

# Jerry Xia | Latest Developments Criminal Enforcement of TS in China

## ➤ Trade Secret Enforcement Options in China

- (1) Civil (Courts); (2) Administrative (MSA - previously AIC);
- (3) **Criminal (PSB)** – Most preferred if possible: Police power to investigate (like FBI); Max deterrents (up to 7 years in jail) if successful; Even if not fully successful, evidence collected may support subsequent civil action

## ➤ Challenges for TS Criminal Enforcement

- **Criminal threshold: 500,000 RMB (approx. 70,000 USD)** – i.e. consequence-based, not just behavior-based
- What counts traditionally: **A) loss** to TS owner (in case TS was published, mostly based on R&D cost); **B) illegal gain** by infringer
- **Real challenges**: Hard to establish **causal link** for loss prong; What if a \$1B TS was stolen but **not yet used yet** (say hidden under bed) or even used, illegal gain not up to RMB500K? Also, infringers usually don't keep good **accounting books!** Hard to calculate R&D cost due to time lapse (say Coca-Cola) or unclear records? Or what if **super low R&D cost** created super high value TS?

## ➤ Positive Developments – New Breakthroughs in Judicial Practice

- **Scenario 1**: Former employees stole TS to join new employers - Criminal prosecution still made happen even before the stolen TS was put into production (only in R&D phase) or even the production was not large enough. The damages may be determined based on TS owner's **loss of potential licensing fees (royalties) through accredited evaluation** (even if no other existing licenses). Encouraging real case examples (very helpful references in case monetary gain not high enough or R&D cost hard to prove):
  - **Example A**: (2013) Su Zhi Xing Zhong No. 0006, by Suzhou Court, Jiangsu Province
  - **Example B**: (2015) Zhe Shao Xing Zhong No. 874 & 875, by Shaoxing Court, Zhejiang Province
- **Scenario 2**: Competitor's expert sneaked into your site to open and photograph a lot of equipment containing TS and was caught on the way to leave – no use no disclosure yet. Would **equipment testing/repairing fees** count as loss?
- **Scenario 3**: Open question to you - say infringer used the stolen TS to obtain **VC investment** – does the received funding count?