

Korea, Republic of

Act on Prevention of Divulgence and Protection of Industrial Technology (2009)

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Contents

CHAPTER I GENERAL PROVISIONS

**CHAPTER II FORMATION AND ENFORCEMENT OF POLICIES TO PREVENT DIVULGENCE OF
AND PROTECT INADUSTRIAL TECHNOLOGY**

CHAPTER III PREVENTING DIVULGENCE AND MANAGEMENT OF INDUSTRIAL TECHNOLOGY

CHAPTER VI PENAL PROVISIONS

Act on Prevention of Divulgence and Protection of Industrial Technology

[Enforcement Date 15. September 2017.] [Act No.14591, 14. March 2017., Partial Amendment]

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to prevent undue divulgence of industrial technology and protect industrial technology in order to strengthen the competitiveness of Korean industries and contribute to national security and development of the national economy.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "industrial technology" means any of the following technologies the head of an administrative agency (where the relevant affairs have been delegated or entrusted, referring to the head of the agency, corporation, or organization delegated or entrusted therewith) determines, publishes, announces, or authenticates in accordance with this Act, other Act, or an order (limited to Presidential Decree, Ordinance of the Prime Minister, and Ministerial ordinance; hereafter the same shall apply in this Article) delegated by this Act or other Acts to enhance the competitiveness of industries or prevent its disclosure among the methods and technological information necessary for the development, production, dissemination, and use of products or services:

- (a) National core technology notified to the public pursuant to Article 9;
- (b) Technology falling within the scope of state-of-the-art technology notified to the public pursuant to Article 5 of the Industrial Development Act;
- (c) New technology authenticated pursuant to Article 15-2 of the Industrial Technology Innovation Promotion Act;
- (d) New electric technology determined and publicly notified pursuant to Article 6-2 of the Electric Technology Management Act;
- (e) New technology authenticated pursuant to Article 7 of the Environmental Technology and Industry Support Act;
- (f) New construction technology determined and notified to the public pursuant to Article 14 of the Construction Technology Promotion Act;
- (g) Health and new technology authenticated pursuant to Article 8 of the Health and Medical Service Technology Promotion Act;

(h) Core and root technology determined pursuant to Article 14 of the Act on Promotion and Sophistication of Ppuri Industry pursuant to Industry;

(i) Technology notified in the Official Gazette by the Minister of Trade, Industry and Energy among technologies determined, published, announced, or authenticated in accordance with the order delegated by other Act or the relevant Act;

2. The term "national core technology" means that designated under Article 9, which has high technological and economic values in the Korean and overseas markets or brings high growth potential to its related industries and is feared as a technology to exert a significantly adverse effect on the national security and the development of the national economy in the event that it is divulged abroad;

[...]

4. The term "institution possessing industrial technology" means enterprises, research institutes, specialized institutions, universities, etc. possessing industrial technologies.

[...]

CHAPTER II FORMATION AND ENFORCEMENT OF POLICIES TO PREVENT DIVULGENCE OF AND PROTECT INADUSTRIAL TECHNOLOGY

[...]

Article 7 (Establishment, etc. of Industrial Technology Protection Committee)

(1) The Industrial Technology Protection Committee (hereinafter referred to as the "Committee") shall be established under the Minister's Office of Trade, Industry and Energy to deliberate on matters in each of the following subparagraphs which concern preventing divulgence of industrial technology and protecting industrial technology:

[...]

4. Matters concerning overseas acquisition, merger, etc. of an institution possessing industrial technology which possesses national core technology under Article 11-2;

[...]

(2) The Committee shall be comprised of not more than 25 members, including one chairperson. In such cases, at least five persons falling under paragraph (3) 3 shall be included in the members.

(3) The Minister of Trade, Industry and Energy shall become a chairperson and persons in each of the following subparagraphs shall become members:

1. A person who is determined by President Decree among Vice-Minister, Deputy Administrator or a public official equivalent to such position of a relevant central governmental administrative agency;
2. A person who is nominated by an information and investigation agency in charge of preventing the divulgence of industrial technology;
3. A person who is experienced and knowledgeable in preventing the divulgence of industrial technology and protecting industrial technology and commissioned upon considering gender by the chairperson.

(4) The Committee shall have one secretary member, who shall be nominated by the chairperson among public officials belonging to the Minister of Trade, Industry and Energy.

[...]

CHAPTER III PREVENTING DIVULGENCE AND MANAGEMENT OF INDUSTRIAL TECHNOLOGY

[...]

Article 11-2 (Overseas Acquisition, Merger, etc. of Institutions Possessing Industrial Technology which Possess National Core Technology)

(1) Where an institution possessing industrial technology which holds national core technology developed with government subsidies for research and development intends to proceed foreign investment (hereinafter referred to as “overseas acquisition, merger, joint venture, etc.”) of “overseas acquisition, merger, joint venture, etc.” which is determined by Presidential Decree, it shall report in advance to the Minister of Trade, Industry and Energy.

(2) Where an institution possessing industrial technology under paragraph (1) has noticed that overseas acquisition, merger, etc. is proceeding by foreigners determined by Presidential Decree, it shall immediately report such fact to the Minister of Trade, Industry and Energy.

(3) Where the Minister of Trade, Industry and Energy deems that the divulgence of national core technology under paragraphs (1) and (2) may seriously affect national security, he/she may, after consulting with the head of the relevant central governmental administrative agency, order institutions possessing industrial technology to take measures, such as suspension, prohibition, restoration to original state, etc. with respect to overseas acquisition, merger, etc. through the deliberation by the Committee.

(4) When a person who intends to proceed overseas acquisition, merger, etc. under paragraphs (1) and (2) has a question about matters of the following subparagraphs with respect to appropriate overseas acquisition, merger, etc., he/she may request to the Minister of Trade, Industry and Energy to examine in advance, as prescribed by Presidential Decree:

1. Whether the national core technology in question is related to national security;
2. Whether the overseas acquisition, merger, etc. in question is subject to the reporting of paragraphs (1) and (2);
3. Other questionable matters with regard to relevant overseas acquisition, merger, etc.

(5) Where an institution possessing industrial technology which holds national core technology fails to file a report under paragraphs (1) and (2), submits a false or unlawful means of report, and proceed overseas acquisition, merger, etc., the Minister of Trade, Industry and Energy may request an examination to the head of the intelligence and investigation agency, after reporting the outcome of examination to the Committee, order the institution possessing industrial technology to take necessary measures, such as suspension, prohibition, restoration to original state, etc. with respect to overseas acquisition, merger, etc. through the deliberation by the Committee.

(6) In any of the following cases, the Committee may listen to the opinions of an institution possessing industrial technology:

1. Deliberation on the reporting under paragraphs (1) and (2);
2. Deliberation on suspension, prohibition, restoration to original state, etc. with respect to overseas acquisition, merger, etc. which seriously affect national security pursuant to paragraph (3);
3. Deliberation on damage of an institution possessing industrial technology according to measures of paragraph (3);
4. Deliberation on suspension, prohibition, restoration to original state, etc. of overseas acquisition, merger, etc. with respect to failing to report or false report under paragraph (5).

(7) The Minister of Trade, Industry and Energy may require specialized committees by area to examine with regard to the reporting pursuant to paragraphs (1) and (2), request necessary cooperation of materials submitted, etc. to the head of a relevant central administrative agency or the head of an institution possessing industrial technology. In such cases, the head of a relative central administrative agency or the head of an institution possessing industrial technology shall cooperate therewith, unless any extenuating circumstances exist. <Amended by Act No. 11690, Mar. 23, 2013>

(8) Detailed matters on measures, procedures, etc. of the reporting under paragraphs (1) and (2), and suspension, prohibition, restoration to original state, etc. shall be prescribed by Presidential Decree.

[...]

Article 14 (Prohibition of Divulging and Infringing Industrial Technology)

No person shall engage in any of the following activities:

[...]

6. Acquiring, merging, etc. industrial technology overseas and failing to report under Article 11-2 (1) and (2) or falsely reporting for the purpose of using national core technology or using it overseas;

[...]

7. Failing to perform orders issued by the Minister of Trade, Industry and Energy under Articles 11 (5) and (7) and 11-2 (3) and (5).

[...]

CHAPTER VI PENAL PROVISIONS

Article 36 (Penal Provisions)

(1) Any person who commits an offence falling under any subparagraph (excluding subparagraph 4) of Article 14 to use industrial technology or have industrial technology used in a foreign country shall be punished by imprisonment with prison labor for not more than 15 years or by a fine not exceeding one billion and 500 million won.

(2) Any person who commits an offence falling under any subparagraph (excluding subparagraphs 4 and 6) of Article 14 shall be punished by imprisonment with prison labor for not more than seven years or by a fine not exceeding seven hundred million won.

[...]

(4) Property acquired by a person who has committed an offence falling under paragraphs (1) through (3) through such offence shall be confiscated: Provided, That where such property cannot be confiscated wholly or partially, the value equivalent thereto shall be collected.

[...]

(6) Any person who has attempted a crime under paragraphs (1) and (2) shall be punished.

(7) Sentences to imprisonment with prison labor and sentences to a fine under paragraphs (1) through (3) shall not be imposed concurrently.

Article 37 (Preparation, Plotting, etc.)

(1) Any person that prepares to or plots to commit crime under Article 36 (1) with intention to consummate the same shall be punished by imprisonment with prison labor for not more than three years or by a fine not exceeding 30 million won.

(2) Any person who prepares to or plots to commit crime under Article 36 (2) with the intention to consummate the same shall be punished by imprisonment with prison labor for not more than two years or by a fine not exceeding 20 million won.

Article 38 (Joint Penal Provisions)

When the representative of a corporation, or the proxy, employee or other worker of a corporation or an individual commits an offence falling under any of Article 36 (1) through (3) in connection with business of the corporation or the individual, not only is the offender punished but the corporation or the individual shall also be punished by a fine as prescribed in the corresponding provision: the same shall not apply to cases where such corporation or individual paid considerable attention to and diligently supervised the business concerned to prevent the occurrence of such offence.

[...]

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