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THE LEGAL PROTECTION OF INDUSTRIAL TRADE SECRETS IN TANZANIA MAINLAND: LEGAL CHALLENGES, INTERNATIONAL COMPLIANCE AND REFORM PROSPECTS

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Abstract

This article examines the legal protection of industrial trade secrets in Tanzania Mainland, with particular attention to the adequacy of the existing legal framework, institutional and enforcement challenges and compliance with international standards. The article adopts a legal analytical approach and draws upon legislation, international instruments, scholarly literature and comparative legal developments. It argues that Tanzania does not operate a unified statutory regime specifically addressing industrial trade secrets. Instead, protection is dispersed among contractual obligations, employment law, competition law and common law principles of confidentiality. While these mechanisms may provide protection in particular circumstances, they leave important questions concerning definition, acquisition, use, disclosure, proof, remedies and enforcement insufficiently settled. The article recommends the development of a coherent legal framework for trade secrets, clarification of institutional responsibilities, strengthening of judicial and administrative capacity, and improvement of awareness among industrial enterprises. Such reforms would enhance legal certainty, encourage innovation and investment, and strengthen fair competition in Tanzania Mainland.

KEYWORDS: Industrial Trade Secrets, Confidential Information, Intellectual Property, TRIPS, Unfair Competition and Tanzania Mainland.

GENERAL OVERVIEW

The growth of modern commerce has changed the nature of assets upon which businesses depend. Enterprises no longer compete only through physical property, machinery or registered intellectual property rights. Valuable commercial information may itself determine whether a business succeeds or loses its position in the market. Manufacturing processes, technical know-how, chemical formulas, customer information, production methods, research data and business strategies can provide a substantial competitive advantage where competitors do not possess the same information. Such information is commonly protected through the legal concept of trade secrets.ⁱ

Trade secrets occupy a distinctive position within intellectual property law. Their protection is different from patents, trademarks and copyright because registration is generally not the source of the right. The commercial value of a trade secret depends upon its secrecy, and protection is therefore closely connected with the

measures taken by its lawful holder to prevent unauthorized access, acquisition, disclosure or use. Once information that derives its commercial value from secrecy becomes publicly available through lawful means, the basis for trade secret protection may substantially diminish.ⁱⁱ

The importance of trade secrets has become more pronounced with technological development and industrialisation. Modern businesses frequently invest considerable financial and human resources in developing information that may not be suitable for patent protection or may be more commercially valuable if kept confidential. A manufacturer may, for example, prefer to preserve a production technique as confidential information rather than disclose it through the patent system. Similarly, a technology company may rely on confidential algorithms, research data or technical processes as part of its competitive strategy. The protection of such information is therefore closely associated with innovation, investment and the ability of enterprises to compete fairly.ⁱⁱⁱ



The legal protection of trade secrets also serves an important function beyond protecting individual businesses. When confidential information can be acquired or used dishonestly without meaningful legal consequences, businesses may become reluctant to invest in research, technology and industrial development. Effective protection can therefore create an environment in which enterprises have greater confidence that commercially valuable knowledge will not simply be appropriated by competitors. The connection between confidentiality, innovation and competition explains why trade secret protection has increasingly become part of international intellectual property discourse.^{iv}

At the international level, one of the most significant developments was the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994. Article 39 requires members of the World Trade Organization to protect certain undisclosed information against disclosure, acquisition or use by others in a manner contrary to honest commercial practices. The provision establishes substantive conditions concerning secrecy, commercial value and reasonable steps taken to maintain confidentiality.^v

The development of international standards, however, does not require every country to adopt an identical legislative model. States retain considerable discretion regarding the legal means through which protection is provided. Consequently, some jurisdictions have enacted comprehensive trade secret legislation, while others continue to rely upon contract, equity, unfair competition and other areas of law. The central issue is therefore not simply whether a country has a statute entitled 'Trade Secrets Act', but whether the legal system as a whole provides effective, predictable and enforceable protection for information falling within the international standard.^{vi}

In Tanzania Mainland, industrial trade secrets have not developed as a distinct statutory category in the same manner as patents, trademarks and copyright. Protection is instead found through a combination of contractual obligations, employment relationships, competition law and common law principles of confidentiality. The existing position creates an important legal question: whether these dispersed mechanisms provide sufficient protection for modern industrial enterprises whose competitive position increasingly depends upon confidential technical and commercial information.^{vii}

The issue is particularly relevant in the context of Tanzania's industrial and commercial development. Businesses operating in manufacturing, processing, technology and other sectors increasingly depend upon information that has economic value precisely because it is not generally known. Where the law does not clearly identify the nature of the protected information, the circumstances in which confidentiality arises and the remedies available following unlawful disclosure or use, affected enterprises may face significant uncertainty.

This article therefore examines the legal protection of industrial trade secrets in Tanzania Mainland. It considers the existing domestic legal framework, the role of common law and equitable

principles, the institutional position, Tanzania's obligations under Article 39 of TRIPS, and the principal challenges affecting effective protection. It further draws comparative lessons from jurisdictions that have developed more structured approaches to trade secret protection. The article ultimately proposes reforms aimed at creating a clearer and more effective system without assuming that the enactment of a separate statute is the only possible means of achieving compliance.

THE LEGAL PROTECTION OF INDUSTRIAL TRADE SECRETS IN TANZANIA MAINLAND

The legal protection of industrial trade secrets in Tanzania Mainland is not located in a single statute. Rather, protection may arise from several branches of law depending upon the relationship between the parties and the circumstances in which confidential information has been obtained or misused. This fragmented character is important because the legal consequences of disclosure may differ depending upon whether the dispute arises from a contract, employment relationship, commercial competition or an equitable obligation of confidence.

The *Law of Contract Act, Cap. 345 R.E. 2023*, provides one of the principal legal foundations through which confidentiality may be protected in commercial relationships. Parties may agree expressly that specified information is confidential and that it must not be disclosed or used outside the purpose for which it was communicated. Such contractual arrangements can be particularly important in industrial relationships involving manufacturers, employees, consultants, suppliers, distributors and business partners. The contractual route gives parties an opportunity to define their obligations before a dispute arises.^{viii}

The strength of contractual protection, however, depends substantially upon the existence and wording of the agreement. A contractual obligation normally binds the parties to the agreement and does not necessarily provide the broader protection that may be required where confidential information is unlawfully acquired by a third party who is not directly bound by the relevant contract. Contract law may therefore provide an important layer of protection without necessarily constituting a complete trade secret regime.

Employment relationships present another important context. Industrial enterprises frequently entrust employees with access to technical processes, customer information, production methods and other confidential material. *The Employment and Labour Relations Act, Cap. 366 R.E. 2023*, together with contractual and workplace obligations, may therefore contribute to maintaining confidentiality during and, in appropriate circumstances, after employment. The protection is particularly significant because employees may have legitimate access to confidential information as part of their duties but may later become competitors or move to another enterprise. Thus, employment law is not specifically designed to provide a comprehensive legal framework for trade secrets. Questions concerning what constitutes a protectable trade secret, the

permissible use of information by former employees, the distinction between general skills and confidential information and the remedies for unauthorized disclosure may require reliance on other legal principles. The absence of a unified framework can consequently make disputes more difficult to resolve consistently.^{ix}

The Fair Competition Act, Cap. 285 R.E. 2023, provides another relevant dimension. Fair competition depends upon businesses competing through lawful commercial conduct rather than through dishonest appropriation of commercially valuable information. The Act establishes a regulatory framework aimed at promoting effective competition and protecting consumers from unfair market conduct. Its relevance to confidential business information is therefore complementary rather than equivalent to a dedicated trade secret regime. The Fair Competition Commission plays an important role in administering competition law. However, the existence of a general competition authority does not necessarily mean that it has a specialised mandate to investigate and determine every dispute involving industrial trade secrets. The distinction is important because trade secret disputes may involve private rights, contractual obligations, employment relationships and equitable remedies in addition to questions of competition.^x

The doctrine of breach of confidence is particularly significant in the absence of comprehensive statutory regulation. Its basic concern is not simply ownership of information but the circumstances in which information has been received and the obligation imposed upon the recipient not to use or disclose it improperly. It may therefore provide an important judicial mechanism for protecting confidential industrial information where statutory provisions do not directly address the dispute. The difficulty, however, is that reliance upon several general areas of law can produce uncertainty. A business seeking protection may have to determine whether its claim should be framed in contract, employment law, unfair competition, breach of confidence or another cause of action. This may increase litigation costs and make the outcome less predictable, particularly for smaller industrial enterprises without specialized legal assistance.^{xi}

THE NATURE AND REQUIREMENTS OF A PROTECTABLE TRADE SECRET

For legal protection to be meaningful, it is necessary to identify what qualifies as a trade secret. International standards provide a useful starting point. Article 39(2) of TRIPS requires protection for information that is secret, has commercial value because it is secret, and has been subject to reasonable steps under the circumstances to keep it secret by the person lawfully in control of the information. The first requirement is secrecy. Information that is generally known or readily accessible to persons within the relevant industry will ordinarily have difficulty qualifying as a trade secret. Secrecy does not necessarily mean that only one person can know the information. A company may share confidential information with employees, professional advisers or commercial partners while still maintaining its secret character, provided that reasonable measures are taken to control access.^{xii}

The second requirement is commercial value. The information must derive economic or competitive value from not being generally known. This requirement distinguishes trade secrets from information that is merely private or inconvenient to disclose. In an industrial context, commercial value may arise from a manufacturing process, formula, technical design, research result, production method or business strategy that enables the enterprise to operate more efficiently or compete more effectively.

The third requirement concerns reasonable steps to preserve secrecy. The law does not ordinarily protect information that its lawful holder has made no meaningful effort to keep confidential. Reasonable measures may include confidentiality agreements, restricted access, password protection, internal policies, employee obligations, physical security and controlled disclosure. The precise measures required will depend upon the nature and circumstances of the information.

These requirements are important for Tanzania because the absence of an express statutory definition leaves businesses and courts without a single, clearly articulated legal test applicable across different disputes. Although the requirements reflected in Article 39 can guide interpretation, reliance upon international standards alone does not necessarily provide the procedural certainty needed in domestic litigation.

PROTECTION THROUGH CONTRACTUAL AND EMPLOYMENT RELATIONSHIPS

Contract remains one of the most practical means through which Tanzanian enterprises can protect confidential information. A properly drafted confidentiality clause can identify the information covered, define permissible use, establish restrictions on disclosure and specify consequences for breach. In industrial settings, such agreements may be used between employers and employees, manufacturers and contractors, joint-venture partners, consultants and other commercial actors. Contractual protection also allows businesses to tailor obligations to their particular circumstances. This is useful because industrial secrets vary considerably between enterprises. A pharmaceutical manufacturer, for instance, may need to protect a formulation and research data, while a manufacturing company may be more concerned with production processes or machinery specifications.^{xiii}

However, contractual protection has an inherent limitation. It is strongest where the parties have a clear contractual relationship. Where information is obtained through unlawful means, such as theft, unauthorised access or improper acquisition by a third party, the affected business may require remedies that do not depend upon the existence of a contract. A modern trade secret regime should therefore extend beyond contractual confidentiality. Employment relationships create an even more delicate balance. Employers have a legitimate interest in protecting confidential information, while employees retain knowledge, experience and skills acquired through their professional lives. The law must therefore distinguish between genuine confidential information and general knowledge, skills and experience that an employee is

entitled to carry to future employment. Clear legal standards are important in preventing confidentiality obligations from becoming unreasonable restraints on employee mobility.

COMMON LAW AND BREACH OF CONFIDENCE

The doctrine of breach of confidence provides another significant basis for protecting undisclosed information. Its importance in Tanzania arises partly from the continued operation of common law and equitable principles through the legal framework governing the application of English common law and equity where applicable. The doctrine is capable of addressing circumstances in which information has been received in confidence and subsequently misused. It may therefore be particularly useful where the relationship between the parties does not fit neatly within a conventional contractual claim. The equitable character of the doctrine also allows courts to consider remedies designed to prevent further misuse of confidential information.

Nevertheless, the effectiveness of relying on breach of confidence as the principal mechanism for industrial trade secrets depends heavily upon judicial development. Where there is limited domestic jurisprudence specifically dealing with industrial trade secrets, businesses may face uncertainty concerning the evidential requirements and the precise circumstances in which an obligation of confidence will be recognized. The absence of a developed body of Tanzanian jurisprudence is therefore not merely an academic concern. Trade secret disputes are highly dependent upon facts, including how information was acquired, who had access to it, what measures were taken to preserve secrecy and how the information was subsequently used. Consistent judicial treatment is essential for businesses to understand the level of protection available to them.^{xiv}

INTERNATIONAL STANDARDS AND TANZANIA'S COMPLIANCE

Tanzania became a member of the World Trade Organization in 1995 and is consequently bound by the international intellectual property standards contained in the TRIPS Agreement. Article 39 specifically addresses undisclosed information and requires members to protect such information in accordance with the conditions established by the provision. Article 39(2) identifies three principal characteristics of protected information. It must be secret in the sense that it is not generally known or readily accessible to persons within the circles that normally deal with the kind of information concerned. It must possess commercial value because it is secret. Finally, the lawful controller must have taken reasonable steps to keep it secret. The provision further requires protection against disclosure, acquisition or use by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices. This is significant because the international standard is concerned not only with disclosure but also with improper acquisition and use.^{xv}

TRIPS therefore establishes a minimum international standard, but it does not prescribe a single institutional or legislative model. A member state may implement the obligation through a combination of laws provided that the resulting protection is effective in substance. Consequently, the proper question in Tanzania is whether the combined operation of contract, employment law, competition law and common law provides meaningful protection satisfying the substance of Article 39.

The existing framework contains mechanisms capable of protecting aspects of confidential industrial information. Contractual obligations may prevent parties from disclosing information; employment relationships may impose confidentiality obligations; competition law addresses unfair commercial conduct; and common law and equity provide a possible basis for claims involving breach of confidence. The country therefore cannot accurately be described as having no legal protection whatsoever for confidential information. The difficulty lies in the fragmented nature of that protection. None of these mechanisms, considered individually, establishes a complete framework covering the identification, acquisition, use, disclosure, preservation, enforcement and remedies associated with industrial trade secrets. This fragmentation can create uncertainty for both businesses and courts.

In this respect, the question of compliance should be approached carefully. The absence of a standalone Trade Secrets Act does not by itself establish a violation of TRIPS. What matters is whether the domestic legal system provides the protection required by Article 39. The more persuasive concern is therefore that Tanzania's current framework may provide partial and indirect protection, while leaving significant aspects insufficiently clarified or institutionally supported.

COMPARATIVE PERSPECTIVE

Comparative experience demonstrates that countries have adopted different approaches to trade secret protection. The United Kingdom historically relied heavily upon the common law doctrine of breach of confidence, contractual obligations and equitable remedies. The adoption of the Trade Secrets (Enforcement, etc.) Regulations 2018 further strengthened the statutory framework by implementing relevant European standards. The European Union adopted Directive (EU) 2016/943 on the protection of undisclosed know-how and business information against unlawful acquisition, use and disclosure. The Directive seeks to harmonise the protection available across Member States and provides rules concerning unlawful acquisition and use, remedies and the protection of confidentiality during judicial proceedings.^{xvi} These approaches are relevant to Tanzania not because they should be copied wholesale, but because they demonstrate the value of clear legal standards. A business is more likely to understand its rights and obligations where the law provides an identifiable definition of protected information, specifies prohibited conduct and establishes predictable remedies.

CHALLENGES IN THE PROTECTION OF INDUSTRIAL TRADE SECRETS IN TANZANIA MAINLAND

The first major challenge is the absence of a unified statutory framework specifically addressing industrial trade secrets. Existing laws provide relevant protection, but they were not designed as a single system for undisclosed information. The resulting fragmentation may create uncertainty regarding the legal basis of claims and the requirements that an enterprise must satisfy.

The problem is particularly significant for small and medium-sized industrial enterprises. Large companies may be able to employ specialised legal advisers and develop sophisticated confidentiality systems. Smaller businesses may depend upon informal practices and may not know the legal significance of identifying and protecting confidential information at the time it is created or shared.

Trade secret litigation presents particular evidential difficulties. The claimant must ordinarily establish the confidential character and commercial value of the information and demonstrate that reasonable steps were taken to preserve secrecy. The claimant may also have to establish how the defendant acquired, used or disclosed the information.

This can be difficult because the very nature of a trade secret means that the information is not publicly available. Evidence concerning internal business practices, access controls, employee conduct and commercial transactions may be required. Without clear statutory standards and procedural mechanisms, parties may face uncertainty concerning the evidence necessary to establish a claim.

Another challenge is institutional uncertainty. Trade secret protection may involve several institutions depending upon the circumstances, including bodies responsible for business regulation, competition and industrial matters, while judicial enforcement may fall within the ordinary court system. The research identifies this institutional fragmentation as a practical weakness because existing institutions address confidentiality and competition within their respective mandates but there is no specialised institutional mechanism dedicated generally to industrial trade secrets.

Legal protection cannot operate effectively where businesses do not understand what should be protected and what practical measures should be taken. Industrial enterprises may possess valuable confidential information without formally identifying it, restricting access or requiring appropriate confidentiality undertakings from employees and business partners.

Awareness is therefore part of the legal protection system itself. Enterprises should understand that trade secret protection depends partly upon their own conduct. Reasonable measures to maintain secrecy are not merely administrative precautions; they may become legally significant when a dispute arises.

Effective enforcement also requires judges, advocates, regulators and investigators to understand the distinctive nature of trade secret disputes. Such cases may involve technical information that cannot easily be understood without expert evidence. They may also require urgent measures to prevent further disclosure while proceedings are pending. The research identifies inadequate institutional resources and specialised expertise as practical obstacles to effective enforcement.

REFORM PROSPECTS

Tanzania should consider developing a coherent legal framework specifically addressing trade secrets. Whether this takes the form of a standalone Trade Secrets Act or carefully integrated amendments to existing legislation should be determined after a detailed legislative assessment. The essential requirement is that the resulting framework should provide clear and predictable protection rather than simply introduce another statute without addressing institutional and procedural weaknesses.

The framework should establish a clear statutory definition based on the essential characteristics reflected in Article 39 of TRIPS: secrecy, commercial value arising from secrecy and reasonable measures to preserve confidentiality. It should also identify unlawful acquisition, disclosure and use and provide appropriate exceptions, particularly where disclosure is justified by law or public interest.

The law should further clarify remedies. Depending upon the circumstances, these may include injunctions, damages, orders concerning confidential material and other appropriate judicial relief. Special attention should be given to maintaining confidentiality during litigation because disclosure in court proceedings can itself destroy the commercial value of the information that the claimant seeks to protect.

Institutional responsibilities should also be clarified. Tanzania may not necessarily need an entirely new regulatory authority if existing institutions can be given clearly defined responsibilities supported by appropriate coordination. What is important is that businesses should know where to seek assistance and that enforcement authorities possess the technical and legal capacity necessary to handle complex confidential-information disputes.

There is also a need to strengthen contractual and workplace practices. Industrial enterprises should be encouraged to identify confidential information, adopt internal confidentiality policies, restrict access on a need-to-know basis, use appropriate confidentiality agreements and establish procedures for the return or destruction of confidential material when employment or commercial relationships end.

Legal education should accompany these reforms. Universities, professional bodies and relevant government institutions can contribute to developing specialised knowledge among advocates, judges, regulators and business advisers. Training should address both the substantive requirements of trade secret protection and the practical management of confidential information.

Finally, Tanzania should continue to assess its domestic framework against Article 39 of TRIPS and comparative developments. The objective should not be formal compliance alone. International obligations are most valuable when translated into domestic rules that businesses can understand and courts can effectively enforce.

CONCLUSION

The protection of industrial trade secrets in Tanzania Mainland remains an area of intellectual property law that requires greater legal clarity. Confidential information may presently receive protection through contract, employment relationships, competition law and common law principles of confidentiality. These mechanisms are important and demonstrate that the law does not leave confidential commercial information entirely without protection. Nevertheless, they operate in a fragmented manner and do not provide a single, comprehensive framework specifically addressing industrial trade secrets. The principal weakness is therefore not simply the absence of a statute bearing the name 'Trade Secrets Act'. The more fundamental concern is the absence of clear and predictable rules governing the identification of protected information, reasonable measures for maintaining secrecy, unlawful acquisition and use, evidentiary requirements, institutional responsibility and remedies. These weaknesses can

reduce confidence in the protection available to industrial enterprises and may discourage investment in commercially valuable knowledge.

Tanzania's obligations under Article 39 of TRIPS provide an important benchmark. The existing framework contains elements capable of satisfying aspects of the international standard, but the fragmented nature of domestic protection makes it difficult to regard the system as fully developed. The appropriate response should therefore be a coherent reform programme aimed at improving substantive rules, enforcement procedures, institutional coordination and business awareness. A stronger trade secret regime would serve more than the interests of individual enterprises. It would contribute to innovation, fair competition, investment and industrial development. As Tanzania continues to expand its manufacturing and technology sectors, commercially valuable confidential information will become increasingly important. Establishing a clearer and more effective legal framework would therefore strengthen both the protection of private commercial interests and the wider objectives of national economic development.

END NOTES

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8. ^{viii} Law of Contract Act, Cap. 345 R.E. 2023.
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11. ^{xi} Ibid.
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13. ^{xiii} Ibid.
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16. ^{xvi} Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.