

# 我國有關經濟間諜立法必要性之探討： 以參考美國經驗為主\*

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我國的營業秘密法自民國 85 年 1 月制定通過，施行至今，數年來隨著世界經濟局勢的變動、貿易型態的改變及智慧財產權保護觀念的提昇，目前無論實務或學界，對營業秘密法條文本身規定與適用尚有曖昧不清、界限模糊之處，實務上常因僱傭期間內保密契約的制作或競業禁止條款的限制，及僱傭期間終止後或離職後競業禁止的約束，而產生許多糾紛，因欠缺對不法行為之遏阻效果，影響業者研發意願，而阻撓產業技術移轉。

本文將探討我國其他相關法律規定：民事法規、公司法、公平交易法、刑法，確認我國有關營業秘密之立法是否妥適，或有另行訂定防制經濟間諜單行法規之必要。再比較我國營業秘密法之實體規範、司法實務與其他相關法律規定，避免造成不公平競爭，以彌補現行法規缺失，應制定劃分權責與刑責的相關立法，建立國內經濟間諜案件之適用法源，明文列舉經濟間諜罪刑的犯罪態樣、罰金刑責及民事賠償方式。建議為遏阻妨礙營業秘密的行為，管制高科技人才，有效保護國家科技，制定我國經濟間諜法之相關立法，有其必要性。

關鍵字：營業秘密、競業禁止條款、僱傭關係、保密契約

# **Analysis of the Economic Espionage Act in the R.O.C.: Based on the Experience of the U.S.**

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## **ABSTRACT**

This paper discusses the trade secret laws of the R.O.C., introducing several cases in Taiwan and related statutes. In order to keep trade secrets, parties should make an express contract to deal with the ownership of trade secrets between or among employees/employers and joint owners. Since no penalty or civil liability is stipulated in the R.O.C. Trade Secret Law (1996), it becomes very difficult to avoid violating individual confidential its rights and to emphasize the importance of information security.

This paper discusses the Law and suggests other new statutes to comprise economic espionage criminals. The Economic Espionage Act is best viewed as an outgrowth of concern over what nations will do with the spies and spying equipment left over from the Cold War and provides us the best experience to legislate a similar act to deal with the economic espionage in the R.O.C.

**Key Words:** trade secrets, non-competition clauses, employment relationship, non-disclosure covenant