



The Honey Pot: Bliss or Abyss?

By: John Ybarra
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You don't want to get trapped in a foreign jurisdictional Honey Pot, especially in China.

What is The Honey Pot? The Honey Pot is a term created by AmerAsia Law LLC describing the amazing bliss and the frightening abyss facing corporations and law firms doing business in foreign markets, especially inside the People's Republic of China ("PRC"). Many of these entities need to store, access, share and export critical data (the Honey) outside the foreign jurisdiction while simultaneously complying with the foreign jurisdiction state secrets law (the Pot).

There is no need to explain the amazing bliss associated with doing business with the Chinese people. This article focuses on the Honey Pot: what it is and how to avoid issues with it.

In a series of examples, this article explores instances involving individuals getting caught in The China Honey Pot itself. Next, it gives a high-level overview of the laws regulating Chinese data and state secrets. Finally, AmerAsia Law describes its proven, turnkey solution, across the pacific, to make sure you don't get caught in The Honey Pot.

The first example is of geologist Xue Feng, a naturalized American citizen born in

China, convicted in July 2010, of violating China's state secrets laws after he obtained an oil industry database for his employer, IHS Energy, a consulting company in Colorado.¹ His lawyers said the information was classified as secret only after he bought it.² Given the government's control of domestic petroleum production, several Western industry experts questioned whether possessing such data could have any impact on China's security.³ The American ambassador, Jon M. Huntsman Jr., attended the hearing at the Municipal High People's Court in Beijing.⁴ Ambassador Huntsman said he was disappointed by the ruling which included a fine of about \$30,000 and eight years in prison.⁵

Next, on August 4, 2014, the Garratts, a Canadian couple, were arrested in Dandong, China and taken into separate cars to detention facilities.⁶ The Garratts would not see each other again for two years.⁷ The Garratts had no idea that they were in the custody of the Ministry of State Security.⁸ A translator informed them that they were being held on suspicion of spying.⁹ The Garratts were unaware that six weeks earlier in Vancouver, Su Bin, a Chinese aviation entrepreneur, had been accused by the United States of conspiring with two Chinese soldiers to steal secret United States military data.¹⁰ Those supporting the Garratts say the couple were simply chess pieces in a larger geopolitical skirmish.¹¹ "The Chinese made it clear that the Garratt case was designed to pressure Canada to block Su Bin's extradition to the U.S.," said James Zimmerman, an American lawyer in Beijing hired by the family to lobby



Canadian and Chinese government officials for their release.¹²

Again, in March 2015, Phan Phan-Gillis, an American woman doing business in China, disappeared from her group while traveling in southern China.¹³ Phan-Gillis was taken by Chinese authorities and accused of espionage which carries a possible death sentence.¹⁴ It took two weeks for her husband to gain confirmation that his wife was being held by Chinese authorities.¹⁵ Phan-Gillis's Chinese attorney, Shang Baojun, told The Associated Press last year that Phan-Gillis was charged with spying, but he could not discuss the case further because it involved state secrets.¹⁶ Jeff Gillis, Phan's husband, said that he was told his wife was accused of conducting a spy mission in 1996, and then trying to recruit new spies the following two years.¹⁷ Jeff Gillis denies these allegations calling them "beyond ridiculous."¹⁸

On April 24, 2018, the United States State Department confirmed that Phan-Gillis was sentenced to 3 1/2 years in prison. Although Phan-Gillis's trial was closed to the public, an American representative from the American Consulate in Guangzhou, China was allowed to attend the public announcement of the verdict against her.¹⁹ The Dui Hua Foundation said Phan-Gillis was the first American citizen to be convicted of spying in a Chinese court since 1973 and that Phan-Gillis' 3 1/2-year prison term is on the low end of sentences for espionage charges, according to Dui Hua's research.²⁰

Finally, on April 15, 2018, the Chinese Government released a series of cartoon style ads in Beijing showing a Chinese woman being approached by a handsome foreigner who is a scholar.²¹ "The scholar, named Dawei or David, showers her with compliments, red roses, fancy dinners and romantic walks in the park, and convinces the girl to provide him with internal documents from her government propaganda workplace." ²² The cartoon ends showing the Chinese woman being taken away by Chinese Security Officials.²³



Beijing launched this new campaign the same week Chinese state media reported that a man convicted of leaking more than 150,000 classified documents to an



undisclosed foreign power had been sentenced to death.²⁴

The man put to death was a computer technician from Sichuan named as Huang Yu.²⁵ Yu worked for a government department which handled state secrets, but he was a bad employee and was fired.²⁶ The report of Yu's death did not disclose the place or time of Yu's execution.²⁷

From these and other examples, it is clear that the Chinese Government is tightening its regulation and enforcement of its state secrets law. Which leads to the next question: what are the rules regulating Chinese Honey, the Honey Pot and the Trap? In China, State Secrets is the Big One.

Chinese state secrecy law has several sources and has been updated over the years. In 1951, two years after the Chinese Communist Party consolidated its power, the PRC created the Provisional Regulations for the Preservation of State Secrets.²⁸ The purpose of the 1951 Regulations was, to prevent "spies inside or outside the country, counter-revolutionary elements and subversive elements from prying into, stealing or selling state secrets."²⁹

On May 1, 1989, China implemented the new Law of the People's Republic of China on the Preservation of State Secrets (herein "State Secrets Law of 1989").³⁰ The State Secrets Law of 1989 defines a state secret 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."³¹

Further, Article 8 of the State Secrets Law of 1989 expands on the definition of what is a state secret to include the following issues:

- (1) major policy decisions on State affairs;
- (2) the building of national defense and the activities of the armed forces;
- (3) diplomatic activities, activities related to foreign countries, and information maintained as commitments to foreign countries;
- (4) national economic and social development;
- (5) science and technology;
- (6) activities for safeguarding State security and the investigation of criminal offences; and
- (7) other matters that are classified as State secrets by the State secret-guarding department.³²

Finally, Article 32 of the State Secrets Law combined with the Chinese Criminal Code, imposes 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.³³

With lives on the line, how does a corporation, or law firm collect, host, review, and produce data across the pacific safely?



AmerAsia Law's China Solution.

AmerAsia Law is a thought leader in data retrieval inside the PRC. AmerAsia Law has attorneys, security and data professionals on the ground inside the PRC, across China, Asia and America ready to provide defensible, data collections, reviews and productions.

First, AmerAsia Law implements a concept known as "dual defensibility." Dual defensibility means conducting data collection, hosting, review, and production that is legally defensible in the United States and complies with Chinese State Secrets Law.

AmerAsia Law ensures compliance with Chinese State Secrets Law by employing a team of trained, PRC certified attorneys to review all data for state secrets before the data is ever viewed by a foreign party or taken outside the country. AmerAsia Law has a network of premier attorneys, known as the "AmerAsia Alliance", all across China, Asia and America. These lawyers ensure that your data is reviewed for state secrets before it is viewed by a foreign party ensuring compliance with the PRC's state secrets law.

Further, AmerAsia Law is fully equipped with data centers, hosting/review software, cyber-security professionals, and data/discovery professionals ready to provide your team with a turnkey solution inside the PRC.

Finally, AmerAsia Law is prepared to defend its work in Chinese Court and US Court ensuring protection for you and your team at home and across the Pacific.

For more information, please contact Amer Asia Law at info@amerasia.com

¹ Andrew Jacobs, (2011), "China Upholds Conviction of American Geologist", New York Times.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Dan Levin, (2017), "Couple Held in China Are Free, but "Even Now We Live Under a Cloud", New York Times.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Associated Press, (2017), "Chinese Court Sentences U.S. Businesswoman Accused of Spying", nbcnews.com.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Vivian Kam, Anna Kook and Georgia McCafferty, (2016) "The spy who loved me? Chinese warned on dating foreigners", cnn.com.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Reuters, (2016), "Chinese man sentenced to death for leaking 150,000 classified documents", The Guardian.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Baoshou GuojiaJimi Zanxing 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).

²⁹ 1951 Regulations, art. 1.

³⁰ 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 Sept. 5, 1988) (trans. by Paul, Weiss, Rifkind, Wharton & Garrison).

³¹ State Secrets Law, art. 2.

³² State Secrets Law, art. 8.

³³ The Criminal and The Criminal Procedure Law of China, note 34, art. 97(1), (1984); State Secrets Law, art. 32.