



Trade Secret System In Thailand

Ms. Taksaorn Somboonsub
Department of Intellectual Property

Trade Secret Seminar

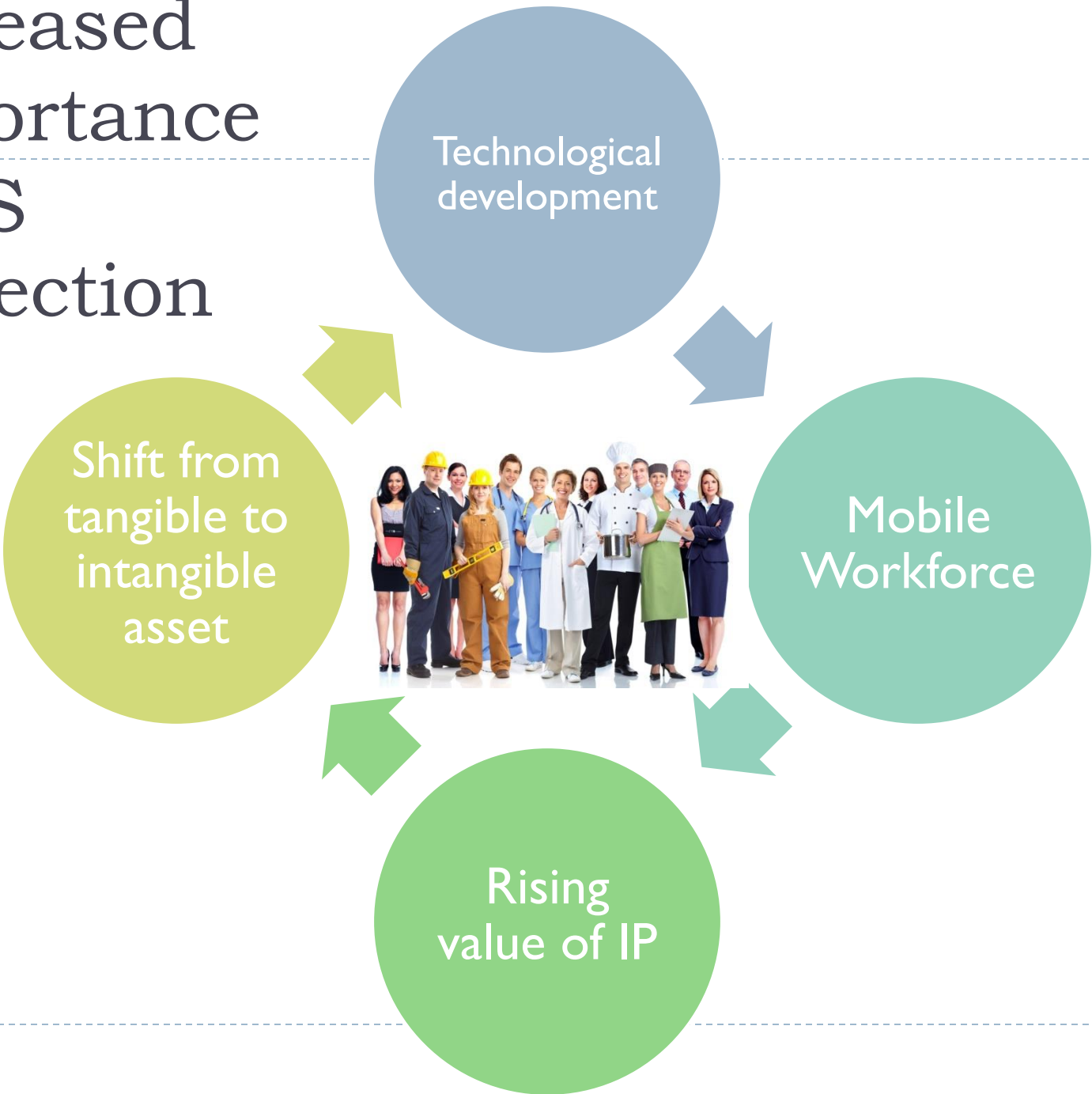
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What are Trade Secrets

- ▶ Formulas/ recipes
- ▶ Techniques for manufacturing products
- ▶ Product designs
- ▶ Technical data
- ▶ Customer lists
- ▶ Marketing strategies
- ▶ Pricing schedules
- ▶ Sale techniques
- ▶ Training manual
- ▶ Business information



Increased Importance of TS Protection



Overview of Trade Secret Protection in Thailand

- ▶ Trade Secrets protection in Thailand began from B.E.2545 (2002)
- ▶ Amended by the Trade Secret Act (No.2) B.E. 2558 (2015)
- ▶ The second amendment covers
 - ▶ Reorganizing Trade Secret Board and related provisions
 - ▶ Lower penalty of officials unlawfully disclose trade secret acquired by virtue of his position.



Trade Secret Protection

- ▶ **Trade Secret** : trade information that is
 1. not yet publicly known or not yet accessible by persons who are normally connected with the information
 2. has commercial values of which derive from its secrecy
 3. the controller of the trade secrets has taken appropriate measures to maintain the secrecy
- ▶ **Rights of trade secret owner**
 - ▶ disclose,
 - ▶ deprive of,
 - ▶ use,
 - ▶ License someone else to disclose, deprive of, or use the trade secret



Owner and Controller

Trade secret owner

- The person who discovered, invented, compiled or created the TS information

Trade secret controller

- The owner of TS. Include possessor, controller, or caretaker of the TS



Infringement

- ▶ **The infringement** : the act of disclosure, deprivation or usage of trade secrets without the consent of the owner in a manner contrary to honest trade practices.
- ▶ **Injunctions** : clear evidence that an infringement has been committed or is imminent, interim injunction to stop the infringement can be granted by the court.
- ▶ **Conciliation and Mediation** : the controller of TS and the other party may agree to submit the dispute to the TS Board for conciliation and mediation.
- ▶ **Limitation Period** : 10 years from the date of infringement



Exceptions

1. Disclosure or use of by a person obtained through a transaction without knowing that the other party obtained TS through infringement
2. Disclosure or use of by state agency which is responsible for their maintenance in the following circumstances :
 - a) Necessary for the protection of public health or safety; or
 - b) Necessary for the benefit of other public interest with no commercial purpose. (must be taken reasonable steps to protect TS from being used in unfair trading activity)
3. Independent discover
4. Reverse Engineering



Damages

1. Actual damages + account of profits accrued from or in connection with the infringement by the infringer
2. Where actual damage cannot be measured. Court may order damages as deemed appropriate
3. Punitive damages can be awarded if clear evidence that infringement is conducted willfully or maliciously causing the trade secrets to cease the quality of secrecy. Damages shall not exceed 2 times the amount of damages under 1 or 2



Penalties

Any person

Whosoever discloses a TS of other person which causes the TS to cease, with malicious intent

-Imprison not exceeding 1 yr or fine not exceeding 200,000 baht

Drug & Agri Officials*

Whosoever, having position to preserved TS according to Art. 15 (Drugs/Agri products) unlawfully discloses or use TS for his own or someone

-Imprison not exceeding 2 yrs or fine not exceeding 200,000 baht

Other Officials*

Whosoever, by duty under this Act, obtain TS which should be kept confidential, discloses such facts (except disclosure on duty or during investigation)

-Imprison not exceeding 1 yr or fine not exceeding 100,000

* As Amended by the Trade Secret Act (No.2) 2015

Comparative Study on Type of Protection

Country	Contract	Common Law	Criminal Liability
Brunei	X		
Cambodia	X		
China	X	X	X
Taiwan	X	X	X
Hong Kong	X	X	
Indonesia	X	X	X
Japan	X	X	X
Korea	X	X	X
Laos PDR	X		
Malaysia	X	X	
Myanmar	X		
Philippines	X		limited
Singapore	X	X	
Thailand	X	X	X
Vietnam	X	X	

► Source : Uncovering Trade Secrets : in East and Southeast Asia, and Around the World, Douglas C.Lippoldt and Mark F.Schultz

Summary

- ▶ Only few cases regarding TS have been brought to Thai Court
- ▶ The Court orders dismissal because plaintiff cannot prove the threshold of the law
- ▶ Confidential clauses or confidentiality agreement are seldom use in business contract



THANK YOU

QUESTIONS?



กรมทรัพย์สินทางปัญญา

LEGAL DEPARTMENT

TEL.02-547-5191

www.ipthailand.go.th