A Legal Research Report on Cases of Trade Secret Disputes Arising from Employee Turnover

(2015-2018)
AnJie Law Firm

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Foreword

Trade secrets belong to the core competitiveness of enterprises. In recent years, former employees taking away their employers’ trade secrets has been an important reason for enterprises’ loss of trade secrets. Worse still, some competitors improperly obtain other enterprises’ trade secrets by paying persons high salaries to purposely dig for information to form their own competitive advantages. Unauthorized disclosure of trade secrets not only causes enterprises to lose competitive advantages and core business know-how, but also results in multiple impacts, such as loss of reputation, performance and profits. All this causes unbearable annoyance to enterprises.

The Report analyzes cases of trade secret disputes arising from employee turnover during a period from 2015 to 2018, summarizes valuable information based on big data and conducts thematic research on key issues with a view to better protect the trade secrets of enterprises, safeguard the core competitiveness of enterprises and provide a source of reference for enterprises and peers to handle similar cases.
Chapter I Report Overview

I. Data Source Description

The data of this Report are from http://wenshu.court.gov.cn/ and the official websites of the administrations for market regulation of Beijing, Shanghai and Shenzhen. In this Report, the selection criterion for judicial adjudicative documents is that the documents were compiled from 2015 to 2018 and concerned cases of trade secret disputes arising from employee turnover, including both civil and criminal cases; and, the selected decisions on administrative penalties are those concerning infringement of trade secrets which can be openly accessed on the official websites of the administrations for market regulation of Beijing, Shanghai and Shenzhen. Given that uploading of judicial adjudicative documents takes a certain workflow, the latest retrieval date of the Report was March 26, 2019 to ensure that all the cases judged in 2018 are covered as far as possible.

II. Basic Data Analysis

(I) Number of Cases

Among the cases of trade secret disputes which were concluded from 2015 to 2018, there were 202 cases arising from employee turnover, including 104 cases of first instance, 96 cases of second instance and two retrial cases. Year-wise, 48 cases were concluded in 2015, including 28 cases of first instance and 20 cases of second instance; 36 cases were concluded in 2016, including 15 cases of first instance, 19 cases of second instance and two retrial cases; 62 cases were concluded in 2017, including 33 cases of first instance and 29 cases of second instance; and 56 cases concluded in 2018, including 28 cases of first instance and 28 cases of second instance. Detailed information can be found in Figure 1.

(II) Case Trial Cycle

According to Article 149 and Article 176 of the Civil Procedure Law, cases subject to the ordinary procedure for trial shall be concluded within six months of the date of filing, and appeals shall be concluded within three months of the date of filing in the second instance. Therefore, the Report divides the trial cycles into four periods, namely less than three months, three
months to half a year (inclusive), half a year to one year (inclusive), and more than one year, for statistical analysis of the retrieved cases.

Some judgments do not indicate the date of filing or it is impossible to query the date of filing through public channels. It is therefore not possible to ascertain the trial cycles of some cases. Presently, there are 147 cases for which trial cycles can be ascertained. Specific information is as shown in Figure 2.

According to Figure 2, it can be found that, in 83 cases of first instance for which trial cycles can be counted, 43 cases were concluded within half a year of the date of filing, and most of the remaining cases were concluded within a year of the date of filing; and more than half of the cases of second instance were concluded within three months of the date of filing, and most of the remaining cases were concluded within a year of the date of filing. Retrial cases which were subject to the procedure of second instance were concluded within half a year of the date of filing.

In general, 89.79% of trade secret disputes arising from employee turnover can be concluded within a year from the date of filing.

(III) Distribution of Cases by Industry

The Report performs statistical analysis of the industries involved in the cases. As shown in Figure 3, the cases involved manufacturing, service, computer & Internet, education & training, biomedicine, trade, chemical engineering, wholesale & retail, construction engineering and others (including finance, advertising, mining, and energy & power, etc.).

Manufacturing is a field with frequent occurrence of trade secret disputes arising from employee turnover. This has something to do with the characteristics of the manufacturing industry and the current situation of China’s economic development. China is a big manufacturing country, and manufacturing enterprises are one of the top enterprise
categories in terms of numbers in the country. Meanwhile, compared with other industries, manufacturing involves business information, while its production process also touches upon materials (formulae), equipment, processes and other technical secrets thus is more prone to the risk of infringement.

Figure 3: Distribution of Cases by Industry

(IV) Distribution of Cases by Region

The Report performs statistical analysis of the geographical distribution of the cases according to the places where the courts hearing such cases were located. The statistical results show that the Pearl River Delta Region and the Yangtze River Delta Region are regions with frequent occurrence of cases of trade secret infringement. This has a certain link with the fact that most domestic enterprises are concentrated in these two regions. The statistical results are shown in Figure 4.

Figure 4: Statistic Distribution of Cases by Region

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1 There is a case for which the court of second instance was the Supreme People's Court, but the case was counted in Jiangsu Province because the enterprise involved locates in Nantong.
(V) Types of Cases

The cases analyzed in this Report include 185 civil cases and 17 criminal cases.

What needs to be explained is that there are only a few criminal cases of trade secret disputes arising from employee turnover which can be publicly queried. This has something to do with the fact that it is more difficult to file a criminal case and the judicial adjudicative documents of some criminal cases are not yet in the public domain. Some civil judgments of the retrieved cases in the Report indicate that the cases also involved criminal cases, but most of the criminal judgments mentioned in the civil judgments cannot be accessed through public retrieval.

(VI) Types of Trade Secrets Involved

Trade secrets can be divided into two types, namely business information and technical secrets. Most of the cases analyzed in this Report involved business information, while the number of cases involving technical secrets is relatively small. There are also some cases which involved both business information and technical secrets.

(VII) Amount of Compensation Awarded and Sentencing

1. Amount of Compensation Awarded in Civil Cases

Among the 185 civil cases retrieved by the Report, there were a total of 88 cases in which infringement was established, accounting for 47.6%.
statistical results, the amount of compensation awarded in most of the civil cases where infringement was confirmed in the judgments was less than CNY500,000. Specific information is shown in Figure 7.

2. Sentencing of Criminal Cases

Among the 17 criminal cases retrieved by the Report, crime was established in a total of 14 cases, accounting for 82.3%.

As for sentencing, as shown in Figure 8, most of the criminal cases were given fixed-term imprisonment of not more than three years, except for three cases in which acquittals were made.

(VIII) Cases with Trade Secret Disclosure Due to Infringement

Among the cases analyzed in the Report, trade secret disclosure was caused by infringement in a total of five cases. In two of these five cases, the infringers disclosed the technical secrets to the Internet, and in the remaining three cases, the infringers applied for patents for the technical secrets.

III. Summary of Analysis of Key Issues
1. In the cases retrieved by the Report, the number of cases involving technical secrets is less than those concerning business information, and the majority of the cases involved such technical secrets as manufacturing processes, designs, technical parameters and technical information. Under the former legal framework, right holders\(^2\) were required to prove the foundation of rights and the infringement facts; considering the difficulties of evidence collection, right holders may obtain evidence by applying to the courts for investigation and evidence collection or evidence preservation, lodging complaints with the departments for market regulation, reporting to the public security organs or taking other measures. With the implementation of the amended Anti-Unfair Competition Law, the problem of difficult collection of evidence has been greatly eased.

2. Most of the cases retrieved in this Report involved business information, and these business information-involving cases mostly concerned customer lists. The cases involving business information were mainly concentrated in three sectors: manufacturing, trade & finance, and education. In judicial practice, the courts mainly determine whether a customer list is a trade secret from five aspects, namely the depth of the contents of the customer list, the price paid for the establishment of the customer list, the difficulty for ordinary persons to obtain the relevant information of the customer list, the alleged infringer’s\(^3\) ill intention in obtaining the customer list, and the stability of transactions with special customers.

3. Jurisdiction over civil disputes over trade secrets arising from employee turnover is mainly based on the domiciles of the alleged infringers. There are few cases where jurisdiction is based on the domiciles of the right holders. Regarding the jurisdiction issue, the Supreme People’s Court has specified that the domicile of a right holder is not the place of the infringing act where the illegal use of trade secrets occurs and that the place where infringing products are sold is not the place where the infringement consequence of acts of illegal disclosure, use or allowing others to use occur. With the establishment of intellectual property courts and intellectual property tribunals in China, cross-region centralized jurisdiction will be achieved for more and more cases. Territorial jurisdiction is relatively broad for the filing and investigation of criminal cases, and right holders often directly start up criminal procedures by reporting matters to the economic investigation departments of local public security organs.

4. There are extremely few trade secret cases involving act injunctions in China at present. The courts are very strict about issuing act injunctions, usually giving comprehensive consideration to the likelihood of an applicant winning a lawsuit, existence of damage that is

\(^2\) Because this Report contains both civil and criminal cases, the appellation of the parties concerned may be different in different types of cases. For the sake of uniformity of expression, unless otherwise specified, the right holders in civil cases and the third-party right holders in criminal cases are collectively referred to as “the right holders” in this Report.

\(^3\) For the sake of uniformity of expression, this Report refers to all suspected infringing parties in civil, administrative and criminal procedures as alleged infringers, but they will be referred to as infringers in the overview (non-judgment description) or theoretical analysis part of the cases already adjudicated.
difficult to remedy, balancing of interests between the applicant and the respondent, and balancing between private and public interests, and other factors.

5. Among the 142 cases in which the right holders claimed that organizations and individuals should jointly assume the liabilities, 46% of the cases were supported by the courts, where organizations and individuals are required to jointly assume the civil liabilities. As for the pursuit of multiple liabilities, the infringers in 5 cases were judged to assume both civil and criminal liabilities, and the infringers in 10 cases were judged to assume both civil and administrative liabilities. The evidential materials of criminal cases and administrative penalties, as well as effective judicial adjudicative documents, administrative penalty decisions and so on can serve as the bases for making final decisions on subsequent civil cases.

6. Acquittal cases accounted for 17.6% of the criminal cases. The main reasons for acquittal judgment included lack of constitutive elements of trade secrets, lack of constitution of a crime and the criminal amount being lower than the minimum standard for criminal prosecution. The determination of the criminal amount is the core and difficult point of criminal cases of trade secrets. Besides traditional principles and methods of calculation, some new breakthroughs have occurred in judicial practice, including the calculation of the criminal amount by evaluating expected income and assuming royalties, and so on.

7. As for cases in which trade secrets were disclosed due to infringement, criminal procedures are the first choice for rights protection thanks to the fairly easy collection of evidence and the easier calculation of loss to right holders. Meanwhile, civil lawsuits of infringement and ownership are also effective ways to protect rights.

8. All the amended provisions of the Anti-Unfair Competition Law amended on April 23, 2019 are related to the protection of trade secrets, including the transfer of burden of proof, the intensification of compensation and penalties, and the expansion of the scope of accountability, and so on. In addition, indirect infringement and other contents also have implications for the criminal protection of trade secrets.
Chapter II Elaborations on Key Issues in Cases of Trade Secret Disputes Arising from Employee Turnover

Section 1 Cases Involving Technical Secrets

Based on the specific contents of technical secrets involved in the cases, this Report divides technical secrets into designs, manufacturing processes, technical parameters, source codes, testing standards and methods, formulae and others. This section performs statistical analysis on the data of the cases involving technical secrets and analyzes the relevant key issues.

I. Data Statistics

(I) Number of Cases and Types of Technical Secrets Involved

1. Number of Cases

Among the retrieved cases of this Report, there were a total of 69 cases involving technical secrets, including 20 in 2015, 16 in both 2016 and 2017, and 17 in 2018. Overall, the number of the cases involving technical secrets which were concluded and in the public domain remained at a stable level, with no obvious increasing or decreasing trend. Detailed information can be found in Figure 9.

2. Types of Technical Secrets Involved

As for the types of technical secrets involved, as shown in Figure 10, the majority of the cases involved such technical secrets as manufacturing processes, designs, technical parameters and technical information. Among them, the largest number of cases involved manufacturing process only, 16 in all, accounting for 23% of cases involving technical secrets. In the cases

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involving technical secrets, classified as “Others”, there were two cases involving operating processes, one chemical analysis report and one patent. The specific analysis is as follows:

![Figure 10: Distribution of Technical Secrets by Type](image)

(1) Manufacturing Processes

Manufacturing processes mainly refer to the production workflows and processes of different products, and their secret points include the working parameters and adjusting methods of spare parts, production process documents, structures and sizes of molds, and so on, whose general carriers are process drawings, documentation and so on. Taking the case of dispute over the technical secret infringement of Nanchang Xinggan Technology Industry Co., Ltd. and Wan Ling (hereinafter referred to as the “Xinggan Technology Case”)⁴ as an example, the technical secret concerned was the process of preparation of cinnamic acid by oxidation of cinnamaldehyde, and the carrier of the trade secret was the sketch of the reaction kettle. The specific secret points included special proportions, special steps and varieties of catalysts, and so on.

(2) Designs

The contents of design mainly included the design drawings of equipment, special products and technologies, which may involve the structures, shapes, requirements for technologies and materials, dates of production and other information with respect to components, and the secret points generally lay in the structural designs.⁵ Taking the case of dispute over

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⁵ Some technical drawings may involve technical parameters, but if the secret points are concerned with structure, shape and so on, they will belong to design-type technical secrets.
trade secret infringement between Lianyungang Firstdart Fishing Tackle Co., Ltd. and Lianyungang Fly Fishing Tackle Co., Ltd. & Zhu Zhongqiao as an example, the design contents were the structure of the die head (composed of clip, rubber mouth, big and small gear wheels, and so on) of the production equipment for “the Fly Diameter-Changing Line”, the carriers of which were the fly line schematic drawing, the general assembly drawing of the rubber mouth of the fly line, and the hand drawing of the structural design for the die head of the fly line. As for the case of dispute over trade secret infringement between Ding Wengang, Zhou Xianjun & Chengdu Ruitu Technology Development Co., Ltd. and Chengdu Weitu Electronic Technology Co., Ltd. (hereinafter referred to as the “Ding Wengang Case”), the technical secret was the structural design information in the research and development process of ROCK (a handheld song-ordering machine), of which the carriers were the pictures and material object of the product.

(3) Technical Parameters

Technical parameters mainly refer to the relevant information of the production lines and devices. Particularly, technical parameters may involve the operating parameters of spare parts, equipment performance and so on; the carriers of technical parameters are generally reflected as the information in the user instructions and drawings. Taking the case concerning the criminal offense of infringing a trade secret by Yuan Baogang (hereinafter referred to as the “Yuan Baogang Case”) as an example, the technical information concerned was the key components of the wind power gear box such as planet carrier, planet wheel and intermediate gear shaft, the carrier of which was the FD1660 serial drawings. As for the case of dispute over ownership of the right to apply for a patent between Shanghai Perwin Packing Machinery Co., Ltd. and Shanghai Huidun Packing Technology Co., Ltd. & Yan Changqing (hereinafter referred to as the “Perwin Case”), the technical secrets were the structural and process parameters of the feeding plate, side plate of feeding case, left riser of filling synchronous box, conveyer belt and driven roller, the carriers of which were the technical materials including the User Instructions to PW-PB4 Automatic Plate Follow-up Filling Line.

(4) Source Codes

Source codes refer to the most original program codes of software programming, which form the basis of software. Most of the technical secrets involved in the trade secret cases in the software and Internet fields are source codes. Taking the case of dispute over technical secret infringement of Fang Shulei and Zhuhai Xiwei Electronic Technology Co., Ltd. (hereinafter referred to as the “Fang Shulei Case”) as an example, the technical secret

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involved was 1553BIP kernel technology, and the source code was the foundation for implementing 1553BIP kernel technology. Upon appraisal, it was found that there were some code segments which were partially identical and substantially identical between the source codes of the 1553BIP kernel owned by Orbita and those owned by Xiwei. The court deemed that such identical or substantially identical source codes were important parts for using the various main functional modules of 1553BIP kernel technology. In other words, the 1553BIP kernel technology owned by Xiwei contained the core technology of the 1553BIP kernel technology of Orbita.

(5) Testing Standards & Methods

Testing standards & methods refer to the standards and testing methods adopted to test whether products are qualified, and the specific carriers are the relevant testing standard documents. Taking the case of dispute over trade secret infringement between Dongguan Mingguan Electronics Co., Ltd. and Shenzhen ZOWEE Technology Co., Ltd. Baoan Branch & Shenzhen ZOWEE Technology Co., Ltd. as an example, the technical secrets involved were the DIR-615 quality assurance test SOP documents, which specifically included 0DIR60SEUAIGFCFUNCTIONTESTPROCEDURE(GR), the Testing Standard for Product Drop Experiment, the Testing Standard for Product High Temperature and Humidity Experiment, the Standard Flow of Product Test, the Product QE Test Items, the DHP-309AV Thermalshock Testing Report Pictures, the Digital Home Test Program Verify Check List, the DUT1-16 Form and so on.

(6) Formulae

Among the retrieved technical secrets, only a few were formulae. Such formulae mainly involved the formulae of materials, namely the modes of raw material combinations, which were mainly contained in material cost analysis lists and other technical materials. For example, the technical secrets involved in the dispute over technical secret infringement of Nantong Synthetic Material Factory of the Ministry of Chemical Industry, Nantong Zhonglan Engineering Plastic Co., Ltd. and others v. Nantong Wangmao Industrial Co., Ltd. (formerly Nantong Dongfang Industrial Co., Ltd.), Chen Jianxin and others (hereinafter referred to as the "Zhonglan Case") were 155 formulae of the modified PBT.

(7) Others

This Report classifies “Other” types of technical secrets as those technical secrets such as operating procedures, composition analysis schemes and so on whose number of cases is small or which cannot be unified categorized. For example, the technical secrets involved in the case of a dispute over trade secret infringement of ACON Biotechnology (Hangzhou) Co.,

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11 Shenzhen Nanshan District People’s Court (2014) Shen Nan Fa Zhi Min Chu Zi No. 103 Civil Judgment.
12 Supreme People’s Court (2014) Min San Zhong Zi No.3 Civil Judgment.
LTD. V. HANGZHOU VIVACHEK BIOTECHNOLOGY CO., LTD. AND HUIJIE\textsuperscript{13} were the operating procedures of the hob cutting process, which were mainly contained in the Operating Specification for the Hob Cutting Process. The technical secrets in the case of a dispute over trade secret infringement of State Nuclear Baoti Zirconium Industry Company v. Western Energy Material Technologies Co., Ltd. and Hui Boning (hereinafter referred to as the "State Nuclear Baoti Case")\textsuperscript{14} were the analysis methods of magnesium on sponge zirconium surfaces and the analysis methods of potassium, lithium and beryllium in zirconium and zirconium alloys, which were contained in the analysis operating guides and other technical materials.

In addition, as far as the types of the cases involving technical secrets are concerned, 53 were civil cases, accounting for 77% of the total number of cases involving technical secrets, and 16 criminal cases. The number of the civil cases is far more than that of criminal cases, which has something to do with the difficulty of filing criminal cases and the fact that the judicial adjudicative documents of some criminal cases have not yet been made public. However, criminal cases involving technical secrets account for a large proportion of criminal cases involving trade secrets, as detailed in Figure 11.

![Figure 11: Types of Technical Secrets in Civil and Criminal Cases](image)

On the whole, manufacturing processes and designs are the types of technical secrets highly frequently found in cases involving technical secrets. Most civil cases involved only one kind of technical secrets, while the number of cases involving both designs and manufacturing processes is relatively small. However, a large number of criminal cases involved the technical secrets of both designs and manufacturing processes, which might have something to do with the limitation of the starting standard for criminal prosecution. The increase in the volume of technical secrets is of great significance in the conviction of alleged infringers.

\textsuperscript{13} Hangzhou Yuhang District People’s Court (2016) Zhe 0110 Min Chu No.17243 Civil Judgment.

\textsuperscript{14} Shaanxi Higher People’s Court (2016) Shan Min Zhong No.451 Civil Judgment.
(II) Distribution of Cases Involving Technical Secrets by Industry

This Report performs statistical analysis of the industries in which the right holders in the cases involving technical secrets operate. According to the statistical results, manufacturing is an industry with a high occurrence of cases involving technical secrets, which reflects the importance of technical secrets in the production and operation of manufacturing enterprises.

Different industries have different specific contents of technical secrets. More specifically, as shown in Figure 12, source codes are the most important technical secret in the Internet and computer industries; technical secrets in the biomedical industry include process operating procedures, electrocardiogram algorithms and so on; in construction engineering, manufacturing processes are an important component of technical secrets, such as the anti-wear spraying technology, the "mold technology for molding longitudinal sleepers" and other technologies in this field; in the two non-industrial sectors of wholesale & retail, and services, the technical secrets are mainly product designs, production processes and software source codes.

(III) Distribution of Cases Involving Technical Secrets by Region

This Report performs statistical analysis of the regions of these cases involving technical secrets. As shown in Figure 13, the Pearl River Delta Region had the largest number of cases involving technical secrets, with 17 in Guangdong Province alone, accounting for 24.6% of the total. The Yangtze River Delta Region came second, including eight cases in Jiangsu Province, seven cases in Zhejiang Province, and seven cases in Shanghai. The occurrence of
larger numbers of cases involving technical secrets in the Pearl and Yangtze river delta regions is closely related to the large number of enterprises and the rapid economic development in the two regions.

![Figure 13: Distribution of Cases Involving Technical Secrets by Region](image)

II. Analysis of the Key Points

(I) Issue of Proof in Cases Involving Technical Secrets

Among the cases retrieved for this Report, there were some civil cases in which the courts determined that the technologies involved did not constitute trade secrets or that the alleged infringers constituted no infringement because of the issue of proof for the right holders. Under the former legal framework, the right holder needs to prove that the information it proposes conforms to the constitutive elements of trade secrets and the actual existence of acts of infringement, which is difficult to prove as a whole. Though the newly amended Anti-Unfair Competition Law has balanced the issue of the burden of proof, there are nevertheless considerable implications to analyze the issue of proof in cases involving technical secrets.

1. Proof of Constitutive Elements of Trade Secrets

According to the provisions of Article 9 of the newly amended Anti-Unfair Competition Law promulgated in 2019, secrecy, confidentiality and value are the three elements that constitute trade secrets.

Secrecy, namely non-publicity, means that something is not known to the public. From the case retrieval results, it can be seen that in both criminal and civil cases, the public prosecution organs or the right holders will generally provide an appraisal opinion on the non-publicity of technical secrets if they want to prove that the relevant technical secrets
possess secrecy. For example, in the Fang Shulei case, the Yue Zhi Si Jian Suo [2013] Jian Zi No.17 Appraisal Opinion submitted by Orbita confirmed that the overall combination of the source codes of its 1553BIP kernel belonged to technical information unknown to the public.\textsuperscript{15}

Confidentiality is related to the confidentiality measures taken by the right holders themselves. In practice, there are several ways of providing proof. The first is to submit the confidentiality and non-competition agreements signed with employees, records of training on confidentiality obligations, and so on to prove that the right holders have clearly required their employees to assume confidentiality obligations for the technical secrets involved. The second is to submit internal confidentiality provisions, confidentiality labels on the carriers of trade secrets, monitoring and management instructions for electronic documents involving trade secrets, and so on to prove that the enterprises have taken confidentiality measures for the technical secrets involved. In the case of a dispute over trade secret infringement of Shanghai Shan Fung Machinery Manufacturing Co., Ltd. v. Zhong Xiaoping, Li Xiaochun and Shanghai Luoxin Machinery Manufacturing Co., Ltd. (hereinafter referred to as the "Shan Fung Case"),\textsuperscript{16} the right holder provided the confidentiality contract, documents on the issue of confidentiality fees to the relevant personnel who had the duty of confidentiality, the Provisions on the Confidentiality of Experimental Workshops, and the Employee Handbook and other evidence to prove that it had taken confidentiality measures. In the Zhonglan case, the Supreme People's Court held that the evidence provided by the right holder, such as the Provisions on the Management of Production Processes and Formulae, the Job Specifications, the Registration of Borrowing of Archives and the method of area-specific recording of formulae, all belonged to the routine measures of production activities, and that the document Sales Price marked "Top Secret" was not relevant to the list of customers which was a trade secret involved. Therefore, the Supreme People's Court concluded that none of the aforementioned evidence could prove that Zhonglan had taken reasonable confidentiality measures.\textsuperscript{17}

Trade secrets involved in the cases must possess realistic or potential commercial value and be able to give competitive advantages to the right holders. In some cases, the right holders will provide sales contracts on their products that involve technical secrets and other related cooperation contracts to prove that such technical secrets can generate economic benefits. They will also provide appraisal reports to prove the value of the relevant technical secrets. As in the aforementioned Fang Shulei case, the appraisal opinion provided by the right holder Orbita held that the design objective of the 1553BIP kernel technology had an application value and could be used in production. Orbita also provided the Technology Development Contracts which it had signed with many companies as well as invoices to prove that the 1553BIP kernel technology could give economic benefits to Orbita through

\textsuperscript{15} Ibidem in Footnote 8.
\textsuperscript{17} Ibidem in Footnote 12.
transfer, licensing and other ways. There are also quite a number of cases in which no proof of value of the trade secrets was made. This is because in general situations, as long as the right holder provides evidence to prove the secrecy and confidentiality of its trade secret, it can be inferred that the trade secret proposed by the right holder has value, unless the infringing party offers counter-evidence.

2. Proof of the Act of Infringement

Article 9 of the newly amended Anti-Unfair Competition Law stipulates four kinds of acts of infringement of trade secrets, and the modes of these acts of infringement all have a common premise, namely "contact". Therefore, right holders firstly need to prove that the alleged infringers have committed an act of contact with their technical secrets.

(1) Proof of "Contact"

In the case of a dispute over technical secret infringement of Shanghai Wood Sea Machinery Co., Ltd., Cao Kun and others v. Union Brother (Shanghai) Machinery Co., Ltd. (hereinafter referred to as the "Wood Sea Case"), the Shanghai Higher People's Court held that "contact" refers to whether the alleged infringer has acquired the relevant information or materials proposed by the right holder. In general situations, the position held by, scope of work undertaken by, ability and scope of obtaining the information proposed by the right holder of the alleged infringer, and so on are the key factors to judge whether the alleged infringer has had contact with the rights information proposed by the right holder.

At the same time, contact can be divided into legal contact and illegal contact. Legal contact refers to the sort of contact where former employees can legally make contact with the trade secrets involved as a result of their working powers, as they are usually R&D personnel in charge of the certain technologies. In such situations, the right holders will generally submit the research reports written by the employees, their signatures on testing equipment, records of their participation in training, descriptions of employees’ employment situations and other evidence to prove that the former employees can come into contact with the relevant technical secrets. For example, in the case of a dispute over technical secret infringement of Liljedahl Wire Material (Taicang) Co., Ltd. v. Taicang Yiguanli Metal Materials

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18 Ibid in Footnote 10.
19 Article 9 of the Anti-Unfair Competition Law stipulates: Business operators shall not conduct the following activities of infringing trade secrets: (1) obtaining the right holder’s trade secrets through theft, bribery, fraud, intimidation, electronic intrusion or other improper means; (2) disclosing, using or allowing others to use the right holder’s trade secrets obtained by the means mentioned in the preceding paragraph; (3) disclosing, using or allowing others to use the trade secrets in their possession, in breach of their confidentiality obligations or violation of the right holder’s confidentiality requirement for trade secrets; and (4) instigating, inducing or helping others to acquire, disclose, use or allow others to use trade secrets, in breach of their confidentiality obligations or violation of the right holder’s confidentiality requirement for trade secrets.
20 "Contact" refers to whether the alleged infringer has acquired the relevant information or materials proposed by the right holder.
Co., Ltd., Zhang Liming and others, the evidence of contact submitted by the right holder included mold repair reports, pre-job training record forms, copper bar test reports, employee dynamic reports, disciplinary sanction reports, decision on appointment and so on. In the case concerning the criminal offense of infringing a trade secret by Song Bin (hereinafter referred to as the “Song Bin Case”), the public prosecution organ submitted the electronic data remote inspection records, research and development project approval report and other evidence to prove that the alleged infringer had come into contact with the technical secrets involved.

Illegal contact refers to the sort of contact with technical secrets which former employees have in breach of the rules by taking advantage of their work, which they would otherwise be unable to come into contact with within their working powers. In such situations, there are stricter requirements for the chain of proof. For example, in the Wood Sea case, the court of first instance held that Li Shoubao was responsible for after-sales services and Zhou Hua served as an electrical engineer at Union Brother and that the existing evidence alone was not enough to ascertain that Li Shoubao and Zhou Hua once came into contact with Union Brother’s business information involved.

In situations where illegal contact cannot be proven, the courts can still presume that the alleged infringers have actually come into contact with the technical secrets involved based on the relationship of mutual confirmation between the various types of evidence of the cases. In the case of a dispute over trade secret infringement of Anhui Zhongding Rubber and Plastic Products Co., Ltd. v. Wang Jianguo, Ningguo City Shengli Automobile Parts Co., Ltd., and Anhui Shengli Light Industrial Products Co., Ltd., the alleged infringer Wang Jianguo was mainly engaged in product sales work while working in Zhongding Rubber and Plastic Products Co., Ltd. He was not a R&D technician concerning the technical secrets involved,

22 Taicang City People’s Court (2014) Tai Zhi Min Chu Zi No.00021 Civil Judgment.
24 Ibidem in Footnote 21. In this case which also involved criminal procedures, the public security organ investigated and collected evidence of the relevant acts of trade secret infringement. Cao Kun, the alleged infringer, was a sales manager but not technology R&D personnel at the right holder’s company. After leaving his post, he set up a company together with three other ex-employees who had worked in technology-related positions in the right holder’s company, sold products which were of the same type as the products of the right holder’s company, and used the business information in their possession to develop business. The right holder submitted the exchange mail records of the alleged infringer Cao Kun to prove that Cao Kun had come into contact with and acquired the company’s technical secrets in addition to his actual contact with the business information of the company. The court held that Cao Kun was a sales manager at Union Brother throughout his tenure and that though the available evidence showed that Cao Kun had mastered the relevant technical solutions, technical parameters and other technical information of the "MAXCUT Serial Computer-Optimized Cross-Cut Saws" while working at Union Brother, the above data did not include the technical solution for the "MAXCUT Serial Computer-Optimized Cross-Cut Saws" to achieve optimal cutting, which was the content of the technical secret (i.e. the cutting-while-measuring design) proposed by Union Brother in the case. In view of this, and considering the position and scope of work of the alleged infringer Cao Kun at Union Brother and his relevant ability to obtain information, the court ruled in the first instance of this case that the existing evidence alone would not be enough to ascertain that Cao Kun had come into contact with the specific content of the technical secret involved (i.e. the “cutting-while-measuring design”) of Union Brother.
and there was no direct evidence to prove that he made contact with the technical secrets involved. The court held that the requirement of proof for the right holder often adopts the rule of "substantially identical plus contact", namely if the right holder proves that the commercial information used by the alleged infringer is identical or substantially identical to the trade secret involved and that the alleged infringer has come into contact with the said trade secret, then the alleged infringer shall provide proof of the legitimacy of its acquisition of the said information. The court maintained that if the alleged infringer cannot provide proof, it can be presumed that it constitutes infringement. In the criminal procedures of the same case, Ningguo City Public Security Bureau found the technical secret-containing documents of Zhongding Rubber and Plastic Products Co., Ltd. on Wang Jianguo’s computer, and seized the products involved. Also, the commercial information used for the automobile dust-proof hood products which Ningguo City Shengli Automobile Parts Co., Ltd. sold to Jiangxi Rongcheng Company was substantially identical to the trade secrets of the PPAP Document Package of Zhongding Rubber and Plastic Products Co., Ltd.’s products involved. All these, together with the fact that Wang Jianguo was mainly engaged in product sales work and was the business supervisor of the product project team while working at Zhongding Rubber and Plastic Products Co., Ltd., was sufficient to show that Wang Jianguo had come into contact with the trade secrets of the PPAP Document Package of the products involved.

(2) Proof of "Illegal Acquisition"

Legal contact is not equal to legal acquisition, and even if employees can legally access technical secrets, it does not mean that unauthorized copying of them and other acts are legal. According to the provisions of Paragraph 1 of Article 9 of the Anti-Unfair Competition Law, it is an infringement to acquire the trade secrets of right holders by unfair means. In most of the current cases, the methods of stealing technical secrets involved former employees making unauthorized copies of the electronic documents of technical secrets on their mobile storage devices, or employees secretly taking away the printed documents of technical secrets when quitting their jobs.

In order to prove the illegality of acquisition, in civil cases, right holders will generally provide the confidentiality regulations documents, employee handbooks, confidentiality agreements and other evidence of the right holders to prove the prohibitive provisions of the right holders on unauthorized possession and copying of their trade secrets. The right holders will also provide their records on employees’ borrowing of technical materials, rule-breaching transmission of emails to outsiders, unauthorized copying and other evidence so as to prove that the employees have illegally obtained the technical secrets involved. If the same case involves administrative investigation or criminal cases, the records on inquiries which the administrative or public security organs have made with the alleged infringers can also be regarded as one type of evidence of illegal acquisition by the alleged infringers. For example, in the case of a dispute over trade secret infringement of Shenzhen Jinminjiang Mechanical
and Electrical Equipment Co., Ltd. and Suzhou Xinminjiang Mechanical and Electrical Equipment Co., Ltd. v. Liao Jianqiang, Yuan Hong and others (hereinafter referred to as the "Jinminjiang Case"), the witness testimonies and the confessions of the alleged infringers submitted by the public prosecution organs, the records of the mailboxes involved as collected by the investigative organs, and other evidence in the criminal case could also prove that the former employees illegally obtained the technical secrets involved.

(3) Proof of "Disclosing, Using or Allowing Others to Use"

"Disclosing, using or allowing others to use" includes the following acts:

First, infringers disclose the trade secrets involved in the cases publicly, or to designated persons. Pure acts of public disclosure generally reflect that the infringers publicly released documents that contain technical secret information involved on the Internet, but such situations rarely happen. The aforementioned Song Bin case involved this kind of disclosure. The right holders in civil cases or the public prosecution organs in criminal cases will generally submit technical secret disclosure posts, posting IPs, registration information and other evidence. There is also another situation of public disclosure, namely infringers apply the right holders’ trade secrets for patents, which achieves the two effects of public disclosure and use at the same time. The State Nuclear Baoti case mentioned that the above falls within this situation. The right holders can prove that the infringers have publicly disclosed and used the technical secrets involved through the patent application documents which are openly accessible on the website of the patent office. As for disclosure to designated persons, infringers usually hand over trade secret documents to joint infringers by e-mail or direct delivery. However, in civil cases, it is usually difficult for the right holders to provide evidence in this respect. In such situations, the administrative investigation records, the confessions in the criminal procedures involved in the same cases and so on therefore become the main evidence. The case concerning criminal offense of infringing trade secret by Hua Man and Liu Hong falls within this kind of situation.27

Second, infringers use secrets themselves or allow others to use trade secrets. In the cases retrieved in this Report, most alleged infringers joined competitors or set up such companies after quitting their jobs, and then used the technical secrets in their possession in production. In such situations, not only use of trade secrets by former employees was involved, but the courts would also presume that the former employees allowed the alleged infringing enterprises to use the trade secrets involved. For example, in the case of a dispute over trade secret infringement of Taiyo Kikai Ltd. v. Shanghai Xinlan Machinery Co., Ltd., Zhu Guojian and others, the court found that the four alleged infringers, Zhu Guojian, Zhang Zihua, Qiao Jianping and Zhuang Yongqing, breached their confidentiality agreements,

27 Hukou County People’s Court (2016) Gan 0429 Xing Chu No.36 Civil and Criminal Judgment.
28 Shanghai Minhang District People’s Court (2014) Min Min San (Zhi) Chu Zi No.644 Judgment.
obtained the drawing of right holder Taiyo Kikai’s "TOF Commercial Bill Rotary Printer" by improper means, and used the trade secrets in their possession in production, helping the right holder’s competitor Shanghai Xinlan Machinery Co., Ltd. to produce unlicensed printers which damaged the right holder’s trade secrets. Such act violated the relevant provisions of China's Anti-Unfair Competition Law and was a case of joint infringement of the right holder's trade secrets by the four alleged infringers and the alleged infringer Shanghai Xinlan Machinery Co., Ltd.

The main evidence submitted by the right holder or the public prosecutor was an appraisal report in which the technical secrets involved in the infringing products and the technical secrets of the right holder were identical, supported by the mail records of the alleged infringers, the technical materials in the computers of the suspected infringing company, and so on.

It should be pointed out that the situations as provided in Item 3 of Paragraph 1 of Article 9 of the Anti-Unfair Competition Law shall refer to the situations where the alleged infringers have legally acquired trade secrets while assuming confidentiality or contractual obligations at the same time, but have breached such confidentiality or contractual obligations. A rather typical situation is one where an alleged infringer keeps a certain technical secret by heart and discloses, uses or allows others to use it without the need for any carrier to make illegal acquisition. Obviously, such situation is more difficult to prove. However, no case of this type has been found in the cases retrieved for this Report.

3. Proof of the Right Holder’s Loss or Alleged Infringer’s Profit

According to the provisions of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Civil Cases of Unfair Competition (hereinafter referred to as the "Interpretation") and the Patent Law of the People's Republic of China, there are two ways to determine the amount of damages in civil cases of trade secret infringement, namely according to the loss of the right holder and the profit of the infringer which incur as a result of the infringement.29 The criminal amount in criminal cases is directly related to the conviction and sentencing of infringers, which will be elaborated in detail in Chapter III of this Report.

(1) Right Holder’s Loss

29 Article 17 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Civil Cases of Unfair Competition stipulates that the amount of damages for acts of trade secret infringement as provided in Article 10 of the Anti-Unfair Competition Law may be determined with reference to the method of determining the amount of damages for infringement of patent rights...... Article 65 of the Patent Law of the People's Republic of China stipulates that the amount of damages for infringement of patent rights shall be determined according to the actual losses suffered by the right holder as a result of infringement; where the actual losses are difficult to determine, they may be determined according to the interests gained by the infringer as a result of the infringement.
As far as the cases retrieved in this Report are concerned, the main ways of calculating loss proposed by the right holder included: by loss of R&D cost, by loss caused by sales reduction, and by loss of profit caused by reduction of extended products or services. Whatever method of calculation is adopted, it needs to be proven in the form of evidence with legal effect, such as appraisal report, evaluation report and so on. In the aforementioned Shan Fung case, the party concerned provided self-produced evidence to prove its loss, but the court did not accept it.\textsuperscript{30} In the Xinggan Technology case, the appraisal opinion submitted by the right holder included an estimation of the amount of losses.\textsuperscript{31} In the case concerning the criminal offense of infringing a trade secret by Liu Guangfu (hereinafter referred to as the "Liu Guangfu Case"),\textsuperscript{32} the public prosecution organ submitted the evaluation report from an evaluation company to prove the loss of the right holder. In both cases, the appraisal opinion and the evaluation report were adopted by the courts.

(2) Infringer’s Profit

The infringement profit of an infringer can be embodied in the growth of sales revenue and profit, as well as the gains obtained through the transfer or external licensing of trade secrets. Right holders may prove their turnovers by providing the records of deposit in the personal and corporate bank accounts of the alleged infringers, as was done in the Shan Fung case. However, the personal or corporate deposit records of the alleged infringers could not be obtained through open channels. The judgment of the Shan Fung case did not indicate the way in which the right holder obtained the relevant evidence. As the case also involved a criminal lawsuit, it can be therefore inferred that the public security organ obtained relevant evidence when investigating the criminal facts of the alleged infringer.

In addition, if the alleged infringer is a listed company, the right holder may also prove the profit of the infringer from selling the infringing products by submitting the audit reports produced by the audit agency based on the relevant data publicly disclosed by the listed company.

It needs to be noted that the above analysis is made under the former legal framework in relation to the case data. The newly amended Anti-Unfair Competition Law has made great changes to the burden of proof, and its core lies in reducing the burden of proof of the right holder and increasing the burden of proof of the alleged infringer, it is believed that this will greatly alleviate the difficulty of proof for the right holder. At the same time, based on the new provisions, the rules of proof will also change accordingly. This issue will be especially analyzed in Chapter III.

\textsuperscript{30} Ibidem in Footnote 16.
\textsuperscript{31} Ibidem in Footnote 4.
\textsuperscript{32} Anhui Anqing Intermediate People’s Court (2017) Wan 08 Xing Zhong No.218 Criminal and Civil Judgment.
(II) Evidence Collection by Public Power in Cases Involving Technical Secrets

Cases involving technical secrets are characterized by difficult evidence collection. Whether it is to obtain evidence of infringement for identity appraisal or to obtain financial information of the alleged infringers to calculate their profits, it is difficult for the means of self-investigation to achieve such purpose. Therefore, a certain degree of public power intervention is needed.

1. Applying to the Court for Investigation and Evidence Collection

Paragraph 2 of Article 3 of the Some Provisions of the Supreme People’s Court on Civil Procedural Evidence stipulates that the parties concerned may apply to the people’s courts for investigation and evidence collection where they are unable to collect evidence by themselves for objective reasons. In the cases of this Report, the methods of applying for investigation and evidence collection mainly included applying to the courts for direct retrieval of the business data of the alleged infringers, or retrieving the business data of the alleged infringers from the departments of market regulation, or the administrative investigation files existing in the same case.

For example, in the case of a dispute over trade secret infringement by Yutian County Kelian Industrial Co., Ltd. and Yu Baokui, the right holder Yulian Company applied to the court of first instance to investigate the tax payments of the right holder for the sales of petroleum screw pump products from 2003 to 2010 after filing its lawsuit. It subsequently also applied to the court to investigate the revenue made by the alleged infringer Yutian County Kelian Industrial Co., Ltd. from selling petroleum screw pumps in 2010. The court of first instance obtained information on the sales of the infringing products from 2006 to October 2011 through the investigation of the relevant department and used the result of the investigation as one of the types of evidence to determine the amount of damages.

In the case of a dispute over trade secret infringement of Yanzhou Quantum Technology Co., Ltd. v. Zoucheng Yanmei Mingxingda Mechanical and Electrical Equipment Co., Ltd., Wu Baoqing and others (hereinafter referred to as the “Yanzhou Quantum Case”), the court of first instance, in accordance with the application of the right holder Yanzhou Quantum, legally retrieved the Bidding Documents of the alleged infringer Mingxingda, the Purchase Contract between Mingxingda and Guojiawan Coal Mine, the Contract on the Sale and Purchase of Industrial Products between Mingxingda and Jingyuan Coal Industry Group Limited, two invoices, He Jinliang’s business card, and so on.

2. Applying to the Court for Evidence Preservation

33 Hebei Higher People’s Court (2016) Ji Min Zhong No.689 Civil Judgment.
34 Shandong Higher People’s Court (2016) Lu Min Zhong No.1364 Civil Judgment.
Paragraph 1 of Article 81 of the Civil Procedure Law stipulates that in circumstances where the evidence may be destroyed or lost or difficult to obtain at a later time, the parties concerned may apply to the people’s courts for evidence preservation in the course of litigation, and the people’s courts may take the initiative to take measures to preserve the evidence. In cases involving technical secrets, the method of evidence collection of applying to the court for evidence preservation has a very positive effect on the promotion of the cases.

In the Yanzhou Quantum case mentioned above, the court of first instance preserved the evidence before litigation against the alleged Mingxingda on the basis of the right holder’s application of Yanzhou Quantum by sealing up in Mingxingda's workshop the three feeders involved, affixing seals to the parts that might involve the secret points and informing Mingxingda on the spot of its obligation to properly keep the sealed equipment and so on, as well as the corresponding legal consequences. The court of first instance produced a written record of the evidence preservation on the spot and photographed and videotaped the preservation process. However, when the court of first instance subsequently conducted an on-site investigation of the feeders involved for the preservation of pre-litigation evidence according to the application of Yanzhou Quantum, it found that Mingxingda tore up the seals without authorization, and transferred and dismantled the feeders under preservation and sealing. As a result, the court of first instance made the (2011) Ji Min San Chu Zi No.165 Penalty Decision and fined Mingxingda CNY200,000.\textsuperscript{35}

In addition, the court of first instance in this case held that Mingxingda committed an act of substantive destruction by, without authorization, tearing up the seals of the feeders and transferring and dismantling the feeders which were under pre-litigation preservation by the court of first instance, which made it impossible to make an identity comparison with the technical secrets of Yanzhou Quantum, for which Mingxingda shall assume the corresponding adverse consequences according to the law. Therefore, the court of first instance could conclude that the related technologies of the belt feeders manufactured and sold by Mingxingda were identical or substantially identical to the technical secrets proposed by Yanzhou Quantum without the need for making an identity comparison. In other words, Mingxingda had infringed the technical secrets involved of Yanzhou Quantum. The court of second instance held that there was no improprieness for the court of first instance to conclude that no comparison could be made and that the belt feeders manufactured by Mingxingda infringed the technical secrets of Yanzhou Quantum according to the burden of proof.

On the basis of evidence preservation, this case made an integrated application of the rule of obstruction of proof, which made it easier for the right holder to obtain a favorable result. At the same time, it also punished the acts of malicious destruction of material evidence, thus offering significant implications.

\textsuperscript{35} Ibidem in Footnote 34.
3. Evidence Collection through Administrative Investigation Procedures

Article 21 of the newly amended Anti-Unfair Competition Law stipulates the administrative penalties for infringement of trade secrets. Among the cases retrieved for this Report, the right holders in some of the civil cases once made tip-offs to the administrative departments for industry and commerce, and the courts confirmed all the same evidence and facts which the administrative organs had already confirmed in the administrative procedures.

In the administrative investigation procedures, the personnel of the departments for market regulation can enter the business premises and production workshops of the alleged infringers, and extract the core technical information or financial information from the electronic equipment of the alleged infringers. The departments for market regulation will determine the technical secrets involved, or entrust third parties to appraise the technical secrets involved and the infringing products. Concerning the issue of determination of infringement, the administrative market supervision departments will also make inquiries with the relevant responsible personnel, make a written record of them, and seal up the equipment and products involved. Because their enforcement is mandatory, the effect of evidence collection is fairly good. The courts also adopt the statements of the parties concerned formed in the process of handling of administrative cases. This has also become a very effective way of obtaining evidence in trade secret cases.

In the Jinminjiang case, the right holder submitted the Xiang Gong Shang An (2012) No.437 Written Decision on Administrative Punishment made by the Xiangcheng Industry and Commerce Bureau to prove that the Xiangcheng Industry and Commerce Bureau had established according to the law that the technical information reflected in the technical drawings of the R900 (automatic winding machine), the R36/R38 (automatic paper/card inserting machine) and the RJCO1 (testing machine) was a trade secret and also that alleged infringers Oude Company, Liao Jianqiang and Yuan Hong committed acts of infringement of the two right holders’ trade secrets. In the case of a dispute over trade secret infringement of Shandong Blue Spring Junengda Co., Ltd. v. Jinan Ruide Polyurethane Co., Ltd. and Zhang Shoujun, Shandong Blue Spring Junengda Co., Ltd. submitted the Ji Ping Gong Shang Jian Chu Zi (2012) No.259 Written Decision on Administrative Punishment made by the Jinan Administration for Industry and Commerce of Shandong Province to prove that the alleged infringers Jinan Ruide Polyurethane Co., Ltd. and Zhang Shoujun had infringed its trade secrets. Both cases achieved the purpose of proof in civil procedures.

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36 Article 21 of the Anti-Unfair Competition Law stipulates that where business operators and other natural persons, legal persons and unincorporated organizations infringe trade secrets in breach of the provisions of Article 9 of this Law, the departments for supervision and inspection shall order them to stop their illegal activities, confiscate their illegal gains and impose a fine of not less than CNY100,000 but not more than CNY1 million; in serious circumstances, a fine of not less than CNY500,000 but not more than CNY5 million shall be imposed.
37 Ibidem in Footnote 26.
4. Evidence Collection through Public Security Organs

For civil cases involving technical secrets, if a criminal offense is involved in the same cases, the right holders may first report them to the public security organs to initiate criminal procedures, so as to use the evidence obtained by the public security organs in the criminal process to achieve the purpose of proof in subsequent civil cases. Specifically, the following two situations can be distinguished.

First, the evidence collected in the preceding criminal cases is used in the subsequent civil litigation. For example, in the Ding Wengang case, Weitu Company reported to the public security organ in 2009 the matter of infringement of its trade secrets by Ruitu Company. The Chengdu Public Security Bureau then searched Ruitu Company and seized the computers involved and the handheld song-ordering prototype machines which it had searched. It also searched, solidified and extracted the computers involved, ROCK structural design data, ROCK hardware design data, emails relating to the sale of ROCK products and other evidence and formed an appraisal report CD. In January 2012, Weitu Company filed a lawsuit with the court against Ruitu Company for infringing its trade secrets. Based on the appraisal report compiled in the preceding criminal procedures, the court held that the information of Weitu Company on its handheld wireless song-ordering machine (i.e. ROCK), was not known to the public and was secret.39

Second, the evidence collected in the early stages of criminal cases whose procedures are terminated is used.40 In the Xinggan Technology case, Wuhan Public Security Bureau once filed a case to investigate whether Wan Ling had infringed Hubei YuanCheng Saichuang Technology Company's trade secrets, and later canceled the case because of insufficient evidence. However, when filing the case for investigation, Wuhan Public Security Bureau entrusted the Intellectual Property Judicial Appraisal Institute of Central South University of Finance, Economics and Law to appraise the non-publicity and identity of the technical information involved and the amount of losses of the right holder. The appraisal opinion held that the technical information involved was not publicly known and that the technical key points involved were identical to the two technical key points proposed by Hubei YuanCheng Saichuang Technology Company, and the amount of losses was established to be CNY6,584,679.70. Such evidential materials have become the basis for the court to establish the legal facts and determine the amount of damages in civil cases.41 Therefore, the evidential materials formed by the public security organs in the process of filing and investigating a case will not lose effect because of the termination of criminal procedures, and the right holders can still use them as evidence in subsequent civil cases.

39 Ibidem in Footnote 7.
40 Termination here does not include the situations of judgment and case closures by the courts. It only refers to the termination of criminal procedures due to insufficient evidence or other reasons.
41 Ibidem in Footnote 4.
Section 2 Cases Involving Business Information

Business information usually refers to the confidential materials, intelligence, plans, schemes, methods, procedures, business decisions and so on which are related to production, operation and sales. Cases involving business information make up the majority of the cases retrieved for this Report. This Section will analyze the cases involving business information from the perspectives of business information type, industry distribution and geographical distribution. Meanwhile, it will also conduct a key analysis of customer lists, which are a special type of business information.

I. Data Analysis

(I) Number of Cases and Types of Business Information Involved

1. Number of Cases

Among the 157 cases retrieved for this Report, there are a total of 157 cases involving business information, including 31 in 2015, 25 in 2016, 57 in 2017 and 44 in 2018. Overall, there were more cases of first instance than cases of second instance each year, but the difference was not significant. Overall, the number of cases was on a rising trend, as detailed in Figure 14.

2. Types of Business Information Involved

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42 Ibidem in Footnote 4.
43 Including 133 cases involving business information only, and 24 cases involving both technical secrets and business information.
According to enterprises’ business activity processes, business information can be divided into three types: management plan-type business information, transaction-type business information and channel-type business information. Among them transaction-type business information mainly refers to customer lists. In the cases retrieved for this Report, the vast majority involving business information involved customer lists, while a small number of cases involved management plan-type business information and channel-type business information. The specific percentages of these cases are shown in Figure 15.

(1) Management Plan-type Business Information

Management plan-type information includes work requirements, project processes, special products or services, production costs, product performance data, raw material lists and other information. This type of business information involves fewer cases of trade secrets, and there are not many cases either which are determined by the courts as constituting trade secrets. The main reason why the courts did not support the cases was that the right holders could not provide evidence to prove that the type of such business information proposed by them conformed to the constitutive elements of trade secrets.

In the case of a dispute over trade secret infringement of XB Technologies (Beijing) Co., Ltd. v. Pim Sebastian Smeets and others, the court finally concluded that the terms and conditions on services and expenses in the Independent Contracting Service Agreement, the relevant contents in the Project Allocation Table and the two specific testing services of MeetingPoint and Havik belonged to the trade secrets of the right holder XB Technologies (Beijing) Co., Ltd. In the case of a dispute over trade secret infringement by Baoding Shengdisi Foundry Machinery Manufacturing Co., Ltd. and Ji Yong (hereinafter referred to as the "Shengdisi Case"), the right holder claimed that its production cost and production and marketing strategies constituted trade secrets. Though the court held that production cost constituted a trade secret, it needed the right holder Yonghong Company to provide further details of its production cost and calculation, while the existing evidence was insufficient to establish that CNY1.66 million being Yonghong Company’s production cost and therefore did not hold that it constituted a trade secret.

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44 Beijing Chaoyang District People’s Court (2015) Chao Min (Zhi) Chu Zi No 35030 Civil Judgment.
(2) Channel-type Business Information

Channel-type business information includes goods source information, supplier information, bidding price reduction and all other information related to marketing activities. For example, in the case of a dispute over commercial bribery and unfair competition between Karamay Jintuo Transportation Service Co., Ltd. and Karamay Kailong Oilfield Technical Service Co., Ltd., the court of first instance held that the practicability of the bidding documents with a big bidding price reduction produced by the right holder Karamay Jintuo Transportation Service Co., Ltd. and its secrecy prior to the opening of the tender for the purpose of winning the vehicle service contract of the tender was self-evident. Therefore, the bidding documents of Karamay Jintuo Transportation Service Co., Ltd. in the case possessed practicability, secrecy and confidentiality and were trade secrets. In the Shan Fung case, the court established the following facts: the business information proposed by the right holder mainly included customer lists and sales and procurement channels; Shanghai Shan Fung Company signed a confidentiality contract with all its personnel involved in confidential information; business information was the value for realizing the economic benefits of the company; and the Employee Handbook of the company also set out confidentiality requirements. Given all these, the court established that the business information shall also be determined as conforming to the statutory requirements of trade secrets.\footnote{Xinjiang Uygur Autonomous Region Higher People’s Court (2017) Xin Min Zhong No.53 Civil Judgment.}

(3) Transaction Information (Customer List)

The customer list is also the most important and most common business information. Most trade secret cases concerning business information involve customer lists, and the business information proposed by the right holders in more than 60% of the cases involves customer lists only.

(II) Distribution of Cases Involving Business Information by Industry

As shown in Figure 16, manufacturing, trade and finance, and education are sectors with a high occurrence of cases involving business information.

\footnote{Ibidem in Footnote 16.}
Cases involving business information are mainly concentrated in the three major sectors of manufacturing, trade and finance, and education. The reason may be that these sectors pay more attention to the protection of technical information than software and computer, chemical, construction engineering and other industries. Meanwhile, the manufacturing industry itself contains a large number of sub-industries, thus leading to a large number of cases.

(III) Distribution of Cases Involving Business Information by Region

Figure 17 shows that the cases involving business information are mainly in the Yangtze River Delta Region and the Pearl River Delta Region. There are fewer cases in the central and northeast provinces, while there are almost no such cases in the northwestern provinces.

The above regional distribution pattern of the cases involving business information is also closely related to the level of economic development and the development model in the regions. Though cases involving technical secrets and cases involving business information
have basically the same pattern, with both being mainly concentrated in the Yangtze and Pearl river delta regions, there are nevertheless some minor differences between them.

As far as cases involving business information are concerned, there are more of them in the Yangtze River Delta Region than in the Pearl River Delta Region. The pattern is reversed for cases involving technical secrets, with more of them in the Pearl River Delta Region than in the Yangtze River Delta Region. The reason is that the Yangtze River Delta Region pays more attention to industries such as finance, import and export trade, and the demand for business information protection is greater. By comparison, the technology industry has continuously developed in the Pearl River Delta Region, especially Shenzhen, which is the gathering place of a large number of technical secrets.

II. Analysis of the Key Points

(I) Constitutive Elements of Customer Lists as Trade Secrets Under Protection

As stated in Section 1 Cases Involving Technical Secrets of this Report, the determination of trade secrets fundamentally lies in the judgment of the secrecy, confidentiality and value of the object to be protected. This is no exception to the determination of the constitution of customer lists as trade secrets.

In judicial practice, the court mainly considers the secrecy of a customer list from five perspectives: (1) depth of the content of the customer list; (2) price of the establishment of the customer list; (3) difficulty of obtaining the relevant information of the customer list by ordinary people; (4) ill intent of an alleged infringer to obtain the customer list; and (5) transaction stability of specific customers.

1. Depth of Content of Customer Lists

For a customer list to constitute a trade secret, its content must not be limited to such general information as customer name, address and contact information. It should also include business information that is not known to the public, such as customer demand type, demand habits, business rules, price tolerance, and even the personality of customer business supervisors.

In the case of a dispute over trade secret infringement of Chongqing Lisong Electromechanical Equipment Co., LTD. v. Zhou Yuxiao and Chongqing Savan Electromechanical Equipment Co., LTD. (hereinafter referred to as the "Lisong Case"), the Supreme People's Court held that the customer information and product parameters in the customer list proposed by the right holder were not clearly specified and lacked specific names, addresses, contact information, as well as transaction habit, intent of product

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48 The Supreme People's Court (2016) Zui Gao Fa Min Shen No.39 Civil Verdict.
purchase and other in-depth information, thus not conforming to the criteria for determining a customer list to be a trade secret in the Interpretation and constituting no trade secret. In the case of a dispute over trade secret infringement of Besstec Electronics (Zhongshan) Co., LTD. v. Liao Xiaojun and Wu Guowei,\textsuperscript{49} the court established that from the evidence provided by Besstec Electronics (Zhongshan) Co., LTD., the content of the information recorded in ESI Company’s customer details list the right to which was claimed by Besstec Electronics (Zhongshan) Co., LTD. was rather simple. The relevant information only included customer names, addresses, and contact mailboxes, and thus lacked depth. For other suppliers, Besstec Electronics (Zhongshan) Co., LTD. did not specify the content of the trade secrets it proposed at all, and all the customer information claimed by Besstec Electronics (Zhongshan) Co., LTD. could be obtained through open channels and could not be determined to be a trade secret.

2. Price of Establishment of a Customer List

Article 9 of the Interpretation stipulates that relevant information being not generally known to and easily obtainable by the relevant personnel in the field to which it belongs shall be determined as "being not known to the public" as stipulated in Paragraph 3 of Article 10 of the Anti-Unfair Competition Law. It also lists some specific situations which are not situations where relevant information is not known to the public. Item 6 thereof states that "the said information can be easily obtained without paying a certain price".\textsuperscript{50} It can be seen that for a customer list to constitute a trade secret, a price has to be paid for it. “Price” mentioned here generally refers to the human, material, financial and other resources which are injected.

In the case of a dispute over trade secret infringement of Changzhou Jingshi Sign Marking Co., Ltd. v. Changzhou Ido Sign Co., Ltd., Zhu Shigang and others (hereinafter referred to as the "Jingshi Sign Case"),\textsuperscript{51} the court held that the alleged infringer argued that the prices on the right holder’s quotation sheet were different from those quoted in its Catalog of Products, but the said price differences precisely showed the different pricing from commercial advertisements which was formed by the right holder on the basis of continuous communication and consultation with customers and in relation to customers’ customized requirements so as to facilitate transactions with customers. It reflected the human and material costs injected by the right holder, and embodied the price policy determined according to the individual needs and price affordability of different customers. The business information of the ten enterprises involved as proposed by the right holder was obtained on the basis of the right holder’s considerable financial and energetic efforts. The court held that the customer list involved was a trade secret.

\textsuperscript{49} Guangdong Zhongshan No.1 People’s Court (2016) Yue 2071 Min Chu No.4755 Civil Judgment.
\textsuperscript{50} Here, it refers to the pre-amendment version of the Anti-Unfair Competition Law on April 23, 2019.
\textsuperscript{51} Jiangsu Changzhou Intermediate People’s Court (2016) Su 04 Min Chu No.22 Civil Judgment.
3. Difficulty of Obtaining the Relevant Information of a Customer List by Ordinary People

This element is usually discussed in conjunction with the price paid for establishing a customer list. Article 9 of the Interpretation states that situations where information has been publicly disclosed in open publications or other media, information has been disclosed through public report meetings, exhibitions and so on, the said information that can be obtained from other public channels does not fall within "being not known to the public". If this is the case, the right holder does not have to pay a certain price to obtain it. In the case of trade secret infringement of Shanghai Diwa Industrial Co., Ltd. and Zhang Yunpeng v. Shanghai Shijing International Trade Co., Ltd. (hereinafter referred to as the "Diwa Case").\(^{52}\) the court stated that the trade secrets proposed by Shanghai Shijing International Trade Co., Ltd. included product requirements, transaction habits, methods of payment and so on which it had formed during its long process of transactions with customers. The court held that such customer information could not be directly obtained through open channels and it could only come into being after the input of certain human and material resources.

4. Ill Intent of an Alleged Infringer to Obtain a Customer List

Article 2.5.3 of the Guidelines of Jiangsu Higher People's Court for the Trial of Disputes over Trade Secret Infringement stipulates that the more special the infringement means are, the more likely customer information is secret. If customer information is obtained by phone tapping, burglary and other means, the probability of the said information being established as a trade secret will be greatly increased.

5. Transaction Stability of Specific Customers

The Interpretation has put special emphasis on specific customers with which the right holders maintain long-term stable transaction relationships. Consequently, there is no lack of precedents in judicial practice that use this as a criterion for judgment.

In the Jingshi Sign case, the court held that the right holder provided several or even dozens of VAT invoices spanning several years with each customer, also accompanied by some corresponding payment vouchers and the right holder's quotation sheets, which formed a mutually corroborative evidence chain. The court also established that the right holder's interpretation did not run counter to the common business sense and accorded with the convenient transaction practice of long-term stable customers.\(^{53}\) By contrast, in the Lisong case, the Supreme People's Court held that the seven sales contracts between 2008 and 2011 submitted by Lisong Company could not prove that the customers involved in the contracts were specific customers with which the right holder maintained long-term stable transaction relationships different from ordinary customers, nor could they prove the efforts

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\(^{52}\) Shanghai Intellectual Property Court (2017) Hu 73 Min Zhong No.38 Civil Judgment.

\(^{53}\) Jiangsu Changzhou Intermediate People's Court (2016) Su 04 Min Chu No.22 Civil Judgment.
and prices which it had paid to develop these customers. As a result, the customer list could not be determined to be a trade secret.\textsuperscript{54}

It needs to be noted that the statement that "customer lists which constitute trade secrets include the customer register gathering a large number of customers, as well as specific customers with which the right holders maintain long-term stable transaction relationships" made in the interpretation is not an exhaustive enumeration of customer lists which constitute trade secrets. As mentioned above, a small number of customer lists can also constitute trade secrets as long as they have in-depth information. Similarly, as far as specific customers are concerned, maintaining a long-term stable transaction relationship is not required for all of them. There are also exceptions. For example, the potential customer information established by right holders through market survey and other means, or the customer information obtained by accidental transactions, may also constitute trade secrets as long as it has in-depth information and can bring competitive advantage or economic value.

(II) Issue of Proof in Cases Involving Business Information

The items for proof in cases involving business information also include three aspects: constitutive elements of trade secrets, act of infringement, and amount of damages, and the relevant principles are also basically the same as those of cases involving technical secrets. However, because business information does not involve complex technical issues, the issue of proof in cases involving business information is relatively simple. Compared with the proof of cases involving technical secrets, the proof of cases involving business information has the following three characteristics:

1. Appraisal of No Involvement of Secrecy and Identity

As analyzed above, in cases involving technical secrets, judicial appraisal is usually used to prove the secrecy of the trade secrets proposed by the right holders and the identity between infringements and trade secrets. Business information is the experience, accumulation and strategies in business management, such as customer lists, financial materials, goods source intelligence, supplier registers, price strategies, and tendering and bidding documents. Such information generally does not involve questions of specialized technologies and knowledge. It is possible to judge whether it possesses secrecy in accordance with the logical rules and relevant evidence submitted by both sides, and in relation to daily life experience and common sense. At the same time, in cases involving business information, it is an obvious fact whether the customer lists, price strategies and other business information of the right holders and the alleged infringers are identical or substantially identical, and no appraisal will be needed. Therefore, in the cases retrieved for

\textsuperscript{54} Ibidem in Footnote 51
this Report, no case was found which involved the appraisal of the secrecy and identity of cases involving business information.

However, this does not mean that there is no need for appraisal in cases involving business information. In determining the amount of losses suffered by the right holder or the amount of profits made by the infringer, appraisal or evaluation is still the main method of proof. Especially in criminal cases, the amount of losses is an important criterion for conviction and sentencing, which requires a third party with professional knowledge to generate reasonable calculation and evaluation results. For example, in the crime of trade secret infringement by a certain person surnamed Li, the alleged infringer Li breached his confidentiality agreement with Baixin Company, and disclosed and used via Weilian Company, the customer information of Baixin Company which was in his possession. The court of first instance, based on the amount of losses of CNY804,139.11 appraised in the Judicial Accounting Appraisal Report, adjudicated that Li constituted the crime of trade secret infringement.

2. Proof of Acts of Infringement Mainly Involving Proving Acts of "Disclosing, Using or Allowing Others to Use"

The proof of acts of infringement in cases involving business information is the same as that in cases involving technical secrets. First of all, it is necessary to prove that the alleged infringer has committed an act of coming into contact with trade secrets. The method of proof of contact is the same as that in cases involving technical secrets, and will not be repeated here.

In the cases involving business information, most of the alleged infringers were senior managers who had come to acquire the business information involved or employees who had long-term stable contact with customers at their former employers. They often could obtain customer lists and other business information through normal channels in normal transactions or work. Therefore, there is less proof of illegal contact in such cases. In judicial practice, the courts will presume that the alleged infringers could come into contact with and obtain the business information of the right holders based on the positions held by the alleged infringers. For example, in the Diwa case, the court held that alleged infringer Zhang Yunpeng worked at Shijing Company from September 2010 to the end of August 2012, and subsequently worked at Shizhan Company. In December 2015, he concurrently did sales work for Shijing Company, and made several trips to Jinguang Company, Wande Company, and other companies, until he submitted his resignation to Shizhan Company in April 2016. Therefore, it could be determined that Zhang Yunpeng actually came into contact with Shijing Company’s customer lists which were trade secrets during his work at the company.56

55 Fujian Xiamen Intermediate People’s Court (2015) Xia Xing Zhong Zi No.590 Criminal Judgment.
56 Ibidem in Footnote 52
As for the acts of disclosing, using or allowing others to use, besides there being no need for appraisal, the method of proof is not much different from that in cases involving technical secrets.

3. Less Involvement of Evidence Collection by Public Power

In cases involving technical secrets, technical questions of complexity and specialization are involved, making it difficult to collect evidence. Therefore, evidence collection by public power sometimes happens. However, in cases involving business information, especially in civil cases involving business information, evidence collection by public power is seldom involved. In proving that an alleged infringer has used the business information involved in the case, the purpose of proof can often be achieved through the rule of preponderance of evidence. For example, in the case of a dispute over trade secret infringement between Dasen Plastic Industrial (Suzhou) Co., Ltd. and Hu Pan, the alleged infringer was a salesperson of the right holder, and Ms. Zhang, the mother of Hu Pan, established Ruiwang Company on May 10, 2014. Ruiwang Company made several business contacts with the right holder's customers from March to April, 2015, involving the same or similar products and models. Hu Pan's signature also appeared on some shipping notices. The court established that in the case Hu Pan failed to provide evidence to prove the justification of his obtaining the relevant information, thus determining that Hu Pan used Dasen's customer business information.

Section 3 Analysis of Places of Jurisdiction over Cases

I. Places of Jurisdiction over Civil Cases

(I) Overview

Civil disputes over trade secret infringement belong to disputes over unfair competition, which is a kind of civil tort. Therefore, the places of jurisdiction over civil disputes over trade secrets arising from employee turnover include the domiciles of the alleged infringers or the places of infringement acts. The places of infringement acts include the place where the infringement is committed and the place where the infringement consequence occurs. In judicial practice, many right holders of trade secrets tend to propose their domiciles as the place of infringement act, thus establishing the linking point between the domicile of the right holder and the jurisdiction over disputes over trade secret infringement.

57 Jiangsu Suzhou Huqiu District People’s Court (2016) Su 0505 Min Chu No.4842 Civil Judgment.
Among the 185 civil disputes over trade secret infringement arising from employee turnover in 2015-2018, a total of 149 cases were tried by the courts in the places where the alleged infringers were located or domiciled, 35 cases were tried by the courts in the places where the right holders were located, and one case was subject to centralized jurisdiction.\(^5^8\) In the case under centralized jurisdiction, the alleged infringer’s domicile was in Lianyungang City, Jiangsu Province, and technical secrets were involved. The case was under the cross-regional centralized jurisdiction of the Nanjing Intermediate People's Court. In essence, it also belonged to the jurisdiction determined by the alleged infringer’s domicile. Therefore, as a whole, the jurisdiction over civil disputes over trade secrets arising from employee turnover is mainly based on the domiciles of the alleged infringers.

(II) Reasons for the Current Situation of Jurisdiction over Civil Cases

1. Right Holder’s Domicile Is Not the Place of the Infringement Act of the Illegal Use of Trade Secrets

Article 9 of China's Anti-Unfair Competition Law stipulates that when determining the places of infringement acts in disputes over trade secrets arising from employee turnover for acts of trade secret infringement including illegal acquisition, illegal disclosure and illegal use, it is necessary to firstly sort out whether such acts fall under illegal acquisition, illegal disclosure or illegal use.

Generally speaking, illegal acquisition of trade secrets only refers to “the acquisition of the right holder's trade secrets by means of theft, bribery, fraud, intimidation, electronic intrusion or other improper means”. During the period of employees' employment, the acquisition of the right holders' trade secrets due to the need of their functional duties does not belong to the illegal acquisition of trade secrets. However, that employees use the trade secrets they know in breach of their confidentiality obligations after they have quit their jobs constitutes "illegal use of trade secrets".

As for acts of illegal use of trade secrets, the Supreme People's Court specified in the (2013) Min Ti Zi No.16 Case the rules for determining the place of the infringement act. It pointed

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\(^5^8\) Nanjing Intermediate People’s Court (2017) Su 01 Min Chu No.1049 Civil Judgment.
out that "the place of infringement consequence shall be understood as the place where the direct consequence of the act of infringement occurs, but it cannot be held that the place where the right holder is located is the place of infringement consequence because the right holder thinks that it has suffered damage. As far as the alleged infringement act of using or allowing others to use trade secrets the alleged infringer has in possession is concerned, the place where such act of infringement is committed shall be the place where the trade secret involved is used, and the place of infringement consequence overlaps the place of committing of infringement". Therefore, the right holder’s domicile is not the place of infringement act for the illegal use of trade secrets, and no jurisdictional linking point can be established between the two.

2. The Place Where the Infringing Product Is Sold Is Not the Place Where the Infringement Consequence of the Act of Illegal Use Occurs

As far as the infringing products manufactured as a result of illegal use of trade secrets are concerned, debate once existed over whether their places of sale were the places of infringement consequence and whether the courts in the places where the infringing products were sold could therefore establish a jurisdictional linking point.

Some scholars believe that the right to trade secrets is already established under the framework of the Anti-Unfair Competition Law and that the acts of use of trade secrets include the sale of infringing products. At the same time, China’s judicial interpretations also stipulate that the places of infringement consequence from the use of patented methods include the places where the products obtained directly from the said patented methods are sold. Therefore, the place of sale of products manufactured by illegal use of trade secrets shall also be determined as the place of infringement consequence, and the courts in the places where such products are sold have jurisdiction over cases of trade secret infringement.

Through judicial adjudication, the Supreme People's Court has established the adjudication rule that the place of sale of infringing products is not the place of infringement consequence of acts of illegal use of trade secrets. As early as 2009, in the case of a dispute over jurisdiction over trade secret infringement of Siwei Industrial (Shenzhen) Co. Ltd. and others v. Avery Dennison and others, the Supreme People's Court held that generally speaking, the place of committing of acts of use of trade secrets overlaps the place of consequence. In other words, the process of use of trade secrets is usually the process of manufacturing of infringing products. When the infringing products are manufactured, the infringement consequence of use of trade secrets occurs simultaneously. It is not appropriate to regard the place where the said infringing products are sold as the place where the infringement consequence of use of trade secrets occurs. In this case, the Supreme People’s

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59 The Supreme People’s Court (2013) Min Ti Zi No.16 Civil Verdict.
60 The Supreme People’s Court (2007) Min San Zhong Zi No.10 Civil Verdict.
Court also pointed out that the acts of selling infringing products made by way of infringement of trade secrets are not the acts of infringement of trade secrets as provided in the Anti-Unfair Competition Law.

3. Cross-regional Centralized Jurisdiction

On August 31, 2014, the tenth Meeting of the Standing Committee of the 12th National People’s Congress adopted the Decision of the Standing Committee of the National People’s Congress on the Establishment of Intellectual Property Courts in Beijing, Shanghai and Guangzhou. Subsequently, intellectual property courts were established in these three places. According to the Provisions on the Jurisdiction of Intellectual Property Courts in Beijing, Shanghai and Guangzhou over Cases which were issued by the Supreme People’s Court and officially came into force on November 3, 2014 (Fa Shi [2014] No.12 Provisions), the Beijing and Shanghai intellectual property courts have centralized jurisdiction over civil cases involving technical secrets in their respective municipal jurisdictional areas, while the Guangzhou Intellectual Property Court has centralized jurisdiction over civil cases involving technical secrets within Guangdong Province (except Shenzhen). The establishment of intellectual property courts in Beijing, Shanghai and Guangzhou also marks the opening of a prelude to the cross-regional centralized jurisdiction over civil cases involving technology-type intellectual property rights (including technical secrets) in China.

In recent years, in addition to intellectual property courts, China has also vigorously promoted the construction of intellectual property tribunals throughout the country. As of the date of the writing of this Report, 18 intellectual property tribunals including the Nanjing Intellectual Property Tribunal, the Suzhou Intellectual Property Tribunal and the Hangzhou Intellectual Property Tribunal had been established. These intellectual property tribunals are not separate courts, but are established through the intermediate people’s courts where they are located.

On January 1, 2019, the Intellectual Property Tribunal of the Supreme People’s Court officially started to perform its duties. If the parties concerned object to the first-instance judgments or rulings of civil intellectual property cases with highly technical specialties such as invention patents, utility model patents, new varieties of plants, IC layout designs, technical secrets, computer software and monopolies and lodge appeals against them, the Intellectual Property Tribunal of the Supreme People’s Court will hear such appeals. This implies that the second instance of cases involving technical secrets will be conducted directly by the Intellectual Property Tribunal of the Supreme People’s Court in a centralized way, and the reform of cross-regional centralized jurisdiction over intellectual property cases in China will be deepened further.

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61 The establishment of the Haikou Intellectual Property Tribunal and the Urumchi Intellectual Property Tribunal has been approved but the two courts have not started business, thus they are not included in the statistics.
Because the research object of this Report is cases involving trade secrets arising from employee turnover in 2015-2018 and the further promotion of centralized jurisdiction only started two years ago, there is only one case under centralized jurisdiction in this Report. It cannot be excluded that there are still many cases under centralized jurisdiction that have not been concluded and therefore are not included in this Report. With the establishment of intellectual property courts and numerous intellectual property tribunals, it will become increasingly more common for the centralized jurisdiction over cases of disputes over technical secrets arising from employee turnover.

II. Places of Jurisdiction over Criminal Cases

On January 10, 2011, the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued the Opinions on Some Issues Concerning the Application of Laws in Handling Criminal Cases of Intellectual Property Infringement (Fa Fa [2011] No.3), which makes the following provision on the filing and investigation of crimes of intellectual property infringement: “criminal cases of intellectual property infringement shall be filed and investigated by the public security organs in the places where the crimes were committed. If necessary, case filing and investigation may be undertaken by the public security organs in the places where the criminal suspects reside. The places of crime in criminal cases of intellectual property infringement include the places where infringing products are manufactured, stored, transported and sold, the places where the website servers for disseminating infringing works and selling infringing products are located, the places where network access is made, the places where the website builders or managers are located, the places where those who uploaded the infringing works are located, and the places where the criminal consequences of infringement actually occur to the right holders”.

Article 8 of Some Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on Handling Cases of Economic Crimes by Public Security Organs, which came into effect on January 1, 2018, also stipulate that “the places of crime include the places where criminal acts occur and the places where criminal consequences occur. The places where criminal acts occur include the places where the criminal acts are committed, as well as the place of preparation, the place of initiation, the place of transit, the place of conclusion and other relevant venues of the criminal acts. Where a criminal act has a successive, sustained or continuous state, the places where the said criminal act is committed successively, in a sustained manner or continuously all are the places where the criminal act occurs. The places where criminal consequences occur include the places where the objects of crime are infringed, and the places where the proceeds of crime are actually obtained, hidden, transferred, used and sold”.

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As far as criminal cases of trade secret infringement are concerned, the right holders may initiate the procedures for filing and investigating the crimes of trade secret infringement by reporting the cases to the public security organs. Unlike civil cases, the territorial jurisdiction over the filing and investigation of criminal cases is relatively broad, and the right holders often initiate criminal proceedings by reporting directly to the economic investigation departments of the public security organs in the places where they are located. At the same time, because the starting of criminal procedures may require some early evidence, the right holders are often inclined to push forward the local public security organs to intervene in the investigations, so as to facilitate communication and cooperation in the course of case handling. Among the 17 criminal disputes over trade secret infringement arising from employee turnover in 2015-2018, there were five cases which were heard by the courts in the places where the alleged infringers were domiciled, and 12 cases which were heard by the courts in the places where the right holders were located, as shown in Figure 19.

![Figure 19: Statistics on Places of Jurisdiction over Criminal Cases](image-url)
Chapter III Thematic Research on Cases of Trade Secret Disputes Arising from Employee Turnover

In the field of trade secrets, there are still many focal issues worth discussing. These issues are not dependent on the big data of the cases, but the relevant cases can indeed play a positive role in the analysis of the issues. Therefore, this Report devotes a separate chapter to the thematic discussion of these issues.

Section 1 Act Injunctions

Article 100 of the Civil Procedure Law of the People's Republic of China amended in 2012 added the act preservation system for the first time, making up for the defect of no provisions on injunctions on acts of trade secrets in the Anti-unfair Competition Law and relevant judicial interpretations, which is helpful for right holders to seek remedial measures in a timely and effective manner. Paragraph 1 of Article 6 of the Provisions on Some Issues Concerning the Application of Laws in Examining Cases of Act Preservation in Intellectual Property Disputes, which came into effect on January 1, 2019, stipulates that "the applicant's trade secrets about to be illegally disclosed soon" falls within the "emergency situations" stipulated in Article 100 and Article 101 of the Civil Procedure Law. With the provision, there is a more specific and broader space of application for injunctions on acts which infringe trade secrets.

This Report has retrieved four cases involving act injunctions, two of which were ruled on by Shanghai No.1 Intermediate People's Court, while the other two were respectively adjudicated by Foshan Intermediate People's Court and Anhui Tongling Intermediate People's Court. The four cases involved the fields of pharmaceuticals, food and environmental equipment manufacturing.

I. Overview of Typical Cases

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62 Article 100 of the Civil Procedure Law stipulates: where the act of one party concerned or other reasons make it difficult to execute a judgment or cause other damage to the other party concerned, the people's court may, on the basis of the application of the other party, make an order to preserve the properties of the party or order it to do certain acts or prohibit it from doing certain acts; where the other party concerned fails to submit an application, the people's court may still order it to take preservation measures when necessary.

63 Strictly speaking, none of the trade secret cases arising from employee turnover between 2015 and 2018 involved act injunctions. However, given their special nature and significant effects, act injunctions possess extremely high research value. Therefore, this Report has retrieved act injunction cases among the current trade secret cases in China and found a total of four such cases.
On July 31, 2013, the Shanghai No.1 Intermediate People's Court made the first ruling on a during-lawsuit act injunction in a trade secret infringement lawsuit in China. In the case of a dispute over technical secret infringement of Eli Lilly and Company and Eli Lilly (China) Research and Development Company v. Huang Mengwei (hereinafter referred to as the "Eli Lilly Case"), the respondent Huang Mengwei was an employee of the applicant Eli Lilly (China) Research and Development Company, and the two parties signed a confidentiality agreement. In January 2013, the respondent Huang Mengwei downloaded 48 documents owned by the applicant from the applicant's server (21 of which were the core confidential business documents of the right holder) and transferred them to his private storage device. Eli Lilly (China) Research and Development Company filed a preservation application with the court and offered a guarantee deposit of CNY100,000 for this purpose. After examination, the court ruled to prohibit the respondent from disclosing, using or allowing others to use the 21 documents claimed by the applicant as protection of trade secrets.

On January 8, 2014, Shanghai No.1 Intermediate People's Court issued a ruling on an act injunction again. In the case of an application for preservation of China Novartis Institutes for BioMedical Research Co., Ltd. v. FENG HE (He Feng) and others (hereinafter referred to as the "Novartis Case"), the respondent He Feng copied without permission 879 confidential documents of the applicant China Novartis Institutes for BioMedical Research Co., Ltd.’s Anticancer Drug Research and Development Projects (EED and LSD1) onto his mobile storage device and took them away before he quit the company, and the applicant applied for a temporary injunction from the court. The court ruled that the respondent shall not disclose, use or allow others to use the 879 documents listed in the "List of Applicant's Trade Secret Documents" (including the document names per se) until the court made a further ruling.

On May 28, 2014, Foshan Intermediate People’s Court made the third ruling on a during-lawsuit injunction on act preservation in China. In the case of a dispute over trade secret infringement between Kou Zhenhua and Foshan Haitian Flavoring and Food Co., Ltd. (hereinafter referred to as the "Haitian Case"), in breach of the rules, the respondent Kou took the computer used by him away from the company before quitting his job and said in writing that his work computer was lost on the day of his departure, and used it as a pretext to refuse to go through the work information handover formalities. The applicant Foshan Haitian Flavoring and Food Co., Ltd. filed an application for an act injunction with the court and provided a guarantee deposit of CNY1 million. The court ultimately ruled that the respondent shall not disclose, use or allow others to use the trade secret documents.

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65 In cases of act injunctions, the applicants are the right holders in cases involving trade secrets. To highlight the special nature of act injunctions, this section adopts the notions of “applicant” and “respondent”.
66 Shanghai No.1 Intermediate People’s Court (2014) Hu Yi Zhong Min Bao Zi No.1 Civil Decision.
(including the document names per se) he obtained from the right holder before the judgment, ruling or conciliation document of the case came into force.

In 2014, Anhui Tongling Intermediate People’s Court issued the first injunction on trade secret acts in Anhui Province. In the case of a dispute over trade secret infringement of Anhui Honvi Environmental Technology Co., Ltd. v. Hefei Yihu Environmental Protection Equipment Co., Ltd. and Xu Baiyuan, the respondent Xu Baiyuan used a mobile hard disk to copy the technical secrets and materials involved when he resigned from the applicant Hefei Yihu Environmental Protection Equipment Co., Ltd. He subsequently joined a third-party company to undertake product research and development work and used his technology as capital stock. The right holder applied to the court for an injunction, requested that the infringer be ordered to stop his infringement acts immediately, stop using the right holder’s trade secrets immediately, and stop selling the products produced with the use of the right holder’s trade secrets immediately. The court made its ruling prudently, demanding that the infringer stop his infringement acts immediately.

II. Factors of Consideration in Injunction Judgments

In trade secret infringement lawsuits, though an injunction is the most effective remedy for right holders, act injunction as a special remedial measure can only be made by the courts after certain substantive reviews are made. In relation to the open judicial adjudicative documents in the aforementioned cases, the following factors that the courts consider in the application of act injunctions in trade secret infringement cases can be summed up:

(I) Possibility of the Applicant Winning the Lawsuit

The possibility of an applicant winning a lawsuit involves two considerations: one is whether the information claimed by the applicant belongs to the scope of trade secrets, and the other is the possibility of infringement by the respondent.

1. Whether the Information Claimed by an Applicant Is a Trade Secret

In the act injunction stage, because of the need to make quick judgments, the courts have relatively relaxed requirements for evidence when they decide whether the information involved in the cases is a trade secret. For example, in the Haitian case, the evidence submitted by the applicant proved that it had set up access authorizations and installed an encryption system for the electronic files stored on its server and the work computers of its staff, and the court therefore held that the applicant had taken reasonable confidentiality measures. Moreover, the applicant provided certain evidence to explain the differences

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68 Refer to Anhui News: Anhui Court Issues the First Trade Secret Act Injunction http://ah.a nhu inews co m/system /2014/10/12/006567907.shtml, The plaintiff withdrew the prosecution later, referring to the Tongling Intermediate People’s Court (2014) Tong Zhong Min San Chu Zi No. 00009 Civil Decision.
between the information involved and the information in the public domain, and the court could preliminarily determine the existence of the rights to trade secrets.69

At the same time, to avoid discrepancy between the ruling of injunction and entitative judgment, the courts usually tend to specify that the scope of rights to trade secrets remedied by injunctions is the information involved as claimed by the applicants, rather than the information that is established upon examination by the courts for protection as trade secrets. This is because it cannot be excluded that the scope of trade secrets will change after entitative examination. In the Eli Lilly case, the main text of the court’s ruling was stated as "prohibit the respondent from disclosing, using or allowing others to use the 21 documents which the applicant proposed for protection as trade secrets".70

2. Possibility of Infringement by the Respondent

The determination of the possibility of infringement by the respondent still follows the idea of "contact + substantially identical" in entitative hearings. In the cases of former employees taking away trade secrets, because the respondents are usually technical backbone or R&D personnel, or have a relationship of link with the applicants and so on, it is relatively easy to provide proof of the "contact" conditions, and the judges can also determine the facts quickly. As for the judgment of "substantially identical", it is very difficult to make such judgment in a short time by means of appraisal because of the urgency of time to issue an injunction. In practice, the focus of examination is therefore often on the judgment of "contact" or improper means.

In the Haitian case, the collegial panel focused on examining whether the respondent had circumstances of having "contact" with the trade secrets, and finally judged that there was a greater possibility of infringement based on the fact that the respondent had transferred and stored the electronic files involved before quitting his job from the applicant and refused to return the files as required by the applicant before quitting.71 In the Novartis case, the court held that the electronic files of the two projects involved were the applicant’s trade secrets and that the relevant files were stored on the applicant’s server, for which access authorization had been set up. Over a short period of time before quitting his job, the respondent accessed, transferred and stored the aforementioned files stored on the server many times, which breached the contractual agreement that employees shall return the applicant’s trade secret information and properties to the applicant before quitting their jobs, thus falling under obtaining trade secrets by improper means.72

(II) Whether There Exists Irreparable Damage

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69 Ibidem in Footnote 67.
70 Ibidem in Footnote 64.
71 Ibidem in Footnote 67.
72 Ibidem in Footnote 66.
The value of trade secrets lies in the competitive advantages which they can bring to the right holders. Once disclosed, it will cause irreversible damage to the right holders, especially extremely serious destruction to the first-mover advantages of market competition and market shares of the right holders. Therefore, the courts will not have too strict requirements in their consideration of the damage factors. When the information involved in the cases is under the control of the respondents and it is very likely that the information involved will be disclosed, such as the respondents will work for competitors and so on, the courts can generally establish the possibility of causing irreparable damage, provided that other conditions are met.

In the Novartis case, the applicant argued that if someone else used its R&D materials in the same field without its permission, it would undoubtedly cause damage to it, and such damage could hardly be measured in terms of money. Should others disclose these R&D materials to specific entities or even make them public without the permission of the applicant, it would bring irreparable damage to the competitive advantages established by the applicant through its earlier investment of considerable time and money. The court held that freezing the respondent’s actions to maintain the status quo and preventing damage was in line with the actual circumstances of the case.73

(III) Balance of Interests between Applicant and Respondent

When issuing an injunction, the court needs to consider whether the damage caused by the injunction to the respondent is obviously greater than the damage caused to the applicant by not issuing the act injunction. In judicial practice, as far as natural persons are concerned, prohibiting them from disclosing, using or allowing others to use the information involved in a case will cause no damage to them, when compared to the applicant. For example, in the Novartis case, the court held that if the act preservation measures taken were to prohibit acts that the respondent did not originally intend to commit, the said act preservation would cause no damage to the respondent; on the contrary, even if the factor was not taken into consideration that the applicant had stated that the respondent was not entitled to any rights or interests of the aforementioned materials, it would be still difficult to say any material damage would be caused to the respondent if the respondent was temporarily prohibited from disclosing, using and allowing others to use the aforementioned materials.74

In addition, act injunctions require an applicant to provide a guarantee deposit to remedy the possible damage to the respondent, so as to safeguard the balance of interests between the applicant and the respondent. As for the determination of the amount of guarantee deposit, because the number of trade secret cases is small and few similar cases are available for use as a reference, the determination of the guarantee deposit generally follows the principle of case-by-case judgment.

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73 Ibidem in Footnote 66.
74 Ibidem in Footnote 66.
(IV) Balance between Private and Public Interests

In the Novartis case, the court held that the trade secret act injunction was the remedy for the applicant to obtain the protection of trade secrets, which fell into the category of private rights, and no possibility was found yet that the granting of the injunction would cause damage to the public interests. "Generally, it is only considered when public health, environmental protection and other major social interests are involved."75

It is worth noting that being related to public health, environmental protection and so on alone does not guarantee that the information involved in the cases falls into the category of public interests. In the Eli Lilly case, though the documents claimed by the applicant belonged to drugs and were related to public health, all the information involved was the interim results of the research and development process, and there was no direct link between public health and whether these documents were disclosed or not. The court held that if all information about public health-related industries was included in the category of public interests, it would unduly harm the interests of the right holders, and would strike a blow to investment and innovation in related industries.76

Section 2 Administrative Punishment

The legal basis for the administrative protection of trade secrets mainly comes from the provisions of the Anti-Unfair Competition Law. From the course of several amendments to the Anti-Unfair Competition Law, it can be seen that China has been constantly stepping up the intensity of administrative punishment for trade secret infringement. Article 25 of the 1993 edition of the Anti-Unfair Competition Law stipulated that where a party infringes a trade secret, the supervision and inspection department shall order it to stop its illegal act and may impose a fine of not less than CNY10,000 but not more than CNY200,000 according to the circumstances. Article 21 of the 2017 edition of the Anti-Unfair Competition Law stipulated that where a party commits an act of trade secret infringement, the administrative department for industry and commerce may order it to stop its illegal act and impose a fine of not less than CNY100,000 but not more than CNY500,000; and where the circumstances are serious, a fine of not less than CNY500,000 but not more than CNY3 million shall be imposed. The Anti-Unfair Competition Law amended on April 23, 2019 has adjusted the upper limit of fines in administrative penalties in general and serious circumstances to CNY1

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76 Ibidem in Footnote 64.
million and CNYS5 million respectively, and added the new mode of punishment of “confiscating illegal gains”.77

The cases retrieved for this Report took place before the newly amended Anti-Unfair Competition Law. There were a total of four cases of administrative punishment, all of which were made by the Shanghai Municipality Administration for Market Regulation. They were all cases involving technical secrets, two of which involved computer software and its source codes, and the other two involved manufacturing processes and drawings. In three of these cases, evidence was fixed by way of judicial appraisal. In the fourth case, evidence of infringement was fixed directly through the statement and admission of the infringer. All these four cases were governed by the 1993 edition of the Anti-Unfair Competition Law, with a fine of not less than CNYS10,000 but not more than CNYS200,000 imposed.

In the case of trade secret infringement by Shanghai Aoyi Automotive Electronics Co., Ltd.,78 when an employee surnamed Gao of Shanghai Kostal-Huayang Automotive Electronics Co., Ltd. quit his job, he took away the source code files copied without permission. And for its part, Shanghai Aoyi Automotive Electronics Co., Ltd. still used the said source codes provided by Gao as core technology for external cooperation and sales, while knowing that the source code files were the trade secrets of Shanghai Kostal-Huayang Automotive Electronics Co., Ltd. To ascertain the facts of the case, the Shanghai Jiading District Administration for Market Regulation commissioned the Judicial Appraisal Center to compare and appraise the electronic evidence extracted and fixed from the operation site of Shanghai Aoyi Automotive Electronics Co., Ltd. and the two source codes in use provided by Shanghai Kostal-Huayang Automotive Electronics Co., Ltd. so as to determine the consistency between the source codes. In the determination of the amount of fine, the Shanghai Jiading District Administration for Market Regulation found through investigation the operating gains which the right holder made from the use of the said trade secrets and the profit that the infringer made from its infringement. After comprehensive consideration, the court set a fine of CNYS200,000, which was the highest statutory amount of fine at that time.

In the case of trade secret infringement by Shanghai HardingCore Pharmaceutical Systems Engineering Co., Ltd.,79 Dai Xingbu (who was dealt with separately) was a former employee of the right holder Shanghai Tofflon Science and Technology Co., Ltd. He handed over the technical drawings of Shanghai Tofflon Science and Technology Co., Ltd.’s hydrogen peroxide

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77 On April 23, 2019, the tenth Meeting of the Standing Committee of the 13th National People’s Congress decided to amend Article 21 of the Anti-Unfair Competition Law of the People’s Republic of China as follows: “where operators and other natural persons, legal persons and non-legal person organizations infringe trade secrets in breach of the provisions of Article 9 of this Law, the supervision and inspection department shall order them to stop their illegal acts, confiscate their illegal gains and impose a fine of not less than CNYS100,000 but not more than CNYS1 million; and where the circumstances are serious, a fine of not less than CNYS500,000 but not more than CNYS5 million shall be imposed.”
generator equipment, which were technical secrets, to Guo Maoqing (who was dealt with separately) who made a slight modification and gave the drawings to Shanghai HardingCore Pharmaceutical Systems Engineering Co., Ltd. to produce hydrogen peroxide generator equipment and sell the equipment to Hunan Truking Technology Co., Ltd. After the incident occurred, Shanghai HardingCore Pharmaceutical Systems Engineering Co., Ltd. contacted Hunan Truking Technology Co., Ltd. to communicate in regard to getting the goods back. Eventually, the two pieces of equipment did not enter the market. Shanghai HardingCore Pharmaceutical Systems Engineering Co., Ltd. also took the initiative to write a letter of apology and a letter of commitment to Shanghai Tofflon Science and Technology Co., Ltd., thus preventing adverse effects from being caused. Therefore, the Shanghai Minhang District Administration for Market Regulation made a decision to impose a lesser punishment.

As far as the current situation is concerned, there are few cases involving trade secret infringement subject to administrative investigation and punishment. Existing cases are mainly concentrated in Shanghai, and only involve technical secrets. Of course, this is also closely related to the degree of openness of administrative law enforcement. It cannot be excluded that a large number of cases could not be retrieved because they have not been made public yet. However, it is believed that with the amendment of the Anti-Unfair Competition Law and the substantial raising of the intensity of administrative punishment, it will be a good channel to protect enterprises’ trade secrets through administrative investigation and punishment. At the same time, as analyzed above, it is possible to effectively obtain through administrative investigation and punishment the statements, financial data, business scale and other evidence of the alleged infringers which the right holders find difficult to obtain on their own because of their own conditions, and this part of evidence can be further applied to civil cases of trade secret infringement to help the handling of civil cases.

**Section 3 Special Circumstances Concerning Assumption of Legal Liability**

I. Assumption of Liability Jointly by Units and Individuals
Among the 202 cases retrieved for this Report, there are 142 cases where each unit and corresponding individual were prosecuted to jointly assume liability, of which 65 cases resulted in a ruling that each unit and corresponding individual shall jointly assume civil liability, accounting for 46%, as shown in Figure 20. The unit and corresponding individual were prosecuted concurrently only in one criminal case, which resulted in an acquittal based upon the court’s judgment.

![Figure 20: Cases in Which Liability was Assumed Jointly by a Unit and Individual](image)

**Figure 20: Cases in Which Liability was Assumed Jointly by a Unit and Individual**

- Assumption of Liability Separately by a Unit and Individual
- Assumption of Liability Jointly by a Unit or Individual

(1) Circumstances Concerning and Standard of Proof for Assumption of Civil Liability Jointly by Units and Individuals

In accordance with Paragraph 3 of Article 9 of the newly amended Anti-Unfair Competition Law, in terms of assumption of civil liability jointly by the unit and the right holder’s former employee, it is required that the infringing unit clearly knows or should know that the information involved used by it was obtained by infringing a trade secret. As in judicial practice, where the right holder’s former employee leaves with its trade secrets to independently set up a company or jointly set up a company with outsiders, or with his close relative acting as the shareholder and such former employee actually controls the company, or a competitor provides business conditions for such former employee and uses the information involved in the name of a company, all these circumstances are infringement of trade secrets jointly by units and individuals, which require the joint assumption of civil liability.

If the right holder claims for assumption of civil liability jointly by a unit and individual, it is required to prove that the unit and individual have jointly committed the act of infringing a trade secret. In terms of the standard of proof, in addition to satisfying the general requirements of infringing trade secrets, it is required to prove that the infringing unit clearly knows or should know that the information involved used by it was obtained by infringing a trade secret; otherwise the right holder shall bear the consequences of its inability to produce effective evidence.

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80 As provided in Paragraph 3 of Article 9 of the Anti-Unfair Competition Law, where a third party clearly knows or should know the fact that an employee or former employee of the right holder of trade secrets or any other unit or individual has conducted any of the illegal acts specified in Paragraph 1 hereof, but still obtains, discloses, uses or allows any other to use such secrets, such practice shall be deemed as infringement of trade secrets.
For instance, in a case concerning disputes over copyright ownership, infringement, commercial bribery and unfair competition between Wuhan Bluestar Technology Co., Ltd. and Li Zheng, Hubei Higher People’s Court held that after the right holder Bluestar Company’s mobile-vehicle linked software was developed and put on the market, the family members of Li Zheng, Ran Longbo and Xu Bo instantly established Yiweite Company upon registration. Yiweite Company clearly knew of the illegal acts of the above three persons but still used Bluestar Company’s customer list for economic interest, so it should assume the legal liability for infringing a trade secret jointly with Li Zheng, Ran Longbo and Xu Bo; in a case concerning a dispute over infringement of trade secrets between Heilongjiang Linke Machinery Co., Ltd. and Harbin Hi-tech machinery Co., Ltd. (hereinafter referred to as the “Linke case”), Linke Machinery Company employed Zheng Xin and provided him with such business conditions as funds and trading qualifications, making him use Hi-tech Company’s customer information as the trade secret involved and carry out such business activities as negotiation, goods gathering and sales in the name of Linke Machinery Company, and the two parties reached an agreement on the profit distribution method. The court held that Linke Machinery Company and Zheng Xin jointly committed the infringement of Hi-tech Company’s trade secrets and should bear joint and several liability therefor; and in a case concerning a dispute over infringement of trade secrets by Wuhan Branch of Beijing Hua’ao Auto Service Co., Ltd. (“Hua’ao Branch”) v. Wuhan Ali Auto Service Co., Ltd. & Nie Jun, the court held that Hua’ao Branch had no evidence proving that the customer list possessed by the three alleged infringers (Ali Company, Nie Jun and Du Ying) had a crossing or overlapping relationship with that of Hua’ao Branch, thus failing to fulfill the burden of proof proving that the acts involved constituted infringement, as well as that proving that the pricing strategy was its trade secret, so all the claims filed by Hua’ao Branch were not tenable in this case.

In terms of the correlation between an infringing unit and a case concerned, this Report proposes that it can be proved from the following aspects:

1. the relationship between the founder of the infringing unit and the right holder’s former employee, which may be identified through checking the company information disclosed by the infringing unit or examining the infringing unit’s business registration file by the court upon application;

2. the relationship between the actual controller of the infringing unit and the right holder’s former employee, which can be identified through checking the relationship between the infringing unit’s shareholder or contributor and the right holder’s former employee; and

3. relevant evidence proving that the infringing unit induced the employee to leave the right holder with a high salary or provides convenient conditions with a view to using the trade secrets involved, such as correspondence, WeChat chat history and statements made in criminal and administrative procedures.

(II) Means of Assumption of Civil Liability Jointly by Units and Individuals

The means of assumption of civil liability mainly include ceasing infringement, jointly and severely compensating for loss, compensating for reasonable expenses to stop infringement, making an apology and eliminating ill effects, etc. With respect to making an apology, the court has held that a trade secret is a kind of property right, and a infringer’s infringement of trade secrets and unfair competition mainly infringe the right holder’s competitive advantages and economic interest, rather than causing damage to the right holder’s personal right, so making an apology as a means of assumption of civil liability shall not apply thereto; with respect to eliminating ill effects, if the infringer simply uses the trade secrets, it is difficult to identify any ill effect caused to the right holder requiring to be eliminated. Therefore, the court would generally rule that the unit and the individual concerned shall jointly bear the civil liability for cessation of infringement and joint and several compensation.

With respect to ceasing infringement, if the information involved is only a customer list, in addition to ordering the infringers to immediately cease the infringement of trade secrets by some courts, some other courts would, in consideration of the particularity of the information contained in the customer list, and in accordance with Article 16 of the Interpretation, order the infringers to cease using the trade secrets involved within a certain period of time. For instance, in a case concerning a dispute over infringement of trade secrets between Shanghai Yiqin Information Technology Co., Ltd. & Xu Jinguo and Shanghai Tuoruan Computer Technology Co., Ltd., in consideration of the change with time of the information in the customer list involved such as contacts, contact information and prices, the court believed that ordering Yiqin Company and Xu Jinguo to cease using the trade secrets involved within two years would be sufficient to protect the legitimate rights and interests of Tuoruan Company; and in a case concerning a dispute over infringement of trade secrets between Qingdao Shengyi Cryotech Co., Ltd. and Beijing Sameee Cryogenics Co., Ltd., the court also ordered the infringing unit and individual concerned not to use the customer list involved for two years.

In some case where the trade secrets had passed out of existence or been disclosed as a patent, since it was of no practical significance to order to cease the infringement, the court concerned would only make a ruling on compensation or make it subject to other separate cases concerning ownership. In a case concerning disputes over infringement of trade

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84 As provided in Article 16 of the Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Laws in the Trial of Civil Cases of Unfair Competition, where a people’s court rules that the civil liability for ceasing the infringement of trade secrets shall be assumed, the time for such cessation of infringement shall generally last until the trade secret has become known to the public. If the time for cessation of the infringement specified in the preceding paragraph is obviously unreasonable, the infringer may be ordered to cease the use of the trade secret within a certain period or scope, provided that the competitive advantage of the right holder’s trade secret is legally protected.


secrets and other unfair competition between Magnetic Autocontrol System (Shanghai) Co., Ltd. and Li Jianbin, Zhang Jiarong, Shi Huling and Ma (HK) Autocontrol Technology & Service Co., Ltd. & Zhu Jiawen, the trade secret involved was the business information acquired by the right holder, “purchase intention of CS&S”, which had passed out of existence after CS&S and the alleged infringer MA HK had concluded the contract involved, so the court only ordered the unit and individual to jointly compensate the right holder for economic losses of CNY3 million along with reasonable expenses, but refused the claim for cessation of the infringement; in the Perwin case, as the two alleged infringers had the right holder’s trade secrets patented, the right holder’s technical secrets had lost their non-publicity due to the patent gazette, so the court ruled that the right to hold the utility model patent involved and the right to apply for the invention patent involved shall be vested in the right holder which was identified as the patent holder of the utility model patent involved.

In addition, there are two labor cases concerning assumption of liability for joint infringement of a trade secret by the unit and employee concerned found which are not included in this Report as neither of them are a trade secret case arising from employee turnover. In each of such labor cases, the court ruled that the unit and individual shall jointly assume the labor responsibility mainly in accordance with Article 91 of the Labor Contract Law of the People's Republic of China. The two cases are briefly introduced as follows.

In the case concerning the labor dispute between Wuhan Dayu Valve Co., Ltd. and Zhang Zizhong, the alleged infringer Zhang Zizhong established a labor relationship under an assumed name of “Zhang Xin” with Otelai Valve Machinery Co., Ltd., a third party involved. The court held that when the labor contract was entered into between Otelai Company and “Zhang Xin”, the former failed to provide evidence proving that it had conducted a reasonable examination of the identity of Zhang Xin and his related work experience, while the latter was still exercising the management duties in Dayu Company; neither Zhang Zizhong nor Otelai Company had any evidence proving that Zhang Zizhong and Dayu Company had dissolved or terminated their labor contract, and what’s more, Zhang Zizhong’s job arranged in Otelai Company had horizontal competition with that in Dayu Company, so the court ordered Otelai Company and Zhang Zizhong to assume joint and several liability for the above loss, and compensate Dayu Company for the loss of CNY743,704.4.

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87 Shanghai Yangpu District People's Court (2015) Yang Min San (Zhi) Chu Zi No. 691 Civil Judgment
88 Ibidem in Footnote 9. The case concerned a dispute over ownership, which is different from the general trade secret case.
89 As provided in Article 91 of the Labor Contract Law of the People's Republic of China, where an employer hires any employee whose labor contract with another employer has not been dissolved or terminated yet, if any loss is caused to the employer mentioned later, the employer first mentioned shall bear joint and several liability for compensation.
90 Wuhan Economic and Technological Development Zone People’s Court (2012) E Wu Jing Kai Min Zhong Zi No.1 Civil Judgment.
In a case concerning a dispute over non-competition between Wang Kongyou & Qingdao Sainuo Chemical Co., Ltd. and Qingdao Electronic Testing Instrument Factory,\(^9\) whether Sainuo Company knew or should have known of the above-mentioned non-competition agreement and thus should assume the joint and several liability with Wang Kongyou became one of the issues in dispute in this case. The court exercised its authority to examine the business registration file concerning the establishment and changes of Sainuo Company, which stated that Wang Kongyou had been the supervisor of the company since its establishment, and the company was actually established by the father of Wang Kongyou. Consequently, the court held that when Sainuo Company was established, Wang Zhixian should have been aware of the labor relationship between and the Employee Confidentiality and Non-Competition Agreement entered into by Wang Kongyou and the Factory. As Wang Kongyou breached the non-competition obligation, the court ordered that Sainuo Company and Wang Kongyou shall assume joint and several liability.

II. Investigation for Multiple Liabilities

Among the cases retrieve so far, there were many involving investigation regarding multiple liabilities. For instance, it was mentioned in the Linke case, the Fang Shulei case, the Shengdisi Company case and a case concerning a dispute over infringement of trade secrets between Zhongshan Bisitan Environmental Protection Technology Co., Ltd. and Shenzhen Land Eco Environmental Technology Co., Ltd.\(^9\) that criminal proceedings were involved concurrently. However, up to now, only the judgment concerning concurrent criminal proceedings\(^9\) in the Shengdisi case has been published on the Internet, in which the infringer concerned was concurrently investigated for civil liability and criminal liability.

In addition, there were ten cases involving industrial and commercial administrative complaints, but relevant administrative penalty instruments are not yet available. In the above cases, each trade secret right holder used the Written Decision of Administrative Punishment as the evidence proving that the information involved was a trade secret and the right holder’s trade secret was infringed by the alleged infringer, and each court confirmed the authenticity, legality and relevance of the file as evidence concerning the case investigated and handled by the competent industrial and commercial administration.

In view thereof, this part will focus on studying the above-mentioned cases in which both civil liability and criminal liability were investigated concurrently, and analyzing the relationship between the characteristics and identification of the compensation amount in criminal-civil cases concerning infringement of trade secrets in judicial practice.

\(^{91}\) Qingdao Licang District People’s Court (2015) Li Min Chu Zi No.387 Civil Judgment.
\(^{92}\) Guangdong Higher People’s Court (2016) Yue 03 Min Zhong No.6032 Civil Judgment.
\(^{93}\) i.e., the case concerning infringement of trade secrets by two persons including Ji .*, Baoding Mancheng District People’s Court (2015) Man Xing Chu Zi No.219 Criminal Judgment.
(I) Overview of Criminal-Civil Cases Concerning Infringement of Trade Secrets

In China, the main boundary between trade secrets-related civil infringement and criminal offense lies in the loss amount of CNY500,000. With respect to a case with loss exceeding CNY500,000, generally criminal procedures, rather than civil suits collateral to criminal proceedings, will be initiated separately, as the scope of civil suits collateral to criminal proceedings is restricted by the Regulations of the Supreme People's Court on the Scope of Civil Suits Collateral to Criminal Proceedings issued in December 2000, that is, a civil suit collateral to criminal proceedings may only be initiated where a material loss is caused due to the criminal offense of infringing personal rights or damaging property. Thus, the mainstream view is that a case concerning the criminal offense of infringing a trade secret may not be subject to initiation of a civil suit collateral to criminal proceedings. However, in a case concerning the criminal offense of infringing a trade secret by Pei Guoliang as prosecuted by the Xi'an People's Procuratorate,\(^{94}\) the court supported the right holder's claim against economic loss in the civil suit collateral thereto.

In the above case, the court held that if the alleged infringer covertly obtained the technical secrets involved for use by the company where he worked, which caused a serious consequence to the right holder, when the criminal liability of the alleged infringer for infringing trade secret is investigated, upon the right holder’s request, the company where the alleged infringer works shall be added as the defendant to the civil suit collateral thereto and investigated for civil liability for compensation due to infringement. The court finally sentenced infringer, Pei Guoliang, to fixed imprisonment of three years with a fine of CNY50,000, and Pei Guoliang and the MCC shall jointly and severally compensate the right holder for its economic losses of CNY7.82 million in the civil lawsuit collateral thereto.

In judicial practice, "criminal first and civil second" is the main order of priority for handling criminal-civil cases, and most courts would suspend the civil suit due to the existence of criminal proceedings. The main reasons for the formation of such type of judicial practice involve:

1. if any suspicion of a criminal offense arises in the trial of a civil case, in accordance with the law, it shall be transferred for prosecution.

In 1998, the Supreme People's Court promulgated the Regulations on Several Issues Concerning the Suspicion of Economic Crimes Involved in the Trial of Cases Concerning Economic Disputes. In Article 12 thereof, it is provided that, with respect to a case concerning an economic dispute that has been filed for trial by a people’s court, if the relevant public security organ or the procuratorate considers it with suspicion of any economic crime, states the reason and notifies by official letter the people's court accepting such case thereof with relevant materials attached, the relevant people's court shall conduct an examination in a conscientious manner; after the examination, if indeed suspicion of an

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economic crime is identified, the case shall be transferred to the public security organ or the procuratorate. This is the fundamental basis for the order of priority of "criminal first and civil second". But there is still restriction for such order of priority. In Article 11 of the Regulations, it is provided that in the trial of a case concerning an economic dispute, the people's court shall, if it finds any evidence of suspicion of an economic crime that is implicated in the case but not subject to the same legal relationship as the case, transfer such evidence to the relevant public security organ or procuratorate for investigation and handling, while continuing to hear the case concerning such economic dispute. (2) Criminal liability shall be investigated first with a view to detaining infringing products and related material and quickly collecting and fixing evidence with the assistance of public security and investigation organs, so as to prevent the infringer from destroying and concealing criminal evidence. (3) Neither of the parties concerned need to produce evidence proving facts that have been confirmed by an effective ruling made by the people's court, provided that there is no evidence to the contrary reversing such fact.  

On the basis of the facts found in the interrogation by the investigation organ and that confessed by the alleged infringer in criminal proceedings, the infringement fact can be easily identified upon the confirmation thereof in the effective criminal judgment, which greatly reduces the difficulty in identifying the infringement facts in civil proceedings. (4) Criminal means can quickly crack down on criminals and guarantee the right holder's interests in the most timely and effective manner, while playing an educational and deterrent role against potential infringements.

In the Linke case, Hi-tech Company reported the infringement of its trade secrets by Zheng Xin and Wang Xiaoyi to Harbin Public Security Bureau so that the infringing product and related evidential material were successfully detained under the assistance of Harbin Public Security Bureau. In civil proceedings, the court of first instance identified that the information involved was a trade secret based on the criminal interrogation record, the appraisal opinion on the infringing product and the economic loss made under the entrustment of the public security bureau, and based on the facts and results identified in the criminal case, it held that the alleged infringer had mastered the trade secrets involved based on the evidence identified in the criminal judgment and finally identified that the alleged infringer had infringed the right holder's trade secrets.  

In the Fang Shulei case, the court identified the case facts based on the facts confirmed by Guangdong Zhuhai Xiangzhou District People's Court (2014) Zhu Xiang Fa Xing Chu Zi No.647 Criminal Judgment and Guangdong Zhuhai Intermediate People's Court (2014) Zhu Zhong Fa Zhi Xing Zhong Zi No.5 Criminal Ruling. Based on the appraisal opinion in the criminal

95 See Article 9 of the Several Provisions of the Supreme People's Court's on Evidence in Civil Proceedings (2008).  
96 Ibidem in Footnote 82.  
97 Ibidem in Footnote 10.
procedures, the court held that the overall combination of Orbita Company’s 1553 BIP kernel source codes shall be identified as technical information unknown to the public.

In addition, in some cases, the unit was not investigated for criminal liability in criminal proceedings, but was convicted of infringement in the subsequent civil proceedings, the main reason for which should be that the standard of proof for a unit’s criminal offense in a criminal case is much higher than that in a civil case. For instance, in the Shengdisi case, the natural persons Ji Yong and Hu Jianbo were only convicted of the criminal offense of infringing trade secrets in the criminal judgment, while in the civil proceedings, the courts of first and second instance held that Shengdisi Company and the two individuals constituted the joint infringement, but the unit need not assume the infringement liability owing to the existence of the settlement agreement reached in criminal proceedings.\textsuperscript{98}

**II) Determination of the Compensation Amount in Criminal-Civil Cases Concerning Infringement of Trade Secrets**

The calculation method for determining the economic loss specified in the written appraisal in criminal proceedings can be supported in subsequent civil proceedings upon confirmation thereof in the effective criminal judgment. However, except for the amount identified in a criminal case, the factors considered in a civil case are relatively less strict than those in a criminal case, and the compensation amount awarded is likely to be higher than that determined in the criminal case.

In the Linke case, the ruling of the court of first instance on the compensation amount to be paid by the infringer completely depended on the appraisal opinion on the right holder’s loss made by the appraisal institution entrusted by the public security organ in the criminal case concerned. The court held that in the criminal case, the appraisal institution entrusted by the public security organ, appraised the amount of Hi-tech Company’s loss and made the appraisal opinion which had been cross-examined in the court trial, with the appraiser appearing in the court to be interrogated in the relevant criminal case. The court accepted the relevant criminal judgment which had already taken legal effect and confirmed the appraisal opinion. The court of second instance held the same view\textsuperscript{99} and in the Fang Shulei case, the court of second instance identified the actual loss caused to Orbita Company based on the facts already identified in the criminal case related to this case, together with the profits from the 12 (sets of) relevant products manufactured and sold in 2009, and 2011 to 2013 as ascertained in the civil case.\textsuperscript{100}

\textsuperscript{98} Ibidem in Footnote 45.
\textsuperscript{99} Ibidem in Footnote 82.
\textsuperscript{100} Ibidem in Footnote 10.
Section 4 Analysis of the Key Issues in Criminal Cases Concerned

In practice, infringement of trade secrets is far more likely to be identified as a civil offense than a criminal offense, which is closely related to the high standard of proof for a conviction in criminal cases and the requirement for refined calculation of the right holder’s loss. This Section focuses on the analysis of cases of acquittal and the identification of the criminal amount.

I. Acquittal Cases

(I) Proportion of Acquittal Cases

Among the cases retrieved for this Report, only 17 were identified as involving the criminal offense of infringing a trade secret, in which 14 defendants were convicted, while three resulted in an acquittal accounting for 17.6%.

(II) Grounds for Acquittal

The court concerned would consider an acquittal mainly on three grounds: 1) the information involved fails to fulfill the constitutive elements of trade secrets, thus not constituting a trade secret; 2) the act of the alleged infringer fails to fulfill the constitutive elements of the criminal offense of infringing a trade secret; and 3) the loss caused to the right holder fails to reach the statutory criminal amount.

For instance, in a case concerning the criminal offense of allegedly infringing a trade secret by Jiang Guanghui & Wu Lijun, the court of second instance held that, for identification of the technologies at issue as not being for publicity, it was required to exclude any disclosure via publication, application and other relevant circumstances. According to the appraisal opinion in this case, the secret points 1 and 2 failed to be adequately identified as not for publicity, not satisfying the standard of proof beyond reasonable doubt, so the case resulted in an acquittal. In a case concerning the criminal offense of infringing a trade secret by Zhejiang Friend Chemical Co., Ltd., Zhang **, Liao **, et al., as the alleged infringer Liao was not obliged to keep the technical information involved confidential, and the evidence failed to adequately prove that the technical information was unknown to the public, and that Liao provided the technical information involved to Zhang, the court held that the two alleged infringers failed to satisfy the requirements for constitution of a crime and the case resulted in an acquittal. Xiamen Intermediate People’s Court held that, in the case

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102 Tianjin Binhai New Area People’s Court (2014) Bin Han Xing Chu Zi No.66 Criminal Judgment.
concerning the criminal offense of infringing a trade secret by Li **103**, it was inappropriate in
the original judgment to calculate the profit rate based on the total business profit of the
shoes & hats sector in charge of by Li during the period when he worked in Baixin Company,
and there was inadequate ground for the loss identified by the court of first instance, so the
case resulted in the suspect Li’s acquittal in the second instance.

II. Determination of the Criminal Amount

In judicial practice, in a case concerning the criminal offense of infringing a trade secret,**104** it
is a core way to calculate the criminal amount using the right holder's loss and illegal gain.
From the perspective of the legislative level, the application of right holder’s loss as a
conviction and sentencing criterion specifically provided in the Criminal Law shall prevail
over that of illegal gain. However, the conviction criterion that “the right holder is caused to
go bankrupt” provided in the Provisions of the Supreme People's Procuratorate and the
Ministry of Public Security on the Criteria for Case-filing, Investigation and Prosecution of
Criminal Cases under the Jurisdiction of Public Security Organs (II) generally will not apply in
practice due to its lack of operability.**105**

(I) Determination of the Criminal Amount based on the Right Holder’s Loss

In judicial practice, the right holder's loss can be calculated based on R&D cost, transfer fee
or license fee, profit amount of the right holder reduced due to infringement and
confidentiality cost, etc.

1. R&D Cost

If the trade secret involved is known to the public in some way, and loses its secrecy under
the most typical circumstance of a patent application or through some public channel,
relevant loss can be calculated based on the R&D cost. For instance, in the Song Bin case, the
alleged infringer Song Bin obtained Meihua Group Company’s trade secret of “Summary of

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103  Ibidem in Footnote 55.
104 As provided in the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on
Several Issues Concerning the Specific Application of Laws in Handling Criminal Cases Involving Infringement of
Intellectual Property Rights, the “significant loss” caused by any infringement of trade secrets to the right holder
of a trade secret refers to a loss of more than CNY500,000 caused to the right holder, and “particularly serious
consequences” refers to a loss of more than CNY2.5 million caused to the right holder. As provided in Article 73 of
the Provisions of the Supreme People’s Procuratorate and the Ministry of Public Security on the Criteria for Case-
filing, Investigation and Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II),
infringement of trade secrets shall be subject to case-filing, investigation and prosecution under the following
four circumstances: (1) a loss of more than CNY500,000 is caused to the right holder; (2) an illegal gain of more
than CNY500,000 is derived from infringement of trade secrets; (3) the right holder is caused to go bankrupt; and
(4) other circumstances causing a significant loss to the right holder.
105 Corporate bankruptcy may be caused by a combination of various factors. It is difficult to determine the causal
relationship between infringement of trade secrets and bankruptcy results. Meanwhile, bankruptcy thus caused
to different enterprises, such as a startup and a listed company, may be of huge differences in social damage. It is
difficult to objectively quantify the size of damage caused by infringement based on this conviction criterion.
Trial Production of Tryptophan Extraction Process” by improper means and disclosed it on the Internet, causing the R&D achievement of Meihua Group Company through investing more than CNY16 million to become part of the public domain. Identifying the R&D funds amounting to more than CNY16 million as the right holder’s loss, the court held that the alleged infringer’s act caused particularly serious consequences to the right holder and constituted the criminal offense of infringing a trade secret.106

2. Transfer Fee or License Fee

If a trade secret becomes known to a specific person due to any infringement, the loss thus caused may be calculated based on the transfer fee and license fee of the trade secret involved. It is worth noting that, in terms of different types of licenses, if the trade secret does not become known to the public due to the infringement, the application of general license fee is of greater significance, while otherwise, there is more space for the application of exclusive license fee. In the Yuan Baogang case,107 the court held that the drawings and calculation reports provided by Yuan Baogang to Beijing Nankou Company were important carriers of NGC Company’s trade secrets involved, the disclosure of which seriously breached NGC Company’s self-willingness to monopolize the relevant technology, damaged the potential value in the authorized use or transfer of the trade secrets by NGC Company to other business entities, while creating a hidden danger of further disclosure of the concerned technology. Therefore, it was not inappropriate for the public prosecution organ to investigate the criminal liability of Yuan Baogang based on the contract price of CNY600,000 corresponding to the drawings and calculation reports already delivered to Beijing Nankou Company.108

3. Right Holder’s Profit Amount Reduced Due to Infringement

The loss of the right holder can be calculated based on the right holder’s direct profit loss caused due to the infringement, or by the method of multiplying its total sales thus reduced by the reasonable unit profit of its products. For instance, in the case109 concerning the criminal offense of infringing a trade secret by Fu Qiyuan, the court held that the orders between J&C Group and Shi* Haofu saw a year-on-year decline of about 80% at the time when Shine Company infringed J&C Group’s trade secrets, resulting in J&C Group’s loss of USD3.34 million, approximately CNY20.78 million, and a profit decline of about CNY4.14 million. Therefore, the loss caused by the infringer to the right holder was CNY4.14 million.

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106 Ibidem in Footnote 23.
108 Ibidem in Footnote 8.
Where it is difficult to determine the total sales reduced, it can also be calculated by the method of multiplying the total sales of infringing products in the market by the reasonable unit profit of the right holder's products, provided that prior to the application of such calculation method, the trade secrets involved shall definitely have a monopoly position in the market, so as to ensure that the profit derived from the purchase of infringing products by the public ought to be credited to the right holder, rather than any other third party. In a case concerning the criminal offense of infringing a trade secret by Zou *yi & Wang *fan, the court held that it was difficult to determine the total sales reduction of 360 centrifuge products caused to the right holder Jinyuan Company due to the infringement, so in the calculation of the loss, the right holder's loss thus caused was held to be the product of the total sales of infringing products in the market multiplied by the reasonable unit profit of 360 centrifuge products.

It is worth noting that, in the calculation of a right holder’s profit reduced due to any infringement, apart from the disclosure of trade secrets, as a major precondition, other factors affecting the corporate profit, such as economic trends, policy changes, and changes in raw material costs, shall be constant, so as to ensure that the calculated criminal amount is accurate enough.

4. Confidentiality Cost

In the event that a company has reached a confidentiality agreement with its employees and paid the employees a confidentiality fee, the confidentiality cost may be incorporated as part of the right holder's loss. For instance, in a case concerning the criminal offense of infringing a trade secret by Zeng Wanxing & Lin Ronglin, the court held that Zeng Wanxing, the alleged infringer, had entered into a trade secret protection and non-competition agreement with the right holder Sundly Company, and when Zeng Wanxing left the company on February 28, 2012, Sundly Company paid the alleged infringer, Zeng Wanxing, confidential compensation of CNY10,000. Consequently, the amount of such CNY10,000 constituted one of the actual losses to the right holder.

(II) Determination of the Criminal Amount based on the Infringer’s Illegal Gain

An infringer’s illegal gain can be calculated by the following methods:

1. Based on the Direct Revenue Derived from Resale or Licensing of Trade Secrets

Taking the above-mentioned Yuan Baogang case as an example, the contract price corresponding to the drawings and calculation reports delivered to Beijing Nankou Company by the alleged infringer was CNY600,000, which though the court tended to identify as the

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110 Jiangsu Changzhou Xinbei District People’s Court (2014) Xin Zhi Xing Chu Zi No.1 Criminal Judgment.
111 Fujian Ningde Jiaocheng District People's Court (2017) Min 0902 Xing Chu No.428 Civil and Criminal Judgment.
right holder's loss, shall better be deemed as the infringer's illegal gain.¹¹²

2. Calculation of the Infringer's Profit Concerned by the Method of Multiplying Sales by Unit Profit

If the infringer uses the trade secrets illegally obtained for production of its own products which is completely dependent on such trade secrets, it can be calculated directly by the method of multiplying the total sales of the infringing products in the market by the reasonable unit profit of the infringing product; where it is difficult to ascertain the profit derived from the infringing product, the average market profit of a similar product may apply instead. In the Liu Guangfu case, the right holder’s loss was directly linked to the product infringing trade secret as a whole. Asset Valuation Co., Ltd. confirmed the amount of loss by calculating the infringer’s interest derived due to the infringement, which was equal to the sales revenue of the infringing product multiplied by the average industrial profit rate.¹¹³

3. Calculation of the Profit Concerned based on the Contribution Rate of Trade Secrets

If the product is not completely dependent on the trade secrets while some other technology accounts for a proportion, it is thus required to comprehensively take into consideration the contribution rate of the trade secrets, that is, the contribution rate of trade secrets to the profit derived from the specific product. Such issue also becomes a focus in the Summary of Discussions on Several Issues Concerning the Application of Laws in Criminal Cases of Intellectual Property Rights (Su Gao Fa [2013] No. 275) jointly issued by Jiangsu Higher People's Court, Jiangsu People's Procuratorate, and the Jiangsu Province Public Security Department. According to the Summary, "if the product involved involves any other key technology in addition to the right holder's technical secrets, when calculating the amount of loss, it is required to take into consideration the role of the technical secrets in the product as a whole, and inappropriate to regard the amount calculated based on the profit of the product as a whole totally as the right holder’s loss".

(III) Breakthrough in the Rulings of Individual Cases

There are indeed some innovative practices in judicial practice, for instance, calculation of the criminal amount by such methods as assessing expected returns and assuming the license fee. However, they are still individual cases currently.

In a case concerning the criminal offense of infringing a trade secret by Li Guixiang et al.,¹¹⁴ the court held that, under the circumstance that the right holder’s loss and the infringer’s actual profit were not yet ascertained, it is required to take into consideration such factors as

¹¹² Ibidem in Footnote 8.
¹¹³ Ibidem in Footnote 32.
the cost of obtaining the trade secrets and the infringer’s profit status prior to using the trade secrets and the size of profit thereafter and determine the future return upon reasonable expectation. The court, in light of the open market value confirmed upon judicial appraisal opinion amounting to CNY3.1111 million, held that it caused a particularly serious consequence and constituted the criminal offense of infringing a trade secret.

In a case concerning the criminal offense of infringing a trade secret by Yu Kefan,\textsuperscript{115} the court held that the object of the criminal offense of infringing a trade secret involves not only the right holder’s economic interest, but also the competitive advantages formed due to the trade secrets and the industrial competitiveness protected by the state. Consequently, it would be more in line with the objective reality of the case to calculate, based on the R&D cost and the annual profit possibly derived from the trade secrets, the possible return brought about if NHU Company licensed the technology. Although it was an assumption to measure the value of the license royalty loss through assessment, in view of the original vouchers and related financial data as the basis for such assumption, and the general application in criminal justice practice of the assessed value of unrecoverable properties involved in criminal cases, the assessed value of the license royalty loss was thus adopted.

It can be seen from the above two cases that the judiciary has paid attention to the limitations of existing legal provisions, especially criminal laws, on the protection of right holders’ trade secrets, and is actively seeking to achieve a balance of interests in this domain through rulings. But limited by the law per se, it is just an attempt to make a breakthrough. According to the mainstream view, it is still believed that the right holder’s loss and infringer’s illegal gain shall be the actual loss or gain in the sense of the criminal law.

\textbf{Section 5 Rights Protection Strategies against the Disclosure of Trade Secrets Due to Infringement}

\textbf{I. Priority of Criminal Cases}

In any case concerning the disclosure of a trade secret, if all the R&D cost invested by the right holder has been lost, the assessment result or the appraisal result of the R&D cost can be directly used as the criminal amount for conviction and sentencing on the basis thereof. Meanwhile, as it is possible to collect evidence from public access and conduct identity appraisal in terms of relevant secret points of trade secrets, collection of evidence proving infringement is of low difficulty. Therefore, criminal cases can be taken as the first choice for trade secret-related rights protection. Taking the Song Bin case as an example, the alleged infringer, Song Bin, disclosed another’s R&D achievements to the Internet by delivering a

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\textsuperscript{115} See Zhejiang Shaoxing Intermediate People’s Court (2015) Zhe Shao Xing Zhong Zi No.874 and No.875 Criminal Judgments. This case is not retrieved herein, but only used for discussion of this issue.
posting on the “Fermentation People's Forum” in the net name of “Meihua” to make public the “Tryptophan Extraction Technology Program” of Meihua Group Company, the R&D input cost of which was more than CNY16 million as audited. The court held that Song Bin’s act made Meihua Group Company’s R&D achievements out of a R&D fund amounting to more than CNY16 million become part of the public domain, thus causing the trade secrets to lose their due commercial value which was a particularly serious consequence, so the alleged infringer Song Bin was convicted of the criminal offense of infringing a trade secret and sentenced to fixed-term imprisonment of five years with a fine of CNY500,000.116

Where a trade secret is disclosed due to any infringement, including the disclosure of a trade secret to the Internet and patent applications, the right holder may initiate criminal or civil proceedings as two rights protection strategies. Criminal proceedings become the first-choice rights protection strategy for right holders because of less difficulty in evidence collection while having significant effect. In the case of failure to satisfy the standards for criminal conviction, civil infringement and ownership proceedings are also effective ways to achieve rights protection.

In the cases retrieved for this Report, there were five cases concerning the disclosure of trade secrets due to infringement, including two concerning infringers' disclosure of information involved to the Internet and three concerning infringers' patent application of information involved, as well as two cases subject to criminal means and civil infringement proceedings for rights protection, both covering the two circumstances of disclosure, and the last one subject to civil ownership proceedings for rights protection.

II. All-round Consideration of Civil Infringement and Ownership Proceedings

With respect to cases that fail to meet the case-filing requirements of the criminal offense of infringing a trade secret, good effects can also be achieved for rights protection through civil infringement proceedings and patent ownership dispute proceedings.

With respect to civil infringement cases concerning the disclosure of trade secrets, as the infringement is relatively less covert, evidence collection is easier. If a trade secret is disclosed to the Internet, the infringement fact may be fixed through webpage preservation and the infringing subject may be confirmed through inquiry of disclosure-related IP registration information or webpage information; if the trade secret is patented upon application, the patent application file may be publicly inquired through the website of the relevant patent administration to compare whether the trade secret involved and the patent applied for are identical.

In the above-mentioned Ding Wengang case, on the website of the alleged infringer Ruitu

116 Ibidem in Footnote 23; the case was rated as “2015 Top Ten Typical Cases Concerning Intellectual Property Protection by the Procuratorates” by the Supreme People's Procuratorate.
Company, there was a front shell image of Weitu Company's handheld song-ordering machine still in the R&D stage. Ruitu Company had the infringement facts notarized at the Guoli Notary Office of Chengdu, Sichuan Province, and submitted to the court a CD containing its technical secret information concerned (hereinafter referred to as “Weitu CD”) and a second CD was created based on the public security organ's appraisal in terms of the alleged infringer's computer in the preceding criminal case. Upon appraisal, the information contained in the Weitu CD was secret, and the information contents of the two CDs were consistent. The court held that Ruitu Company and Ding Wengang et al. constituted infringement of trade secrets and exercised its discretion to rule that Ruitu Company shall compensate Weitu Company for its economic loss of CNY150,000. In the State Nuclear Baoti case, Baoti Company claimed that the Western Energy Material used the content that Hui Boning came into contact with when working at Baoti Company to file an invention patent application with the China National Intellectual Property Administration, which infringed its trade secrets. Baoti Company submitted the Analysis and Operation Guidebook, the Experiment Report, the Confidentiality Agreement, the Longteng Plan of China National Nuclear Corporation - the First Phase Experimental Report on Chemical Composition Analysis of Zirconium Alloy and the Invention Patent Application, etc., as evidence, which, as the court identified, could prove that Hui Boning actually came into contact with and mastered Baoti Company’s technical secrets involved when working at Baoti Company, and during his term of office at Western Energy Material, he disclosed and used Baoti Company's trade secrets involved in breach of the stipulations in the confidentiality agreement entered into with Baoti Company previously and provided conditions for Western Energy Material to obtain and use Baoti Company's trade secrets.

In cases concerning disputes over ownership arising from the disclosure of trade secrets through patent applications, right holders mainly request the court to determine the ownership of the patent involved. In addition to supporting the patent ownership-related claim, the court would exercise its discretion to determine the amount of compensation in light of the right holder's R&D cost and other factors. In the Perwin case, the alleged infringer, Yan Changqing, came into contact with the technical drawings containing the right holder's technical secrets involved, and applied for an invention patent and utility model patent respectively in the name of Huidun Company. The right holder lodged a lawsuit with the court and requested the court to confirm it as the patentee of the utility model patent involved and the applicant for the invention patent involved. The court, through entrusting an appraisal institution to verify the secrecy and identity of the technical issues involved, appraised that the specific technical information in the right holder's technical secrets involved was identical or substantially identical to the relevant technical information corresponding to the utility model patent and the invention patent involved. The court held that the two alleged infringers did not make any substantial contribution to the technical information disclosed in the utility model patent and the invention patent involved, and

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117 Ibidem in Footnote 7.
118 Ibidem in Footnote 14.
ruled that the right to the utility model patent and the right to apply for the invention patent involved shall be vested in the right holder. Meanwhile, obviously, it was impossible to make up for the loss suffered by the above-mentioned right holder due to the two alleged infringers’ infringement merely through ruling that the right to the utility model patent and the right to apply for the invention patent involved shall be invested in the right holder, so the court further ruled that the two alleged infringers shall compensate the right holder for its economic loss of CNY200,000.\textsuperscript{119}

**Section 6 Amendment to the Anti-Unfair Competition Law and the Implications Thereof**

The decision to amend the Anti-Unfair Competition Law was adopted at the tenth Session of the Standing Committee of the 13th National People's Congress on April 23, 2019. The amended provisions thereof this time all concern the protection of trade secrets, including the transfer of the burden of proof, the intensification of compensation and penalty, and the expansion of the accountability scope, and so on. This part will analyze the key contents of this amendment and the significance of the criminal protection of trade secrets.

I. Transfer of the Burden of Proof

A new provision added to the Anti-Unfair Competition Law as Article 32 reads: "in the civil trial procedures concerning infringement of trade secrets, the trade secret right holder shall provide prima facie evidence proving that it has taken confidentiality measures for the claimed trade secret and reasonably indicating that the trade secret has been infringed, while the alleged infringer shall prove that the trade secret claimed by the right holder shall not be identified as a trade secret defined in the Law.

Where the trade secret right holder provides prima facie evidence reasonably indicating that the trade secret has been infringed, as well as any of the following evidence, the alleged infringer shall produce evidence proving that it has committed no infringement of the trade secret:

1. there is evidence proving that the alleged infringer has the channel or opportunity to access the relevant trade secret and that the information used by it is substantially identical to the trade secret;
2. there is evidence proving that the trade secret has been disclosed, used or suspected of being disclosed and used by the alleged infringer;
3. there is other evidence proving that the trade secret has been infringed by the alleged infringer.”

\textsuperscript{119} Ibidem in Footnote 9.
Some people believe that this provision shall be identified as reversal of the burden of proof, but this Report inclines to support Mr. Kong Xiangjun’s point of view, that is, it actually transfers the burden of proof to the alleged infringer after the right holder fulfills a certain burden of proof.

(I) Alleviation of the Right Holder’s Burden of Proof in Terms of Secrecy

Proof of trade secrets usually includes two core parts: one is the proof of the constitutive elements of trade secrets and second is the proof of infringement. Paragraph 1 of Article 32 of the Anti-Unfair Competition Law is a provision on the issue concerning the proof of constitutive elements. In accordance with the pre-amendment provision, the right holder shall assume full burden of proof on the constitutive elements of trade secrets, that is, to prove whether the information claimed as trade secret is of secrecy and confidentiality. As to the value, in judicial practice, it will be deduced based on its secrecy and confidentiality, unless the alleged infringer provides any counter evidence. After this amendment, if the right holder produces evidence proving that it has taken confidentiality measures and properly states that the trade secret is infringed, it is relieved from proving that the trade secret is secret and of value, while instead, the alleged infringer shall produce evidence proving that the trade secret is not secret nor has value. As analyzed above, with respect to the value of trade secrets, the inference method is more often used in judicial practice. Thus, the main influence of this amendment is the proof of secrecy.

Secrecy, i.e., non-publicity, is the most core and basic part of the constitutive elements of trade secrets, while also the most fundamental element that distinguishes trade secrets from general confidential information. From the perspective of objective effect, the influences of this amendment include: (1) it simplifies the procedures and shortens the cycle for proof of business secrets. In the trade secret cases retrieved for this Report, a large number of alleged infringers are natural persons, whose capabilities to assume the burden of proof and respond to action are weaker than those of right holders. If the alleged infringer has no evidence to the contrary, the court may hold in a direct way that the trade secret claimed by the right holder meets the constitutive elements of trade secrets, with no need to introduce non-publicity appraisal procedures; (2) it cuts down the right holder’s rights protection expenses. Since it requires no non-publicity appraisal initiated by the right holder, the right holder can be exempted from appraisal-related costs; (3) objectively, the protection scope of trade secrets may be expanded due to such procedural setting. As an enterprise with

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121 It is provided in Article 14 of the Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Laws in the Trial of Civil Cases of Unfair Competition that where a party concerned alleges that another person has infringed his trade secret, such party shall assume the burden of proof to prove that the trade secret possessed by it meets the statutory requirements, the counterparty’s information is identical or substantially identical to its trade secret, as well as the fact that the counterparty has taken unfair means, among which, the evidence that the trade secret meets the statutory requirements includes the carrier, the specific content, the commercial value of and the specific confidentiality measures taken for the trade secret.
relatively mature management, the information on confidentiality measures taken by it is often far more than that to be protected as trade secrets. As the capability to assume the burden of proof may be nonequivalent, if the court directly supports the protection scope of trade secrets claimed by the right holder, some information that actually has no characteristic of secrecy may be protected as trade secrets.

In summary, the setting of Paragraph 1 of Article 32 of the Anti-Unfair Competition Law is not aimed at solving the problem of “inaccessibility of trade secret-related evidence”, as it is actually not difficult to prove secrecy, but the setting of Paragraph 1 of Article 32 alleviates the right holder's burden of proof and cost of rights protection, which is of positive significance to the right holder.

(II) Reduction of the Difficulty in the Right Holder’s Production of Evidence Proving an Infringement

In Paragraph 2 of Article 32 of the Anti-Unfair Competition Law, it specifies the proof of infringement. A right holder’s production of evidence includes providing prima facie evidence reasonably indicating that its trade secret has been infringed, while proving that the alleged infringer has come into contact with its trade secret to which the information used thereby is substantially identical, or the trade secret has been disclosed and/or used or suspected of being disclosed and/or used by the alleged infringer, or providing other evidence indicating that the trade secret has been infringed by the alleged infringer, among which, providing prima facie evidence reasonably indicating that the trade secret has been infringed is consistent with the provision of Paragraph 1, from the perspective of legislative technology. Item 3 of Paragraph 2 is miscellaneous provisions and is of little significance to interpretation. This Report focuses on the interpretation of Item 1 and Item 2 of Paragraph 2.

The content of Item 1 states “contact” and “substantially identical”. First of all, it emphasizes the proof of “contact”, which is the manifestation of the consensus of judicial practice in the legal amendment. The issue concerning the proof of “contact” is greatly reflected in judicial practice, and there are detailed analyses in Chapter II hereof, so it is unnecessary to repeat them here. The requirement of the proof of “substantially identical” is consistent with the legal provisions in the original Law, which has been the crux of the "difficulties in collection of trade secret-related evidence" all along. As evidence on infringers is difficult to access, it is difficult to prove that information used by the infringer is substantially identical to the right holder's trade secret.

Item 2, Paragraph 2 of Article 32 has become the biggest highlight of this amendment, that is, providing evidence proving that the trade secret has been disclosed and/or used or is suspected of being disclosed and/or used by the alleged infringer. However, there is still the problem of inaccessibility of evidence proving that the trade secret has been disclosed and/or used by the alleged infringer, as it's actually not easy for the right holder to become
aware of the disclosure, if any, unless it is made through public channels such as the Internet; and in terms of proving that the trade secret has been used, there is no substantial difference between it and the process of proving "the information used is substantially identical to the trade secret" as specified in Item 1. To prove that the alleged infringer has used the trade secret, it is inevitably necessary to prove that the information used by the alleged infringer is identical to the right holder's trade secret.

However, the provision of “suspected of being disclosed and/or used” obviously puts forward a new solution to the problem of “inaccessibility of trade secret-related evidence”. The provision of “suspected of being disclosed and/or used” actually gives judges more space to exercise discretion. From the former employee's breach of non-competition to joining the competitor, to marketing and promotion of various end products involving the relevant trade secret, all these may be deemed as evidence proving that the trade secret is “suspected of being disclosed and/or used”. However, to what extent of proof can the burden of proof be transferred still requires judges’ specific discretion.

On the whole, Paragraph 2 of Article 32 does not fundamentally shake the right holder's burden of proof in terms of infringement, but opens a path to give judges more space to exercise discretion and the difficulty in right holder’s production of evidence can indeed be reduced if the burden of proof may be transferred to the alleged infringer where appropriate. However, the standard for specific discretion still requires more exploration through judicial practice.

II. Intensification of Compensation and Penalties

As mentioned above, as provided in the Anti-Unfair Competition Law amended in November 2017, the ceiling of statutory compensation and administrative penalties for infringing trade secrets has been elevated dramatically from the original CNY300,000 to CNY3 million, and further reaches CNY5 million after this amendment in 2019.

Meanwhile, punitive damages are introduced in this amendment. As provided in Paragraph 3, Article 17 of the amended Anti-Unfair Competition Law, where a business operator maliciously commits an act of infringing a trade secret, if the circumstances are serious, an amount of punitive damages may be determined as equal to more than one but less than five times the amount determined by the above method. Punitive damages, as a hot spot in recent years, though being provided in the Trademark Law, unfortunately, are rarely applied in judicial practice due to the difficulty in quantifying the degree of an infringer's maliciousness. Thus, it may be impossible to see any case concerning the application of punitive damages in trade secret-related infringement proceedings in the short term. Notwithstanding this, the intensification of statutory compensation and penalties can enable right holders to obtain more compensation on the one hand, and on the other hand, will have a greater deterrent effect on potential infringers.
III. Expansion of the Accountability Scope

In this amendment, the mode of "electronic intrusion" is added as a new circumstance of improperly obtaining the right holder's trade secrets, along with the addition of the fourth circumstance of infringing a trade secret, that is, "instigating, inducing, or helping any other to, in breach of confidentiality obligation or the right holder's requirement for keeping its trade secret confidential, obtain, disclose, use or allow any other to use the right holder's trade secret."

From the perspective of legislative purposes, the former is a newly added improper measure for obtaining trade secrets in consideration of the development trend that electronic equipment has become a carrier for storage of technologies and business information by most enterprises, and the latter mainly aims to regulate "indirect infringement" in trade secret cases.

As shown in the Report, that a former employee left with the right holder’s trade secrets has become an important form of infringement of trade secrets, while in association with a competitor’s involvement to different degrees in a large number of cases. Compared with the old Law, in which there were only provisions on the circumstance that a competitor uses the trade secrets brought by the right holder’s former employee even if it clearly knows or should know the fact, the new Law undoubtedly provides a clearer position aiming to restrain a competitor’s improper conduct of deliberately poaching personnel and then using the right holder’s trade secrets. Although there is no substantive obstacle in judicial practice to hold such conduct to be indirect infringement in accordance with the Tort Liability Law, etc., the new Law’s position obviously has a positive warning effect, while laying a good foundation for merely investigating the responsibility of the indirect infringer (competitor) for infringing a trade secret under special circumstances. Let’s look forward to the emergence of classic cases concerning this in judicial practice.

In addition, this amendment incorporates natural persons, legal persons and unincorporated organizations in addition to business operators into the scope of the liability subject to trade secret cases. The term “business operator” obviously bears the characteristics of the times. Although business operator is the most common liability subject, this identity plays no decisive or key role in the identification of actual infringement. Therefore, in this amendment, the scope of infringement liability subject is expanded beyond business operator so as to prevent alleged infringers from using such identity as a cover to sidestep the law.

It is required to note that although this amendment expands the scope of liability subject in terms of both civil liability and administrative liability, this Report believes that the amendment to provisions on administrative liability is of greater significance. In civil
judgments, non-business operator legal persons or unincorporated entities are less likely to commit infringement of trade secrets in practice, but in theory they can still be held accountable by investigation for joint infringement liability, etc. However, the subject of administrative penalty shall inevitably be subject to pre-amendment provisions. As analyzed above, the administrative investigation and punishment procedures, besides as an independent law enforcement approach, can be used as a major measure for evidence collection in judicial cases, and the expansion of liability subject thereof is undoubtedly of significant favorability for the overall protection strategy of trade secrets.

There are some other changes in this amendment, such as expanding the scope of trade secrets from the original “technical information” and “business information” to “commercial information”, and amending the breach of "agreement" to breach of "confidentiality obligation". Intuitively, the former is to construct a foundation for adding new-type trade secrets, but for the time being, there is no obstacle to cover all trade secrets with the pre-amendment legal framework. As for amending the breach of "agreement" to breach of "confidentiality obligation", it can be understood as a lowered requirement for enterprises to take confidentiality measures for keeping their trade secrets. In addition to reaching an express "agreement" through conclusion of confidentiality agreements, a right holder may also, based on other general legal provisions or industry-related regulations, claim that the alleged infringer bears a confidentiality obligation.

**IV. Impact on the Criminal Protection of Trade Secrets**

First of all, as Article 219 of the Criminal Law strictly corresponds to Article 9 of the original Anti-Unfair Competition Law, the scale for ruling on some issues concerning trade secret-related civil infringement and criminal offenses is thus unified. Whether this amendment will lead to the addition of any relevant provisions to the Criminal Law to be amended is still worthy of expectation.

Secondly, the provision on indirect infringement added in Item 4, Paragraph 1 of Article 9 after the amendment is of implication significance for the identification of joint offenses. Both instigating offender and accessory offender are existing concepts in the theory of criminal law. Viewing from Item 4, it confirms indirect infringement on the basis of direct infringement, which is consistent with the accomplice theory that a one-sided accomplice is not tenable in China. From a theoretical perspective, whether there is a provision on investigation for the responsibility of instigating offender and accessory offender as confirmed in the Criminal Law or not, the acts of instigation and assistance in an offense shall both be subjected to criminal punishment. However, if there are clear and definite provisions thereon, especially if the acts of instigation and assistance are included as the criminal offense of infringing a trade secret in the future amendment of the Criminal Law, it will be a greatly significant impetus for investigation of the criminal liabilities of joint infringers and new employers. In criminal procedures, it is difficult to crack down on the right holder’s
competitor, but most of the time only its former employee is investigated, which is precisely the difficulty in judicial practice.

Finally, viewing the content of Article 32 after the amendment, it can be expected that the criteria for criminal case-filing will be lowered in the future. However, as interpreted above, the key provision of Article 32 still requires a definite scale for ruling in specific applications. Consequently, from a practical perspective, it may take a period of time for a change to come. At the beginning of initiating criminal procedures, the right holder still needs to collect relevant evidence in an all-round manner as practically as possible to ensure that criminal procedures can be initiated.

Summary

Through all-round retrieval and in-depth analysis of cases concerning disputes over trade secrets arising from employee turnover, the trials of which were concluded in 2015 - 2018, this Report shows that under the original legal framework, although right holders face certain difficulty in evidence collection, trade secret rights protection still can be effectively achieved through designing relevant strategies and taking appropriate legal action, and it can be expected that the new amendment to the Anti-Unfair Competition Law will play an active role in shortening the trial cycle of trade secret-related cases, intensifying the penalties and compensation for infringing trade secrets, reducing the difficulty in right holders' production of evidence, and enriching the measures for evidence collection, etc., and this new protection system will promote China's judicial practice for trade secret protection to a new level.
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