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# RECENT DEVELOPMENT

*Timothy A. Gelatt\**

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## The New Chinese State Secrets Law

The People's Republic of China ("PRC") is one of the most secretive societies in the world. Information is revealed and shared on the strictest need-to-know basis. This is true between fellow Chinese—even close friends and relatives—and especially where "foreign elements" are involved. Indeed, a "presumption of secrecy" might be said to pervade the PRC's approach to the flow of information.

The Chinese concern with secrecy is not surprising in light of the conditions under which the PRC was established in 1949. The PRC's founding leader, Mao Zedong, and his colleagues perceived the newborn regime as threatened by enemies from within and without who were intent on stealing vital intelligence to sabotage the revolution. This atmosphere of paranoia continued in a series of political movements peaking with the Cultural Revolution of 1966-1976, the petrifying effects of which remain today.

In 1951, two short years after the Chinese Communist Party consolidated its power, the PRC promulgated the Provisional Regulations for the Preservation of State Secrets (the "1951 Regulations").<sup>1</sup> In keeping with the spirit of the times, the purpose of the 1951 Regulations was, in their own words, to prevent "spies inside or outside the country, counter-revolutionary elements and subversive elements from prying into, stealing or selling state secrets."<sup>2</sup> On May 1, 1989, China implemented the new Law of the People's Republic of China on the Preservation of State Secrets (the "State Secrets Law").<sup>3</sup> Against the backdrop

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1. See Baoshou Guojia Jimi Zaxing Tiaoli [Provisional Regulations for the Preservation of State Secrets] (adopted June 1, 1951; promulgated June 8, 1951), *reprinted in Zhongyang Renmin Zhengfu Faling Huibian* 27 (1951) [hereinafter 1951 Regulations]. For a discussion and English translation, see Hsia, Hambley & Johnson, *Introduction to the State Secrets Laws of the People's Republic of China*, 2 CHINA L. REP. 267 (1983).

2. 1951 Regulations, *supra* note 1, art. 1.

3. See Zhonghua Renmin Gongheguo Baoshou Guojia Mimi Fa [Law of the People's Republic of China on the Preservation of State Secrets] (adopted and promulgated May 1, 1989), 22 CORNELL INT'L. L.J. 255 (1989).

described above, the new law represents a significant evolution in Chinese secrecy law.

### I. PRC's 1951 Provisional Regulations

The 1951 regulations contained no definition of "state secrets," but merely a long list of peculiar examples under which it would be possible to fit virtually any imaginable piece of information. For example, the list included "secret matters concerning. . . meteorological forecasts."<sup>4</sup> And for good measure, there was a residual catch-all provision covering "all other state affairs that must be kept secret."<sup>5</sup>

As specific examples demonstrate, the Chinese have strictly enforced their secrecy law. The main "charge" against a Chinese staff member of Shell International Petroleum leading to six and a half years of solitary confinement was that she wrote a foreigner about the size of Shanghai's grain supply for a given year.<sup>6</sup> Nor have non-PRC citizens been immune from the law's sweeping application. Hanson Huang, a Harvard-educated lawyer holding Hong Kong identity documents, was held incommunicado for a year and a half and then sentenced to 15 years' imprisonment for passing unspecified state secrets to unidentified foreigners.<sup>7</sup>

For foreigners attempting to negotiate various forms of business cooperation projects with Chinese enterprises since the PRC opened its doors to foreign investment in 1979,<sup>8</sup> the difficulties of extracting legal, economic, and other relevant information from their Chinese counterparts and government agencies count among their greatest frustrations. Matters have improved considerably since the early days of Sino-foreign business contacts, but the word "*neibu*" (internal) is still all too frequently invoked by Chinese officials to explain why they simply cannot show a foreign party the regulation or document the officials have been citing to support their position on a particular issue.<sup>9</sup>

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gated Sept. 5, 1988) (trans. by Paul, Weiss, Rifkind, Wharton & Garrison in Appendix to this Article) [hereinafter State Secrets Law]; *Zhonghua Renmin Gongheguo Guowuyuan Gongbao* [State Council Gazette of the People's Republic of China] 621 (1988) [hereinafter State Council Gazette].

4. 1951 Regulations, *supra* note 1, art. 2(9).

5. *Id.* art. 2(17).

6. See N. CHENG, *LIFE AND DEATH IN SHANGHAI* 353 (1987).

7. In February 1984, after two years of speculation, a Chinese Justice Ministry official confirmed that Huang had been arrested, tried, and convicted of espionage in June 1983. United Press International Wire Service, International Section, Feb. 9, 1989 (copy on file at the *Cornell International Law Journal*). Huang was paroled on May 15, 1985, but confined to Beijing. Foreign Broadcast Information Service (FBIS), May 31, 1985, at W1-W2.

8. The PRC's opening to foreign investment was formally marked by the promulgation of *Zhonghua Renmin Gongheguo Zhongwai Hezi Jingying Qiye Fa* [Law of the People's Republic of China on Chinese-Foreign Joint Ventures] (adopted July 1, 1979; promulgated July 8, 1979), *reprinted in* 1 CHINA'S FOREIGN ECONOMIC LEGISLATION 1 (1982).

9. For a discussion of the problem of internal regulations, see Gelatt, *Legal and Extra-Legal Issues in Joint Venture Negotiations*, 1 J. CHINESE L. 217, 229-31 (1987).

## II. PRC's New State Secrets Law

In recent years, the PRC has demonstrated an awareness of the need for information to become more easily available to Chinese and foreigners alike. This sensibility is part of the general effort following the Cultural Revolution to establish the rule of law<sup>10</sup> and to mobilize the people's confidence and enthusiasm toward the "four modernizations" of industry, agriculture, defense, and science and technology. While the most "liberal" of the PRC's current leaders have thus far fallen short of the efforts of the Soviet Union's Gorbachev in his campaign for *glasnost*, they are cognizant that policies and regulations must be clearly stated and information must be available for legitimate and constructive purposes—in short, society must become more open.

This new spirit informs the State Secrets Law passed by the Standing Committee of the National People's Congress ("NPC") in September, 1988.<sup>11</sup> It will take effect, replacing the 1951 Regulations, on May 1, 1989. Although it contains numerous circularities and ambiguities, the State Secrets Law generally represents a significant improvement over its 1951 predecessor. Most importantly, its general tenor turns the presumption of secrecy into a presumption of non-secrecy. The State Secrets Law recognizes that the rubric of state secret should be limited to particular categories of material that need to be restricted to a limited range of people for a specific period of time.<sup>12</sup> To be considered a state secret, a particular document or piece of information must now satisfy criteria set forth in the law and must be appropriately marked.<sup>13</sup>

The 1951 Regulations did not distinguish between the relative importance of different types of state secrets, nor did they link a specific category of state secrets to the possible effects of its improper divulgence. In contrast, the State Secrets Law divides state secrets into three categories—"top secret," "highly secret," and "secret," depending on how much harm their disclosure could cause the national interest and national security.<sup>14</sup> There is also a mechanism to inform people with access to material if such material has been categorized as a state secret and the specific grade of secrecy it has been assigned. The need for such a mechanism had been discussed prominently during the debates on the new law in the NPC Standing Committee, and this provision was

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10. For an example of the discussions from the early post-cultural revolution period of the need for a socialist legal system, see Sun Guohua, *On the Role of Law in Modern Socialist Construction*, 1 FAXUE YANJIU 33 (1980).

11. See State Secrets Law, *supra* note 3.

12. *Id.* arts. 2, 8.

13. *Id.* arts. 8, 12. How this apparently all-encompassing language of Article 8 will affect so-called *neibu* or internal documents remains unclear. See *infra* text following note 22.

14. *Id.* art. 9. The U.S. government has a similar three-tier system under which information may be classified as "top secret," "secret," or "confidential," depending on the degree of harm its disclosure could cause to national security. 5 DEPARTMENT OF STATE FOREIGN AFFAIRS MANUAL 922 (1982).

added as a result of those discussions.<sup>15</sup>

These modifications afford some practical significance to the concept of a state secret. But substantial elaboration is still needed concerning the bases for categorizing secrets and the authority to make such decisions. For example, the law provides guidance only with respect to top secret items. Among other restrictions, such documents may not be photocopied without approval from the agency that classified them as top secret.<sup>16</sup> Given the potentially severe consequences of improper handling of state secrets,<sup>17</sup> the drafters of the implementing regulations should make sure there is appropriate guidance for treating the lesser categories of secrets.

Another positive contribution of the State Secrets Law is its provision for the “declassification” of state secrets when changing economic and political circumstances no longer require them to be kept confidential. All items classified as state secrets will have a specific time period attached to them, but it is unclear whether the time period will actually be stamped on documents together with the degree of secrecy or will be disclosed otherwise.<sup>18</sup> Even so, the presumption of non-secrecy in the new law is reinforced by the provision that the agency which classified a document as secret may declassify the document at any time if it determines that continued secrecy is no longer required, even before the expiration of the originally determined secrecy period.<sup>19</sup> By the same token, however, an agency may also extend the secrecy period upon expiration—apparently without any limits—if it sees fit.<sup>20</sup>

The most intriguing aspect of the State Secrets Law, and the part most directly relevant to foreigners living and working in the PRC, is the lack of distinction between material that may be disclosed “internally”—that is to PRC citizens or a certain sector thereof—and that which may be disclosed to foreigners. Indeed, Article 21, one of the two direct references the law makes to “foreign elements,” is rather positive.<sup>21</sup> Article 21 recognizes that it may be necessary to provide information on state secrets when dealing with foreigners and requires only advance approval in accordance with unspecified “procedures.”<sup>22</sup>

Taken at face value, the State Secrets Law (particularly in light of Article 21) can be interpreted as depriving Chinese officials of the *neibu* excuse for denying foreigners access to a vast, nebulous range of legal and other documents. After all, the law requires a document to be specifically labelled a “state secret” in order to be kept confidential, makes no distinction between disclosure to foreigners and Chinese, and, fur-

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15. Fazhi Ribao, Sept. 3, 1988, at 2.

16. State Secrets Law, *supra* note 3, art. 18.

17. See *infra* notes 34-38 and accompanying text.

18. State Secrets Law, *supra* note 3, arts. 14, 15.

19. *Id.* art. 16.

20. *Id.*

21. The other reference is in art. 32. See *infra* notes 37-38 and accompanying text.

22. State Secrets Law, *supra* note 3, art. 21.

thermore, allows the revelation of state secrets to foreigners in some situations. There is conceivably no remaining legal justification for refusing to provide a relevant document to a foreigner simply on the ground that it is "internal."

### III. Limitations of the State Secrets Law

Despite the liberalization of Chinese secrecy law, it is unrealistic to expect dramatic changes after the new law takes effect. The *neibu* phenomenon, for example, is so deeply rooted in the Chinese consciousness that major "thought reform" will be necessary to dislodge it. Still, recent statements by Chinese officials of their intentions to make laws public in a more systematic way,<sup>23</sup> as well as the spirit of the State Secrets Law itself, do afford reasons for optimism. One of the most enduring bugaboos of doing business in China—the veil of secrecy surrounding essential legal, financial, and economic information—may yet change significantly, if gradually.

The State Secrets Law will clearly require substantial implementing regulations<sup>24</sup> and experience for true liberalization to be realized. Under close scrutiny, the language of the law itself rapidly crumbles. For example, a state secret is defined in Article 2 (as noted, the 1951 Regulations contained no definition) as a "matter that concerns the security and interests of the State, the knowledge of which, *as determined in accordance with legally prescribed procedures*, is to be limited to a certain range of people for a certain period of time."<sup>25</sup> This implies that separate procedures will determine which items of information meeting the general criteria of Article 2 will be deemed state secrets, but the law gives no clue as to the specifics of these procedures.

Consider also Article 8 of the State Secrets Law which contains a list of items that will be considered state secrets if they fall within the definition of Article 2. The list is significantly less sweeping than that contained in the 1951 Regulations, but there are still gaping holes that must be filled by further regulations and interpretation in order to establish clear standards for defining state secrets and providing concrete guidance to people with access to potentially confidential information.

First, Article 8 begins with a declaration that "state secrets *include* the following secret matters that meet the provisions of Article 2."<sup>26</sup> The use of the word "include" (*baokuo*) in Chinese legislation generally signifies, as one would expect, that the list is not meant to be exhaustive. The circular reference to "secret matters," similar to the approach of

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23. N.Y. Times, Nov. 20, 1988, at 21, col. 1; Zukerman, *An End to Chinese Inscrutability*, TIME, Dec. 19, 1988, at 65.

24. Implementing regulations for the State Secrets Law will be formulated by the government departments in charge of state secrets. State Secrets Law, *supra* note 3, art. 33.

25. *Id.* art. 2 (emphasis added).

26. *Id.* art. 8 (emphasis added).

the 1951 Regulations,<sup>27</sup> is repeated in each of the six specific examples listed: for instance, "secret matters in major policy decisions on state affairs;"<sup>28</sup> and "secret matters in national economic and social development."<sup>29</sup> Furthermore, the cite to Article 2 refers back to the unidentified legal procedures under which state secrets are evidently to be determined.<sup>30</sup>

Second, Article 8 has a residual catch-all provision that is an improvement over its 1951 counterpart but which still leaves important questions unanswered. This provision defines state secrets to be "other state secret matters that the state secrecy preservation departments determine should be preserved."<sup>31</sup> Although representing some improvement over the 1951 Regulations' catch-all provision, this language is still not very satisfactory.<sup>32</sup> Besides the uncertainty about the definition of "state secret matters,"<sup>33</sup> it is unclear which authorities will determine other categories of secrets, on what basis, and how such determinations will be made known. The PRC announced the establishment of a new State Secrets Bureau, under the State Council, to replace the former Central Secrets Commission at the same time the State Secrets Law was enacted.<sup>34</sup> However, the State Secrets Law also refers to state secrets departments that may be established at the local level and even within individual specific state agencies and work units.<sup>35</sup> No guidance is given as to the relationship between and among these local and central bodies and their relative decision-making authority.

## Conclusion

However successfully the new State Secrets Law may be implemented, there is no denying its very drafting and publication represent a serious effort to establish a rational system to protect perceived national interests, while also providing the PRC's population with meaningful guidelines to determine what they can and cannot reveal. Both the law itself and the published NPC debates thereon reveal a heartening concern for legislative clarity, objective standards, and what might even be called "rights consciousness."

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27. 1951 Regulations, *supra* note 1, art. 2.

28. State Secrets Law, *supra* note 3, art. 8(i).

29. *Id.* art. 8(iv).

30. See *supra* note 25 and accompanying text.

31. State Secrets Law, *supra* note 3, art. 8(vii).

32. Interestingly, according to reports on the legislative history of the State Secrets Law in the PRC legal press, as originally drafted this provision was almost identical to the 1951 catch-all. Certain participants in the debate on the new law in the Standing committee of the NPC commented that the provision needed some limitation, and the change was made that resulted in the law as it now stands. Fazhi Ribao, Sept. 3, 1988, at 2.

33. See *supra* notes 24-29 and accompanying text.

34. FAR EASTERN ECON. REV., Nov. 3, 1988, at 25.

35. State Secrets Law, *supra* note 3, art. 11.

While the State Secrets Law is less arbitrary and more sensitive to the underlying issues than the 1951 Regulations, it is also clearer about the potentially severe consequences of violating its provisions. Disclosing state secrets—whether intentionally or negligently<sup>36</sup>—can lead to a maximum of seven years' imprisonment under a provision of the PRC Criminal Code cross-referenced in the State Secrets Law.<sup>37</sup> Violations not reaching criminal proportions may be subject to unspecified administrative penalties.<sup>38</sup> The new law detracts from its success in other areas by failing to provide any standards to determine whether a particular disclosure constitutes a criminal or administrative offense.

In addition, Article 32 of the State Secrets Law coupled with a contemporaneously adopted addition to the Criminal Code,<sup>39</sup> could offset some of the salutary effects pertaining to the flow of information between Chinese and foreigners. These provisions impose penalties, including life imprisonment or execution, for the theft, gathering, purchase, or "illegal provision" of state secrets to or for "organizations, groups or individuals" from outside of China.<sup>40</sup> This is the only instance where the State Secrets Law distinguishes between disclosing secrets to Chinese and non-Chinese, but it is obviously critical. Article 32 must be supplemented by clear guidelines in the implementing regulations or elsewhere that speak to the precise scope of the article itself, particularly the vague reference to "illegal provisions," and on the very definition of state secrets.<sup>41</sup> Otherwise, the potentially drastic consequences of revealing state secrets to foreigners will maintain the "chilling effect" that leads so many Chinese with whom foreigners deal

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36. *Id.* art. 31. China's criminal law is noteworthy for distinguishing between intentional and negligent crimes. Certain specified conduct is criminally punishable even when committed negligently. See *Zhonghua Renmin Gongheguo Xingfa* [The Criminal Law of the People's Republic of China], art. 12, (adopted July 1, 1979; effective Jan. 1, 1980) (trans. in *THE CRIMINAL LAW AND THE CRIMINAL PROCEDURE LAW OF CHINA* (1984)) [hereinafter *CRIMINAL LAW*]. An example of the application of the negligent crime concept of the Criminal Law was the case of American businessman Richard Ondrick who was sentenced to 1-1/2 years' imprisonment under Art. 106 of the Criminal Law for negligently setting fire to a hotel in Harbin that killed 10 people in 1985. *New York Times*, Sept. 13, 1985, at 3; *id.* Aug. 13, 1985, at 5.

37. Criminal Law, *supra* note 36, art. 186. This is only one example of a number of areas in PRC law where the violation of what are essentially administrative statutes may constitute violations of the Criminal Law if they reach a certain degree of severity. Another example is in the area of trademark violations. See *id.* art. 127.

38. State Secrets Law, *supra* note 3, art. 31.

39. See *Guanyu Chengzhi Xielou Guojia Mimi Fanzui de Buchong Guiding* [Supplementary Provisions on Punishing Crimes of Disclosure of State Secrets] (adopted September 5, 1988), reprinted in *State Council Gazette*, *supra* note 3, at 626.

40. *Id.*; State Secrets Law, *supra* note 3, art. 32. Other articles of the Criminal Law are also potentially applicable to the revelation of state secrets to foreigners. See, e.g., Criminal Law, *supra* note 34, art. 97(1) ("Stealing, secretly gathering or providing intelligence for an enemy.").

41. See *supra*, notes 24-30 and accompanying text.



personally and professionally to withhold information intuitively.<sup>42</sup>

One thing is clear. The new State Secrets Law has eliminated much of the almost comically sweeping rhetoric of its 1951 predecessor. But there is no doubt that, even in the reform-minded PRC of today, state secrets are no laughing matter.

## APPENDIX

### Law of The People's Republic of China on the Preservation of State Secrets\*

#### Chapter One. General Provisions

##### *Article 1.*

This Law is formulated in order to preserve state secrets, protect the security and interests of the State and safeguard the smooth progress of reforms, the open policy and the cause of socialist construction.

##### *Article 2.*

State secrets are matters that concern the security and interests of the State, the knowledge of which, as determined in accordance with legally prescribed procedures, is to be limited to a certain range of people for a certain period of time.

##### *Article 3.*

All state organs, armed forces, political parties, social organizations, enterprises, institutions and citizens have the duty to preserve state secrets.

##### *Article 4.*

The guiding principles to be implemented in the work of preserving state secrets are active prevention, stressing the main points, and ensuring both the preservation of state secrets and the facilitation of various work.

##### *Article 5.*

The state secrecy preservation departments are in charge of the work of preservation of state secrets for the entire country. Local secrecy preservation departments of various levels at or above the county level are, within the limits of their authority, in charge of the work of preservation of state secrets in their own administrative area.

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42. According to press reports, 80% of criminal prosecutions of state secrets violations in recent years involved the provision of secrets to foreigners. FAR EASTERN ECON. REV., Nov 3, 1988, at 25.

\* Adopted by the Third Session of the Standing Committee of the Seventh National People's Congress on September 5, 1988. Translated by Paul, Weiss, Rifkind, Wharton & Garrison.

Central state organs, within the limits of their authority, are in charge of or guide the work of preservation of state secrets in their own administrative system.

*Article 6.*

State organs at or above the county level and units involved with state secrets shall, according to the actual situation, establish secrets preservation organizations or designate personnel to manage the daily work of preservation of state secrets in their own organs and units.

*Article 7.*

Units or individuals with outstanding achievements in such areas as the preservation and protection of state secrets and the improvement of secrecy preservation technology or measures shall be given encouragement and reward.

**Chapter Two. Scope of State Secrets and Grades of Secrecy**

*Article 8.*

State secrets include the following secret matters that meet the provisions of Article 2 of this Law:

- (i) Secret matters in major policy decisions on state affairs;
- (ii) Secret matters in national defense construction and activities of the armed forces;
- (iii) Secret matters in diplomatic and foreign affairs activities and matters with respect to which the obligation of confidentiality has been undertaken vis a vis foreigners;
- (iv) Secret matters in national, economic and social development;
- (v) Secret matters in science and technology;
- (vi) Secret matters in activities for the defense of state security and the investigation of crimes; and
- (vii) Other state secret matters that the state secrecy preservation departments determine should be preserved.

Matters that do not meet the provisions of Article 2 of this Law are not state secrets.

Those secret matters of political parties that meet the provisions of Article 2 of this Law are state secrets.

*Article 9.*

State secrets are classified into three grades of secrecy: "top secret," "highly secret," and "secret."

"Top secret" is for the most important state secrets, whose revelation would cause the security and interests of the State to suffer extremely serious harm. "Highly secret" is for important state secrets, whose revelation would cause the security and interests of the State to suffer serious harm. "Secret" is for ordinary state secrets, whose revelation would cause the security and interests of the State to suffer harm.

*Article 10*

The specific scope of state secrets and their grades of secrecy shall be stipulated by the state secrecy preservation departments in conjunction respectively with the foreign affairs, public security and state security organs, and other relevant central organs.

The specific scope of state secrets in the national defense area and their grades of secrecy shall be stipulated by the Central Military Commission.

Provisions on the specific scope of state secrets and their grades of secrecy shall be promulgated within the relevant spheres.

*Article 11.*

State organs and units at various levels shall determine the grade of secrecy of the state secret matters they generate in accordance with the provisions on the specific scope of state secrets and their grade of secrecy.

With respect to matters for which it is unclear whether or not they are state secrets and to which grade of secrecy they belong, a determination shall be made by the state secrecy preservation departments, the secrecy preservation departments of the provinces, autonomous regions and municipalities directly under the central authorities, the secrecy preservation departments of the cities in which the governments of the provinces and autonomous regions are located and the secrecy preservation departments of relatively large cities approved by the State Council or organs approved by the state secrecy preservation departments. Before the grade of secrecy has been determined, the organ or unit that has generated the matter in question shall first adopt secrecy preservation measures in accordance with the provisionally established grade of secrecy.

*Article 12.*

Documents and materials that constitute state secrets shall be marked with the grade of secrecy in accordance with the provisions of Articles 9, 10 and 11 of this Law. Those that do not constitute state secrets shall not be marked as state secret documents and materials.

*Article 13.*

Where there is a dispute as to whether a matter is a state secret and what grade of secrecy it falls into, the matter shall be determined by state secrecy preservation departments or the secrecy preservation departments of the provinces, autonomous regions or municipalities directly under the central authorities.

*Article 14.*

When an organ or unit determines the grade of secrecy of a state secret matter, it shall, according to the circumstances, determine a time period

for preservation of secrecy. Specific measures on determining the time period for preservation of secrecy shall be stipulated by the state secrecy preservation departments.

*Article 15.*

The grades of secrecy of state secret matters and time periods for preservation of secrecy shall be promptly modified in light of changes in circumstances. Modifications of grades of secrecy or time periods for preservation of secrecy shall be decided by the organ or unit that originally determined the grade of secrecy and time period for preservation of secrecy, and may also be decided by the higher-level authority of such organ or unit.

*Article 16.*

State secret matters shall be automatically declassified when the time period for preservation of secrecy expires. When the time period for preservation of secrecy requires extension, the decision shall be made by the organ or unit that originally determined the grade of secrecy and the time period for preservation of secrecy or by its higher-level authority.

If state secret matters, during the period for preservation of secrecy, no longer need to be kept secret, the organ or unit that originally determined the grade of secrecy and the time period for preservation of secrecy, or its higher-level authority, shall promptly declassify them.

### **Chapter Three. Secrecy Preservation System**

*Article 17.*

Secrecy preservation measures for the production, receipt and dispatch, transmission, use, reproduction, excerption, storage and destruction of documents, materials and other items that constitute state secrets shall be formulated by the state secrecy preservation departments.

Measures for the use of such technology as electronic information for the storage and retrieval, processing and transmission of state secrets shall be stipulated by the state secrecy preservation departments in conjunction with the relevant central organs.

*Article 18.*

The following secrecy preservation measures must be adopted for state secret documents, materials and other items of the top secret grade:

- (i) They must not be reproduced and excerpted without the approval of the organ or unit that originally determined the grade of secrecy or its higher-level authority;
- (ii) Their receipt and dispatch, transmission and carrying outside must be undertaken by designated personnel and necessary security measures adopted;
- (iii) They must be stored in secure facilities with foolproof equipment.

With respect to approved reproductions and excerpts of state secret documents, materials and other items of the top secret grade, secrecy preservation measures shall be adopted in accordance with the provisions of the preceding paragraph.

*Article 19.*

Secrecy preservation measures for the development, production, transportation, use, storage, maintenance and destruction of equipment or products that constitute state secrets shall be formulated by the state secrecy preservation departments in conjunction with the relevant central organs.

*Article 20.*

In the publication and distribution of newspapers and magazines, books, maps, pictorial materials and audio and video products, as well as in the production and broadcasting of radio and television programs and films, the relevant secrecy preservation provisions shall be observed and state secrets may not be disclosed.

*Article 21.*

When it is necessary in the course of contacts and cooperation with foreign parties to provide state secret matters, the matter shall be approved in advance in accordance with stipulated procedures.

*Article 22.*

Units sponsoring meetings and other activities involving state secrets shall adopt secrecy preservation measures and carry out education of participating personnel in secrecy preservation, stipulating specific requirements.

*Article 23.*

Military areas and other sites and locations involving state secrets that are not open to the outside shall adopt secrecy preservation measures. Unless it has been approved in accordance with the relevant state provisions, unauthorized decisions may not be made open to the outside or expand the scope of access.

*Article 24.*

Disclosure of state secrets in private contacts and correspondence is not permitted.

When documents, materials and other items that constitute state secrets are carried out, the relevant secrecy preservation provisions may not be violated.

Discussion of state secrets in public places is not permitted.

*Article 25.*

Secrecy preservation measures must be adopted in the transmission of state secrets by wire or wireless communication.

The transmission of state secrets in open code or in secret code that has not been examined and approved by the relevant central organs is not permitted.

The transmission of documents, materials and other items that constitute state secrets through the ordinary mail is not permitted.

*Article 26.*

Without having obtained approval of the relevant departments in charge, it is forbidden to carry, transmit or send documents, materials or other items that constitute state secrets outside of the border.

*Article 27.*

Contact with state secrets shall, according to need, be restricted to personnel within a certain scope. Only approved personnel can come into contact with state secrets of the top secret grade.

*Article 28.*

Specialized personnel appointed to manage state secret matters shall be examined and approved in accordance with the provisions of the state secrecy preservation departments and the departments in charge of personnel.

The departure from the territory of specialized personnel who manage state secret matters shall be approved by the organ that appointed them upon approval. If the relevant departments in charge of the State Council consider that, after their departure from the territory, such individuals will cause harm to state security or cause serious loss to the interests of the State, their departure from the territory may not be approved.

*Article 29.*

Organs and units shall carry out education of their personnel in secrecy preservation, and inspect the work of secrecy preservation on a regular basis.

*Article 30.*

When state personnel or other citizens discover that state secrets have been disclosed or may be disclosed, they shall immediately take remedial measures and promptly report the matter to the relevant organs or units; after receiving such reports, the relevant organs or units shall immediately handle the matter.

#### **Chapter Four. Legal Responsibility**

##### *Article 31.*

In cases of violation of the provisions of this Law involving the intentional or negligent disclosure of state secrets, when the circumstances are serious, criminal responsibility shall be investigated in accordance with the provisions of Article 186 of the Criminal Law.

In cases of violation of the provisions of this Law involving the disclosure of state secrets that is not sufficient to warrant criminal punishment, consideration may be given under the circumstances to the imposition of administrative sanctions.

##### *Article 32.*

In cases of theft, gathering, purchase or illegal provision of state secrets to or for organizations, groups or individuals outside of the territory, criminal responsibility shall be investigated in accordance with the law.

#### **Chapter Five. Supplementary Provisions**

##### *Article 33.*

The state secrecy preservation departments shall formulate implementing measures in accordance with this Law which shall be implemented after reporting to and approval by the State Council.

##### *Article 34.*

The Central Military Commission shall formulate secrecy preservation regulations for the China People's Liberation Army in accordance with this Law.

##### *Article 35.*

This Law will be implemented from May 1, 1989. The Provisional Regulations for the Preservation of State Secrets promulgated in June 1951 shall be simultaneously rescinded.

##### *Appendix.*

The text of Article 186 of the Criminal Law:

State personnel who violate the laws and regulations of the state on the protection of state secrets, disclosing important state secrets, when the circumstances are serious, are to be sentenced to not more than seven years of fixed-term imprisonment, criminal detention or deprivation of political rights.

Where persons who are not state personnel commit the crime in the preceding paragraph, consideration is to be given according to the circumstances to punishing them in accordance with the stipulations of the preceding paragraph.