

China and Hong Kong Expand Protections Over State Secrets

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China recently enacted a revision to the PRC Law on Guarding State Secrets, and shortly after Hong Kong followed suit when it passed the Safeguarding National Security Ordinance. Read together, the two legislative actions broaden the scope of information within the purview of China's state-secrets regime and, in essence, expand the enforcement of China's state-secrets law to cover Hong Kong. Businesses conducting due diligence, litigation discovery, or other information-related activity in the region should adjust their procedures accordingly.

CHINA'S REVISION TO THE STATE SECRETS LAW

On February 27, the Standing Committee of the National People's Congress passed a revision to the China Law on Guarding State Secrets (State Secrets Law).^[1] Most of the changes can be viewed as modernization updates that would not significantly modify how a business would deal with the State Secrets Law. However, new Article 64 adds "Work Secrets" as a category of information that is not State Secrets but still requires protective measures. Work Secrets are not clearly defined but would cause an adverse impact if disclosed. The State Secrets Law provides that regulations on the protection of Work Secrets will follow.

In practice, the procedure for State Secrets review in China is standardized for matters that involve cross-border transfer of information, particularly government investigations and litigation. Increasingly, such considerations have become relevant in situations that call for information review or diligence, with the safe solution often being to keep the review localized. Generally, such a review would err on the side of caution, considering the possibility of retroactive designation of information as a State Secret. Going forward, the inclusion of Work Secrets in the State Secrets Law may require adjustments to the standard review protocols, but the overall substance and procedure should remain consistent.

HONG KONG'S NATIONAL SECURITY BILL

On March 19, the Hong Kong Legislative Council passed the Safeguarding National Security Ordinance (National Security Law) pursuant to Article 23 of the Basic Law requiring Hong Kong to enact laws to "prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."^[2]

The National Security Law includes a number of offenses related to national security, such as treason, insurrection, and espionage. Part 4 of the National Security Law addresses offenses in connection with state secrets and defines those to include state secrets of both China and Hong Kong. Notably, state secrets are defined to include, *inter alia*, secrets involving (i) major policy decision on affairs of China or Hong Kong, and (ii) economic or social development of China or Hong Kong. Furthermore, Part 4 includes offenses for unlawful disclosure, acquisition, possession, and attempting to leave Hong Kong in possession of state secrets. Taken together, the definition of state secrets could encompass commercial information related to the region or important industries relevant to business activity or litigation.

Going forward, the state secret review protocols utilized in China will now be relevant to practice in Hong Kong. In addition, until recently, Hong Kong has been a common middle-ground location for conducting depositions for China-based individuals in U.S. litigation. Under the new regime, Hong Kong may be a less desirable location for conducting depositions of China-based individuals, particularly where the matter or questions involve issues or industries that China views as important. If Hong Kong is the deposition location, and there is a risk that state secrets may be involved in the case, the parties should work out ground rules in advance.

Winston regularly represents clients to manage complex cross-border matters involving information protection in China. Please contact the authors or your Winston & Strawn relationship attorney if you have any questions or need further information.

^[1] The Chinese version can be found at https://www.gov.cn/yaowen/liebiao/202402/content_6934648.htm, with an unofficial translation available at <https://www.chinalawtranslate.com/en/secrets-law-2024>.

^[2] <https://www.basiclaw.gov.hk/en/basiclaw/chapter2.html>.

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