

**Checklist for Protection of Trade
Secrets in Employment Relationships
under Chinese Law**

中国法下劳动关系中的商业秘密保护清单

Trade secrets are crucial in today's global competition and often determine its outcome. The following summarizes the relevant issues, general rules and legal basis for the protection of trade secrets in Chinese employment relationships for the reference of practitioners:

商业秘密在当今全球竞争中至关重要、决定胜负。下文概括总结中国劳动关系中对商业秘密保护的有关议题、一般规则和法律依据供实务者参考:

No. 编号	Issues 议题	General Rules 一般规则	Legal Basis 法律依据
1	“Trade Secret” “商业秘密”	<p>“Trade Secret” refers to:</p> <ul style="list-style-type: none"> ▪ Technical information, management operation information or other commercial information ▪ that is unknown to the public, ▪ is of commercial value, and ▪ for which the right holder has taken corresponding confidentiality measures. <p>“商业秘密”是指:</p> <ul style="list-style-type: none"> ▪ 不为公众所知悉, ▪ 具有商业价值, ▪ 并经权利人采取相应保密措施的 ▪ 技术信息、经营信息等商业信息。 	<p>Article 9 Paragraph 4 of the PRC Anti-Unfair Competition Law (2019)</p> <p>《中华人民共和国反不正当竞争法》（2019）第九条第四款</p>
2	“Right Holder of Trade Secret” “商业秘密权利人”	<p>“Right Holder of Trade Secret” refers to:</p> <ul style="list-style-type: none"> ▪ the owner of the trade secret, and ▪ the user of the trade secret who has been authorized by the owner of the trade secret. <p>“商业秘密权利人”是指:</p> <ul style="list-style-type: none"> ▪ 商业秘密的所有人, 和 ▪ 经商业秘密所有人许可的商业秘密使用人。 	<p>Article 219 Paragraph 4 of the PRC Criminal Law (2017)</p> <p>《中华人民共和国刑法》（2017）第二百一十九条第四款</p> <p>Article 2 Paragraph 6 of the State Administration for Industry and Commerce on Several Provisions on Prohibiting Infringements upon Trade Secrets (1998) 《国家工商行政管理局关于禁止侵犯商业秘密行为的若干规定》（1998）第二条第六款</p>

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3	“Technical Information” “技术信息”	<p>“Technical Information” refers to information in relation to technology such as information on:</p> <ul style="list-style-type: none"> ▪ structures, ▪ raw materials, ▪ components, ▪ formulations, ▪ materials, ▪ samples, ▪ patterns, ▪ materials for propagation of new plant varieties, ▪ processes, ▪ methods or ▪ their procedures, algorithms, data, computer programs and their relate files, etc. <p>“技术信息”是指与技术有关的信息，例如与以下有关的信息：</p> <ul style="list-style-type: none"> ▪ 结构、 ▪ 原料、 ▪ 组分、 ▪ 配方、 ▪ 材料、 ▪ 样品、 ▪ 样式、 ▪ 植物新品种繁殖材料、 ▪ 工艺、 ▪ 方法、或 ▪ 其步骤、算法、数据、计算机程序及其有关文档等。 	<p>Article 1 Paragraph 1 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p> <p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第一条第一款</p>

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4	“Management Operation Information” “经营信息”	<p>“Management Operation Information” refers to information in relation to management operation activities such as information on:</p> <ul style="list-style-type: none"> ▪ creative ideas, ▪ management, ▪ sales, ▪ finances, ▪ plans, ▪ samples, ▪ bidding and tendering materials, ▪ customer information (including customer names, addresses, contact information, trade practices, intentions, contents, etc.), ▪ data, etc. <p>“经营信息”是指与经营活动有关的信息，例如与以下有关的信息：</p> <ul style="list-style-type: none"> ▪ 创意、 ▪ 管理、 ▪ 销售、 ▪ 财务、 ▪ 计划、 ▪ 样本、 ▪ 招投标材料、 ▪ 客户信息（包括客户的名称、地址、联系方式以及交易习惯、意向、内等）、 ▪ 数据等。 	<p>Article 1 Paragraphs 2 and 3 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p> <p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第一条第二、三款</p>

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5	“Unknown to the Public” “不为公众所知悉”	<p>“Unknown to the Public” refers to that the right holder’s to be protected information:</p> <ul style="list-style-type: none"> ▪ at the time of the infringement ▪ was not generally known and easily accessible to persons concerned in the field to which such information belongs. <p>“不为公众所知悉”是指权利人请求保护的信息：</p> <ul style="list-style-type: none"> ▪ 在侵权行为发生时 ▪ 不为所属领域的相关人员普遍知悉和容易获得。 <p>Typical circumstances where information is known to the public:</p> <ul style="list-style-type: none"> ▪ if the information is of general knowledge or industry practice in the field to which it belongs; ▪ the information relates only to the product’s dimensions, structure, materials, simple combinations of components, etc. that can be obtained directly by the person concerned in the field to which the information belongs by observing the product on the market; ▪ the information has been publicly disclosed in a publication or other public media; ▪ the information has been made public through a public presentation, exhibition, etc.; or ▪ the information can be obtained from other public sources by persons concerned in the field to which it belongs. <p>信息为公众所知悉的典型情况：</p> <ul style="list-style-type: none"> ▪ 该信息在所属领域属于一般常识或者行业惯例的； ▪ 该信息仅涉及产品的尺寸、结构、材料、部件的简单组合等内容，所属领域的相关人员通过观察上市产品即可直接获得的； ▪ 该信息已经在公开出版物或者其他媒体上公开披露的； ▪ 该信息已通过公开的报告会、展览等方式公开的；或 ▪ 所属领域的相关人员从其他公开渠道可以获得该信息的。 	<p>Articles 3 and 4 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p> <p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第三条、第四条</p>

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6	“Commercial Value” “具有商业价值”	<p>“Commercial Value” includes:</p> <ul style="list-style-type: none"> ▪ actual commercial, and ▪ potential commercial value. <p>“商业价值”包括:</p> <ul style="list-style-type: none"> ▪ 现实的商业价值, 和 ▪ 潜在的商业价值。 <p>When judging the “Commercial Value”, the following factors shall be taken into account:</p> <ul style="list-style-type: none"> ▪ the cost for research and development of such trade secret, ▪ the profitability by enforcing such trade secret, ▪ the obtainable benefits by enforcing such trade secret, ▪ the duration of maintaining the competitive advantage by enforcing such trade secret, ▪ etc. <p>评判“商业价值”, 应当考虑如下因素:</p> <ul style="list-style-type: none"> ▪ 该商业秘密的研究开发成本、 ▪ 实施该项商业秘密的收益、 ▪ 可得利益、 ▪ 可保持竞争优势的时间等。 	<p>Article 7 and Article 19 Paragraph 2 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p> <p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》(2020) 第七条、第十九条第二款</p>

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7	“Corresponding Confidentiality Measures” “相应保密措施”	<p>Typical “Corresponding Confidentiality Measures” include:</p> <ul style="list-style-type: none"> ▪ Signing a confidentiality agreement or agreeing on confidentiality obligations in a contract; ▪ Employees, former employees, suppliers, customers, visitors, etc., who may have access to or may obtain, trade secrets, are required to maintain confidentiality through enterprise’s articles of associations, training, rules and regulations, written notifications, etc.; ▪ Restricting visitors to confidential production and business premises such as plants and workshops or segregating the management of them; ▪ Distinguishing and managing trade secrets and their carriers by marking, classifying, segregating, encrypting, and sealing them, as well as limiting the range of persons who can have access to or can obtain them, etc.; ▪ Adopting measures such as prohibiting or restricting the use of, access to, storage in or copying of computer equipment, electronic equipment, network equipment, storage devices, software, etc. that may be used to access to or obtain trade secrets; ▪ Requiring the departing employee to register, return, remove, destroy the trade secrets and their carriers that he/she had access to or obtained, and to continue to bear the obligation of confidentiality. <p>典型的“相应保密措施”包括：</p> <ul style="list-style-type: none"> ▪ 签订保密协议或者在合同中约定保密义务的； ▪ 通过企业章程、培训、规章制度、书面告知等方式，对能够接触、获取商业秘密的员工、前员工、供应商、客户、来访者等提出保密要求的； ▪ 对涉密的厂房、车间等生产经营场所限制来访者或者进行区分管理的； ▪ 以标记、分类、隔离、加密、封存、限制能够接触或者获取的人员范围方式，对商业秘密及其载体进行区分和管理的； ▪ 对能够接触、获取商业秘密的计算机设备、电子设备、网络设备、存储设备、软件等，采取禁止或者限制使用、访问、存储、复制等措施的； ▪ 要求离职员工登记、返还、清除、销毁其接触或者获取的商业秘密及其载体，继续承担保密义务的。 	<p>Article 6 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p> <p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第六条</p>

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8	Confidentiality agreements and non-competition agreements with employees 与劳动者的保密协议和竞业限制约定	<p>An employer and an employee may include in their employment contract confidentiality provisions on the protection of the employer's trade secrets and other confidential matters with regard to intellectual property. 用人单位与劳动者可以在劳动合同中约定保守用人单位的商业秘密和与知识产权相关的保密事项。</p> <p>In the confidentiality agreement with an employee, both parties may agree to adjust the working position and change the relevant contents of the employment contract within a certain period (no more than six months) before the termination of the employment contract or after the employee requires to terminate the employment contract. 与劳动者签订保密协议时，可以约定在劳动合同终止前或该职工提出解除劳动合同后的一定时间内（不超过六个月），调整其工作岗位，变更劳动合同中相关内容。</p> <p>Save for the non-competition covenant, no contractual penalty is allowed for a confidentiality agreement between an employer and an employee. However, a provision on the method for damage calculation in a confidentiality agreement is not prohibited by law. 除竞业限制约定外，用人单位与劳动者间的保密协议不得约定违约金，但法律并未禁止保密协议约定损失赔偿的计算方法。</p> <p>The personnel subject to non-competition covenant shall be limited to senior management, senior technicians and other individuals with confidentiality obligations. 竞业限制的人员限于用人单位的高级管理人员、高级技术人员和其他负有保密义务的人员。</p> <p>The scope, geographical limitations and term of the non-competition covenant shall be legally and reasonably agreed upon by the employer and the employee. 竞业限制的范围、地域、期限由用人单位与劳动者合法合理约定。</p>	<p>Article 585 Paragraphs 1 and 2 of the PRC Civil Code 《中华人民共和国民法典》第五百八十五条第一、二款</p> <p>Article 23, 24 and 25 of the PRC Labor Contract Law (2012) 《中华人民共和国劳动合同法》（2012）第二十三条、第二十四条、第二十五条</p> <p>Article 6 to 10 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Labor Dispute Cases (IV) (2013) 《最高人民法院关于审理劳动争议案件适用法律若干问题的解释（四）》（2013）第六条至第十条</p> <p>Article 2 of the former Ministry of Labor's Circular on Certain Issues Concerning the Movement of Enterprise Employees (1996) 原劳动部《关于企业职工流动若干问题的通知》（1996）第二条</p>

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		<p>After the rescission or termination of an employment contract, the non-competition covenant period shall not exceed two years. 在劳动合同解除或终止后竞业限制的期限不得超过二年。</p> <p>During the term of post-employment non-competition covenant, the employer shall pay the employee an economic compensation on a monthly basis (at least at the rate of 30% of the average monthly wages of 12 months before such employment contract is rescinded or terminated, and not lower than the local minimum wage). 在后劳动合同竞业限制期限内用人单位按月给予劳动者经济补偿（至少为劳动者在劳动合同解除或者终止前十二个月平均工资的 30%，且不低于当地最低工资）。</p> <p>The employer may rescind the non-competition covenant during the post-employment non-competition covenant period. However, the employee is entitled to claim for an additional three-month economic compensation from the employer. Therefore, if the rescission of the post-employment non-competition covenant is wished. Such rescission should be declared at the same time when terminating the employment contract in order to avoid the payment of any additional economic compensation for non-competition covenant. 在后劳动合同竞业限制期限内，用人单位可以解除竞业限制协议。但劳动者有权请求用人单位额外支付劳动者三个月的竞业限制经济补偿。因此，如果希望解除后劳动合同竞业限制，应该在解除或终止劳动合同时一并宣布解除，避免支付任何额外的竞业限制经济补偿。</p> <p>If an employee breaches the non-competition covenant, he/she shall pay contractual penalty to the employer in accordance with their agreement. Should the agreed contractual penalty be lower than the actual damages, the employer may ask the arbitral tribunal or the court to make an increase. Should the agreed contractual penalty be extraordinarily higher than the actual</p>	

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		<p>damages, the employee may ask the arbitral tribunal or the court to make an appropriate decrease.</p> <p>劳动者违反竞业限制约定的，应当按照约定向用人单位支付违约金。如果约定的违约金低于实际损失的，用人单位可以请求仲裁庭或法院予以增加。如果约定的违约金过分高于实际损失的，用人单位可以请求仲裁庭或法院予以适当减少。</p> <p>Where an employee violates the non-competition covenant and thus pays the relevant contractual penalty to the employer, the employer shall be entitled to requesting the employee to continue the performance of the non-competition covenant in accordance with their agreement.</p> <p>劳动者违反竞业限制约定，向用人单位支付违约金后，用人单位有权要求劳动者按照约定继续履行竞业限制义务。</p>	
9	<p>Employer's confidentiality rules and regulations</p> <p>用人单位保密规章制度</p>	<p>When adopting, revising and deciding rules or material matters that are directly related to the employees' immediate rights and interests, for ensuring their validity the employer shall</p> <ul style="list-style-type: none"> ▪ present such formulation, amendments and decisions to the employee representative congress or all the employees for discussion, ▪ solicit their proposals and comments, ▪ determine after consultation with the labor union or employee representative on the basis of equality, ▪ publicize or communicate to the employees relevant rules, regulations and decisions on material matters. <p>在制定、修改或者决定直接涉及劳动者切身利益的规章制度或者重大事项时，为确保其有效性用人单位应当</p> <ul style="list-style-type: none"> ▪ 经职工代表大会或者全体职工讨论， ▪ 提出方案和意见， ▪ 与工会或者职工代表平等协商确定， ▪ 将有关规章制度和重大事项决定公示，或者告知劳动者。 	<p>Article 4 of the PRC Labor Contract Law (2012)</p> <p>《中华人民共和国劳动合同法》（2012）第四条</p>

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10	Parties infringing trade secrets 侵犯商业秘密的 主体	<p>The parties infringing trade secrets include business operators and other natural persons (i.e. including employees), legal persons and non-legal person organizations than the business operators.</p> <p>侵犯商业秘密的主体包括经营者和经营者以外的自然人（也即包括劳动者）、法人和非法人组织。</p> <p>A “business operator” refers to a natural or legal person or any other non-legal person organization engaged in the manufacturing or trading of commodities or the provision of services.</p> <p>所谓“经营者”，是指从事商品生产、经营或者提供服务的自然人、法人和非法人组织。</p>	<p>Article 2 Paragraph 3 and Article 9 Paragraph 2 of the PRC Anti-Unfair Competition Law (2019)</p> <p>《中华人民共和国反不正当竞争法》（2019）第二条第三款，第九条第二款</p>
11	Infringements on trade secrets 侵犯商业秘密的 行为	<p>Infringements on trade secrets include:</p> <ul style="list-style-type: none"> ▪ obtaining a right holder's trade secrets by theft, bribery, frauds, coercion, electronic intrusion or other improper means; ▪ disclosing, using, or allowing others to use a right holder's trade secrets obtained by the means mentioned in the preceding paragraph; ▪ disclosing, using or allowing others to use a right holder's trade secrets in violation of confidentiality obligations or the right holder's requirements on keeping such trade secrets confidential; ▪ soliciting, inducing, or assisting another person to obtain, disclose, use, or permit others to use the right holder's trade secrets in violation of the obligation of confidentiality or the right holder's requirements on keeping trade secrets confidential. <p>侵犯商业秘密的行为包括:</p> <ul style="list-style-type: none"> ▪ 以盗窃、贿赂、欺诈、胁迫、电子侵入或者其他不正当手段获取权利人商业秘密; ▪ 披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密; ▪ 违反保密义务或者违反权利人有关保守商业秘密的要求，披露、使用或允许他人使用其所掌握的商业秘密; ▪ 教唆、引诱、帮助他人违反保密义务或者违反权利人有关保守商业秘密 	<p>Article 9 Paragraphs 1 and 3 of the PRC Anti-Unfair Competition Law (2019)</p> <p>《中华人民共和国反不正当竞争法》（2019）第九条第一、三款</p> <p>Article 8 and 9 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p> <p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第八条、第九条</p>

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		<p>要求，获取、披露、使用或者允许他人使用权利人的商业秘密。</p> <p>Where a third party knows or should know that an employee or former employee of the right holder of trade secrets or any other entity or individual conducts any of the acts specified above, but still obtains, discloses, uses or allows any other party to use such trade secrets, such act shall be deemed infringement of trade secrets.</p> <p>第三人明知或者应知商业秘密权利人的员工、前员工或者其他单位、个人实施上述行为，仍获取、披露、使用或者允许他人使用该商业秘密的，视为侵犯商业秘密。</p> <p>The obtainment of the right holder's trade secrets in a manner contrary to the statutory provisions or recognized business ethics constitutes infringement on trade secrets, i.e. the obtainment of the right holder's trade secrets by other improper means.</p> <p>以违反法律规定或者公认的商业道德的方式获取权利人的商业秘密的，构成侵犯商业秘密，也即以其他不正当手段获取权利人的商业秘密。</p> <p>The direct use of the right holder's trade secrets in production and business activities, or the use of the right holder's trade secrets after modification or improvement, or the adjustment, optimization or improvement of relevant production and business activities based on the right holder's trade secrets, constitutes the use of the right holder's trade secrets.</p> <p>在生产经营活动中直接使用权利人的商业秘密，或者对权利人的商业秘密进行修改、改进后使用，或者根据权利人的商业秘密调整、优化、改进有关生产经营活动的，构成使用权利人的商业秘密。</p>	

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12	Consequences, remedies and statute of limitations when an employee violates confidentiality agreement with his/her employer 劳动者违反与用人单位间保密协议的后果、救济途径、时效	<p>Where an employee violates the confidential matters stipulated in his/her employment contract, causing any economic loss to the employer, the employee shall pay compensation to the employer according to the relevant provisions of the Anti-Unfair Competition Law. 劳动者违反劳动合同中约定的保密事项，对用人单位造成经济损失的，按《反不正当竞争法》有关规定支付用人单位赔偿费用。</p> <p>The compensation amount shall be based on the actual losses suffered by the right holder as a result of the infringement by the infringer; where it is difficult to calculate the actual losses, such amount shall be determined in accordance with the benefits obtained by the infringer from the infringement. Where an infringer is malicious and if the circumstance is serious, the amount of compensation may be determined between one time and five times the amount determined according to the above method. The compensation amount shall also include the reasonable expenses paid by the right holder to stop the infringement (e.g. legal expenses). 赔偿权利人损失的数额按照其因被侵权所受到的实际损失确定；实际损失难以计算的，按照侵权人因侵权所获得的利益确定。侵权人恶意实施侵犯商业秘密行为，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支（例如法律费用）。</p> <p>Where it is difficult to determine the actual losses suffered by the right holder or the benefits obtained by the infringer from the infringement, the court may award the right holder up to CNY 5 million in damages, depending on the seriousness of the infringement. 权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益难以确定的，由人民法院根据侵权行为的情节判决给予权利人五百万元以下的赔偿。</p> <p>Where an employee causes economic losses to the employer for his/her own reason, the employer may require the employee to compensate such losses as agreed in the employment contract. The compensation for economic losses</p>	<p>Article 17 of the PRC Anti-Unfair Competition Law (2019) 《中华人民共和国反不正当竞争法》（2019）第十七条</p> <p>Article 39 of the PRC Labor Contract Law (2012) 《中华人民共和国劳动合同法》（2012）第三十九条</p> <p>Article 27 of the PRC Law on Mediation and Arbitration of Labor Disputes (2007) 《中华人民共和国劳动争议调解仲裁法》（2007）第二十七条</p> <p>Article 5 of the Circular of the Former Ministry of Labor on the Release of the Rules Governing Compensation for Losses Resulting from Violation of Labor Contract Stipulations of the Labor Law (1995) 原劳动部《违反〈劳动法〉有关劳动合同规定的赔偿办法》（1995）第五条</p> <p>Article 16 of the Interim Provisions on the Payment of Remuneration of the former Ministry of Labor (1994)</p>

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		<p>may be deducted from the remuneration of such employee, provided that the amount to be deducted every month shall not be more than 20% of the net remuneration of the current month of the employee. Where the remaining remuneration after deduction is lower than the local minimum standard for monthly remuneration, the minimum standard shall be followed when paying remuneration.</p> <p>因劳动者本人原因给用人单位造成经济损失的，用人单位可按照劳动合同的约定要求其赔偿经济损失。经济损失的赔偿，可从劳动者本人的工资中扣除。但每月扣除的部分不得超过劳动者当月净工资的 20%。若扣除后的剩余工资部分低于当地月最低工资标准，则按最低工资标准支付。</p> <p>An employer may immediately rescind the labor contract by a written notice without paying economic compensation if by violating confidentiality agreement the employee materially breaches the employer's rules and regulations, causes substantial loss to the employer due to his/her serious dereliction of duty or engagement in graft for personal gain, frauds or is subject to criminal liability.</p> <p>因劳动者违反保密协议构成严重违反用人单位规章制度、严重失职、营私舞弊导致用人单位重大损失、欺诈或被追究刑事责任等，用人单位可立即书面通知解除其劳动合同，无须支付经济补偿。</p> <p>In addition, the right holder may also request a ruling/judgment against the infringer to stop the breach/infringement, return or destroy the trade secret carrier, and erase the trade secret information under its control.</p> <p>此外，权利人还可请求裁决/判决侵权人停止违约/侵权行为、返还或者销毁商业秘密载体、清除其控制的商业秘密信息。</p> <p>If a labor dispute arises as a result of the infringement of the employer's trade secrets due to an employee's violation of the confidentiality agreement in the employment contract, the parties concerned may apply to the labor dispute arbitration committee for arbitration.</p>	<p>原劳动部《工资支付暂行规定》（1994）第十六条</p> <p>Letter of the General Office of the Ministry of Labor and Social Security on Issues concerning Trade Secret Infringement in Labor Dispute Cases (1999)</p> <p>劳动和社会保障部办公厅关于劳动争议案中涉及商业秘密侵权问题的函（1999）</p>

No. 编号	Issues 议题	General Rules 一般规则	Legal Basis 法律依据
		<p>劳动者违反劳动合同中有关保守商业秘密的约定，造成用人单位商业秘密被侵害而发生劳动争议，当事人可向劳动争议仲裁委员会申请仲裁。</p> <p>The time limit for application for arbitration on labor disputes is one year. 劳动争议申请仲裁的时效期间为一年。</p>	
13	<p>Liability, remedies, statute of limitations for infringement on trade secrets of the former employer by an employee itself or jointly with his/her new employer 劳动者个人或与其新用人单位共同侵犯原用人单位的商业秘密的责任、救济途径、时效</p>	<p>A new employer shall bear tort liability for any damage caused by its employee due to infringement on trade secrets of the employee's former employers in the course of the employee's performance of his/her work duties. After the new employer has assumed the tort liability, it may recover from the employee with intentional misconduct or gross negligence. 劳动者因执行其工作任务侵犯其原用人单位商业秘密造成损害的，由其新用人单位承担侵权责任。新用人单位承担侵权责任后，可以向有故意或者重大过失的劳动者追偿。</p> <p>Where a new employer knows or should know that an employee or former employee of the right holder of trade secrets conducts any infringement on trade secrets of the right holder, but still obtains, discloses, uses or allows any other party to use such trade secrets, such practice shall be deemed infringement of trade secrets by the new employer itself. 新用人单位明知或者应知商业秘密权利人的员工、前员工实施侵犯权利人商业秘密的行为，仍获取、披露、使用或者允许他人使用该商业秘密的，视为新用人单位自身侵犯商业秘密。</p> <p>Where any employer employs an employee, whose labor contract with the former employer has not been terminated yet, causing any economic loss to the former employer out of obtaining trade secrets, the employee shall be directly liable for the compensation for such loss and the new employer shall bear joint and several liability for the compensation. The portion of such joint and several liability shall not be less than 70% of the total economic loss caused to the former employer.</p>	<p>Article 188 and Article 1191 of the PRC Civil Code (2019) 《中华人民共和国民法典》（2019）第一百八十八条、第一千一百九十一条</p> <p>Article 17 of the PRC Anti-Unfair Competition Law (2019) 《中华人民共和国反不正当竞争法》（2019）第十七条</p> <p>Article 6 of Circular of the Former Ministry of Labor on the Release of the Rules Governing Compensation for Losses Resulting from Violation of Labor Contract Stipulations of the Labor Law (1995) 原劳动部关于发布《违反〈劳动法〉有关劳动合同规定的赔偿办法》的通知（1995）第六条</p>

No. 编号	Issues 议题	General Rules 一般规则	Legal Basis 法律依据
		<p>用人单位招用尚未解除劳动合同的劳动者，因获取商业秘密对原用人单位造成经济损失的，除该劳动者承担直接赔偿责任外，该用人单位应当承担连带赔偿责任。其连带赔偿的份额应不低于对原用人单位造成经济损失总额的百分之七十。</p> <p>The compensation amount shall be based on the actual losses suffered by the right holder as a result of the infringement by the infringer; where it is difficult to calculate the actual losses, such amount shall be determined in accordance with the benefits obtained by the infringer from the infringement. Where an infringer is malicious and if the circumstance is serious, the amount of compensation may be determined between one time and five times the amount determined according to the above method. The compensation amount shall also include the reasonable expenses paid by the right holder to stop the infringement (e.g. legal expenses).</p> <p>赔偿权利人损失的数额按照其因被侵权所受到的实际损失确定；实际损失难以计算的，按照侵权人因侵权所获得的利益确定。侵权人恶意实施侵犯商业秘密行为，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支（例如法律费用）。</p> <p>Where it is difficult to determine the actual losses suffered by the right holder or the benefits obtained by the infringer from the infringement, the court may award the right holder up to CNY 5 million in damages, depending on the seriousness of the infringement.</p> <p>权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益难以确定的，由人民法院根据侵权行为的情节判决给予权利人五百万元以下的赔偿。</p> <p>In addition, the right holder may also request a ruling/judgment against the infringer to stop the infringement, return or destroy the trade secret carrier, and erase the trade secret information under its control.</p> <p>此外，权利人还可请求裁决/判决侵权人停止侵权行为、返还或者销毁商业秘密载体、清除其控制的商业秘密信息。</p>	

No. 编号	Issues 议题	General Rules 一般规则	Legal Basis 法律依据
		<p>The general statute of limitations for the right holder's application for legal protection by court shall be three years. 权利人向人民法院请求保护民事权利的一般诉讼时效期间为三年。</p>	
14	<p>Administrative penalties and statute of limitations for infringement on trade secrets 对侵犯商业秘密行为的行政处罚及时效</p>	<p>Where a business operator or any other natural person, legal person or non-legal person organization infringes any trade secret, the supervision and inspection authority (i.e. the Administration for Market Regulation) shall order it to cease the illegal act, confiscate the illegal gains and impose on it a fine of at least CNY100,000 up to CNY 1 million; where the circumstance is serious, the fine shall be at least CNY 500,000 up to CNY 5 million. 经营者以及其他自然人、法人和非法人组织侵犯商业秘密的，由监督检查部门（即市场监督管理局）责令停止违法行为，没收违法所得，处十万元以上一百万元以下的罚款；情节严重的，处五十万元以上五百万元以下的罚款。</p> <p>Where an unlawful act is not discovered within two years, an administrative penalty will not be imposed. 违法行为在二年内未被发现的，不再给予行政处罚。</p>	<p>Article 21 of the PRC Anti-Unfair Competition Law (2019) 《中华人民共和国反不正当竞争法》（2019）第二十一条</p> <p>Article 29 of the PRC Law on Administrative Penalties (2017) 《中华人民共和国行政处罚法》（2017）第二十九条</p>
15	<p>Criminal liability for infringement on trade secrets, statute of limitations for prosecution 侵犯商业秘密的刑事责任、追诉时效</p>	<p>Where an individual infringes on trade secrets and thus causes heavy losses to the right holder (e.g. CNY 300,000 or above), and if it constitutes the crime of infringement on trade secrets, the individual shall be sentenced to fixed-term imprisonment of up to three years or criminal detention and/or be fined; if the consequences are particularly serious, he/she shall be sentenced to fixed-term imprisonment of more than three years up to seven years and be fined. 个人侵犯商业秘密行为，导致权利人重大损失（例如 300,000 元人民币以上）构成侵犯商业秘密罪的，处三年以下有期徒刑或者拘役，并处或者单处罚金；造成特别严重后果的，处三年以上七年以下有期徒刑，并处罚金。</p> <p>Where an entity commits the crime of infringement on trade secrets, it shall be fined, and the persons in charge and the other persons who are directly</p>	<p>Article 87, 89, 219 and 220 of the PRC Criminal Law (2017) 《中华人民共和国刑法》（2017）第八十七条、第八十九条、第二百一十九条、第二百二十条</p> <p>Decision of the Supreme People's Procuratorate and the Ministry of Public Security on Amending the Criteria for Filing and Prosecuting Criminal Cases Involving</p>

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		<p>responsible for the crime shall be punished in accordance with the above provisions. 单位犯侵犯商业秘密罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员按照上述规定处罚。</p> <p>The statute of limitations for prosecuting the crime of infringement on trade secrets shall be ten years. 对侵犯商业秘密罪的追诉时效为十年。</p>	<p>Infringement on Trade Secrets (2020) 《最高人民法院、公安部关于修改侵犯商业秘密刑事案件立案追诉标准的决定》（2020）</p>
16	<p>Burden of proof in civil cases of trade secret infringement 侵犯商业秘密民事案件的举证责任</p>	<p>During civil trials of infringement of trade secrets, where the preliminary evidence provided by a right holder of trade secrets can prove that the right holder has taken measures to keep the confidentiality of the trade secrets and can reasonably indicate that such trade secrets have been infringed, the alleged infringer shall prove that the trade secrets claimed by the right holder do not fall with the scope of trade secrets as provided in this Law. 在侵犯商业秘密的民事审判程序中，商业秘密权利人提供初步证据，证明其已经对所主张的商业秘密采取保密措施，且合理表明商业秘密被侵犯，涉嫌侵权人应当证明权利人所主张的商业秘密不属于本法规定的商业秘密。</p> <p>Where the right holder of trade secrets provides preliminary evidence that can reasonably indicate that the trade secrets have been infringed and provides one of the following pieces of evidence, the alleged infringer shall prove that there is no infringement of any trade secret:</p> <ul style="list-style-type: none"> ▪ there is evidence showing that the alleged infringer has access to or opportunities to obtain such trade secrets and the information used by the alleged infringer is substantially identical to such trade secrets; ▪ there is evidence showing that such trade secrets have been or have the possible risk of being disclosed or used by the alleged infringer; ▪ there is any other evidence showing that such trade secrets have been infringed by the alleged infringer. <p>商业秘密权利人提供初步证据合理表明商业秘密被侵犯，且提供以下证据之一的，涉嫌侵权人应当证明其不存在侵犯商业秘密的行为：</p>	<p>Article 32 of the PRC Anti-Unfair Competition Law (2019) 《中华人民共和国反不正当竞争法》（2019）第三十二条</p> <p>Article 24 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020) 《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第二十四条</p>

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		<ul style="list-style-type: none"> ▪ 有证据表明涉嫌侵权人有渠道或者机会获取商业秘密，且其使用的信息该商业秘密实质上相同； ▪ 有证据表明商业秘密已经被涉嫌侵权人披露、使用或者有被披露、使用风险； ▪ 有其他证据表明商业秘密被涉嫌侵权人侵犯。 	
		<p>If the right holder has provided preliminary evidence of the infringer's profits gained as a result of the infringement, but the books and information relating to the infringement of trade secrets are in the infringer's possession, the court may, upon the right holder's application, order the infringer to provide such books and information. If the infringer, without justifiable reasons, refuses to provide, or fails to provide truthfully, the court may, on the basis of the right holder's claim and the evidence provided, determine the benefits that the infringer has obtained as a result of the infringement.</p> <p>权利人已经提供侵权人因侵权所获得的利益的初步证据，但与侵犯商业秘密行为相关的账簿、资料由侵权人掌握的，人民法院可以根据权利人的申请，责令侵权人提供该账簿、资料。侵权人无正当理由拒不提供或者不如实提供的，人民法院可以根据权利人的主张和提供的证据认定侵权人因侵权所获得的利益。</p>	
17	<p>Application for relevant compulsory measures 申请有关强制措施</p>	<p>Where the infringer attempts or has improperly obtained, disclosed, used or allowed others to use the trade secrets claimed by the right holder and where failure to take preservation measures to prohibit such acts will make it difficult to enforce the judgment or cause other damage to the parties concerned, or will cause irreparable damage to the legitimate rights and interests of the right holder, the court may rule to take preservation measures to prohibit such acts in accordance with law. In case of emergency, the court shall make a ruling within forty-eight hours.</p> <p>侵权人试图或者已经以不正当手段获取、披露、使用或者允许他人使用权利人所主张的商业秘密，不采取行为保全措施会使判决难以执行或者造成当事人其他损害，或者将会使权利人的合法权益受到难以弥补的损害的，人民法院可以</p>	<p>Article 100 and 101 of the PRC Civil Procedure Law (2017) 《中华人民共和国民事诉讼法》（2017）第一百条、第一百零一条</p> <p>Article 15 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases of Trade Secrets Infringement (2020)</p>

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18	Trial in camera 不公开审理	<p>依法裁定采取行为保全措施。情况紧急的，人民法院应当在四十八小时内作出裁定。</p> <p>Upon application, cases involving trade secrets may be tried under exclusion of the public. 经申请，涉商业秘密案件可以不公开审理。</p>	<p>《最高人民法院关于审理侵犯商业秘密民事案件适用法律若干问题的规定》（2020）第十五条</p> <p>Article 26 of the PRC Law on Mediation and Arbitration of Labor Disputes (2007) 《中华人民共和国劳动争议调解仲裁法》（2007）第二十六条</p> <p>Article 134 Paragraph 2 of the PRC Civil Procedure Law (2017) 《中华人民共和国民事诉讼法》（2017）第一百三十四条第二款</p> <p>Article 54 Paragraph 2 of the PRC Administrative Procedure Law (2017) 《中华人民共和国行政诉讼法》（2017）第五十四条第二款</p> <p>Article 188 Paragraph 1 of the PRC Criminal Procedure Law (2018) 《中华人民共和国刑事诉讼法》（2018）第一百八十八条第一款</p>



李光 博士 / Dr. LI Guang, LL.M.

Salary Partner

Rechtsanwalt (Germany)

Solicitor (England & Wales)

Attorney at Law (New York)

Lawyer Qualification (China)

Direct +49 89 21038-262

E-Mail G.Li@taylorwessing.com

Taylor Wessing PartG mbB

Isartorplatz 8, 80331 Munich, Germany

www.taylorwessing.com