

MANAGED DISCOVERY

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Lessons Learned and Best Practices for Doing Document Review in China

By Michael Vella, Managed Discovery



Managed Discovery understands the needs of lawyers because we have walked in your shoes, including down the unusual paths of the People's Republic of China. Our team of legal specialists has more than a decade of experience handling litigation and investigations involving documents and witnesses residing in China. Through this experience, we have formed definite views about how PRC document review can be managed efficiently, qualitatively, and in compliance with local law.

In connection with the launch of our China Document Review Service, we are pleased to share the top four lessons we have learned about the China review environment in this series of articles. Here is our third lesson in the four part series.

Lesson 3: Compliance Review Is Not Just About State Secrets

Challenge: When international firms and clients think about document review in China, they understandably focus on the risks of violating the China State Secrets Law when exporting documents. While this law is serious, it is not the only issue, or even the riskiest one, you are likely to confront in a China document review.

If the Chinese authorities have followed the State Secrets Law, there is little chance that a foreign company will unknowingly possess any Chinese state secrets. Indeed, if for some reason, the government deemed it necessary to share a state secret with a foreign entity, the State Secrets Law requires the government to clearly label the

document as a state secret and to ensure the company is aware of its obligation to maintain its secrecy under the law. Probably for this very reason, there is no reported case of a foreign company being prosecuted under the State Secrets Law for exporting its own documents.

In our estimation, the larger compliance risk for international companies involves possible violations of the Chinese privacy laws. Although privacy remains something of a gray area under Chinese law, several government agencies have issued increasingly strict regulations, and unlike state secrets, every foreign company is in possession of private information. Furthermore, the employees whose data you are imaging and reviewing are fully aware of their privacy rights and do not hesitate to raise complaints to local authorities. This makes privacy an important part of any compliance review process.

Solution: Because privacy-related risks arise in every case, Managed Discovery prefers to talk about the process of compliance review more generally, and not just about state secrets review. As part of the compliance review process, companies and law firms should not only ensure that the document review is sensitive to State Secrets concerns, but also must be careful to identify and protect private information. This

may involve significant redaction of personally identifiable information (PII). In addition, the best-managed compliance teams take a proactive approach to privacy risks in China by obtaining employee consents to disclosure, copying, and export of their private information during the hiring process or at least prior to collection of employee data. The Chinese privacy laws allow considerable flexibility for the review process when such consents are in place. Accordingly, Managed Discovery recommends talking with your Chinese counsel about these matters in advance of any document review. Working with your counsel, we can then implement a compliance review process to reduce your company's risk.

JUST ONE MORE THING

Managed Discovery takes document review to the next level of quality wherever we go. Our China Document Review Service is the result of more than a decade of experience that our China team leader gained while working at two international law firms in Shanghai. As a result, we believe our service offers a unique combination of quality, compliance, and cost.

Watch for future papers to learn...

Lesson 4: Not All Local Lawyers Are Created Equal
We invite you to contact us for more information.

MICHAEL VELLA

Vice President of Business Development

Having lived and worked in China for more than 10 years, I understand the full range of risks and opportunities of doing business here. In addition to handling IP risks, I have helped companies handle some of their most sensitive operational issues in China, including resolving matters involving theft, fraud and corruption. I have handled compliance investigations involving the Foreign Corrupt Practices Act (FCPA), Chinese anticorruption laws, the UK Bribery Act, U.S. securities laws, and the Office of Foreign Assets Control (OFAC).

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