a commercial secret to be handed over to the mentioned bodies should bear a stamp "Commercial Secret" (classified), specifying its possessor (full name and location of legal entities, and family name, name, patronymic of a citizen-individual businessman, and his place of residence).

Also, it should be noted that the Russian legislation envisages responsibility for refusal in providing the state authorities with

the legally requested information. A recent example illustrating the above requirements is the "Dubre" case.[2] *A company, Dubre Ltd., refused to provide the Federal Antimonopoly Service with information regarding a deal on buying 38,6% of shares of the insurance company "INGOSSTRAKH." Based on Para 5 of Article 19.8 of the Administrative Offences Code of the Russian Federation, the antimonopoly body initiated an administrative case and issued a decision according to which Dubre Ltd. was fined in the amount of 300,000 rubles (~12000 $US), for failure to submit the requested information within the established term.*

Further, when concluding agreements, the subject of which contains granting the right to use know-how (licensing agreements), it is very important to correctly determine the information that constitutes know-how as well as to properly record the fact of transfer of documents in which know-how is disclosed. It is advisable to pay attention to the fact that not any information can be protected as know-how and, accordingly, be the subject of a license agreement. For example, publicly available information cannot be recognized as know-how, as it does not meet the criteria established by law, which is confirmed by judicial practice.

So, in 2021, an individual entrepreneur filed a lawsuit against MC DREAM LLC with a Commercial court demanding that the license agreement to a secret production (know-how) should not be recognized as concluded and the payments made by the licensee in the amount of 851,113.12 rubles (~11700 $US) had to be returned. The claim was motivated by the fact that the contract included a list of documents that contained know-how. However, when the entrepreneur received these documents under the acceptance act, he discovered that they contained terms and a well-known description of the process of carrying out professional activities in the field of providing services for cleaning premises, cleaning windows and facades, and mobile dry cleaning. The entrepreneur did not recognize such information as a secret of production (know-how) information and considered the license agreement not concluded. By Resolution 8 of the Eighth Arbitration Court of Appeal dated August 17, 20212, confirmed by the Resolution of the Intellectual Property Rights Court dated October 27, 20213, his claims were satisfied, since it was not possible to identify the secret of production (know-how), which was licensed to the entrepreneur.

§ 32:6 Protection of trade secrets in labor relations

As a general rule, the exclusive right to the trade secret cre-

[2]Resolution of the Federal Arbitrazh Court of the Moscow Region dated May 4, 2008, case No.A40-43389/07-96-242.

ated for hire based on the labor contract or a special task of the employer belongs to the latter.[1] Contrary to regulations regarding creation of other protectable subject-matters (invention, copyright, etc.), there is no option in the law for conclusion of an agreement between the employee and employer to change the above rule. Thus, the documents which might prove the labor character of the created know-how and that the exclusive rights to this subject-matter belong to the employer may be a labor contract or instructions from which it directly follows that the employee is hired/engaged for doing a job in the process which know-how may be created. According to Para 2 of Article 1470 of the CC the employee must keep the obtained information confidential until expiration of the exclusive right to such information. This obligation can also be incorporated into the labor agreement with the employee (Article 57 of the Labor Code of the Russian Federation).[2]

Additionally, the fact of disclosure of confidential information by an employee may also be a ground for termination of a labor contract. This shall also work even in case there is just a possibility of disclosure.

For instance, in a case handled by the Penza regional Court, an employee sent to his personal e-mail documents containing confidential information. When he came to the office he was informed that this fact had been discovered and the labor contract would be terminated for this reason. The employee disagreed with the decision of the employer and filed an action with a court claiming restoration as an employee since there was no proof that information was transferred to third parties. However, the Court dismissed his action and ruled that the law does not require proving the fact of disclosure and a mere possibility of disclosure is sufficient to qualify actions of the employee as disclosure. His e-mail might become available as a result of legal or illegal actions of third parties and therefore the confidential information could be potentially disclosed.[3]

§ 32:7 Liability for disclosure and illegal use of trade secret—Civil liability

According to Article 1472 of the CC, a person infringing the exclusive right to the know-how, as well as a person who is obliged to keep the know-how secret but failed to fulfill such

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[Section 32:6]

[1]Article 1470 of the Civil Code of the Russian Federation.

[2]Resolution of the 8th Commercial Court of Appeals dated 17.08.2021 N 08АП-3852/2021.

[3]Resolution of the IP Court dated 27.10.2021 N A70-4767/2020.

obligation, is obliged to reimburse the right holder the damages caused by their activities (common civil responsibility).

As provided by Article 15 and Article 1064 of the CC, damage caused to a person or property of a person, as well as damage caused to a property of a legal entity, shall be reimbursed in full by the person who caused the damage.

According to Para 2 of Article 15 of the CC, losses shall include the expenses which the person, whose right has been violated made or will have to make to restore the violated right, the loss or the damage done to his property (the compensatory damage), and also the unreceived profits, which this person would have derived under the ordinary conditions of the civil turnover, if his right were not violated (the missed profit). If the person, who has violated the right of another person, has derived profits as a result of this, the person whose right has been violated shall have the right to claim, alongside with the compensation of his other losses, also the compensation of the missed profit in the amount not less than such profits.

The concept of full responsibility for the caused damage shall be applicable in labor relations as well. In particular, an employee shall be liable for the full damage caused by the illegal disclosure of information constituting a commercial secret (Article 243 of the Labor Code of the Russian Federation).

A person shall not bear liability for the use of know-how if he/she did not know or should not have known that his/her use unlawful, including in connection with the fact that he obtained access to the know-how accidentally or by mistake (Para 2 of Article 1472 of the CC).

Generally, the following persons may be regarded as potential infringers of the exclusive right to know-how:

— a person who obtained know-how illegally, i.e. knowingly overcoming the measures taken by the owner to protect confidentiality of the information making trade secret;
— an employee who disclosed know-how contrary to the labor contract terms;
— a counteragent who disclosed the know-how in breach of the contract, e.g. a license agreement;
— other persons who disclose know-how without permission of its owner.

From a practical point of view, it is advisable to introduce a penalty clause for disclosure of know-how into the contract by which the sensitive and protected information is handed over. In this situation, besides damages, the right holder shall be able to claim payment of a penalty in the agreed amount, and this is indeed enforceable in Russia.

For instance, the issue of implementation of a penalty clause was considered by the IP Court in 2015 (case No. A56-5365/2014). *As it follows from the Resolution of the Court there was a Contract on transfer of a technology between a private entrepreneur, Mr.Pavel Tretyakov, and his counteragent, private entrepreneur Mr.Viacheslav Novikov. The technology was protected as know-how and the right holder had taken necessary measures to preserve the confidentiality of the information. In accordance with his obligations under the Contract, the right holder handed over information as an electronic document recorded on DVD. The plaintiff became aware that the defendant failed to perform his obligations to keep the information in secret and disclosed the same to Mr.Maxim Shashkov by sending the document via e-mail. According to the Contract, in case of transfer of the Technology to a third party, the client (defendant) had to pay 1,000,000 rubles as a penalty for each and every act of such infringement. Having considered the case the Court came to the conclusion that Mr.Viacheslav Novikov (defendant) violated his obligations under the Contract and must pay a penalty as envisaged by the Contract. In this light the claims were satisfied in full.*

However, it may happen that know-how may be disclosed by a third party and in this case it shall lead to termination of its protection under Article 1467 of the CC. Therefore, it would be wise for a user/licensee of the confidential information to introduce an indemnity clause into the contract. In the past there was an issue of enforceability of such clauses; however, according to the latest amendments to the CC a new Article 406.1 ('Indemnification of losses caused by occurrence circumstances specified in the contract'), parties to a contract may include in their contract the obligation of one party to indemnify the other party's property losses incurred upon the occurrence of certain events specified in the agreement and not related to the breach of the agreement. The contract must envisage the amount of indemnification or provide a method for its calculation. The amount of indemnification may be decreased by the court only when the other party deliberately contributed to the increase of the losses.

It is possible that confidential information can be disclosed to a potential partner before the contract is signed. In this regard, in order to protect the interests of the parties the legislator introduced Article 434.1 into the CC which regulates issues related to pre-contractual negotiations. Pursuant to this Article, the disclosure of confidential information provided by the other party, or the use of such information for personal purposes, shall be considered a bad faith action. A party acting in bad faith shall be liable for damages and harm caused to the aggrieved party.

Furthermore, according to the latest amendments to the CC, a new Article 431.2 ('Representations on circumstances') was

introduced according to which a party to a contract before or after its conclusion may give the other party representations on the circumstances related to, among other things, the subject matter of the contract, powers to conclude the contract, licenses and permissions, its financial situation, etc. If the given representations turn out to be false, the misrepresenting party must pay penalties in the agreed amount or damages caused to the other party in the following events: (i) the represented circumstances are essential for the conclusion, performance, or termination of the contract; and (ii) the misrepresenting party was aware that the other party would rely on such representations or had reasonable grounds to assume this.

§ 32:8 Liability for disclosure and illegal use of trade secret—Administrative liability

According to Article 14.7 of the Law "On Protection of Competition," unfair competition related to obtaining, using, or disclosing information that constitutes commercial or other secrets protected by law is prohibited, including: 1) obtaining and using such information, possessed by another economic entity—a competitor, without consent from the person that has the right to control it; 2) using or disclosing such information, possessed by another economic entity—a competitor, as a result of breaching the contract conditions with the person that has the right to control it; 3) using or disclosing such information, possessed by another economic entity—a competitor, and obtained from a person that had or has access to the above information as a result of duty performance, if the statutory or contractual nondisclosure period is not expired.

Russian legislation, in particular the Administrative Offences Code,[1] envisages significant fines for violation of the antimonopoly legislation which may be imposed on a person who illegally obtained and used information which constitutes a trade secret (know-how).

It should also be noted that databases of clients and potential clients, including contact details, terms and conditions of contracts concluded with the clients, and the like information is not a trade secret (know-how) per se, however it can be considered as confidential information protected under the law. Therefore, the illegal obtaining and use of such information can be recognized as unfair competition. For instance, in a case considered by Federal Antitrust Service (FAS), former employees established a new entity to compete with the former employer. They used

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[Section 32:8]

[1]Article 14.33 of the Administrative Offences Code.

confidential information of the former employer (information about clients, financial information including estimation of costs of work, technical information, and project documentation) with the purpose to entice his clients in spite of the non-disclosure obligations. In its decision, FAS (case No.1-14/16411) recognized actions of the company established by the former employees as unfair competition. FAS came to the conclusion that such kind of information cannot be treated as a trade secret (know-how), but it is nevertheless confidential information which unauthorized use shall constitute violation of the Law "On protection of Competition."

§ 32:9 Liability for disclosure and illegal use of trade secret—Criminal liability

Aside from civil and administrative liability, the unauthorized disclosure of trade secrets may entail criminal responsibility.

The criminal law and the criminal procedure law in the Russian Federation belong to the federal jurisdiction. The main sources of the penal legislation in the Russian Federation are:

> the Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ, the Criminal Procedure Code of the Russian Federation of December 18, 2001 No. 174-FZ, the Criminal Execution Code of the Russian Federation January 8, 1997 No. 1-FZ, the Federal Constitutional Law of December 31, 1996 No. 1-FKZ "On Judicial System of the Russian Federation," the Law of the Russian Federation of June 26, 1992 No. 3132-1 "On the Status of Judges in the Russian Federation," the Law of the Russian Federation dated February 7, 2011 No. 3-FZ "On the Police," and Federal Law dated August 12, 1995 No. 144-FZ "On the Criminal Investigation Activities."

Chapter 22 of the RF Criminal Code contains criminal offences committed in the sphere of economic activity and imposes criminal sanctions for such infringements. Among other things there is an Article dedicated to the illegal receipt and disclosure of information classified as a commercial, tax or bank secret.

It should be noted that under the Russian criminal law only an individual can be prosecuted. A legal entity cannot be a subject for criminal prosecution, but its executive authorities and other officers can be.

According to Part 1 of Article 183 of the RF Criminal Code, gathering of information regarded as a commercial, tax, or banking secret, by means of stealing documents, bribery, and threats, as well as in other illegal ways, shall be punishable by a fine at the rate of up to 500,000 rubles (~8,300 $US), or in the amount of the convicted person's wage or his other income for a period of 1 year, or correctional works or compulsory works for a period up to 2 years, or by imprisonment for the same term.

Part 2 of Article 183 of the RF Criminal Code provides that the illegal disclosure or use of information classified as commercial, tax, or bank secret without the consent of the owner thereof, by a person to whom it is entrusted or became known in the line of service or work, shall be punishable by a fine at the rate of up to 1,000,000 rubles (~11,900 $US), or in the amount of the wage or salary or any other income of the convicted person for a period of up to 2 years with a deprivation of the person of his right to occupy certain offices or engage in certain activities for a term of up to 3 years, or correctional works for a term of up to 2 years, or compulsory works for a term of up to 4 years, or imprisonment for the same term.

According to the mentioned Part 2 of Article 183 of the RF Criminal Code, only a person to whom the secret information was entrusted or became known in the course of being in service or performing labour duties may be liable for intentional disclosure or use of such information without the consent of the owner of the information (e.g. employer).

"Disclosure" means any actions or inactions which make the secret information publicly available in any form—oral, written etc.

The punishment for the same actions which inflicted large-scale harm or which have been committed from a selfish motive is a fine at a rate up to 1,500,000 rubles (~17,800 $US), or in the amount of the wage or salary or any other income of the convicted person for a period of up to 3 years with a deprivation of the person's right to occupy certain offices or engage in certain activities for a term of up to three years, or compulsory works for a term of up to 5 years, or imprisonment for the same term (Part 3 of Article 183 of the RF Criminal Code).

In case of serious consequences as a result of committing actions under Para 2-3 of the same Article, the punishment will be compulsory works for a term of up to 5 years or imprisonment for a term of up to 7 years (Part 4 of Article 183 of the RF Criminal Code).

According to Article 170.2 of the RF Criminal Code, actions specified hereinabove shall be deemed as inflicting large-scale harm if the damage caused by those actions exceeds 2,250,000 rubles (~26,800 $US), and especially large-scale harm—9,000,000 rubles (~107,150 $US).

It should be noted that the cases of prosecution for disclosure of confidential information are quite extensive, and the type of punishment depends on the circumstances of the case and gravity of the crime.

For instance, the Regional Court of Kaliningrad handled a criminal case with respect to a 28-year old manager and found him guilty in committing a crime envisaged by Para 1 of Article

183 of the RF Criminal Code. The manager worked for a company and signed a non-disclosure agreement with respect to confidential information which included information about customers, clients, prices, and regions of distribution. However, due to the conflict between him and a head of the company, the manager left the company. Before his leave, the manager copied confidential information to a memory drive and offered the same to the competitor of the company for 300,000 rubles. He was caught red-handed taking money from the representative of the competitor. The Court found him guilty and sentenced him with a fine in the amount of 15,000 rubles.

The second example refers to the case No.4y/8-5590/1621 considered by the Moscow City Court in 2016, in which an employee responsible for maintenance of the database of clients in the company (a distributor of pharma products), despite of the signed non-disclosure obligations transferred the database to third parties. As a result of his actions the clients of the employer became the victims of swindlers who used information about credit cards of the clients. The Court found the employee and his accessories to the crime guilty, and sentenced 2 years of imprisonment in a penal settlement.

Besides, the RF Criminal Code provides criminal liability for crimes in the computer information field. According to Article 272 of the Code, *illegal access to the protected computer information, i.e., information on machine-readable media, in computers, computer systems, and their networks, if this deed has involved the destruction, blocking, modification, or copying of information, or the disruption of the work of the computers, computer systems, or their networks, shall be punishable by a fine in the amount up to 200,000 rubles (~3,300 $US) , or in the amount of the wage or salary, or any other income of the convicted person for a period up to 18 months, or by correctional works for a term of up to 1 year, or by deprivation of liberty for a term of up to 2 years or compulsory works for a term of up to 2 years, or imprisonment for the same term.*

Thus, that Article protects the rights of the holder of the information from illegal access and use of the information (by a person who is not authorized to do so) that may be done, e.g. by means of using special computer programs allowing hacking of the installed security system as well as the use of passwords with the purpose to download, modify, or block information.

It should be noted that, in order for the acts with respect to the protected information to be qualified as a crime they must be done intentionally, i.e. a person who has committed that crime should clearly understand that such act is illegal and nevertheless wants to get access to the information and use it without

authorization. Hence, in case the illegal access to the protected information was done as a result of uncareful acts, it should not be regarded as a crime for which Article 272 of the RF Criminal Code envisages responsibility.

The same actions which inflicted large-scale harm or which have been committed from a selfish motive shall be punishable by a *fine in the amount up to from 100,000 to 300,000 rubles (~ from 1190 to 3570 $US), or in the amount of the wage or salary, or any other income of the convicted person for a period from 1 years to 2 years, or by correctional works for a term of from 1 year to 2 years, or by deprivation of liberty for a term of up to 4 years or compulsory works for a term of up to 4 years, or imprisonment for the same term (Para 2* of Article 272 of the RF Criminal Code).

Stricter liability is envisaged for the crimes committed by a group of persons or a person using his/her employment status. In particular, such actions may be punished by a fine *in the amount up to 500,000 rubles (~5,950 $US) , or in the amount of the wage or salary, or any other income of the convicted person for a period up to 3 years, or by deprivation of liberty for a term of up to 4 years or compulsory works for a term of up to 5 years, or imprisonment for the same term (Para 3 of* Article 272 of the RF Criminal Code).

In case the actions envisaged by Para 2—Para 3 of the same Article lead to serious consequences or created a threat of the same such actions shall be punishable by *imprisonment for a term of up to 7 years (Para 4 of* Article 272 of the RF Criminal Code).

For the purposes of Article 272 of the RF Criminal Code, a large-scale harm shall mean an amount exceeding 1,000,000 rubles (~11,900 $US).

§ 32:10 Conclusion

One may say that the Russian legal system on protection of trade secrets is relatively young, especially in comparison with those countries where trade secrets are traditionally recognized as valuable subject matters, and this is absolutely true. In the meantime, within the last several years the Russian Government made significant steps towards improvement of protection of commercial secrets (know-how), which now along with other IP subject matters, enjoys legal protection under the Civil Code that makes it possible to protect the trade secrets more efficiently not only based on the civil law, but based on the criminal law as well.

Besides, the legislator granted the owner of the trade secret with the exclusive right that may be described by a phrase "one giant leap for the Russian legal system" because that new regulations placed trade secrets on a par with other IP subject matters such as trademarks, inventions, copyright, etc.

Thus, nowadays the Russian laws on protection of trade secrets seem to be a very efficient system which allows use of this specific subject matter in the civil circulation, as well as enforcing the exclusive rights.