

China defines commercial secrets, tells firms to protect them

Written by The Wall Street Journal
Tuesday, 27 April 2010 15:16

SHANGHAI—China's government on Monday offered broad examples of what constitutes a commercial secret, following criticism during a recent trial of Rio Tinto PLC executives that its framework lacked transparency.

The trial highlighted the issue as a major vagary of doing business in China. Even after the four men were found guilty, almost nothing was known of what commercial secrets they allegedly stole, offering little guidance for companies moving forward.

However, the fresh parameters offered in a Monday statement by the state-owned Assets Supervision and Administration Commission were wide-ranging and vague, and may have done little to clarify matters.

The government mainly emphasized how companies hold responsibility. Chinese companies "should attach great importance to the protection of trade secrets," said the commission, which oversees the government's holdings in more than 120 of the country's biggest business groups.

In its 34-clause notice, the commission said secrets range from financial information to strategic plans, from technology to mergers, procurement to restructuring—virtually anything that hasn't been publicly disclosed and could hold economic value to the company.

China's government traditionally has characterized secrets in broad terms, as both commercial information that it fears undermines the interests of its corporations and as state secrets that may put the nation's sovereignty at risk. Information in foreign hands is regarded as particularly sensitive. Chinese courts have been known to convict citizens on secrets charges for mailing newspaper clippings overseas.

China defines commercial secrets, tells firms to protect them

Written by The Wall Street Journal
Tuesday, 27 April 2010 15:16

China's obsession with secrets was highlighted at the recent trial of the executives of Anglo-Australian miner Rio Tinto. The salesmen were detained last July on allegations of taking state secrets, and later formally arrested, tried and convicted on charges they stole commercial secrets.

The rules, announced Monday, are dated March 25, the day after the trial ended. It is unclear whether they had any bearing on the trial, which also included bribery charges. In sentencing the four men to terms of seven to 14 years on March 29, the judge made no reference to any new guidelines.

The sentences suggested the court considered the commercial-secrets violations as lesser offenses than bribery. Australian Stern Hu was sentenced to five years in jail for illegally obtaining commercial secrets and seven years for taking bribes, for a total sentence of 10 years plus fines.

But secrets were a particular concern for foreign businesses. Chinese prosecutors never publicly detailed what information the men—who were later fired by Rio Tinto—possessed. When they were sentenced, the judge said the secrets primarily involved how much Chinese steelmakers were willing to pay for iron ore, information executives at other companies considered routine market intelligence.

Under the newly published rules, details of negotiations involving government-owned companies—such as iron-ore pricing talks—are considered commercial secrets.

The Chinese steel industry previously paid more attention to core technology secrets, while business information was sometimes poorly protected, said Bai Fang, spokesman with Wuhan Iron & Steel Group. "The rules make the steel industry realize that some operating information constitutes commercial secrets, too," he added.

China defines commercial secrets, tells firms to protect them

Written by The Wall Street Journal
Tuesday, 27 April 2010 15:16

State companies now are required to classify commercial secrets internally, by their importance. In some cases, commercial secrets relating to operations and technology of state companies will be deemed national state secrets, the rules said.

Some secrets at central government-owned companies, the notice said, will have expiration dates. Employment contracts at the companies will now require confidentiality clauses, it stated.

The rules didn't offer details of how violations will be penalized, except to say breaches will be referred to judicial authorities.