



International Distribution Institute

# IDI CONFERENCE 2024

## Workshop 3: Collection and use of customers' data Contractual solutions China

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# I.1 Legal framework for customer data:

## 1. Personal Data Protection: PIPL, CSL, DSL

- ❖ *Personal Information Protection Law of the People's Republic of China (Effective Date: 11-01-2021) (PIPL)*
- ❖ *Cybersecurity Law of the People's Republic of China (Effective Date: 06-01-2017) (CSL)*
- ❖ *Data Security Law of the People's Republic of China (Effective Date: 09-01-2021) (DSL)*
- ❖ *Other related laws and provisions*

## 2. Trade secrets :

- ❖ *Anti Unfair Competition Law (Effective date: 04-23-2019) (AUCL)*
- ❖ **No qualification of “goodwill” as understood in EU**

# PIPL - GDPR

With reference to the General Data Protection Regulation (GDPR), the types of rights granted to individuals under PIPL are **basically the same.**

- Right to know and consent
- Right of refusal
- Right of access, reproduction
- Right of data portability
- Right of deletion
- Right of correction and supplementation



## I.2 Legal framework for distribution and franchise agreements:

### 1. **Distribution** : No specific statutory provisions

⇒ General Provision of Contract Article 463-594, Chapter VII Agency of General Provisions in Civil Code apply.

### 2. **Franchise** : Not specified in the Civil Code

- ❖ *Regulations on the Administration of Commercial Franchise (RACF) (2007)*
- ❖ *Administrative Measures for Commercial Franchise Filing (2023)*
- ❖ *Administrative Measures for Commercial Franchise Disclosure (2012)*

## II. Customer data qualified as trade secret

### Article 9 of AUCL

(3) violate confidentiality obligation or violate a rights holder's requirements on keeping confidentiality of **commercial secrets**, and disclose, use or allow others to use such commercial secrets they obtained;...

Commercial secrets referred to in this Law shall mean **commercial information** such as **technical information** and **business information**, which is **not known to the public**, has **commercial value** and for which the rights holder has adopted the corresponding **confidentiality measures**.

## II. Customer data qualified as trade secret

*Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Trade Secret Infringement (Provisions)*

- **Technical information** such as algorithm, data
- **Commercial information** such as customer information, and data related to the business activities

**Customer information** includes name, address, and contact details of customers, as well as information on transaction practice, intent, contents, etc.

## **III. Ownership, use and protection of customer data**

Customer data can be protected as trade secret and trade secret belongs to the operator who processed the customer data.

Provided the consumer's consent has been obtained in accordance with PIPL and the relevant processing principles have been fulfilled, the operator may use the customer data to carry out commercially necessary acts.



## CASE STUDY

1. Chongqing JSQ Internet Technology Co., Ltd. v. Chen.
2. Company A in Hong Kong v. Wei-B, Hu, etc.

Case 1 see in the awards (2022)渝0192民初716号

Case 2 see in the awards (2021)最高法知民终312号



# Conditions for qualification as trade secrets:

## ❖ **Secrecy:** "not known to the public"

including customer's contact information, address, ,intention and habits of the transaction and more in-depth analysis of the customer's habits and behaviors based on the experience gained from long term dealings with the customer.

# Conditions for qualification as trade secrets:

## ❖ Confidentiality Measures

usually include the method of processing customer information, which can be linked to several laws on data compliance, and compliance with the rules on data processing

Additional protection: Non-competition clauses

# Conditions for qualification as trade secrets:

## ❖ Value

Data results have been analyzed and processed by the data processor or have been subjected to other forms of labor, so as to process the data that originally had no value or less value into the data that has high commercial value.

Facilitate a transaction but also explore even more potential business value so that the person who obtains this customer list can gain an advantage and an active position.

Including **customer's specific trading habits, intentions, ways, preferences, etc., which is accumulated in long-term business transactions and is difficult to access by the general people.**



# Related clauses

- **Specify which party owns rights on customer data**
- **Address data collection, processing, and consent.**
- **Ensure compliance with privacy laws (e.g., GDPR).**
- **Define data security measures.**
- **Approval before sharing data with third parties**

# Related clauses

- ❖ **Confidentiality**
- ❖ **Breach and Remedies**
- ❖ **Assignment and Sub-contracting**
- ❖ **Representations and Warranties**
- ❖ **Termination (processing/transfer/destruction of data, compensation)**
- ❖ **Reporting (update list of customers, regular reporting on activities)**

# China specificities to consider:

- ❖ Language Barrier
- ❖ Market with its own specific networks
- ❖ Reporting obligations shall be closely followed