

## Confidentiality of Trade Secrets During Court Proceedings in Sri Lanka: A Comparative Analysis

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### Abstract

Trade secrets are an intellectual property strategy used by businesses to protect commercially valuable information which generates a competitive advantage. In Sri Lankan context, the majority of small and medium-scale enterprises and traditional knowledge-based enterprises depend on trade secret protection to protect their intellectual creations. Secrecy, inter alia, is an integral element of trade secret protection. Protection is available until confidential information is kept as a secret. Advancement of technology created novel avenues to commit trade secret misappropriation requiring trade secret holders to institute litigation. However, court proceedings being public proceedings and the lack of legal provisions to preserve the confidentiality of trade secrets during court proceedings makes trade secret holders reluctant to disclose confidential information as such disclosure amounts to the expiry of trade secret protection. Said practical difficulties adversely affect the enforcement of the rights of trade secret holders. The paper firstly analyses legal provisions under Sri Lankan Law on the preservation of confidentiality of information during court proceedings. Secondly, a comparative analysis is employed to analyse the existing law in Sri Lanka compared with the United States and the United Kingdom jurisdictions. The doctrinal method is used to analyse the law at present and identify lacunas in the law. Comparative method assisted in comparing best practices adopted by selected jurisdictions. Findings revealed that countries with legal provisions to preserve the confidentiality of trade secrets during court proceedings assist in better enforcement of the rights of trade secret holders. The paper recommends introducing procedural laws to facilitate the confidentiality of trade secrets in Sri Lankan court proceedings.

**Keywords:** *Trade Secrets, Court Proceedings, Confidentiality, Misappropriation*