

## 中美營業秘密保護之比較

### The Comparison of Trade Secrets Protection between Taiwan and the U.S.

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**摘要：**企業經常開發具有價值，且能給於他們在產品製造和銷售上競爭優勢的構思或資訊，例如產品製造方法、價格和行銷策略、電腦程式、機械設計、客戶名單、或某種特殊運作密竅。這些構思或資訊之絕大價值來自於他們的秘密性，也就是說，這些企業的競爭對手並無取得這些構思或資訊的管道。倘若一企業之構思或資訊符合受法律保護之“營業秘密”，該企業則可防止其員工洩漏營業秘密，和禁止其競爭對手以不正當方法取得或使用此營業秘密。

爲了對抗營業秘密侵害，我國營業秘密法於民國84年12月23日通過，並於85年1月17日施行。此法之訂立，使我國成爲全世界首先以專門立法來保護營業秘密的國家。

這篇文章概論中美營業秘密保護之比較，本文共分三部分。第一部分簡述我國營業秘密法，第二部分比較我國營業秘密法與美國營業秘密保護模範立法之統一營業秘密法，第三部分爲作者對我國營業秘密法之評論。本文結論，依其明確的營業秘密和營業秘密侵害之法定定義，我國營業秘密法比以往刑法，民法和公平交易法提供營業秘密所有人對營業秘密侵害更周詳的法律保護。然而，營業秘密法律師應了解我國營業秘密法之優點與缺失，方能對於營業秘密訴訟案件提供有效的法律辯護。

**關鍵詞：**營業秘密，侵害，不正當方法，洩漏，職務範圍，訴訟時效，重大過失，還原工程，雇主實施權，受聘工作。

**Abstract:** Businesses often develop valuable ideas or information such as methods of manufacture, pricing and marketing techniques, computer programs, machinery designs,

customer lists, or the “know-how” necessary to perform a particular operation, which give them a competitive advantage in producing or selling their goods or services effectively. Much of the value of these ideas or information arises from their secret nature, that is businesses’ competitors do not have access to them. If a business’ idea or information constitutes a legally protectable “trade secret”, the business may prevent its employees from disclosing it to others, and may prohibit its competitors from acquiring it by improper means or using the trade secret once acquired.

To combat with the trade secret misappropriation, the Taiwan Trade Secrets Act was promulgated on December 22, 1995 and enforced on January 17, 1996. Because of the enactment of the Taiwan Trade Secrets Act, Taiwan becomes the pioneer country in the world who has the law specifically legislated to protect the trade secret.

This article provides a comparison of trade secrets protection between Taiwan and the U.S. The article consists of three parts. Part I of this article outlines the Taiwan Trade Secrets Act. Part II compares the Taiwan Trade Secrets Act with U.S. trade secret model law, the Uniform Trade Secrets Act. Part III comments on the Taiwan Trade Secrets Act. The article concludes that, by its explicit statutory definition of either trade secret or trade secret misappropriation, the Taiwan Trade Secrets Act provides the trade secret owner more extensive protection against trade secret misappropriation than previously provided by different criminal statutes, civil code, and fair trade law. However, a trade secret attorney should be aware of some merits and deficiencies contained in the Taiwan Trade Secrets Act in order to provide an adequate representation in legal disputes involving trade secrets.

**Key words:** Trade secret, Misappropriation, Improper means, Disclose, Scope of the employment, Statute of limitations, Gross negligence, Reverse engineering, Shop rights, Works-for-hire.