

Enlightenment of Legal Effectiveness Structure

— Comments on Trade Secret Law of China

Trade Secret Law of China
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I. Overview

1. Nature and Genre

The Trade Secret Law of China, a beautifully bound but inconspicuous booklet, may leave a first impression that it is just an ordinary compilation of laws and regulations. However, simply through skimming, readers will be enchanted by the charm of such a style of writing that has never been used before (at least a similar one has never been found in Chinese legal publications).

In fact, the reason why it can be quickly regarded as a compilation of laws and regulations (which herein only refers to typical published compilations because such books are of great variety and have distinctive features, and some of them are added with excessive and perhaps unnecessary content) is that it shares one thing in common with the latter, i.e., the majority thereof relates to the current laws and regulations or excerpts thereof, which are legally binding normative documents *per se*. This makes them both highly practical.

In addition, a series of characteristics of this book make it stand out and form a new style of writing. Let's just call it a "special academic style for legal compilations".

2. Structure

A surprising richness in structure also enables this book to be significantly distinguishable from ordinary compilations of laws and regulations.

In addition to the Main Text and Afterword, this book al-

so consists of four other parts, i.e., Compilation Scheme, Guide to the Use of the book, Keywords and Version. The "Compilation Scheme" mentions the "principled considerations" for the compilation of this book, including a relatively detailed introduction to the legal hierarchy, completeness of selected materials, plans for deletion of provisions, and the like. The "Guide to the Use of the Book" makes explanations to the book format, which basically follows the publishing conventions, but is unique at the mention of judicial interpretations, i.e., only the simplified issue numbers, rather than the full names, of the judicial interpretations are indicated. For instance, the Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Trade Secret Infringement adopted by the Judicial Committee of the Supreme People's Court on 24 August 2020 appears at 80 *et seq.*, but is only indicated as "Judicial Interpretation No. 7/2020". Such an arrangement makes the whole book more coherent and concise. The "Version" discloses the books, newspapers, online resources and non-public publications used in the compilation process, thereby ensuring the reliability of the content of the book.

3. Content

In brief, this book is mainly about the current legal provisions on trade secrets in China. However, "current laws" is a concept that should be strictly defined, which is a prerequisite for the clear presentation of the content in the book. Although the departmental regulations of the State Council and the regulations of local governments are specified in Article 91 *et seq.* of the Legislation Law (2020 and 2023), this book is aimed to compile the regulations at the level of the State Council, namely, administrative regulations specified in Article 72 *et seq.* of the Legislation Law (2020 and 2023).¹ This "boundary line" is of significance to draw readers' attention to the most crucial legal system in China.

This book also follows strict criteria for selecting the judicial interpretations issued by the Supreme People's

Court, i.e., only judicial interpretations assigned with issue numbers are included, and a large number of other judicial documents and policies, such as approvals, notices, meeting minutes or even guiding cases are abandoned.

The integrity of content is the proper meaning of this book. However, it is worth mentioning that two parts of this book, namely, legal interpretations for individual cases by courts at all levels and domestic and foreign bilateral agreements, are not in line with this tenet², which means representative documents are included by means of exemplification, rather than listed in an exhaustive manner.

Under such scrutinous circumstances, the provisions on the protection of trade secrets still amount to more than 60,000 words, which shows that the China's legal system after forty-plus years of construction has become all-inclusive.

II. Characteristics

This book is distinctively featured, which will be explained mainly from the following three aspects.

1. Pyramid-like effectiveness structure

The most prominent feature of this book is to integrate the principle of legal effectiveness into the compilation of legal provisions. This principle has been clarified in Article 98 *et seq.* of the Legislation Law (2020 and 2023), with the core that higher laws are superior to subordinate laws, and the subordinate laws which are in conflict with the higher laws are invalid. In this spirit, this book reorganizes all the legal provisions according to the rank of legislators (or according to the chronological order if the legislators are at the same rank), thereby forming a brand-new system. This is crystally clear from the Table of Contents. The first three items in the Main Text of the Table of Contents are as follows:

“The National People's Congress

The Standing Committee of the National People's Congress

The State Council”.

Of course, there are three other items thereafter, namely, “National Supervisory Commission”, “People's Court” and “International Treaties”. The National Supervisory Commission is an institution newly established according to the Amendment to the Constitution (2018), which is parallel to the State Council in terms of constitutional status. The judicial interpretations issued by the people's courts have spe-

cial values in China's legal system, “but it is difficult to determine how it ranks on the effectiveness ladder of domestic laws”.³ The bilateral agreements and multilateral conventions that China has signed or joined are also an important part of sources of law, and are, in principle, superior to domestic laws.

In order to strictly abide by the hierarchy of effectiveness, this book makes special treatment to several codes. Take the Criminal Law for example. Articles 180.2 to 4 and Article 219.4 of the Criminal Law appear on the first page of the main text of this book because the Criminal Law was originally created by the National People's Congress in 1979 and revised in 1997. Surprisingly, the Criminal Law also appears on pages 26 and 27 thereof. According to the Table of Contents, the laws enacted by the Standing Committee of the National People's Congress start from page 8 thereof. On pages 26 and 27 are there Articles 180.1 and 4, Articles 219.1 and 2, as well as Article 219*bis* of the Criminal Law (2020), which are the amendments to the Criminal Law formulated by the Standing Committee of the National People's Congress. Such an internal effectiveness difference between the provisions also occurs in laws such as the Civil Procedure Law (1991 and 2023). This situation is explained on page 2 of the “Compilation Scheme”.

2. Dichotomous “keywords”

The dichotomy of “keywords” in this book seems to be quite confusing at a first glance.⁴

Careful readers will find that except the Main Text, this section is actually the largest part of this book, which occupies eleven pages in total, wherein keywords in Part A are listed in more than four pages and keywords in Part B are in about six pages. It is specifically explained in page 5 of the “Compilation Scheme” as follows:

“Keywords in Part A are the basis for the inclusion of various provisions. It can be easily seen from the number of those keywords that the legislators have a large vocabulary. Different terms are adopted on dissimilar occasions although they are all directed to ‘trade secrets’ in nature. The identification of keywords in this book is a technical work for sure, and cannot be considered as the final conclusion. Enormous researches are required to prove to what extent the connotation underlying each word can decide that the word is a superordinate concept, sub-category or associated term of trade secrets.

This contributes to the generation of keywords in Part B. Of course, the compiler did not include those words that

are obviously irrelevant, such as ‘business conventions’ or ‘common sense of science’. On the contrary, the selected keywords have somewhat made the compiler hesitate about their true meanings. The word ‘novelty’ is a typical example. The compiler has undergone several rounds of ‘negation of negation’ before its inclusion. Hence, the list of keywords primarily functions to help the compiler temporarily let go of it and leave the problems behind.”

What are the keywords in Part B about?

From the logic of simplicity, the keyword list in Part B seems to be superfluous because this book is compiled according to the keywords in Part A. However, the compiler uses the keywords in Part B, out of good intention, to remind readers (especially those who are in charge of specific cases) of the fact that there are still categories in China’s current laws that are related to the protection of trade secrets to varying degrees. In other words, this book cannot be deemed as perfect.

Furthermore, through the disclosure of the keywords in Part B, the compiler reveals his thoughts and confusions when extracting the legal provisions, and leaves them to experts, scholars and practitioners in the IP industry for further exploration.

It can be seen that it is the surprising keyword list in Part B that greatly enhances the academic traits of this book. A seemingly “insignificant” compilation of legal provisions is full of suspense. It is impossible to get out of this “swamp” of concepts and regulations without careful considerations.

3. Exquisite editing

It is obvious that the compiler intends to keep the compilation concise as much as possible. As can be seen, only the legal documents issued by the State Council and judicial interpretations issued by the Supreme People’s Court are included, the formal titles of the judicial interpretations are omitted, and legal interpretations for individual cases and bilateral agreements are only provided as examples.

In fact, the treatment of keywords also plays a vital role in the control of the length of the book. Once a specific term is listed under Part A, it may lead to the fact that all the provisions covered by that term will be included in the main text of the book; or otherwise, they can be all “omitted”.

Another sophisticated treatment lies in the editing of legal provisions. In order to select the most essential provisions in relation to the protection of trade secrets in Chinese laws, the compiler places a special importance on content

extraction and refinement.

The “Compilation Scheme” is achieved through the following principles:

(1) Minimalism:

Selected provisions are abridged, usually to subparagraphs, that is to say, where there are multiple paragraphs in one provision, only the paragraph(s) in relation to trade secrets is(are) included, and where there are multiple subparagraphs under one paragraph, only the subparagraph(s) in relation to trade secrets is(are) included. Where there is a legal document with the title containing the term “trade secret”, the provisions which are not directly related to trade secrets will be deleted, such as the Judicial Interpretation (B) No. Fa-shi 7[2020].

(2) Directness:

This is an embodiment of the doctrine of minimalism. Only provisions containing the keywords as listed are included, which indirectly implies the reason why other provisions on trade secrets are excluded. For instance, Article 17.4 of the Anti-Unfair Competition Law (1993 and 2019) stipulates the liability for violation of Article 9 (a core provision on the protection of trade secrets) of the Law and is not included due to lack of the keyword(s).

Furthermore, directness also indicates the inclusion of the principled provisions which act as an indispensable part in the protection of trade secrets. For instance, Article 2.1 of the Anti-Unfair Competition Law (1993 and 2019) is also not included.⁵

It can be said that the length of a book is mostly regarded as unimportant, or more accurately, the expanded length has become a trend among scholars and publishers, and books concerning compilation of laws and regulations are prone to be “swollen” and lengthened disorderly. This can be attributed to no copyright royalties for legal documents (Article 5.1 of the Copyright Law (1990 and 2020)). For this reason, the style of this book is just the opposite and thought-provoking.

III. Conclusion

According to the current academic mainstream, a non-monograph booklet with limited length is better kept under the table. However, this book is still stunning after the true face thereof is revealed to the public.

The value of this book lies in innovation. With very limited materials (valid legal provisions in a narrow field), the

compiler accomplished a refreshing work through ingenious design. This booklet is centered on trade secrets. It can be said that the style and layout of this book (before its publication) also constitutes a trade secret.

There is not a single law called “Trade Secret Law” in China. But this book provides a “Trade Secret Law” that has been created through academic compilation — a “panoramic view” of the China’s trade secret protection system and therefore serves as a valuable reference book for judges, lawyers and other legal practitioners engaged in the related work.

Finally, this book further functions to remind experts, scholars and practitioners in the IP industry who are keen on promoting the “code” compilation by a legislative authority to show proper respect for the current laws. “... The jungle of laws must be treated with respect like what we do to the nature. Driving a bulldozer into a jungle is a huge mistake.”⁶ After all, through a long period of legal practice, the current laws have formed into an independent and associated ecological system and been becoming a part of the China’s modernization process. ■

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¹ Obviously, the State Council’s departmental regulations contain many provisions on trade secrets. One of the earliest systematic regulations is the “Several Provisions on Prohibiting Infringements upon Trade Secrets” issued by the then State Administration for Industry and Commerce in November 1995. The full text of the regulations consists of 12 articles.

² See page 3 of the “Compilation Scheme” of the book.

³ See page 2 of the “Compilation Scheme” of the book.

⁴ Interestingly, the Table of Contents shows that the book has two other binary arrangements, namely, legal interpretations for individual cases (by courts at all levels) (A) and judicial interpretations (B) (by the traditional, abstract Supreme People’s Court) under the item of “People’s Courts”, and bilateral agreements (B) and multilateral conventions (A) under the item of “International Treaties”. The former is also worth further research.

⁵ See page 4 of the “Compilation Scheme” of the book.

⁶ See page 115 of the “Afterword” of the book.

CNIPA Holds Bilateral Meetings with IP Agencies from Multiple Countries and Regions

From 9 to 10 July 2024, during the Sixty-Fifth Series of Meetings of the Assemblies of the Member States of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland, the China National Intellectual Property Administration (CNIPA) held bilateral meetings with intellectual property (IP) agencies from Japan, Russia, Iran, South Africa, Spain, Saudi Arabia, and the African Intellectual Property Organization. The meetings facilitated in-depth exchanges on issues of mutual concerns, and reached a series of consensuses.

During the meetings, CNIPA Commissioner Shen Changyu provided updates on China’s latest progress in IP. He emphasized that the Chinese government has attached great importance to IP work, and approved the establishment of an inter-ministerial joint conference system aimed at building an IP powerhouse, thereby enhancing top-level IP design. He highlighted

the continuous improvements in IP creation, utilization, protection, management, and services, and the ongoing optimization of the innovation environment. Shen expressed willingness to work closely with all parties to strengthen communication and cooperation, providing better services for users worldwide.

The attendees expressed their desire to deepen IP cooperation with China, and advance exchanges in areas including IP finance, patent quality improvement, trademark protection, geographical indication cooperation, application of artificial intelligence in examinations, talent training, and services for small and medium-sized enterprises, to jointly support innovation and development.

Source: CNIPA