

Defend Trade Secrets Act of 2016 (“DTSA”) - S. 1890 – 114<sup>th</sup> Congress (2015-2016)

On Wednesday, May 11, 2016, President Barack Obama signed into law the Defend Trade Secrets Act of 2016. DTSA amends chapter 90 of title 18, United States Code (commonly known as the “Espionage Act of 1996”) to provide federal jurisdiction for the theft of trade secrets “if the trade secret is related to a product or service used in, or intended for use in interstate or foreign commerce.” Specifically, 18 USC §1836 authorizes federal civil proceedings for misappropriation of a trade secret by employees as well as foreign entities. Prior to today, trade secret protection was a matter of state law, except in New York and Massachusetts, which adopted some version of the Uniform Trade Secrets Act (“UTSA”). DTSA does not preempt state law or any other provision of law. The salient provisions of the law are among others, treble damages, immunity for confidential disclosure to the government (whistle blower) or to an attorney, notice of immunity to employees, anti-retaliation law suit, *ex-parte* seizure order, injunctive relief, exemplary damages. A defense to a claim of trade secret misappropriation includes reverse engineering, independent derivation or any other lawful means of acquisition.

*Emmanuel Coffy*