

IPBA Journal

September 2023

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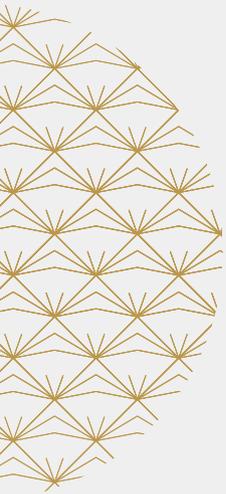
NEWS & LEGAL UPDATE

Artificial
Intelligence ('AI')
and the Law



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BAR ASSOCIATION

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IPBA

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24-27 APRIL

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New World, New Wisdom

Date

April 24-27, 2024

Venue

The Okura Tokyo, JAPAN

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c/o JTB Communication Design, Inc.
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IPBA 2024 Tokyo

The Inter-Pacific Bar Association (IPBA) established in April 1991 at an inaugural conference held in Tokyo is an international association of business and commercial lawyers who live, or have a strong interest, in the Asia-Pacific region. IPBA 2024 TOKYO provides the collaboration of Inter-Pacific countries, seeing a more integrated approach of doing business and creating opportunities across and even beyond its reach.

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The President's Message

Richard Briggs
President



Dear Colleagues, Members and Friends,

Here we go again ... it seems like yesterday that I had scripted the last President's message.

It is now September of 2023 and I am very much looking forward to the IPBA Mid-Year Council Meeting and Regional Conference in Jakarta next week. I am particularly looking forward to seeing everyone, although I have a little trepidation about Jakarta's infamous traffic.

The meetings in Jakarta stretch from a Friday evening Drinks Reception on 15 September through Committee Meetings and dinners on 16 and 17 September, to the Regional Conference entitled 'Capitalising on Indonesia's Imperative Capitals: The New Capital City, Human Capital and Investment Capital' on Monday 18 September. This is being held at the InterContinental Hotel Pondok Indah in Jakarta, Indonesia. Indonesia is of course a huge country and an important jurisdiction for the IPBA, and hopefully we can use the Mid-Year's Regional Conference as a springboard to try to develop more Indonesian interest and eventually members. I would like to thank our current Indonesian members for their efforts in volunteering to host us in Jakarta.

My Presidency (the second year of the slightly unique two-year Presidency as a consequence of Covid-19) runs through to the next Annual Meeting and Conference in Tokyo from 24 to 27 April 2024, where I will hand over the Presidency to our current President-Elect, Miyuki Ishiguro. My plan is of course to support Miyuki in the preparations and marketing for the Tokyo Conference and to try to increase both the membership and the number of attendees from the numbers we had in early 2023 in Dubai. While we are

proud of the numbers we achieved in Dubai, we hope that the membership and attendee numbers will soon revert back to pre-Covid levels, to put the IPBA back in a similar position as it was in Singapore in 2019.

To this end, I hope to participate as IPBA President in Indian Arbitration Week in Delhi in mid-October, as well as attend the 36th LawAsia Conference in Bengaluru, India from Friday, 24 to Monday 27 November 2023. I also hope to be involved in the preparations for the Tokyo Conference, and possibly attend as many receptions as I can (enjoying the immense privileges of the Presidency when it comes to attending receptions!).

As a last point and on a personal level, I am Chair of the Host Committee for the International Congress of Maritime Arbitrators ('ICMA') Conference from 5 to 10 November 2023 in Dubai. This Conference is to be hosted by the Dubai International Arbitration Centre (aka 'DIAC'), of which I have recently been appointed to the Board. In the same way as I have urged other organisations to support the IPBA, it will be great if those of you interested in either or both of the Maritime and Arbitration businesses could come and support the ICMA in November.

Onwards and forwards we go ...

Yours sincerely,

Richard Briggs | President



The Secretary-General's Message

Jose Cochingyan III
Secretary-General



Dear Fellow IPBA Members,

Artificial Intelligence, it has been said, will replace lawyers, or a large part of what we do. But the threat of artificial intelligence to our profession may not be due to the entry of this new technology but rather the artificiality of how our profession practises law. There is a tendency to address issues with repetitive textbook answers or a laundry list of regulations—and I submit that the artificiality of the copy-and-paste approach in the practice of law is where artificial intelligence can replace lawyers. Justice Oliver Wendell Holmes has oft been quoted as saying that the life of the law lies not in logic but in experience, and that experience is what will hone and nurture the sensibility that lawyers should have for their client's cause, their passion for scholarship and their love of the law. I am confident that as long we are able to maintain the rhythm of human experience in how we practise law and the resulting intuitive sense of what the solution would be, we will not as a profession be replaced by the algorithm of digital bits.

In this sense, artificial intelligence does not bring about a disruption in our noble profession, but rather a liberation. It is the liberation from what is mundane and mediocre and our elevation in the sincerity of our service to our clients. It is the elevation of that experience that will transform mechanical and predictive logic into true legal wisdom.

And this experience is what I revel in when I attend the many sessions of the IPBA, not only at our annual conferences but also at our regional meetings and specialised events. The collective celebration of this experience is what we share when we come together at our gatherings, not only in the rooms where panel discussions are held but also in the cavernous halls where we meet for drinks and a chat. We have several opportunities lined up for us to dive into this exuberant exchange. These are already scheduled as of this writing

or may have already been held by the time you get your hands on this Journal. There is the IPBA Arbitration Day on 30 August 2023 in Singapore; the seminar on Indonesia's Imperative Capital on 18 September 2023 in Jakarta; the IPBA breakfast in Paris on 28 September 2023; the IPBA Latin American Regional Forum from 30 November to 2 December 2023 in Lima; the IPBA US Regional Event in Los Angeles on 6 December 2023; and finally, the grand event that everyone looks forward to, the IPBA Annual Conference in Tokyo from 24 to 27 April 2024. If you have missed some of these events by this time, do explore how you can attend those that are yet to be held. And of course, we must do all that we can not only to attend the Tokyo Conference but to participate in the many panel discussions that are on offer. Contact your committees now and offer yourself as speakers. In Tokyo, you must be there and be heard.

Jose Cochingyan III | Secretary-General



Message to the Reader



Welcome to the September issue of the IPBA Journal. We have chosen Artificial Intelligence ('AI') and the Law as the focus of this edition. Since the recent launch of ChatGPT, everyone has been talking about AI. It is disrupting almost every industry and profession, including the legal industry, and it is having an immense effect on how lawyers practise law. Nowadays, AI is being used to draft contracts, predict legal outcomes, recommend judicial decisions, find relevant documents and undertake legal research at a much faster pace than any human lawyer can do it.

The pace at which AI and technology is advancing is also causing some challenges for the legal industry. The general principles of law have remained the same for generations, yet the way we practise law is constantly changing. Lawyers often seek ways to optimise processes and improve practices. As lawyers are in the service industry, it is important to balance adoption of the best available technology with maintaining a personal connection with clients (always trying to put people first). It will be interesting to see how over time AI evolves to impact the legal industry. For now, AI is more likely to aid than replace lawyers in the near term, but the possibilities for future innovation are endless.

As for articles relevant to this edition, we would like to express our gratitude to all the authors who have contributed to the Journal. Perhaps due to the popularity of the topic, we received an overwhelming amount of support and interest from our members. This issue consists of nine articles with topics ranging from the impact of AI in dispute resolution, regulation of AI, AI and the practice of law, AI and financial crime, the impact of AI on human resources and a detailed discussion of AI and law across different jurisdictions, including China, India, Malaysia, Australia and New Zealand. We have also included a special Q&A interview with our IPBA member

Eunice Tan from Hong Kong. These interviews aim to provide human stories of our members behind the legal profession.

The Publications Committee is currently engaged in a review of the publication guidelines. We aim to initiate a discussion on a new set of guidelines by the IPBA Officers and Council for consideration during the next Council meeting in Jakarta.

As always, Olivia Kung (Vice-Chair of the Publications Committee) and I are very grateful for the continued proactive responses and support from our members. We hope that all readers enjoy what is yet another issue of the Journal replete with many interesting and informative articles from contributors covering a wide geographical span. We encourage all members to continue submitting articles for consideration for publication in future issues of the IPBA Journal.

Yours sincerely,

James Jung | Chair, Publications Committee

We apologise for neglecting to include the following member among the IPBA New Council Members in the June edition of this Journal:

Committee Chair

Legal Practice

Abraham Vergis, S.C.

Providence Law Asia LLC, Singapore



IPBA Upcoming Events

Event	Location	Date
IPBA Annual Meeting and Conferences		
32nd Annual Meeting and Conference	Tokyo, Japan	24-27 April 2024
33rd Annual Meeting and Conference	Chicago, IL, USA	1st Quarter 2025
IPBA Mid-Year Council Meeting and Regional Conference		
IPBA Council Meetings (Council Members only)	Jakarta, Indonesia	16-17 September 2023
Regional Conference: Capitalizing on Indonesia's Imperative Capitals: The New Capital City, Human Capital, and Investment Capital	Jakarta, Indonesia	18 September 2023
IPBA Local and Regional Events		
IPBA Dispute Resolution & Arbitration Committee	New Delhi, India	13 October 2023
IPBA International Construction Projects Committee	New Delhi, India	14 October 2023
IPBA South America Regional Conference	Lima, Peru	30 November- 2 December 2023
IPBA North America Regional Conference	Los Angeles, CA, USA	6 December 2023

More details can be found on our web site: <https://ipba.org>
The above schedule is subject to change.

Join the Inter-Pacific Bar Association

Since its humble beginnings in 1991 at a conference that drew more than 500 lawyers from around the world to Tokyo, the IPBA has blossomed to become the foremost commercial lawyer association with a focus on the Asia-Pacific Region. Benefits of joining IPBA include the opportunity to publish articles in this IPBA Journal; access to online and printed membership directories; and valuable networking opportunities at our Annual Meeting and Conference as well as 10 regional conferences throughout the year. Members can join up to three of the 24 committees focused on various of commercial law practice areas, from banking and finance, to insurance, to employment and immigration law, and more. We welcome lawyers from law firms as well as in-house counsel. IPBA's spirit of camaraderie ensures that our members from over 65 jurisdictions become friends as well as colleagues who stay in close touch with each other through IPBA events, committee activities, and social network platforms. To find out more or to join us, visit the IPBA website at <https://ipba.org>.



Let's All Drink Pisco in Lima before Christmas!

We wish to inform you through this article about the upcoming IPBA Latin American Regional Conference to be held between 30 November and 2 December in the city of Lima, Peru. During the event, IPBA members will gather around sessions and social events with a tropical taste and a view of Peru's coastline, under the title 'Influence of International Business and Litigation Standards in Latin America'.

The Conference will discuss the latest global practices through a Latin American lens under the form of three panels: (1) ESG landing in LatAm: effects, costs and opportunities; (2) ESG dispute resolution in international arbitration; and (3) Cyber-security in Latin America: the dos, the don'ts and the legal issues you need to understand.

Your Latin American friends, and the friends from Latin America who have agreed to join us in Lima, seek to expose the international corporate and business standards, trends and practices that are being embraced in the region in areas such as M&A and investment projects, arbitration disputes, data protection and cybersecurity, with a special focus having been reserved for ESG. The application of these standards is a great opportunity for, and a challenge to, the legal community, as more and more corporate clients are seeking to implement them.

As coincidences do not exist, this Conference is taking place in Lima, Peru, during the celebrations of the 2023 UN Climate Change Conference COP28 taking place in Dubai. Sustainability, which goes hand-in-hand with climate change issues, is not only a matter of societal importance, but now it is also a matter of corporate and legal concern, with a well-driven ESG approach assisting companies to find business opportunities through a sustainable development strategy.

Likewise, anticipating the role that Peru plays in Latin America, the Conference coincides with Peru's recent appointment as president pro tempore of the Pacific Alliance, an important bloc for regional economic and trade integration. Similarly, Peru will host the Asia-Pacific Economic Cooperation ('APEC') leaders' summit in 2024, which to a certain extent follows, from a political perspective, the same goals we IPBA members pursue

by bringing together lawyers and businesses with an interest in the Asia Pacific region and beyond. Last but not least, for those who will participate in the IPBA US Regional Conference taking place in Los Angeles on 6 December, you could live a memorable experience that includes attending the IPBA Latin American Regional Conference until 2 December and, between dates, take a few days to visit other cities in Peru such as Cuzco, where Machu Picchu, one of the seven wonders of the world, is located.

Therefore, it is perfect timing for the IPBA Latin American Regional Conference to address ESG and sustainability, to have Peru as the host country and, of course, for you to be part of the Lima Conference! We promise it will enhance your networking, legal and business opportunities through interactions with the most prominent law firms and colleagues from Latin America, which have already confirmed their presence in Peru.

If all of the above is not enough, do consider that the city of Lima will give you an insight into the country's history, traditions and artwork, not to mention the additional activities that can be carried out here, such as walking/jogging along the coastline of Miraflores and Barranco, visiting Lima's colonial historic centre or performing outdoor adventure activities. This is a small portion of what Peru has to offer, since the country is well known for its breathtaking landscapes, beautiful cities filled with history, culture, traditions and its delicious and acclaimed gastronomy. Here is a fact for you: did you know that Lima is the city with the largest number of restaurants within the top 50 restaurants in the world according to acclaimed culinary publications?

Let us say no more, other than that your Latin American friends from the IPBA would be delighted to welcome you in Lima with a pisco toast, and what better time to share it than with IPBA members before Christmas.

As a personal note, it would be among the honours of my life to host you in my home country. Cheers!

Fernando Hurtado de Mendoza



IPBA Annual Meeting and Conference Dubai 2023 Committee Session Highlights

International Construction Projects Committee Introduction

The International Construction Projects ('ICP') Committee organised and hosted three sessions during the IPBA Dubai Conference (7–10 March 2023). The sessions were lively with free-flowing discussions between the panellists and audience. Below is a brief report:

Recent Developments in the Use and Enforcement of Multi-Tier Dispute Resolution Clauses

This session was moderated by Anneliese Day KC and Peter Chow. The panellists were from multiple common law/civil law jurisdictions and comprised: Vladimir Talanov, EPAM Russia; Matthew Christensen, Kim & Chang, Korea; Zhuo Jiexiang, Providence Law, Singapore—Justice Law Clerk; Urs Lustenberger, Switzerland, Lustenberger Attorneys at Law; and Mohamed ElGhatif, OGH Legal, Litigator.

The discussion mainly centred around two issues, namely: (1) whether negotiation, mediation, expert determination, DRB's (Dispute Resolution Boards) are effective and enforceable; and (2) practical application of these tools for cross-border disputes along with advantages and disadvantages.

Discussion

Mandatory nature of multi-tier clauses: A majority of jurisdictions recognise and support multi-tier ADR mechanisms. In circumstances where each of the steps is not followed when a dispute arises, the courts in England have held that the different layers of dispute resolution mechanisms affect only the admissibility of the claim and not the jurisdiction of the Tribunal. It is only if the contract clearly states a more final consequence of non-compliance, that it may be treated as a matter of jurisdiction.

Use of experts for issues of law: The panellists believed that in cross-border arbitrations, experts on legal issues are rarely needed because the composition of the Tribunal is such that it can understand the diverse legal facets presented by parties.

Drafting guidelines: Although most jurisdictions support multi-tier arbitrations, there can be grey areas. The drafters need to be aware of the consequences that amendment to each limb of the clause entails. The ADR clause should clarify that parties will have the ability to move for interim and preservation/conservatory measures without going through the ADR mechanism; and whether any counterclaim also needs to go

through the same ADR mechanism and if so to what extent and in what manner.

Major Projects—Management of Post-Covid Impacts on Progress and Payment

This session was moderated by Karen Gough and Miranda Liu. All of the panellists were from different jurisdictions (overall five jurisdictions were represented) and comprised: Jack Terceno, Partner, Freshfields, Tokyo; La Ko Luen, Partner, Shook Lin & Bok, Malaysia; Juan Saez, Accuracy, Dubai; and Michael Stokes, Senior Managing Director, Ankura, London.

The panel discussion centred around the post-Covid approach to delay and disruption claims in large-scale international engineering, construction and infrastructure projects and how the consequences of delay and disruption played out in the different jurisdictions.

Discussion

Panellists agreed that the causes were mainly supply chain issues, stoppage of work at site, lack of manpower, and cash flow issues.

Applicability of force majeure clause ('FM') during Covid:

The force majeure clause was invariably invoked by parties during Covid, but with mixed results. In Malaysia, various standard form construction contracts listed out events which trigger force majeure, but COVID and MCO (Movement Control Order) did not fall under it. In Singapore, the High Court of Singapore in *Ser Kim Koi and GTMS Construction Pte Ltd [2022] SCHC(A) 34* provided support to the argument that contracts that neither specify an event of pandemic nor define the term force majeure should be interpreted to cover the effects of COVID-19.

Experts' viewpoint: The industry is seeing a spate of Covid claims. The panellists agreed that if parties cannot claim costs under force majeure, they can try and claim under other provisions such as Change in Law.

Going forward: Parties entering into contracts in the future should keep in mind the possibility of a pandemic and its impact which would likely not be considered as an 'unforeseen event'. The panellists had a varied view on inclusion of events in force majeure clauses: while one view was that force majeure clauses should be exhaustive and contain all possible events, including 'pandemic' and 'endemic', the contrary view was

that it may be better not to be too restrictive and some flexibility should be allowed.

The Rise in the Use of NEC Forms of Contract in Public Procurement Projects and Implications for the Construction Industry Throughout the World

This session was moderated by Alfred Wu and Mirella Nicholson. The panellists were: Jeremy Nicholson KC, 4 Pump Court, London; Peter Caldwell, Caldwell Ltd., Hong Kong; Tony Dymond, Debevoise & Plimpton LLP, London; and Vyapak Desai, Nishith Desai Associates, Mumbai.

The panellists agreed that NEC forms act in the spirit of mutual trust and cooperation. The success of NEC depends on the party's willingness to engage in it.

Discussion

United Kingdom: In the UK it is mandatory for all government construction contracts to use NEC forms and the results have been positive.

Hong Kong: The government has mandated all civil engineering projects to use NEC, but the forms are sometimes heavily amended which undermines their spirit.

India: Until recently, India was following the FIDIC contract. The use of NEC is very rare. In India, the employer is usually the State and the contractor is the private party. The success of NEC depends on a collaborative approach, which the State rarely offers.

Approach of NEC to disputes: In NEC, the main option for dispute resolution is adjudication. Even though non-binding, parties do tend to abide by the decision of the adjudicator/adjudication board.

Future of NEC: While panellists hoped that NECs see more uptake, they also believed that it would take a lot to displace FIDIC. FIDIC is more popular as it is driven by the World Bank, while NEC is industry/government driven. Probably, it would be good for FIDIC to adopt a similar structure as that of NECs.

Reported by Ms Ankit Khushu of Kachwaha & Partners in New Delhi

Other committee reports can be found in the June 2023 edition of this Journal.

Dispute Resolution for AI Superpowered Smart Contracts— An Attempt to Play Catch Up!

Blockchain and smart contracts are technologies adopted only in the very recent past. Now, they are being combined with artificial intelligence ('AI'). But do we fully grasp smart contracting risks? Can we mitigate the effects of disputes? This article attempts to catch up by proposing a framework for resolving smart contract disputes, in hopes of setting a foundation before AI integration is adopted.



Introduction

Not long ago, the blockchain-driven smart contract was seen as capable of changing transactions forever. In 2022 alone, Ethereum deployed over eight million smart contracts, a 293 per cent increase to the previous year.¹

But recent developments in artificial intelligence ('AI') ushers in a new era. ChatGPT, NightCafe, along with a litany of other applications, can generate natural language, programming codes or art, capable of automating tasks and changing the way we work.

Now, the union of AI and smart contracts is trending. Advocated as capable of revolutionising the business

world, the union also makes technological sense—they are compatible through shared characteristics, such as the dependence on large datasets, need for high levels of computational power and capability to offer decentralised solutions.² But are we prepared for the risks of this union? Have we fully grasped the issues associated with smart contracts before its AI partnership?

This article will focus on: (i) the legal risks associated with entering into blockchain-based smart contracts, combined with AI; and (ii) propose a combination of self-regulation and *lex mercatoria*, with the application of reputation bonds, as a framework to resolve smart

contract disputes, to lay a foundation before smart contracts are fully integrated with AI.

Smart Contracts

Introduced by Nick Szabo, a smart contract is intended to operate a set of promises electronically. These promises are coded within software to prescribe a set of results, depending on fulfilment of certain conditions, on an automatic basis.³

When driven by blockchain technology, computers would continuously monitor data streams and when certain criteria were met, automatic enforcement of a smart contract would occur without the need for an overarching authority. This deterministic 'if/then' logic ensures irrevocable execution of the contract, reduces malicious or accidental acts and the need for trust.

These smart contracts would also adopt blockchain's three main characteristics: (i) decentralisation; (ii) immutability; and (iii) pseudonymity. Advocates therefore claim that blockchain is secure, accurate and capable of guaranteeing desired outcomes. In practice, immutability can be compromised. For example, in May 2016, a hacker found a loophole in the coding of the Decentralised Autonomous Organisation application (built on Ethereum) and drained 3.6 million Ether.

A Quick Summary of AI and its Potential Integration with Smart Contracts

AI is a field of technology that seeks to recreate human intelligence in machines.⁴ While the ultimate goal of creating a machine with its own consciousness is further away, the current generation of AI encompasses many impressive achievements. Recent highlights include: (i) natural language processors, such as Siri; (ii) digital image generators that can create from natural language descriptions, such as DALL-E; (iii) self-driving cars, such as from Waymo or Tesla; and (iv) large language models, such as ChatGPT, or more recently, Meta AI's Llama 2. Large language models are particularly powerful and capable of creating software and code, including writing smart contracts.

Currently, the main characteristic of AI is the ability to automate tasks through machine learning. This involves a machine being trained to learn from enormous amounts of data. The learning may be supervised, in that the data is already annotated by human beings and so the machine learns by example, or unsupervised, where the machine will try to pick up patterns and similarities on its own.⁵ There are other categories, including reinforcement learning, where the system will undergo a series of trial-and-error attempts to obtain the best outcome.⁶

Introduced by Nick Szabo, a smart contract is intended to operate a set of promises electronically.

Over time, the machine will be trained such that, when presented with new data, it will be capable of accurately determining patterns, make predictions and/or execute on decisions. Its success is reliant upon 'neural networks', mathematical models that mimic the way brain neurons signal to each other.⁷ However, like a human brain, neural networks can change parameters within the machine's algorithm to arrange output. Ultimately, this means that AI machines are difficult to understand and outputs cannot be fully explained in a transparent manner.⁸

Other weaknesses include: (i) its reliance on data, meaning any bias or incorrect data involved in training can damage AI's ability to be successful—this is one form of cyberattack on AI, known as data poisoning;⁹ and (ii) it being prone to include errors or even security issues, due to its nature of being software code.

In a scenario where AI further generates software code, the new code could be written with further errors, security vulnerabilities or other problems. This may be due to many reasons, including: (i) the AI not having sufficient access to software code data which it needs to provide decent generation of code; (ii) the AI having access to examples of good and poor coding, and being unable to discern between quality; or (iii) the AI not having been trained on how to code in a safe, professional manner.¹⁰

From a smart contract perspective, advocates argue that AI could: (i) write and execute smart contracts more efficiently and accurately, thereby reducing disputes; (ii) add flexibility to the rigid 'if/then' deterministic

aspect of the smart contract—an example includes allowing a machine learning algorithm to amend terms and conditions based on context-specific factors or be capable of handling more complex decision making; (iii) greatly enhance the decision-making process for smart contracts, given the speed in which it can analyse data for trends, which leads to better informed decisions; and (iv) also make blockchain more secure based on AI's ability to analyse network traffic for potential threats.¹¹

However, while AI can be incredibly beneficial, the above advantages should be read with significant concern. Should AI be relied upon to generate smart contract code or to make decisions based on its training on data sets that could be subject to data poisoning? Should we feel comfortable with an AI-amended agreement? Does AI make better informed decisions or does AI simply compare new and old data, causing perceived judgment to be assumed? Yes, AI can make blockchain more secure, but does that mean AI does not possess vulnerabilities that could adversely affect smart contracts?

Why Are Smart Contract Disputes Inevitable?

Overview

Theoretically, since smart contracts are enforced by code, judges, juries and their interpretations of contract law become unnecessary, hence the mantra 'code is law'. Proponents argue the circumvention of traditional legal frameworks by smart contracts is desirable due to increased efficiency, lower cost of entering smart contracts, decreased potential for disputes and the reduced need for courts and lawyers.

In reality, risks surrounding smart contracts give rise to originally unforeseen disputes and challenges and the purported gains of entering a smart contract may be lost. Enforcing a smart contract under dispute would naturally be a higher cost than traditional counterparts because no mechanism within the blockchain exists to adapt to unexpected problems.

Unfortunately, AI compounds these issues.

Issue 1—Establishing Meeting of the Minds

In many jurisdictions, it is commonplace to find a requirement establishing the intent to create legal relations—a 'meeting of the minds'. However, smart contracts have characteristics that are detrimental to establishing this.

Code Versus Natural Language

A smart contract is partly or fully written in code and published on a blockchain to be read by computers. While it is popular for a natural language version to be drafted alongside (called a Ricardian contract),¹² this version will likely contain discrepancies compared to the code. This translation complexity may mean that the contracting parties' intentions are not adequately reflected.

In addition, if 'code is law' is true, then the code should prevail and be considered the authentic version. But how do parties read code or obtain legal advice on it?

While AI could assist with the review of the code, it cannot be relied upon as the sole tool to provide legal advice since, among other reasons: (i) while AI can identify patterns, it may not understand surrounding factors, such as jurisdiction or special circumstances impacting the dispute; (ii) AI is trained on data that may not be up to date with the latest laws; and (iii) AI may not be equipped to address broader ethical concerns.

Deterministic Nature

Not all legal terms can be properly coded. Since the 'if/then' logic is relatively binary, it cannot assess phrases with materiality thresholds.

A phrase like 'commercially reasonable endeavours' involves ambiguity. Since execution of a smart contract does not involve sentient assessment (unless a human is involved), it is unclear how the code would operate and if it could produce unintended results.

While AI is touted to be capable of dynamic judgment calls, it is not yet capable of considering a full environment of factors. Real world evidence demonstrates the same conclusion. Although not directly relevant to analysing materiality thresholds, one example is when Amazon created an AI recruiting tool with the goal of finding top talent. Unfortunately, its AI tool was trained off resumes submitted to Amazon over a 10-year period. Most of them were male, so the AI concluded that top talent had to be male, thereby failing to recognise top female talent.

Errors

For every thousand lines of code, an average of a hundred errors is made.¹³ If so, unexpected outcomes may occur in the automated execution and performance of the smart contract.

In *B2C2 Ltd v Quoine Pte Ltd*, where cryptocurrency trades had been deemed void for mistake and unilaterally reversed, the Singapore International Commercial Court had to consider how to ascertain intent when operations were performed by computers without human intervention. The direction they took involved consideration of the original programmer that coded the automated systems at the time of writing and not when the contracts were executed by the parties.¹⁴

To establish a meeting of the minds, would courts require evidence that the programmer of the smart contract did not intend for certain errors to occur? If the smart contract was AI-generated or subject to AI decision making, would the indirect intent of the programmer of the AI be required? How would intent be inferred or considered given the AI's training and reliance on large data sets of unknown quality?

Issue 2—The Oracle and Black Box Problem

Smart contracts cannot usefully exist without connection to the outside world. As a result, they are connected to the outside world through data streams that inform whether certain criteria have been fulfilled, such that execution can occur. This is an 'oracle'. However, if the oracle contains unhygienic data or is tampered with, the integrity of the smart contract is compromised and originally intended objectives will not be met, causing disputes.

Where AI decision making applies, the 'black box' issue, which is the lack of transparency in interpreting how AI algorithms arrive at certain conclusions,¹⁵ can cause parties to further raise disputes due to dissatisfaction when unpredicted outcomes occur. Worse yet, the black box issue also presents significant obstacles in dispute resolution as experts in multiple fields will be required to decipher the AI, its effect on the smart contract and legal ramifications.

Issue 3—Voidable Contracts

Parties may enter smart contracts in the same vitiating ways as its traditional counterparts, for example, duress, reliance on misrepresentations or lack of capacity. Given the pseudonymity associated with blockchain, there are plenty of innocent users that may seek legal redress.

Why is Enforcement of Smart Contracts Problematic?

Overview

When smart contract disputes arise, what legal redress is available? Aside from negotiation, the next logical step

might be a State's court system. However, attempting judicial enforcement faces substantial challenges and arguably, relying on State courts is incompatible with blockchain's core values, which emphasises reduced authoritative interference.

Issue 1—Unclear Legal Framework No Consistent International Framework

Some States have legislated to legalise smart contracts but there is no consistent framework established internationally to govern smart contracts. So far, courts have barely begun addressing the litany of legal issues plaguing these contracts.

Elements of a Binding Contract

Does a smart contract create a validly binding relationship with the necessary elements, such as:

- (i) offer;
- (ii) acceptance;
- (iii) consideration;
- (iv) intention to create binding legal relations;
- (v) certainty of essential terms;
- (vi) capacity; and
- (vii) being in writing?

The above are non-exhaustive common law examples. However, for a smart contract dispute, each of these elements may be questioned and tested. Unfortunately, there is no clarity on what principles may be applied.

Property

Are cryptoassets legitimate property? Courts in Singapore, London and New Zealand have recognised cryptoassets as property but this is not universal. While Chinese courts have recognised Bitcoin as a virtual asset,¹⁶ the Shenzhen Intermediate People's Court ordered in *Gao Zheyu v Shenzhen Yunsilu Innovation Development Fund Enterprise (L.P.) and Li Bin* for an arbitral award to be set aside on public interest grounds since the award required an exchange of Bitcoin for fiat currency, which was not legal in China.¹⁷

Processes of Evidence

How are discovery processes applied? Would courts be limited to the blockchain record or would extraneous evidence be submitted? Much of this will depend on the legal system applicable. However, given the lack of

identifiable parties, obtaining agreement or compelling evidence would prove challenging. When parties fail to comply, how would proceedings continue? Would an adverse inference be drawn, similar to arbitration?

Furthermore, is the blockchain record complete? Who contributed to the record? How will evidence relating to AI be submitted and how many experts will be required? What level of confidentiality applies? Do errors exist in the smart contract or AI source code and how would they be proven? Would legal privilege apply?

Procedural Rules

What other procedural rules apply to smart contract disputes? Who has the burden of proof? For public policy reasons, such as consumer protection, would the onus of proof be reversed? How would this work against the automatic enforcement of smart contracts?

Issue 2—Jurisdiction

How do courts perceive their ability to make decisions over a smart contract dispute? Putting aside the discussion that judges may lack blockchain or AI understanding and require expert opinions, the decentralised and pseudonymous characteristics present serious challenges to establishing jurisdiction and governing law.

Contracting parties are largely undiscoverable. Location can be hidden using virtual private networks. Payment information could be shielded through cryptocurrency. Blockchain records cannot be located due to its decentralised nature. Without this information, personal jurisdiction becomes irrelevant or incapable of being established (although it could be waived).

Similarly, a court may not be capable of ruling over the subject matter as blockchain is distributed over internationally located nodes. In theory, each State could legislate for courts to hear specific matters and exercise power over a dispute, for instance, the Delaware Court of Chancery has subject matter jurisdiction over technological disputes where damages sought are below US\$1 million.¹⁸ However, in light of the enforcement challenges (discussed below), it is difficult to determine how this authority would be exercised over a practical dispute.

With respect to governing law, adding a relevant clause within the smart contract would resolve ambiguity. But what if the contract is silent? Trying to ascertain the law of closest connection will require some degree of location information, which blockchain inherently makes difficult to obtain.

Issue 3—Enforcement of Remedies

Given the automatic enforcement and pseudonymity, could remedies be applied?

Would it be technologically possible for a court to reverse or prevent a transaction from occurring? For example, a smart contract can be voided for vitiating circumstances but manipulating a blockchain transaction is theoretically impossible, or at the very least, requires a high level of computing power or resources. If so, remedies may need to be off the blockchain, especially if a reversal is insufficient to cover loss.

But what remedies can courts provide? Compel parties to enter into another transaction to reverse the original smart contract? Order specific performance? Assuming the necessary remedy was provided, how do parties meaningfully enforce a remedy without the other party's identity, physical location and location of assets?

In light of *B2C2 Ltd v Quoine Pte Ltd*, would a court impose liability on the original programmer of a smart contract code (or AI code) if an error had inadvertently been included? What if the programmer was not party to the proceedings?

Decentralised Justice Platforms Exist, So Why is Obtaining Justice Difficult?

Overview

Decentralised justice platforms ('DJPs') have been developed to resolve smart contract disputes. Platforms like Jur and Aragon seek to emulate a court system, involve jurors to deliberate on a dispute and make a ruling in favour of a successful party.

DJPs encode a dispute resolution mechanism into smart contracts. If a dispute occurs, automatic enforcement is suspended until a final decision on the DJP is delivered.

Courts in Singapore, London and New Zealand have recognised cryptoassets as property, but this is not universal.

Each platform has different processes, but dispute resolution generally revolves around the selection of jurors from its user base internationally. These jurors will act as judges and make a ruling in favour of the successful party, usually for cryptocurrency payments.

While suspension of smart contract execution may constitute sufficient make good for a low value dispute, the viability for DJPs to provide justice diminishes with increased complexity or transaction value. More substantial remedies, such as damages or specific performance may be required, which cannot be pursued using DJPs.

Other inherent flaws also exist.

Issue 1—Lack of Discovery

There is no guidance on what information should be submitted to DJPs or whether parties can request discovery. If so, each party is incentivised to provide only information that casts their claims in a positive light and/or damages their opponents. While in traditional court proceedings or arbitration judges could compel discovery of information that inflicts self-harm, the pseudonymity involved with smart contracts prevents jurors from having any real power.

Further, jurors may come from a variety of backgrounds—how will they engage with discovery requests? Will they have the necessary understanding of complex smart contract and AI technologies? Will jurors be permitted to require discovery? Will jurors draw an adverse finding in the event of non-compliance?

Issue 2—The Schelling Point

Most DJPs operate based on game theory and the Schelling Point. Jurors who side with the majority will be rewarded, whereas those in the minority will lose their staked cryptocurrency. However, the Schelling Point assumes that a group of individuals with no communication will tend to choose the same outcome and achieve consensus,¹⁹ which is inherently problematic because it implies unidentifiable, disparate individuals with varying cultural backgrounds, intelligence and beliefs will

generally come to the same 'correct' response.

Issue 3—Scalability Issues

DJPs may not be scalable. Without adequate discovery processes, nefarious parties could flood a case with fraudulent materials. While this affects traditional courts, vexatious conduct is penalised. This option does not exist with DJPs, thereby reducing the effectiveness of jurors presiding over the dispute.

This is compounded by the lack of a hearing, cross examination or further fact finding. The jurors rely on information entered via an online form.²⁰ Since a smart contract may rely on multiple oracles or assets, how is information presented comprehensibly?

A framework capable of supporting smart contract transactions is needed to provide confidence that these contracts can be enforced.

Can AI Help?

Yes, AI could assist with these issues. Advocates claim that AI could revolutionise smart contract dispute resolution since AI is capable of reviewing contract terms, identifying potential areas of disputes and suggest resolutions. Its computational power will also assist with scaling. Given the lack of discovery processes, AI would be useful in automating laborious tasks, such as review or analysis of evidence, identifying fraudulent materials or summarising issues for jurors. However, it is important to note that the previously discussed weaknesses of AI can apply in the execution of these tasks, which will continually complicate the journey to obtain justice.

Lex Mercatoria and Self-Regulation

A framework capable of supporting smart contract transactions is needed to provide confidence that these contracts can be enforced. Given its decentralisation, one solution is submitting all smart contracts to a supranational framework, such as the International Institute for the Unification of Private Law's ('UNIDROIT') Principles of International Commercial Contracts.

But another option exists—*lex mercatoria*. *Lex mercatoria* is an international system of self-regulated and privately enforceable customs that was inspired by mercantile practices to bridge the lack of law and multiculturalism of trade. These customs were widely practised along major trade routes to support international merchants

and were eventually endorsed by official or regulatory institutions or codified into legislation.

The framework of *lex mercatoria* is preferred over other supranational frameworks, which are subject to political negotiation and insufficient to support the rate of technological change. Comparatively, *lex mercatoria* is malleable, capable of reflecting the commercial context and expectations of users and efficiently supporting changing customs.

This does not imply public international law is not the best recourse for smart contracts. But since developments could take many years of negotiations, *lex mercatoria* offers a persuasive interim tool. Arguably, it is already in use by virtue of DJPs. Jur, in particular, has claimed that its platform is aligned with modern day *lex mercatoria*.²¹

Self-Regulation and *Lex Mercatoria*—Sufficient to Mitigate Smart Contracting’s Enforcement Challenges?

Overview

Self-regulation is a framework where individual actors choose to regulate themselves voluntarily by following a set of standards. It is suggested as an attractive solution for regulating matters when State control is not viable, for example, when States are unable to regulate the matter adequately or the circumstances are complex and the State is unable to access information about the problem and its solutions.²² Smart contract disputes fall within this scope.

The main characteristics of self-regulation include: (i) the creation of a standard where compliance is voluntary; (ii) increased flexibility in the creation of the standard; and (iii) States are uninvolved in creating or enforcing the standard.²³

Proponents argue that self-regulation allows an industry to orient its business strategies, ensure cost-effectiveness by removing State regulation, efficiently create and monitor compliance through technical knowledge and industry experience, and create a culture of compliance through a sense of ownership over the industry standard. Critics argue that self-regulation is pointless because participation is voluntary. In particular, a ‘free-rider’ problem is created. This is where specific individual players in the market choose not to comply (while others do) because they will benefit from

collective self-regulation. Over time, other players will lose interest since compliance is more expensive than non-compliance.

However, based on regulation literature, the free-rider problem could be overcome by certain factors, including: (i) the ability to detect non-complying behaviour—the more transparent the better as this can allow non-complying players to be subject to boycott; and (ii) the inclusion of incentives to comply or punishments for non-compliance.²⁴

Diamond Bonds—A Case Study

In 1992, Lisa Bernstein wrote about the diamond industry and the New York Diamond Dealers Club (‘DCC’). She discussed the club’s compulsory arbitration system that resolved disputes through the application of the diamond industry’s trade customs, which were generally known or set out in bylaws. Diamond dealers that pursued disputes in court or failed to comply with arbitration decisions would be suspended or expelled.²⁵

Interestingly, the DCC’s extra-legal system was perceived by dealers as superior to formal contracts due to the value placed on honouring commitments and preserving reputation.²⁶ Reputation was the foundation that tied the self-regulatory trade practices with private arbitration within the diamond industry and was a useful tool because: (i) a loss of reputation was damaging to future business opportunities, making reputation directly proportionate to profit; and (ii) it was supported by a homogeneous group of individuals with similar beliefs that frequently transacted with each other.²⁷

Since 1992, this reputation system has suffered a deep erosion of trust within the diamond industry since non-complying dealers/members were continually operating unpunished. However, the failure was attributed to serious financial and leadership mismanagement, with many activities being hidden from directors.²⁸ The system failed due to poor administration, which incentivised dealers to conduct themselves fraudulently as this forwarded their profits better than preserving reputation.

Nevertheless, the diamond industry has continually utilised self-regulation, including the establishment of the Kimberley Process Certification Scheme to reduce trade of conflict diamonds.

A Framework for Dispute Resolution

To mitigate the risks of non-compliance with a smart contract, enforcement challenges and resolution of disputes, the following model is proposed.

Element 1—Blockchain with Decentralised Justice

The blockchain environment would be community-run, subject to pseudonymity but retaining some online identification through on-blockchain usernames. A screening process would be implemented where all users agree to a community-agreed code of conduct or user agreement. This blockchain would have its own cryptocurrency in circulation and freedom in the smart contracting applications used. A decentralised justice platform would be responsible for resolving all transaction disputes on the blockchain.

In addition, the blockchain will have an access control layer setting out what actions may be performed by each user. It is envisaged that each user may freely transact on the platform but be given limited rights to write comments and reviews only where a verifiable transaction had been made.

Element 2—User Agreement with Code of Conduct

In order to participate, users would voluntarily agree to certain standards of behaviour, thereby creating a homogenous group with similar beliefs. These standards could be amended over time to reflect changes in social norms. Any non-compliance with these standards would be made public.

Element 3—The Dual-Layered Reputation System

The following reputation system would apply:

- i. each user's profile on the blockchain would be subject to reviews regarding the user's credibility as a supplier or consumer and only those users who had a verified transaction with another user would be capable of leaving a review and rating; and
- ii. where a dispute had been decided by the jurors on the decentralised justice platform, and the parties failed to comply with the decision or any rulings, such non-compliance would be publicly posted in a visible and accessible location on the blockchain.

An interesting option may be to charge a fee or bond, either on a one-off or subscription basis, depending on the state of the user's reputation. The lower the user's repute, the higher the fee paid to the community pool.

Element 4—Non-Compliance With Smart Contracts and Juror Decisions

All disputes would be submitted for a juror decision under the DJP, with each user being bound to comply with the juror decision. However, in the event of non-compliance, additional punitive measures would be applied aside from the reviews. For example, revoking or suspending the user's access or ability to transact on the blockchain, thereby losing access to owned cryptocurrency.

In theory, the user could create a new identity in the blockchain, but in so doing, lose the reputation of previous positively reviewed engagements (and forfeit any fees/bond paid). There may also be other consequences (and legal issues) regarding loss of intellectual property rights created by the user. If a community pool of fees had been created, it could be used to make good injured parties.

Will it Work?

Possibly! It is acknowledged that this model cannot cater to every circumstance for which a contracting party needs protection and it may not be appealing for everyone (as only reputable users would agree to opt in, in the longer term).

However, the model does possess the characteristics that made using reputation successful in the diamond industry, being: (i) a homogenous group of individuals; (ii) compliance advancing a user's self-interest; and (iii) non-compliances being punished. In particular, this model presents a commercial pathway forward for the community to transact. Users are armed with information about other users or their products and services before deciding to enter a smart contract. This aligns with marketing research, which has shown: (i) over 70 per cent of online consumers trust reviews and this percentage was going up in the mid-2010s;²⁹ and (ii) not only do negative reviews affect and lower sales, they have longer-lasting power and are more valued by readers than positive reviews.³⁰

From an AI perspective, it is acknowledged that despite the issues identified in this article, the continual innovation and adoption of AI will not suddenly dissipate, and neither should it, given its significant benefits. However, until developers can implement processes and frameworks to mitigate serious disadvantages or public international law can enforce

legal standards (such as the European Union's AI Act), this model can be a useful foundational framework.

Online reviews for products and services on AI-powered smart contracts could identify when users experience unpredictable or unsatisfactory outcomes. While users are unlikely to be machine learning experts, capable of understanding the back-end algorithm (or even have access to the algorithm), this model provides an opportunity for users to consciously adopt risk according to their own appetite.

Over time, this means users, services or systems with poor reputation will fail to gain utility, due to low levels of transacting, while users (and well-developed AI-powered smart contracts) with a good reputation will flourish, creating a safer commercial market.

At least, until the next big thing ...

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Conceptual Regulatory Approaches to AI

In the midst of the artificial intelligence ('AI') revolution, diverse jurisdictions grapple with shaping effective policies to regulate AI's dynamic impact. In this article, the authors discuss the need to regulate AI, the challenges of AI policy-making and a comparative analysis of selected jurisdictional approaches to AI frameworks. This article puts forward the case for a principles-based approach to regulating the evolving AI landscape, rather than a strictly rules-based approach to the same.



Introduction

In today's era of rapid technological progress and advancements, the advent of artificial intelligence ('AI') has no doubt been the subject of much debate. In comparison to its early days of invention as early as the 1950s, AI has now transcended into our daily lives and is accessible right from our smartphones and homes. Virtual assistants such as Apple's Siri and Amazon's Alexa, map and navigation applications, AI chatbots such as ChatGPT and even Spotify's Discover Weekly auto-generated playlists are all examples of AI used by millions of people daily.

On a commercial scale, AI has indeed become a driving force behind business strategies and operations globally with its ability to process large volumes of data and patterns and render (or suggest) actionable solutions. From supply chain optimisation, producing tailored and personalised marketing campaigns and advertisements, to its use in the healthcare industry, government agencies and financial or investment forecasting, the capabilities of AI appear to be expanding at an unprecedented pace.

AI also appears to have become an increasingly integral part of the legal industry across the globe—this is evident from the natural language processing ('NLP') element of AI used in legal research platforms, contract management solutions and even selected courts in Malaysia piloting AI-sentencing in which AI is used to help judges with sentencing for criminal cases.

In this article, the authors discuss and compare the global challenges and policy response to AI thus far.

The Need to Regulate AI

The ascent of AI does not come without its own set of complexities and concerns. AI has been the subject of much debate across professions, industries and jurisdictions, particularly centring around ethics and professional accountability.

This then sparks the question of regulating the use of AI—more specifically, should AI be regulated and how?

The most common arguments for regulating AI are the ethical concerns surrounding the use of AI—as AI systems become more advanced and the use of AI becomes more widespread (especially in making significant decisions which may affect individuals' lives),

there is a pressing need to ensure that these decisions are made fairly, ethically and in a transparent manner. There is also a need to ensure that AI is used ethically and safely within the law as it becomes increasingly more accessible to the consumer market. Conversely, the most common argument against regulating AI is that regulation could potentially stifle or hinder innovation due to regulatory 'red tape' and that regulation could be difficult due to the fast-evolving nature of AI, especially in the last several years.

Some of the concerns associated with the rising use of AI in various domains include its propensity to perpetuate existing biases and potentially reinforce existing social disparities. This happens because AI's 'intelligence' and machine learning is premised upon existing training data which documents and reflects existing human biases (whether unknowingly or otherwise), is likely to reflect historical and social disparities, and may also be the result of poor or flawed data sampling. It was reported that Amazon had ceased the use of a hiring algorithm to filter through and suggest top job applications for hiring after it was found that the algorithm seemingly favoured male applicants as a result of the algorithm's training data being sourced from the resumes submitted to the company over a certain period of time—most of which were from male applicants and which reflected the largely male-dominant state of the tech industry.

AI's perpetuation of existing biases is not a novel problem—as early as 1988, a British medical school was found to be discriminating against interview applicants, according to the UK Commission for Racial Equality. This was due to a computer programme which appeared to filter against female and non-European names in the applications submitted, because it was developed based on the school's prior admissions.

Investigative journalism website ProPublica has also found that an AI-sentencing algorithm used in Broward County, Florida, mislabelled African-American defendants as 'high-risk'. Additionally, there is also a large risk of mislabelling and misjudgement in using AI developed and trained based on historical data from one location in another with different societal compositions and nuances.

There is also a need to protect society from the harms of AI being used improperly—in the age of the Internet, AI-generated 'deepfakes' (which are edited/manipulated

media—usually images, videos and even audio). An issue of growing concern is that deepfakes are getting more believable as the AI software that is used to generate these media 'learns' from more media content and data over time. These could be taken advantage of and used as a scam tactic to target vulnerable or less technologically savvy individuals (for example, by impersonation).

Conversely, the most common argument against regulating AI is that regulation could potentially stifle or hinder innovation due to regulatory 'red tape' and that regulation could be difficult due to the fluid and fast-evolving nature of AI, especially in the last several years.

For the purposes of this article, the authors take the position that some form of regulation of AI is better than no regulation at all, and will discuss the approaches taken by regulators in different jurisdictions. It will consider whether legislative regulations with the force of law are appropriate developments at this juncture and stage of AI development globally.

Distinguishing Between Policy and Legislative Regulation

Amidst the discussion on the regulation of AI, there is a distinction to be made between policy frameworks and legislative regulations. For the purposes of this article, policy frameworks are considered to be broader, guidance-type documents and are intended to assist stakeholders in 'self-policing', as opposed to legislative regulations which are detailed and have the force of law in order to enable enforcement of the same.

It certainly appears as though the use and capabilities of AI have yet to settle as development of AI has only accelerated and the categories of technology falling within the general sphere of AI are also under constant and rapid development, especially in the last several years. For this reason, it may be premature to have specific regulations on the use of AI—especially when we do not know, at this juncture, just how much further AI will develop and be put to use.

Having said the above, it is certainly possible, and important, for lawmakers and regulators to put broader policy frameworks in place. These policy frameworks may serve as a useful guide for AI industry stakeholders in the development and deployment of AI amidst its growth in the next several years. Future detailed regulations for AI may also be formulated using the existing policy

frameworks as a guide or a base. In the meantime, blatant misuse of AI may be 'regulated' or controlled by the workings of existing legislation and regulations.

Policy and Regulatory Challenges

Effectively regulating the use of AI by way of policymaking and legislature presents a complex set of challenges, largely brought about by the fact that AI, like most technology, is multifaceted and constantly evolving at a rapid pace.

Perhaps the most global policy formulation challenge in terms of AI would be defining AI for the purposes of these policies and regulations. Apart from there being no universally agreed upon definition of AI, one of the struggles of defining AI may stem from the fact that AI is not a singular object or technology. Rather, AI appears to be an umbrella term given to any software which is able to perform tasks which may have previously been thought to require human intelligence. However, this definition may not always work for policies and regulations given that what 'tasks' may require human intelligence are likely to change extremely rapidly, and this struggle with defining AI will likely only grow as AI innovations increase in technicality and complexity over time.

Nevertheless, it appears to be generally accepted and understood to broadly categorise AI technology by functionality, purpose and complexity. Some types of technology considered to be AI under this wide-reaching umbrella term include natural language processing ('NLP') used in search engines and translators, robotics, machine learning and even those that are now considered commonplace such as speech (for example, speech to text in dictation functionalities) and vision (image and facial recognition). From the above examples alone, it is evident how the 'requiring human intelligence' definition of AI may soon become obsolete as AI continues to grow in complexity.

The above ties in with pacing issues in terms of policymaking, in that technology, especially AI, advances at such a rapid pace that it is often difficult for policy and regulations to keep up. New applications, services and products are being developed and introduced into the market at a pace that regulators might find challenging to match. New technologies can also bring about novel risks and challenges that current legislation and policies may not have considered. Additionally, it generally takes time to fully implement,

let alone pass, laws, regulations and policies, given the need for careful consultations, reviews, discussions and approvals. In the time taken to pass a regulation or policy, the technology sought to be regulated is likely to have advanced further than the existing policy or regulation had contemplated and there is always the risk of the policy or regulation becoming outdated.

Additionally, like most regulations and legislation, a global, 'one-size-fits-all' approach to regulating AI may not be the most desirable. The socioeconomic, cultural and even political nuances across different jurisdictions must be taken into account in policymaking. This is further complicated by the inherent cross-border nature of technology and AI in particular—regulators must balance between solutions tailored to their domestic domains, while still facilitating cross-border cooperation in terms of AI, so as to allow their respective jurisdictions to reap the socioeconomic benefits of AI advancements internally, regionally and internationally, while still placing adequate protections in place that are suitable and 'fit-for-purpose' for their particular jurisdictions. Regulators also face the additional challenge of balancing between adequately protecting consumers and society, while not stifling innovation, as well as ensuring that any new AI regulations and policies work in tandem with existing laws and regulations and are in line with national-level goals, plans and visions.

One additional challenge which has yet to be seen, given that AI regulations across the world are relatively new and are mostly yet to be implemented, is that of practical enforcement of these regulations. This is where the technicalities of the drafting of these regulations and policies are paramount and will be put to the test. Like most legislation, and given the ever-evolving nature of AI, it is likely that legislative grey areas will be uncovered which regulators will need to address to avoid the same from being exploited. Further, enforcement may likely be an issue in terms of ensuring that the organisations and executive functions carrying out such enforcement actions that span across diverse industries are sufficiently well-trained and technically well-versed to tackle cases of exploitation of AI against these new regulations.

A Comparison of Global Frameworks Thus Far Overview

Regulators worldwide are racing to develop policy frameworks to address AI—these span from domestic frameworks to collaborative frameworks drafted by

regional alliances (such as ASEAN and the EU) and global cooperations or cross-border institutions such as UNESCO, G20 and the Organisation for Economic Co-operation and Development ('OECD').

These frameworks can be broadly categorised into two approaches: (1) regulatory (which aim to regulate or control the use of AI); and (2) policy-based frameworks for bolstering or enhancing AI-readiness and digital transformation, many of which work within existing digital transformation plans. It is interesting to note that, to date, most jurisdictions and cross-border institutions have yet to reach the implementation stage of these policies and are generally still in the drafting stage of the same.

European Union

The European Union ('EU') appears to be one of the forerunners of developing AI frameworks/regulations, in developing a robust framework for regulating the use of AI, known as the 'EU Artificial Intelligence Act' or 'AI Act'. The idea of the EU AI Act was proposed by the European Commission as part of a wider strategy to regulate and ensure ethical and proper use of AI and is intended to work in tandem with the EU's existing 'Coordinated Plan for AI' of 2021 and the EU's 'European AI Strategy' of 2018. As of June 2023, the European Parliament is in the process of negotiating its position on the EU AI Act.

The EU AI Act adopts a foundational risk-based approach, which categorises AI systems into one of four levels of risk based on their potential harm and impact: unacceptable risk, high risk, limited risk or minimal risk, and the regulatory requirements or restrictions that follow vary depending on the assigned risk level. The European Commission states that this framework provides AI stakeholders (such as developers, deployers and users) with clarity by intervening only in cases that existing national and EU legislations do not cover.

It is interesting to note that the EU AI Act is anticipated to narrow down the definition of AI to 'systems developed through machine learning approaches and logic- and knowledge-based approaches', which is done in order to provide sufficient clarity in distinguishing AI (and presumably the scope of the EU AI Act) from simpler software systems. The above is as reported by the Council of the EU (as of December 2022) in a statement regarding its general approach to the EU AI Act.

The EU AI Act is also reported to cover prohibited AI practices, most notably the use of AI for social scoring and 'real-time biometric identification' in publicly accessible spaces by law enforcement authorities, except where such use is 'strictly necessary for law enforcement purposes'.

From an ethics angle, at this stage, the European Commission appears to be taking the approach of promoting transparency and ensuring that AI 'works for people' by ensuring that AI developed and put on the EU market is 'human-centric, sustainable, secure, inclusive and trustworthy'.

Additionally and from a policy perspective, the European Commission's Coordinated Plan for AI sets out a number of proposals for the EU and Member States to, among others, set enabling conditions for AI development and uptake in the EU, build and mobilise research capacities, provide support and funding for innovation in AI, nurture talent and skills in enabling a 'thriving AI ecosystem' and to use AI for advancements in other high-impact sectors such as healthcare, migration and asylum, and law enforcement.

United States

In contrast, the United States does not have a comprehensive framework or federal-level legislation or policy for regulating the use of AI. Instead, AI regulation in the United States is a combination of state-level efforts, industry self-regulation, guidelines and agency-specific actions.

At the federal level, the White House Office of Science and Technology Policy has published the 'Blueprint for an AI Bill of Rights' in October 2022—this Blueprint expressly states that it does not 'constitute US government policy' and is instead a 'guide for the design, use and deployment of automated systems to protect the rights of the American public in the age of AI'.

For context, this Blueprint appears to define or refer to AI (in the context of applicability of the Blueprint) as 'automated systems that have the potential to meaningfully impact the American public's rights, opportunities or access to critical resources or services'. 'Automated systems' are further defined in detail within the Blueprint and this definition makes reference to systems, software or processes that use computation as whole or part of a system to determine outcomes,

make or aid decisions and interact with individuals or communities, among other things.

This Blueprint identifies five areas which all AI (which is referred to as 'automated systems' throughout this Blueprint) should adhere to, seemingly as a matter of best practice. These five areas are: automated systems should be safe and effective; algorithms and automated systems should be used and designed in an equitable way and should not perpetuate or contribute to unjustified different treatment of individuals; automated systems should have built-in protections against abusive data practices and individuals should have agency over how their data is used; developers, designers and deployers of automated systems should provide accessible and plain language notification and explanation that, among others, an automated system is being used and the outcomes of its use; and finally, that individuals should be able to opt out from automated systems in favour of a human alternative where appropriate.

Singapore

In the Asian context, Singapore appears to be leading the 'race' to develop a comprehensive AI framework—the Personal Data Protection Commission ('PDPC') of Singapore has published a second edition of its Model AI Governance Framework in 2020. However, it should be noted that this Model Framework is expressly indicated to be a voluntary guidance document and is intended to assist organisations in their commercial deployment of AI, to achieve increased stakeholder confidence in AI and manage risks in AI deployment, as well as to demonstrate reasonable efforts to align internal policies and practices with accountability-based practices in data protection, such as Singapore's own Personal Data Protection Act 2012 and the OECD's Privacy Principles.

The Model Framework is intended to be sector- and technology-agnostic and is formulated to promote the responsible use of AI pursuant to two primary guiding principles: that AI-assisted decision making should be explainable, fair and transparent; and that AI systems should be human-centric and safe. The Model Framework sets out suggested practices organisations may take in deploying AI systems responsibly. These practices are categorised into four main pillars: implementing adequate internal governance structures and measures; assessing and determining the extent of human involvement in AI-augmented decision

making; adopting a risk-based approach in operations management and practising accessible; and open stakeholder interaction and communication.

In terms of its approach to ethics in the use of AI, the Model Framework expressly mentions that it does not focus on setting out a new set of ethical principles for AI, as there are many existing attempts at establishing a universal set of principles (but there remains a great deal of variation across cultures, jurisdictions and industries). Instead, the Model Framework's approach to ethical standards and principles is to set out a compilation of existing AI ethical principles from various sources, which organisations may incorporate into their own corporate practices and principles. These ethical principles include accountability, transparency, fairness and human-centricity, all of which are common themes across different jurisdictions' and organisations' approach to ethics in AI.

Malaysia

Across the causeway, Malaysia adopts a slightly different approach to AI. While Malaysia has yet to set out an overarching national framework for the regulation of AI, the Ministry of Science, Technology and Innovation ('MOSTI') has published a National AI Roadmap (officially referred to as 'AI-Rmap') which appears to be a policy document outlining the Malaysian government's approach and strategy in creating an appropriate and sustainable domestic environment for responsible AI development and deployment, including a five-year goal and six pillars of strategies and initiatives. These include (among others) establishing AI governance and regulation, advancing research and development and escalating existing digital infrastructure and accessibility. The AI-Rmap also sets out a goal for a Policy and Regulation Committee for AI (which will form part of MOSTI's AI Coordination and Implementation Unit) to review existing laws and develop regulations and guidelines for the use of AI domestically.

At present, Malaysia's regulatory approach to AI is sector-specific. One such example is the Securities Commission of Malaysia ('SC'), which is the statutory body responsible for governing and regulating the capital market in Malaysia. On 1 August 2023, the SC issued its Guidelines on Technology Risk Management ('Guidelines'), following its Public Consultation Paper on its proposed regulatory framework on the same topic (technology risk management) published in September

2022. As of the date of submission of this article, the SC has yet to announce the date on which the Guidelines will come into force, but it is expected that this will be in the third quarter of 2024 to provide sufficient time for all capital market entities to ensure familiarity and compliance with the Guidelines.

While the Guidelines address technology risk management as a whole, Appendix 3 of the Guidelines is dedicated to setting out guiding principles relating to the adoption of AI and machine learning. Generally, the Guidelines set out that any capital market entity 'adopting' AI and machine learning should be guided by four main principles (which appear to be generally shaped by common global AI ethical principles): accountability; transparency and explainability; fairness and non-discrimination; and practical accuracy and reliability. The Guidelines set out in further detail practical measures and requirements to be fulfilled by capital markets entities. Some examples of capital market entities 'adopting' AI and machine learning as provided by the SC are where AI is used for the purposes of supporting advisory services, risk management, client monitoring and portfolio management.

Comparative Summary

Jurisdictions should approach the regulation of AI via robust policy frameworks for development and deployment. Using Malaysia's approach as an example, while the sector-specific Guidelines issued by the SC are robust, it may be time to advance an overarching national policy framework and ethical guidelines for the use of AI, in addition to the existing Roadmap for advancing AI development and use in the country. The existing Roadmap on its own arguably may not be adequate in providing guidance posts to AI industry stakeholders within the country or looking to invest in the country.

To summarise the above comparison, the EU appears to have the most detailed and robust framework for regulating and setting out guiding principles for the development and deployment of AI; however, this framework takes the form of a bill, which will become law once the same is passed and fixed to come into force as an Act. Singapore similarly has an overarching national framework, however, instead of this framework having the force of law, it is simply a model national framework that sets out guidance and best practices. In the US and Malaysia, these jurisdictions appear to adopt

a more sector-specific approach and do not have an overarching national policy framework. It is arguable that a broad-based approach would certainly be useful as a guide across the AI industry seeking to operate in those jurisdictions and would also play an important role in boosting public and investor confidence in AI, therefore encouraging AI-related investments and economy growth.

Common Themes and Principles Between Differing Frameworks

The above comparison of selected jurisdictions' approaches to AI shows a common thread, which is that the ethics of AI development and deployment appears to be a guiding principle behind the various policies and frameworks emerging globally. The approach to AI policymaking between different jurisdictions appears to be principle-based in nature. There are several common ethical principles which form the basis of most jurisdictional policy approaches to AI.

These are generally the principles of transparency (to make the operations, decisions and processes of AI understandable and explainable to human stakeholders), fairness (in the interest of removing biasness in the use of AI) and security (to ensure the safety and security of AI systems especially where data privacy of the general public is concerned). A human-centric approach is also favoured, which is evident particularly in the EU and Singapore's framework approaches.

Nevertheless, despite AI's inherent cross-border nature, it is evident that there is no universal or global solution to regulating AI, and even adopting frameworks and common ethical principles in the same manner across jurisdictions may not be desirable—there must be careful consideration in terms of adopting principles and frameworks in the domestic context of each particular jurisdiction and ensuring that such principles and frameworks are tailored to fit, and to work, in the particular cultural and socioeconomic nuances of each jurisdiction. The manner and form in which such guiding ethical principles are implemented in practice are likely to differ across jurisdictions, due to the need for regulators to have regard to local or domestic societal and cultural norms (among other considerations unique to each jurisdiction). Likewise, international organisations and alliances should exercise caution in 'requiring' adherence to a global set of principles and frameworks and members should be allowed the liberty

to adopt and adapt such principles and frameworks as contextually appropriate.

There is much that remains to be seen in terms of the final regulatory policy frameworks and actual regulations of AI in individual jurisdictions, and regionally, in the years to come. Nevertheless, the development of AI policies and regulations, while in its early stages across the globe, appears to be moving in a much-welcomed direction of placing ethical principles that are integral, yet common enough to be adapted by different jurisdictions as they see fit—such as transparency, accountability, sustainability and fairness. The encouragement of human-centric AI and the general idea that AI should be used to aid human decisions, rather than make or replace them, is a promising step forward. The development and application of regional and cross-border policies and frameworks, and their subsequent adaptability and interconnection with existing domestic frameworks and legislation, will certainly be an interesting evolution in this area of the law.

As discussed above, it is the authors' opinion that a rules-based approach to regulating AI (in the form of legislative regulation) may not be desirable or appropriate in the light of the current state of AI and the fact that there is still much to be learned about AI's capabilities and uses. A principles-based approach for regulating technological advancements such as AI is favoured due to the fluid nature of such technology. In terms of enacting legislation to regulate AI in the future, an adequate balance must be struck between a principles-based and rules-based approach.



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Note: This article was assisted by Shivani Sivanesan, Associate at LAW Partnership.

Artificial Intelligence and the Law in Practice

● ● This article discusses how artificial intelligence ('AI') can be implemented in your day-to-day practice and the practical implications and consequences that you should be aware of with respect to recent developments in different jurisdictions to ensure compliance with professional obligations.

The introduction of generative artificial intelligence, specifically the likes of Chat GPT and Google Bard, and the sheer strength and capability it brings to matter and content creation, is making massive waves in all areas and aspects of our lives. The legal community is no different. Although the arrival of AI is daunting to some, others have embraced the efficiencies that AI can bring to add value. It is inevitable that AI will become a part of our daily lives and early adopters to AI will no doubt receive major benefits.

Irrespective of whether we welcome the arrival of AI, we cannot dispute that it has seeped into our daily lives on an undetected scale. For example, with the new Microsoft Office update, we now get reminders and pop ups asking whether we want to 'follow up' or 'respond' to emails we have received. We also now have access to an 'editor' function that checks our drafting not only for spelling and grammar but now based on either a formal, professional or casual writing style, checks for clarity, conciseness, formality and inclusiveness (among others). This is a subtle example of AI that we see on a day-to-day basis. Interestingly, Microsoft is a majority stakeholder of OpenAI, which produced ChatGPT.

When asked 'What is generative AI', the following responses were derived from the following free AI platforms:

Chat GPT

Generative AI refers to a class of artificial intelligence techniques and models that are designed to generate new content, such as text, images, audio and more, that is similar in style and structure to existing data. These models are trained on large datasets and learn patterns and relationships within the data in order to create new instances that resemble the training examples.

One of the most well-known types of generative AI models is the generative adversarial network ('GAN'), which consists of two neural networks: a generator and a discriminator. The generator creates new content,



while the discriminator evaluates whether the content is real (from the training data) or fake (generated by the generator). These two networks work in a feedback loop, with the generator trying to improve its output to fool the discriminator and the discriminator getting better at distinguishing real from generated content. This competition drives the generator to create more realistic and high-quality outputs over time.

Another type of generative AI is the autoregressive model, which generates data one piece at a time, conditioning each new element on the previous ones. Language models like Generative Pre-trained Transformer ('GPT') fall into this category. These models predict the next word in a sequence based on the words that came before it, allowing them to generate coherent and contextually relevant text.

Generative AI has found applications in various fields, such as:

- *Text Generation:* Generating human-like text for content creation, storytelling and more.
- *Image Generation:* Creating realistic images, artistic pieces and even editing or enhancing images.
- *Music and Audio Generation:* Composing music, generating audio clips and even imitating voices.
- *Video Generation:* Generating video sequences and animations.
- *Data Augmentation:* Creating synthetic data to enhance the size and diversity of training datasets.

However, it is important to note that while generative AI has shown impressive capabilities, the generated content is not always perfect and can sometimes lack coherence, relevance or quality. Researchers continue to work on improving these models and addressing their limitations.

Google Bard

Generative AI is a type of artificial intelligence that can produce new content, such as text, images, audio and video. It does this by learning the patterns

and structures of existing data and then using that knowledge to create new data that is similar to the original.

Generative AI is still in its early stages of development, but it has the potential to revolutionise many industries. For example, it can be used to create new forms of art and entertainment, develop new products and services and even generate synthetic data for training other AI models.

Here are some examples of generative AI in action:

- *Text generation:* Generative AI can be used to create realistic-looking text, such as news articles, blog posts and even creative writing. For example, the GPT-3 language model can generate text that is indistinguishable from human-written text.
- *Image generation:* Generative AI can also be used to create realistic-looking images. For example, the DALL-E 2 image generation model can create images from text descriptions.
- *Audio generation:* Generative AI can also be used to create realistic-sounding audio, such as music and speech. For example, the NVIDIA Riva AI model can generate audio that is indistinguishable from human-produced audio.
- *Video generation:* Generative AI can also be used to create realistic-looking videos. For example, the Google DeepMind DeepDream video generation model can create videos that are based on user-provided images.

Generative AI is a powerful tool that has the potential to change the world. It is still in its early stages of development, but it is already having a significant impact on many industries. As generative AI technology continues to develop, it is likely to become even more powerful and versatile.

Here are some of the key differences between generative AI and traditional AI:

- Generative AI creates new content, while traditional AI analyses existing content. Generative AI can be used to create new text, images, audio

and video, while traditional AI is typically used to analyse existing data and make predictions.

- Generative AI is more creative than traditional AI. Generative AI can be used to create new and original content, while traditional AI is typically used to make predictions based on existing data.
- Generative AI is more challenging to develop than traditional AI. Generative AI models require a lot of data and computing power to train, while traditional AI models can be trained with less data and computing power.
- Generative AI is a rapidly developing field with the potential to revolutionise many industries. It is still in its early stages of development, but it is already having a significant impact on the world. As generative AI technology continues to develop, it is likely to become even more powerful and versatile.

From a practical perspective, we cannot deny the efficiencies and benefits that AI will bring to our daily practice. Being a bilingual lawyer growing up in an English-speaking country, communicating with clients from my home country can be difficult. Despite understanding the culture and being able to communicate in my native tongue, translating legal jargon and complex legal terms can be challenging. In this instance, the introduction of AI has been a welcome addition to my legal toolbox. The translation of legal terminology and concepts can be completed with a click of a mouse and the results are almost instantaneous.¹ From a business development perspective, language barriers can potentially be broken with the use of AI, particularly from an administrative perspective where I am able to generate quick translations to enable understanding of the document before engaging a translator and my English-speaking secretary is able to conduct email correspondence in my client's native language.

Notwithstanding the convenience that AI brings, we need to appreciate that AI is still in its infant stages. The results generated are not perfect. Sometimes numerous regenerations of the same question are required until the required result is produced, and sometimes human intervention is required to 're-translate' the result into one that can be utilised.

From a legal perspective, when utilising AI we must consider the following:

1. *Disclosure*: to what extent must we disclose the use of AI in our daily practice?
2. *Confidentiality*: to what extent can we maintain and comply with our confidentiality requirements and duties to our clients?
3. *Privacy*: to what extent can we maintain the privacy of our clients especially when using free open AI technology?
4. *Infringement*: to what extent is information generated by AI copyrighted? How do we check?

These are all valid legal questions we must ask ourselves to ensure we utilise AI in a way that allows us to comply with our duties and obligations to our clients and to ensure we comply with our professional obligations. We must ask these questions of ourselves every time we use AI, especially in a climate where it is unclear how different jurisdictions will deal with these issues. For example, I have made it a personal rule that despite utilising the benefits of generative AI, I will ensure no personal information is 'prompted' into an AI model and I will further ensure I disclose to clients when and if I have used AI in preparation of documents.

Luckily, some jurisdictions have taken the lead in developing some guidelines and/or recommendations in considering the impact of AI. For example, in New Zealand, the Office of the Privacy Commissioner released a Generative Artificial Intelligence update on 15 June 2023.² The potential privacy risks that the New Zealand Office of the Privacy Commissioner released are:³

1. The training data used by the generative AI: generative AI models are trained on vast amounts of information, some of which is personal information. This presents various privacy risks, including around how personal information has been collected, whether there is sufficient transparency and whether the information is accurate or contains bias;
2. Confidentiality of information your agency will enter into a generative AI: generative AI tools require a prompt for them to undertake their activities. This

prompt could be a few words or a large amount of data and could include personal and confidential business information. There is a risk that personal information entered into the generative AI is retained or disclosed by the provider of the generative AI tool and used to continue training the model;

3. Accuracy of information created by the generative AI: generative AI tools often produce very confident errors of fact or logic and can perpetuate bias and discrimination. Do not rely on the output of generative AI tools without first taking appropriate steps to fact check and ensure the accuracy of the output; and
4. Access and correction to personal information: the Privacy Act provides individuals with a right to access and correct personal information held by an agency. Generative AI tools may not always be compatible with such rights.

In a way, the guidelines provided are 'no-brainers' for our profession given the duties and obligations we owe to our clients with respect to disclosure, confidentiality, privacy and standard of work.

Despite the provision of guidelines such as these, reluctance to the use of AI is patently clear in other professions.

The New Zealand Ministry of Business, Innovation and Employment, which forms part of the New Zealand government ministry, banned staff from using AI technology such as Chat GPT due to data and privacy risks.⁴ Similarly, international conglomerates have also banned or restricted staff from using AI technology such as Apple, Samsung and Amazon, among others.⁵

Notwithstanding this, we are seeing novel developments in different jurisdictions around the world. For example, the EU has recently proposed the implementation of a regulatory system for AI through the 'AI Act'.⁶ Although the AI Act is still at its preliminary stages, it will provide an interesting precedent for different jurisdictions to consider.

As such, it will be interesting to see the developments that we see in AI in the legal stratosphere. For example, we are already seeing that numerous contractual drafting tools have been generated in AI whereas we see less AI being developed from a litigation perspective,

although it would not be surprising to see predictive AI tools being developed to assist litigators in providing advice to clients to assess risks.⁷

Given basic human nature of the 'fear of the unknown', it is not peculiar for individuals to feel threatened by the arrival of AI. However, in my personal view, we must adapt and make use of AI as a tool to generate efficiencies in our daily lives and in our practice. But what is patently clear is that we must be wary of the limitations that AI clearly has to ensure that we do not fall into the trap of using AI as a replacement instead of as a tool. We must ensure we maintain all professional duties to our clients and ensure that any advice provided to our clients is sound.

Notes

¹ It is noted that Google Bard does not yet provide translation into different languages whereas ChatGPT provides for this function.

² Office of the Privacy Commissioner Generative Artificial Intelligence (15 June 2023).

³ Ibid.

⁴ Hamish Caldwell 'Government Ministry Blocks AI Technology From Staff Use' Radio New Zealand (online ed, Auckland, 6 June 2023).

⁵ Dexter Tilo 'Has Apple Banned ChatGPT for Employees?' Human Resources Director (online ed, 23 May 2023)

⁶ Council Director 2021/0106 (COD) (2021) Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) And Amending Certain Union Legislative Acts 2021.

⁷ Predictive AI analyses past data and uses statistical algorithms to make predictions about future events.



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Impact of Artificial Intelligence on Human Resources and Thoughts on the Foreseeable Future of the Legal Profession

After a silent and rapid incubation, computer systems that can perform tasks that would normally require human intelligence (also known as artificial intelligence), have become a reality and represent one of the hottest challenges, if not the greatest and more complex, which enterprises now face and, in most cases, at stake is their future and business continuity. In this challenge, social, ethical and legal aspects are critical and need to be taken into account.



Taking on the artificial intelligence ('AI') challenge has become particularly unavoidable as AI has broken into, from multiple angles, the business model of many industries. If AI on one hand represents a big revolution in data management, processing and decision making, on the other hand it has simultaneously raised ethical, social and—as always—legal issues, all at once. As social and legal environments are struggling to keep up, AI has already had an impact. Among the aspects of deep concern is employment law which often (if not always) crosses paths with data processing and protection, particularly when it comes to workers' rights and, in general, to people and work management.

To detect a hint of how this impact might be significant, suffice it to say that AI has already been changing the content of all of the duties and tasks consisting of (or ending in) decision making based on data (especially big data) and information processing, quickly replacing manual activities which have typically required extra resources and been particularly time consuming until very recently. Having machines processing information and data to reach conclusions or form decisions is self-explanatory as to how impactful this revolution can be in any work environment. But moving into typical activities related to people management and employment, powerful applications of AI inevitably need to reckon with the restrictions and protections of employment and privacy laws.

As far as the pre-hiring and recruitment phase is concerned, for example, faster, more accurate and incomparably cost-effective automated data collection and management has made ordinary recruitment processes suddenly obsolete and no longer useful. As a result, recruiting now requires fewer people to achieve bigger results in a shorter time. Data privacy is of course very sensitive in terms of rules on data processing (and in particular to avoid wrongful processing). In addition to this, automated recruitment processes, if left ungoverned when it comes to compliance (such as relating to gender equality and discrimination), may entail significant legal issues, since wrongful results conflicting with applicable laws may involuntarily not only pass unnoticed, but be reiterated. AI is typically based on the capitalisation of previous experiences and on elaborating new results starting from previous inputs, thus entailing the risk that undesired patterns may be involuntarily replicated in the future. As machines have no capacity to completely elaborate their results based on ethics or good sense, human intervention is still unavoidable most of the time.

The first conclusion which emanates from these preliminary considerations is that any form of AI implemented in business activity needs to be governed and then regulated with dedicated internal policies to also avoid accidental law violations.

In a legal environment which has been found to be unprepared for the sudden changes imposed by the digital evolution and the advent of AI, the EU AI Act, which is supposed to become the world's first comprehensive AI law (once completed the approval path expected for the end of this year), identifies 'high-risk systems' as those used 'in employment, workers management and access to self-employment, notably for the recruitment and selection of persons, for making decisions on promotion and termination and for task allocation, monitoring or evaluation of persons in work-related contractual relationships, ... since those systems may appreciably impact future career prospects and livelihoods of these persons' (Recital 36 of the AI Act). Consistently, AI assumes that throughout 'the recruitment process and in the evaluation, promotion, or retention of persons in work-related contractual relationships, such systems may perpetuate historical patterns of discrimination, for example against women, certain age groups, persons with disabilities, or persons of certain racial or ethnic origins or sexual orientation' (Recital 36 of the AI Act).

On another employment law and HR-related subject, while AI allows for 'intelligently' processing and elaborating almost instantly an (until recently) unimaginable amount of data, restrictions for the employer to use tools that (even indirectly) may allow remote control on employees remain, and they might be critical. Indeed, in many civil law jurisdictions (including Italy) remotely controlling employees is generally forbidden or strongly limited and even in the cases when it is allowed, employers can acquire and use the data for disciplinary purposes only in specific cases and provided that information and guarantees on data processing and data privacy are complied with.

If AI is going to play a central role in many heterogeneous industries (for example, consultancy, legal, delivery, etc., as well as in all fields where combined and processed information are fundamental) and although its functioning is led by machines and algorithms, data processing is the key factor and data may easily include personal and sensitive data (for example, ethnicity or gender of people) in its storage, hence requiring extra care when it

comes to data protection compliance, also considering that sanctions applicable by General Data Protection Regulation ('GDPR') legislation in the case of wrongful data protection are particularly significant and can be quantified based on the global turnover of the group to which the single entity held liable belongs.

The second conclusion is that when it comes to AI implementation, data protection plays a critical role and careful analysis of all the data which might be voluntarily or involuntarily processed, as well as any form of control which AI may directly or indirectly allow, needs to be properly addressed and not left unregulated (again, for example, also regulating these aspects in internal policies and guidelines).

Last, but not least, AI is also expected to have an impact on the job market in terms of available and/or requested jobs, professions and duties in general. AI is indeed a great opportunity, but at the same time a big threat to old jobs forced to face a totally different kind of challenge.

Whether AI could, even in the near future, replace or reduce the amount of human resources required in certain industries is already a fact. But can this happen also with the legal profession or in general in relation to consultancy and advisory roles? The discussions on these topics have been ongoing for years now, and, needless to say, interpretations and views on this topic are conflicting and widely debated. AI can certainly make an important contribution in collecting information and conducting research and investigations faster, but the critical and analytical thinking that represents the added value for any strategic advice (whether legal or not) can hardly be outsourced to an artificial intelligence. It is not realistic (at least in the foreseeable future based on the expected development of the existing technology) that a machine could really replace humans in making decisions weighting business, ethical, legal and 'human' factors which can hardly be considered measurable or computable. Also, among other things, the legal profession, which has not evolved much through the years (at least not as much as other less traditional industries), might and will probably change, adapting to the evolution of society and technology as a sort of 'Darwinian effect'. AI is of course supporting legal counsel, but it seems difficult to conclude that lawyers and, in general, justice operators, will be replaced by machines or algorithms. It is instead a fact that technology, digitalisation and AI are causing a strong acceleration, which has not been experienced at

least since computers first appeared in legal offices, aimed at rendering delivery of legal services quicker and quicker and compressing the time originally required to collect and process information, for example, to provide an opinion. This piece of revolution will of course require, even more than in the past, the supervision of skilled and expert counsel, not only to run the last (and most important) mile to finalise the right advice, but before doing that, to check, combine and confirm that the data and information has been properly collected, processed and elaborated by the artificial assistant.

However, there is one last question which will remain temporarily unsolved—just as tough times create strong people and easy times create weakness, AI may on one hand render easier a tough job helping young professionals to come to a conclusion with a level of time and effort which was unthinkable until recently. But, since tough jobs usually also represent effective training, skipping this part of the job may affect such training, delaying the time required for new professionals to complete their set of skills. Looking at it from the other side of the coin, however, it may also be that with the help of AI and a vaster amount of information and sources, automatically combined and explained, the next generation of professionals will be offered a bigger opportunity to reduce the steps required, becoming even more quickly prepared to make the most out of the potential of AI. Another way to say it is that lawyers may not be replaced by AI but by lawyers who can master AI.

All of these questions will help us to find the answers. One last piece of information is due—this article has been entirely drafted by a human being.



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Financial Crime and Artificial Intelligence: the Next Frontier

This article will seek to explore the ways in which AI is helping to protect against some of the most significant financial crimes committed across the globe, including threats to the integrity of the financial markets and money laundering, while also exploring the recent development of AI-enhanced technology to commit fraud.



Introduction

Artificial intelligence ('AI') is developing as a powerful tool with the potential to positively revolutionise critical industries such as science, healthcare and finance. In respect of financial crime, AI is already supporting the guardians of the financial system by providing the technological basis to carry out fraud prevention measures quicker than ever before, and in many cases, in real time.

However, like most transformative technology there are those seeking to take advantage of it for their own unlawful benefit. Malicious actors are leveraging the capabilities of AI to perpetrate financial crimes at an unprecedented scale and sophistication. By delving into some key areas exposed to such criminal abuse, this article will examine the ways in which AI is helping to protect against unlawful conduct, including in

the financial markets and in the fight against money laundering, as well as the recent impact of AI-enhanced deepfake technology to commit fraudulent scams.

Before delving into these issues, it is worth just defining what this article means by 'AI'. There are many roaming definitions and this article does not intend to buck the trend by providing a definitive one, however, there is a general acceptance that AI is an umbrella term for anything that allows a machine to do something that ordinarily requires human intelligence.¹ AI's introduction and development dates back to the 1950s and the now famous quote from Alan Turing, 'AI is the science and engineering of making intelligent machines, especially intelligent computer programs'.² Technically, AI has a number of subsets of learning, one of the main ones being machine learning. Both terms are used interchangeably in this article.

The Financial Markets

If the last two decades have taught us anything it is that in an ever more globalised world the potential has never been greater for economic or health crises in one location to spread rapidly across continents. The impact can be devastating and total. One of the greatest risks is in the financial markets, where geopolitics, global trade and consumerism are intertwined and dependent. Any technology that can assist regulators monitor the variables in the financial markets is not only desirable, but necessary. It is in this sphere that AI has broken new ground, as its Natural Language Processing algorithms are being used to analyse news articles, social media posts and financial reports to assess market sentiment in real time to detect signs of market manipulation and/or fraudulent activities (positive or negative sentiment around a particular stock can be an indicator of potential market manipulation or insider trading—see below). This information can be compared against historical market data to learn normal trading patterns, price movements and typical behaviours of various securities. This learning can also be used to establish baseline patterns for each stock or asset, and therefore an awareness of activity that falls outside of these parameters.

Any technology that can assist regulators monitor the variables in the financial markets is not only desirable, but necessary.

Given the transformative capability of AI to monitor and assess misconduct in the financial markets, it was no surprise to see the heads of two of the world's top financial regulators, the UK's Financial Conduct Authority³ and the United States' Securities and Exchange Commission,⁴ recently give speeches on artificial intelligence within a few weeks of each other. Although conscious that typically financial regulators do not regulate technology, but rather the effect on and use of technology in the financial services industry, a key factor highlighted by both was the fundamental function of AI technology to improve the monitoring and surveillance of market activity. However, AI can also provide important data for understanding and planning the future of financial regulation in different jurisdictions—the Securities and Exchange Board of India has stated for many years that it intends to use artificial intelligence, machine learning and rule-based algorithms to assist not only its monitoring and investigations mandate, but as a pillar of its policy-making process.⁵

Counter-balancing the benefits of AI in the financial markets is the potential harm it can facilitate if deployed by those looking to undermine or manipulate the market for their own unlawful gain. Such threats to the integrity of the financial markets can arise through AI in several ways, but perhaps most commonly through misinformation campaigns and generative AI.

When it comes to misinformation, there are many contemporaneous global examples of attempts to influence referenda and national elections by employing AI-generated campaigning. This can be through fake news articles and/or social media posts intended to push a particular agenda or cast aspersions on another.⁶ Perhaps less well publicised, however, are attempts by malicious actors to deploy false information about a company, its financial performance or a particular industry in order to take advantage of subsequent drastic fluctuations in stock prices. In practice, these nefarious actors will often identify low-priced stocks with potential for manipulation and employ AI-powered chatbots and social media accounts to create hype around these stocks, artificially inflating their prices. Once the prices peak, criminals sell their positions, leaving others with significant losses.

In a similar manner, generative AI, the form of artificial intelligence capable of creating new images, text and other media, presents a particular type of issue capable of distorting financial markets for a sufficient time to allow criminals to take advantage. An example of such an opportunity occurred earlier this year, when on the morning of 22 May 2023, just before the US stock markets opened, an image of black smoke billowing next to the Pentagon began circulating widely on websites and social media outlets popular in investment circles and also by some news outlets including RT, the Russian government-backed media company, and a Twitter account bearing the blue verification check mark that suggested that it was associated with Bloomberg News (it was not). Despite swift clarification from local police and fire officials that the image was false and that there was no fire at or near the Pentagon, the impact on the market had been felt: the S&P 500 had dropped 0.3 per cent and the price of US Treasury bonds and gold had risen slightly. These are

movements that typically and predictably occur at a time of crisis as investors seek a secure haven for their money. Sure enough, these price movements corrected themselves shortly after the photograph was confirmed to be an AI-generated hoax.⁷

While it is not clear whether this incident was a cynical attempt to influence the financial markets or an ill-judged prank, the sobering conclusion is clear—if someone had wanted to make illicit gains on the US stock market using AI, they could have.

AI's ability to both protect the integrity of the financial markets while being its biggest threat is a balancing act that regulators and governments around the world are going to have to work together to combat. In this regard, AI's market surveillance systems are capable of being integrated with other financial institutions' systems and regulatory authorities, allowing for collaborative intelligence sharing to help detect cross-market manipulations and coordinated fraud activities. The sharing and continued innovation of this technology is likely to be critical to maintaining the integrity of the financial markets.

Money Laundering

A term now in common parlance, money laundering at its basic level is the disguising of the origins of illegally obtained proceeds so that they appear to be legitimate. Some of the earliest modern references to it come from Prohibition-era United States, as organised crime groups started to benefit from funds obtained from illegal sales of alcohol. The 1980s and the growth of the illegal drugs trade in the West saw anti-money laundering ('AML') laws develop in a manner that is now familiar to most lawyers and compliance professionals, with a post-9/11 world also shining the spotlight on countering terrorist funding ('CTF').

Following the financial crisis of 2008, the world has seen increasingly stringent legislation and regulation aimed at improving AML and CTF frameworks within financial institutions. Despite this, the stark reality is that today money laundering is operating at an unprecedented scale, from small-scale fraud to global organised crime and terrorism. The United Nations Office on Drugs and Crime estimating that between 2 per cent and 5 per cent of global GDP is laundered each year or EUR715 billion and EUR1.87 trillion).⁸ While technology has traditionally been used to assist AML processes and procedures when it comes to transaction monitoring

and individual screening systems, a traditional rules-based approach has resulted in high volumes of 'false positives', namely perfectly innocent transactions flagged up as potentially suspicious as they meet rigid and increasingly outdated criteria. The sheer number of false positives has led many financial services companies to be overwhelmed, both from a resource and cost perspective. This cost burden is particularly felt by businesses and consumers who pay a heavy cost for AML/CTF compliance. Practically, sifting through so many 'irrelevant' transactions inevitably increases the likelihood of missing out on the anomalies and outliers that do present a significant money laundering or terrorist financing threat. It is no surprise that with these issues, the impact and efficiency of the current approach to legal and regulatory AML/CTF has come under increased scrutiny.⁹ Indeed, an infamous former-UK politician recently likened AML compliance checks in the UK to 'a sledgehammer that misses the nut'.¹⁰

It is in this context that this article turns to the modern impact and capability of AI in the AML/CTF sphere. To address some of the issues set out above (as well as the changing methodologies criminals use to disguise the movement of their funds), banks and other financial institutions have for several years been moving towards the adoption of AI-enhanced technology, particularly machine learning. This is because AI is a natural tool for more efficiently identifying suspicious or potentially suspicious transactions as it can be used to analyse vast amounts of data, recognise, identify and even predict patterns in customer behaviours and when those patterns are broken, flag them for review.¹¹ AI-driven risk assessment algorithms can help identify high-risk customers and transactions, ensuring that AML compliance measures are more targeted and effective (and in the long term more cost efficient). Indeed, in 2021 the Financial Action Task Force ('FATF'), a global organisation setting benchmark standards for anti-money laundering, highlighted machine learning as having 'significant' AML/CTF potential, particularly in respect of 'detecting anomalies and outliers'.¹² Moreover, AI can help the compliance industry keep up with new methodologies as machine learning models learn from historical money laundering cases to improve the accuracy of detecting new, previously unseen money laundering patterns. In addition, building on the same technology used to assess sentiment in the financial markets, AI is being used to assess high-risk jurisdictions more effectively and to enhance the

better determination of Politically Exposed Persons and sanctioned individuals and entities.

However, as AI is not within the exclusive purview of financial institutions and/or enforcement agencies, its capabilities can also be used by individuals to further their criminal enterprise. In fact, a recent study of hundreds of compliance professionals found that the threat from generative AI tools like ChatGPT and other like technologies was the number one concern for those in the AML industry, above other issues such as regulation, cryptocurrency and blockchain.¹³

In the hands of criminals, AI's ability to analyse transaction patterns and identify anomalies can be exploited to obfuscate money laundering activities, seek and identify new ways to structure financial transactions to avoid detection and break down large sums of illicit money into smaller, seemingly legitimate amounts. In fact, as machine learning develops, AI is being utilised by criminals to predict and/or identify the latest risk assessment algorithms used by financial institutions to detect suspicious transactions, and in doing so, increase their prospects of evading such detection.

A further concern arises over the enhanced capability of criminals to anonymise and/or surround transactions with sufficient smoke and mirrors to avoid detection. Given the long-standing availability and accessibility of offshore accounts and shell companies the 'Follow the Money' methodology has never been as simple as it sounds for law enforcement agencies. However, this task is becoming more difficult still as AI algorithms assist criminals in anonymising transactions by introducing complex routing patterns which increase the challenge for authorities and investigators to trace the flow of funds. While this attempt to obfuscate the source and destination of funds is not new (shell companies are reported to be the most common method of money laundering¹⁴) AI is providing criminals with the ability to analyse historical transaction data to identify the most effective methods of doing so.

There is little doubt that AI is improving many of the underlying deficiencies in our increasingly integrated AML/CFT compliance frameworks, but it also provides the potential power for those with the requisite skills to stay ahead of the good progress being made. While AI may speed up reviews and reduce cost of compliance, it will take some time to see whether AI is going to make

a hard job more difficult, or provide an effective tool for law enforcement to finally combat money laundering around the globe.

AI-Enhanced Deepfakes

Perhaps the most disturbing dimension to AI-enhanced financial crime is the advent of AI-generated deepfake phishing attacks. AI enables criminals to utilise deepfake technology to impersonate individuals, such as company executives or high-profile individuals, in video or audio messages to facilitate financial scams or fraudulent activities. For example, by using deepfake audio, criminals can create voice replicas of company executives or even videos, convincing employees to carry out unauthorised transactions or disclose sensitive information without verifying their authenticity. One of the earliest reports of such attacks was in 2019 when AI-based software was used by criminals to impersonate a CEO's voice in a phone call to a senior director at a UK-based energy firm, ordering the urgent payment of USD \$243,000 to a Hungarian supplier. Such was the level of the deepfake that the criminals were able to mimic the CEO's slight German accent and the 'melody of his voice' on the phone.¹⁵ There are many other examples of AI-software being used to clone a voice and combine it with social engineering techniques to commit fraud and even reports of tech companies being targeted with this approach.¹⁶ The momentum behind these attacks is growing, with reports that dark web forums and social networking communities on platforms such as Telegram and Discord are discussing how to carry out financial crime using deepfakes.¹⁷

However, they say that 'it takes one to know one' and AI can also play a crucial role in identifying deepfakes by leveraging its own algorithms to analyse and compare the authenticity of media files with original, unaltered content. This can be done in a variety of ways, including the use of deepfake detection models developed by machine learning algorithms trained on large datasets that consist of both genuine and deepfake media files. By learning from the patterns and features present in these datasets, the AI models can identify inconsistencies that may indicate the presence of a deepfake. It follows that AI-driven facial recognition and voice biometrics technologies may be used to verify the identities of individuals in media files. This is done not just by analysing facial features and voice characteristics, but also through more precise and intelligent observations of lip movements,

to determine if they match the characteristics of the original person. Other applications, including consistency checks (for facial recognition and expressions throughout a video) and the identification of inconsistent noise patterns can be deployed to help route out deepfakes. AI systems can also leverage transfer learning, where knowledge gained from one domain (for example, facial recognition) is applied to another (for example, deepfake detection). This approach improves detection accuracy while reducing computational costs. Furthermore, AI models are designed for real-time deepfake detection, allowing for quick identification and response to potential threats.

AI's current ability to analyse and compare media content with its vast knowledge of genuine patterns and features empowers it to effectively identify deepfakes. As deepfake technology evolves, these AI-driven detection models will continue to advance, becoming more robust and reliable. Leveraging AI for deepfake detection on a scale and in real-time is therefore crucial to preserving the authenticity of media content, safeguarding against misinformation and protecting individuals and organisations from the potential harms caused by maliciously manipulated content.

Conclusion

Ultimately the fight against modern tech-based financial crime will come down to who is able to realise the full potential of AI sooner and more consistently. For financial institutions and law enforcement, the key is likely to be increased collaboration and information sharing globally and a stubborn insistence on pursuing technological innovation, something that governments must find a way of funding and subsidising. This will be vital in developing robust defence mechanisms that can protect financial systems and individuals from the looming threats posed by AI-driven financial crime.

Notes

- ¹ www.akkio.com/post/the-five-main-subsets-of-ai-machine-learning-nlp-and-more.
- ² www-formal.stanford.edu/jmc/whatisai/node1.html.
- ³ Read the FCA's Chief Executive Nikhil Rath's speech on 12 July 2023: FCA, 'Our emerging regulatory approach to Big Tech and Artificial Intelligence', available at www.fca.org.uk/news/speeches/our-emerging-regulatory-approach-big-tech-and-artificial-intelligence.
- ⁴ Read the SEC's Chair Gary Gensler's speech on 17 July 2023: SEC.gov, 'Isaac Newton to AI' Remarks before the National Press Club', available at www.sec.gov/news/speech/gensler-isaac-newton-ai-remarks-07-17-2023.

⁵ See www.angelone.in/blog/sebi-plans-to-invest-heavily-in-artificial-intelligence-and-machine-learning-know-why.

⁶ See the OSCE Policy Paper on AI in Political Campaigns (April 2021) which listed the following referendums and elections as being influenced by AI-driven campaigning: the 2016 United Kingdom referendum to leave the EU, the 2016 presidential election in the United States, the 2016; Colombian Peace Referendum, the 2017 French presidential election, the 2018 Brazilian presidential election, and the 2019 general elections in India – see www.osce.org/files/f/documents/a/3/483638.pdf.

⁷ Bloomberg News, 23 May 2023, 'How a Fake AI Photo of a Pentagon Blast Went Viral and Briefly Spooked Stocks' available at <https://www.bloomberg.com/news/articles/2023-05-22/fake-ai-photo-of-pentagon-blast-goes-viral-trips-stocks-briefly>.

⁸ Europol, Economic Crime, available at www.europol.europa.eu/crime-areas-and-statistics/crime-areas/economic-crime/money-laundering.

⁹ REF. City AM, 2 August 2023, John Binns, 'Even Farage Agrees Anti-money Laundering Laws are Weapons of Mass Distraction', available at www.cityam.com/even-farage-agrees-anti-money-laundering-laws-are-weapons-of-mass-distraction/.

¹⁰ Ibid

¹¹ RedCompass Labs, 16 May 2023, 'AI Can Help Solve the Anti-money Laundering Conundrum', available at <https://blog.redcompasslabs.com/artificial-intelligence-can-help-solve-the-aml-conundrum#:~:text=AI%20algorithms%20are%20trained%20to,subtle%20outliers%20in%20the%20pattern>.

¹² The Financial Action Task Force, July 2021, 'Opportunities and Challenges of New Technologies for AML/CFT', available at <https://www.fatf-gafi.org/en/publications/DigitalTransformation/Opportunities-challenges-new-technologies-for-aml-cft.html#:~:text=Opportunities%20and%20Challenges%20of%20New%20Technologies%20for%20AML%2FCFT,-Publication%20details&text=New%20technologies%20can%20improve%20the,more%20accurate%2C%20timely%20and%20comprehensive>.

¹³ Feedzai, August 2023, 'The State of Global Anti Money Laundering Compliance Report 2023', available at <https://feedzai.com/aptopees/2023/08/Feedzai-The-State-of-AML-Compliance-2023.pdf>.

¹⁴ Ibid, p 13. The Feedzai 2023 Report found that Shell Companies were considered by 49% of compliance professionals to be the most common method of money laundering, behind professional money laundering organisations (37%) and cryptocurrency (32%).

¹⁵ The Wall Street Journal, 30 August 2019, 'Fraudsters Used AI to Mimic CEO's Voice in Unusual Cybercrime Case', available at www.wsj.com/articles/fraudsters-use-ai-to-mimic-ceos-voice-in-unusual-cybercrime-case-11567157402.

¹⁶ See The Verge, 27 July 2020, 'AI voice clones are getting more and more realistic', available at <https://www.theverge.com/2020/7/27/21339898/deepfake-audio-voice-clone-scam-attempt-nis0>

¹⁷ See The Medium, 18 July 2021, 'Combating Deepfakes with AI', available at <https://medium.com/@ieeesb.nitdgp/combating-deepfakes-with-ai-6b19dec442b8>.



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The Transformative Impact of AI on the Indian Legal System

The use of artificial intelligence in legal systems is at present being explored by judiciaries, regulatory bodies and legal professionals around the world. This article explains the initiatives taken by the judiciary, regulatory bodies and legal professionals in India to harness artificial intelligence in the Indian legal system. This article also analyses the opportunities and challenges related to the use of artificial intelligence in the Indian legal system and legal practice.



Introduction

In an increasingly technology-centric society, artificial intelligence ('AI') is advancing rapidly to change the way the world functions. With intelligent machines enabling high-level cognitive processes like thinking, perceiving, learning, problem solving and decision making, combined with advances in data collection, analytics and computer processing power, AI presents solutions to automate repetitive tasks, amplify human capabilities, simplify usage of machines, analyse data and integrate information effectively and thus, improving decision making capabilities, with minimal errors. From facial and voice recognition technologies to the deployment of AI for repetitive automation in large manufacturing industries, AI is being used in all walks of life, business and a wide array of sectors. The sheer volume of innovations that AI has brought in society and the innovations that it can bring in the future, has led to its penetrations in sectors such as healthcare, manufacturing, commerce, agriculture, logistics, banking and finance, and defence.

As AI is progressing with each passing day, it is transforming our ways of living and changing the world altogether by complementing and supplementing human intelligence. Using AI technologies in business can bring about competitive advantages as it would reduce the workload and pressure on humans. For instance, AI-enabled applications are being used by businesses to provide prompt customer services, predict and assess risks, analyse client data, increase production facilities and solve industrial quality control issues. While AI may threaten some unskilled jobs through automation, it will also potentially create different kinds of jobs and roles that require new skill sets to be developed through training.

From the inception of India's Information Technology ('IT') boom in the late 1990s, the unavoidable integration of technology into virtually every sector has been evident. The legal sector is not an exception. The influx of AI technology is visible in both legal services and in the Indian judiciary. From the start, Indian lawyers have embraced technology from the usage of advanced search engines to digitalised client management tools to compliance management, being a few among the many technological assistants that lawyers have embraced. AI

is expected to have a significant effect on the practice of law and legal services. Although AI is more likely to assist than replace lawyers, it can substantially increase lawyers' productivity, efficiency and avoid human errors. However, optimum leverage of the advantages stemming from AI technology is yet to be displayed in the legal sector in India. The rate at which it is being deployed in India, currently seems insignificant. A study conducted in 2019 showed that less than 5 per cent of Indian lawyers make use of AI technology. Further, only a few Indian law firms have adopted AI, primarily for the analysis and enhancement of contractual and various other legal documents. There is currently no other quantifiable data to reflect the degree of integration of AI in Indian legal services. Therefore, understanding the scope and prospects of AI development in the Indian legal sector is relevant and delved into in this article.

AI is expected to have a significant effect on the practice of law and legal services.

Use of AI by the Indian Judiciary and Regulators

The Indian judiciary has initiated steps in leveraging AI tools, indicative of a proactive drive to unlock and capitalise on the benefits offered by AI. With the advent of the Covid-19 pandemic, there has been greater focus on use of technology and electronic means of conducting judicial proceedings. Technology played a significant part in the functioning of the judiciary during that time, which included turning physical court rooms into virtual court rooms, the conduct of hearings through video conferencing, digitisation of court records, electronic filing of cases and legal papers, etc. A variety of applications and websites, including 'E-Court Services' and others, were established to facilitate court proceedings. Going beyond these advancements, the Supreme Court of India has also set up an AI Committee to harness the use of AI technology in automation, legal research and document translation. Recently, the Supreme Court of India introduced, on an experimental basis, live transcription of court proceedings for the first time in the country, employing AI and high-tech tools. Subsequently, the Supreme Court of India has invited bids to set up an Artificial Intelligence System to transcribe court proceedings, subject to approval by the relevant bench. This initiative will promote greater transparency as it will provide the public real time and faster access to information pertaining to documentation of court proceedings. The Supreme

Court of India has further adopted an AI tool called Supreme Court Vidhik Anuvaad Software ('SUVAS') that converts and provides judgments in various regional languages. This is indicative of the unique application of AI by the judiciary to resolve an Indian jurisdiction-specific issue pertaining to the presence of diverse languages. An honourable judge of an Indian high court has gone a step further and used ChatGPT to assist decision making in a bail application case. The honourable judge in this case used an AI platform, which has been trained with multitudinous data, to further assess the worldwide view on bail when the assault was laced with cruelty.

An honourable Supreme Court judge in India has opined that AI has significantly altered the legal landscape as a pivotal force capable of revolutionising legal services. However, the honourable judge also pointed out that ethical considerations like 'responsibility, openness, and safeguarding parties' rights' could arise due to AI's integration into the legal sector, while reassuring that the judiciary is mindful of the ethical implications linked to the implementation of AI within court proceedings. Honourable Chief Justice of India DY Chandrachud also acknowledged in a statement that technology has become a powerful tool in the legal system for improving efficiency, accessibility and accuracy in the administration of justice.

The Indian regulatory bodies have also taken initiatives to adopt AI technology to carry out their functioning. The Securities Exchange Board of India ('SEBI'), the primary securities market regulator, has set forth the future use of AI to facilitate its functioning. It has indicated the following possible future use of AI: (1) pattern tracking and data analytics for surveillance purposes to track fraudulent behaviours such as insider trading and front running; and (2) it is developing a data lake that has inbuilt machine learning analytical capacities that can be used for surveillance, investigation along with developing policies and application processing. Further, the Reserve Bank of India ('RBI'), which is the central bank of India, is looking to use advanced machine learning and AI to analyse its vast database and make its regulatory supervision over banks and non-banking financial companies ('NBFCs') more efficient.

The key take away is that the Indian judiciary and regulators are not hesitant towards harnessing the opportunities underlying AI technology to improve

their functioning. The scope and potential of AI use is far-reaching. The degree of responsibility in carefully handling data and ensuring accuracy of results is higher in the case of regulatory or governmental bodies. Therefore, regulations for responsible use of AI need to be put in place in order to avoid the possible issues or breaches that may arise.

AI Application in the Legal Sector

AI has a number of applications in the legal sector, including the following:

- 1. Legal research and data analysis.** Legal research and analysis is a key element across all forms of legal services. The current legal research system is guided by keyword searches and reviewing of endless search results, that is highly time consuming. AI-driven legal search and analysis, which provides more sophisticated searches, could assist in delivering more efficient legal services. Certain search engines were recently launched in India that provide more sophisticated search results by analysing entire passages and legal briefs instead of just relying on key words.
- 2. Contract drafting and management.** The most predominant aspect of corporate and other commercial legal services is drafting and managing the life cycle of contracts. AI tools can make contract drafting easier and faster. AI can automatically generate standard clauses and language, saving time for legal professionals who would otherwise have to write them manually. The task of proofreading finalised contracts is another mundane task that can be replaced by AI. Such use of AI can enhance contract management workflow through the removal of inefficiencies and minimisation of repetitive tasks.
- 3. Due diligence and compliance.** One of the most taxing aspects of providing legal services is conducting due diligence. It entails reviewing and classifying vast amounts of data, being time consuming and susceptible to human error. Currently AI technology is not advanced enough to completely undertake the task of due diligence. However, certain AI-driven tools can assist in the due diligence process. For instance, there are certain Indian AI-driven due diligence applications that carry out limited diligence pertaining to financials,



litigation, ownership structures, business history, tax compliance, market reputation, wilful defaults, etc.

4. **Client service and communication.** Another nuanced use of AI is to improve client service and interaction. Use of chatbots for limited client interaction, understanding and noting requirements can ensure round-the-clock availability and thus enhance client satisfaction. AI can be used to further streamline the interaction process between legal practitioners and their clients, by automating routine communication tasks, scheduling appointments and facilitating the sharing of necessary documents. This automation will not only save considerable time, but will allow lawyers to focus on more skilled tasks.
5. **Document management and automation.** While law firms continue to move away from paper documents, sorting and finding digital documents is still challenging. Using tagging and profiling functionality, AI-driven document management software stores and organises case files, legal documents, notes and emails effectively, which solves the document organisation challenges significantly. Document management solutions also enable document ID and check-in/check-out privileges to maintain version control and security. Also, document management software can share files with others easily and seamlessly provide version control of a document to multiple users.

6. **Invoicing processes.** The legal industry is constantly evolving, and one of the latest innovations making waves worldwide is the introduction of AI technology into legal invoice review processes. Manual invoice review processes can be time consuming and labour intensive, involving multiple stakeholders and paper-based documentation. With AI, the entire process can be automated, from invoice submission to review and approval, reducing the need for manual intervention and speeding up the overall billing cycle. Currently, most law firms in India use time tracking and invoice generation software. However, more advancement, with significant automation and integration, can be expected in such software tools in the near term.
7. **Prediction of case outcome.** In the context of litigation, AI-driven technology could possibly be used to understand case outcomes. AI can meticulously analyse extensive repositories of legal information, detect intricate trends, historical precedents and pertinent parameters that human observation could easily miss. This predictive proficiency could empower lawyers to assess potential case conclusions, facilitating knowledgeable judgments and tactical strategies. However, it is posed with the major challenge of bias that is discussed in the next section.

In India the legal tech sector is also a growing market with around 650 startups operating in this space. Startups

in the legal tech sector are cumulatively using AI to provide a varied range of solutions. Their customer base includes all three pillars of the legal system, that is, citizen, judiciary and legal service providers. Their product landscape involves delivering sample legal documents, process efficiency, legal resources, research and legal service tools and all of these include products pertaining to practice management, contract and document management, shareholding and stock option management tools for companies, due diligence solutions, online dispute resolution facilitation tools, knowledge platforms, document drafting, digital signatures, etc.

It is largely evident that the use of AI in the Indian legal sector is still at its nascent stage and there is a need to push greater incentives for usage of AI by Indian lawyers and realise the benefits underlying AI technology.

Challenges Underlying the Use of AI in the Legal Sector

The use of AI in the legal sector comes with its set of challenges that need to be addressed in order for its full potential to be realised. Some challenges are common across all sectors, however, there are certain challenges that are unique to the legal sector. The legal sector, being a professional service, is attached with a greater degree of responsibility and ethical standards that need to be adhered to. The following addresses some of the challenges that stand in the way of using AI in the legal sector:

1. **Issue of bias.** The primary issue that underlies the use of AI is the concern of bias. AI operates on a judgement system, which has given rise to concerns regarding biases and consequent ethical concerns. The problem of biases is linked to factors such as insufficient diversity in training data, pre-existing biases of developers and the incorporation of historical data. In the Indian context, this is more predominant considering the large demographic and cultural diversity in India and the possible under-representation of certain groups in AI datasets. The application of AI by the judiciary and lawyers in case-outcome prediction or in decision making respectively, could be susceptible to such issues of bias. This brings in a greater concern of upon whom such responsibility will rest in cases leading to miscarriage of justice. Errors guided by biases could even prove to be costly for lawyers. Therefore, there
- is a need to regulate and directly control these issues of bias to avoid these implications.
2. **Issue of misinformation.** Use of AI technology for research and other data analysis could lead to errors and sometimes even misinformation. A recent American case, where a lawyer who had cited a fake case that was generated by ChatGPT in his filings, is being considered for penal sanctions. The danger of wholly relying on AI tools for legal research is thus plainly evident. This could prove to be detrimental if lawyers give legal advice based on incorrect or made up information.
3. **Limited assistance, not replacement.** The current level of AI development is not prepared to significantly replace all the skills and tasks carried out by a lawyer. For instance, while using contract drafting and reviewing tools, AI cannot completely undertake drafting the intricate details as set forth by a client in a complex matter but can help in building the basic structure and reviewing and proofreading contracts. Similarly, in due diligence, AI's capacity to account for complicated and diverse details in due diligence might not be sufficient. Therefore, the use of AI is limited to assistance in performing lawyer's tasks and cannot wholly replace lawyers.
4. **Costs and uniform access to AI tools.** To keep up with the market trend of AI use, law firms and lawyers need to pay to use AI technology-based applications that could add to their costs. This could be an affordable cost addition for larger firms and established lawyers, however, it could prove expensive and become inaccessible to smaller firms and lawyers who are in the process of establishing themselves. The natural implication would be non-uniform growth of AI usage in the legal field.
5. **Confidentiality.** When AI is being used in the legal sector then a conundrum of confidentiality and AI comes up. As AI is being fed data for processing, augmenting and storing among other things and that data would include data of clients and sensitive data of the firms which if it leaks out can cause significant loss to the lawyer, including reputational loss, and to clients and could impact their business. Thus, this creates a tussle between confidentiality and the use of AI in the absence of a proper regulatory framework.

6. **Training.** The use of AI tools would additionally require proper technical training of lawyers. This is an additional cost. The skills of a lawyer need to be aligned with the new uses of technology. The training would also require basic information dissemination and removal of the stigma pertaining to the usage of AI technology among lawyers.
7. **Handling data.** In the case of handling and use of client services and communication through an AI tool, the challenges of complying with the new Digital Personal Data Protection Act 2023 is to be also considered. There is a greater degree of caution to be exercised while handling the 'personal data' of clients and to avoid instances of breaches, considering the exorbitant fines under the new data protection law in India.
8. **Changing environment of law.** The legal sector is ever evolving and changing with new laws and amendments coming on a daily basis, this would mean that AI has to keep up with all these changes and would require updates of their software which would require additional and continuous R&D.
9. **Regulatory considerations.** The key challenges in the use of AI, that is common across all sectors, is compliance and consideration of the existing legal framework and absence of codified laws that regulate AI *per se*. The use of AI tools in the legal sector is posed with issues pertaining to, *inter alia*, contractual obligations, liabilities, intellectual property ('IP') rights, data privacy and protection. The current IP laws in India are unclear about the ownership, inventorship and authorship of work/inventions created by AI. This becomes a problem in terms of lack of incentives to develop legal assistance AI tools and further poses an issue in establishing IP ownership over AI-generated legal work. Further, the amount of data that is being fed to AI for processing and storage requires regulation because the data might belong to an individual and could be his/her personal data which if breached can harm the reputation of or can cause monetary losses to that individual and thus requires protection under the law. In India, the legal framework currently holds humans responsible for the actions of AI systems they control. This concept is in line with the principles of the Information Technology Act 2000, which places responsibility on individuals who have

authorised, accessed or controlled the AI system. As stated before, if lawyers give wrong advice based on incorrect or made up information from an AI tool, such lawyer will be liable and responsible for such wrong advice. However, as AI becomes more autonomous, the question of assigning liability becomes more complex. Accordingly, the role of contracts in establishing ownership and responsibility of the legal documents and advice created through AI tools by lawyers is another crucial consideration that needs to be defined.

Concluding Remarks

It is largely evident that the integration of AI in the legal sector can be a catalyst to transformative growth, increase of productivity and efficiency. However, noting that there are attached issues pertaining to its use, the need of the hour is to ensure collaborative growth in the legal-tech domain with greater participation by lawyers and law makers in this AI integration process. The aim for responsible design, development and deployment of AI in the legal field and setting out enforcement mechanisms for the operationalisation of these principles to truly achieve the 'AI for All' strategy adopted by the Government of India. Moreover, there is a need to build awareness and remove stigma over the use of technology such as AI among Indian legal practitioners, that can be developed through initiatives, training and spreading awareness.

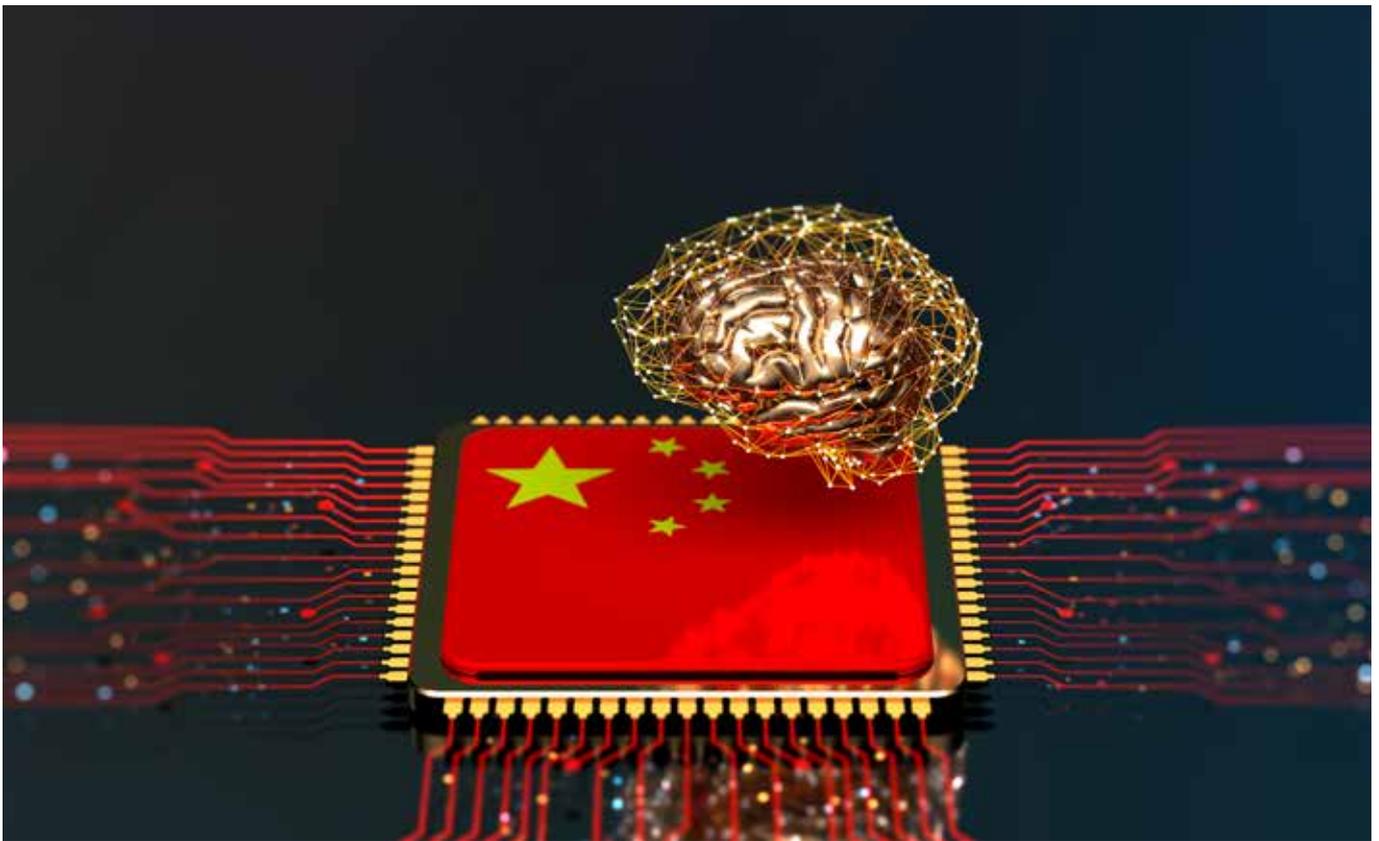


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AI & the Law: China's Perspective

In recent years, artificial intelligence ('AI') is undoubtedly one of the hottest emerging issues in the world. The purpose of this article is to share the Chinese experience of the construction of AI compliance and to provide some useful ideas and references for people concerned about AI issues.



Introduction

Artificial intelligence has become an indisputable 'social hot spot', not only because of the rapid development of technology, but also because people are exploring more and more application scenarios of AI, witnessing the increasing integration of this technology into human daily life and the social economy, and consequently we are beginning to think about the attendant ethical issues and application risks. For all countries in the world, AI is not only a global technological innovation, but also a common challenge to the compliance system. As the second largest economy in the world, China's ideas and experiences in the construction of AI compliance are worth sharing.

Taking Information Security as the Starting Point to Comprehensively Build a Multi-Level Compliance System That Combines Laws and Regulations

Artificial intelligence, such as ChatGPT, is changing with each passing day, but it often depends on the collection, retrieval, analysis and processing of information. It involves not only the search of network information, but also the collection of the personal information of users. Therefore, the compliance management of network information and personal information is the only way for the construction of AI compliance and is also important for the construction of an AI compliance system.

In terms of network information management, on 7 November 2016, the Law of the People's Republic of China on Network Security was promulgated, which applies to the construction, operation, maintenance and use of networks within the territory of the People's Republic of China, as well as the supervision and management of network security. In view of the division of functions of the network security supervision department, Article 8 of the Law stipulates that the national network information department is responsible for the overall coordination of network security work and related supervision and management work. The competent telecommunications department, public security department and other relevant organs under the State Council shall be responsible for network security protection, supervision and management within their respective responsibilities in accordance with the provisions of this Law and relevant laws and administrative regulations. The responsibilities of the relevant departments of the local people's governments at or above the county level for network security protection and supervision and management shall be determined in accordance with the relevant provisions of the State.

Article 21 of the Law clearly implements the hierarchical protection system of network security. Network operators shall, in accordance with the requirements of the network security level protection system, fulfill the obligations of formulating internal security management system and operation rules, preventing computer viruses and network attacks, taking technical measures to monitor and record network operation status and network security incidents and taking measures such as data classification, important data backup and encryption. In addition, at present, AI products often collect a large amount of user information and needs in the process of interacting with users. Article 41 of the Law also explicitly requires network operators to collect and use personal information in accordance with the principles of legality, legitimacy and necessity, to publicly collect and use rules, to express the purpose, mode and scope of collecting and using information, and to obtain the consent of the collector. Providers of AI products should abide by the above provisions when releasing products to the public based on the network so as to ensure the standardisation and safety of AI operation.

In terms of personal information protection, on 20 August 2021, the Personal Information Protection Law of the

People's Republic of China was promulgated. The Law applies to the processing of personal information of natural persons within the territory of the People's Republic of China as well as the processing of personal information of domestic natural persons outside the territory for the purpose of providing products or services to domestic natural persons. Article 28 of this Law clearly defines the scope of sensitive personal information, namely, biometric identification, religious belief, specific identity, medical health, financial accounts, tracking and other information, as well as personal information of minors under the age of 14 years. A processor of personal information may process sensitive personal information if, and only if, it has a specific purpose and is sufficiently necessary and subject to strict safeguards. Article 51 of the Law clearly requires that personal information processors should take effective measures to prevent unauthorised access and leakage, tampering and loss of personal information according to the purpose and method of processing personal information, the types of personal information, the impact on personal rights and interests and possible security risks. Such measures include formulating internal management systems and operating procedures, implementing classified management of personal information, taking corresponding security technical measures such as encryption and de-identification, reasonably determining the operation authority of personal information processing, regularly conducting security education and training for employees, and formulating and organising the implementation of emergency plans for personal information security incidents. In the process of collecting personal information such as user data, AI service providers must comply with the relevant provisions of the above personal information protection law to protect the personal information security of citizens, otherwise they will bear corresponding legal liabilities.

Based on the above laws, on 10 January 2023, the Ministry of Industry and Information Technology and the Ministry of Public Security jointly issued the Regulations on the Deep Synthesis of Internet Information Services. The Regulations make special provisions on the provision of news information by AI services. The implementation of these Regulations holds significant importance in ensuring the lawful and responsible application of deep synthesis technology in internet information services. By imposing stringent restrictions, it effectively prevents the dissemination of false or misleading information, thereby upholding public order and safeguarding

individuals' rights. The enactment of this regulation not only contributes to ensuring national security and preventing actions that could harm national interests and reputation, but also enhances the authenticity and credibility of internet information. Furthermore, this regulation encourages the ethical and sound use of deep synthesis technology, laying the foundation for creating a positive and orderly online environment.

On 10 July 2023, the National Development and Reform Commission, the Ministry of Education, the Ministry of Science and Technology, Ministry of Industry and Information Technology, Ministry of Public Security and the State Administration of Radio and Television jointly issued the Interim Measures for the Management of Generative Artificial Intelligence Services. The Measures are applicable to the use of generative AI technology to provide services to the public in the People's Republic of China to generate text, pictures, audio, video and other content, and regulate the training, service and security of AI in all aspects. It clearly requires that generative AI services with public opinion attributes or social mobilisation capabilities should carry out security assessments in accordance with the relevant provisions of the State and perform the procedures of algorithm filing, alteration and cancellation in accordance with the Regulations on the Recommendation and Management of Internet Information Service Algorithms. This regulation also explicitly requires AI providers to cooperate with the competent authorities in the supervision and inspection of generative AI services according to their responsibilities, to explain the source, scale, type, labelling rules, algorithm mechanism of training data and to provide necessary technical and data support and assistance. This is to put AI products and services, which have an important influence on social governance, under effective supervision, and avoid the serious misleading impact of AI services on the public's perception and judgement.

After several rounds of legislation, China has now formed a multi-level compliance system combining laws and regulations and has put it into full use to strictly investigate and punish the illegal operation of AI technology and prevent it from endangering

AI technology has become an undeniable and indispensable productive force which has gradually played an increasingly important role in all walks of life.

social stability. On 25 April 2023, the public security organs of Gansu Province cracked a case that used AI technology to concoct false and untrue information. The suspect learned the method of earning traffic through Wechat friends, searched the hot social news in recent years on the whole network, modified and edited the collected news elements through the recent popular ChatGPT artificial intelligence software and uploaded it to the network for illegal profit. After investigation, it was found that the suspect had used modern scientific and technological means to fabricate false information, which was widely disseminated and browsed, and his behaviour had been suspected of provoking trouble. Chinese public security bodies took prompt measures to take criminal compulsory measures against criminal suspects to avoid further misleading the public with false information.

Guided by Key Issues to Explore Diversified Compliance Paths That are Both Open and Rigorous

At present, AI technology has become an undeniable and indispensable productive force which has gradually played an increasingly important role in all walks of life. Rejecting the application of AI technology in industry will miss the key opportunities for industrial development, but at the same time, allowing the abuse of AI technology in industry will aggravate the serious risk to industrial operations. Therefore, it is necessary for all walks of life to combine their own actual conditions, take on the integration of AI technology into solving the major issues in the operation of the industry as the orientation, explore various ways of compliance operation with both development tolerance and preciseness and prudence and put the laws and regulations into practice.

In terms of the judicial application of AI technology, on 8 December 2022, the Opinions of the Supreme People's Court of the People's Republic of China on Regulating and Strengthening the Judicial Application of AI was officially issued, which set specific objectives for the judicial work of AI in 2025 and 2030. The application and theoretical system of judicial AI technology with rule guidance and the demonstration of the effect of application can greatly reduce the workload of

judges and provide high-level intelligent assistance support for the whole process of justice in the interests of people and justice overall. But this Opinion also clearly emphasises the auxiliary trial principle of AI technology, that is, no matter to what level the technology develops, AI cannot replace the judge's judgment so that judicial judgment is always made by judges, judgment authority is always exercised by the judicial organisation and judicial responsibility is ultimately borne by judges—thus consolidating the fundamental bottom line that justice still needs to be people-oriented in the development of AI technology.

In terms of the financial application of AI technology, on 27 April 2018 the People's Bank of China, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission and the State Administration of Foreign Exchange jointly issued the Guiding Opinions on Regulating the Asset Management Business of Financial Institutions, which agreed that qualified financial institutions should use AI technology. However, it also explicitly requires financial institutions to use AI technology to carry out asset management business in strict compliance with investor appropriateness, investment scope, information disclosure, risk isolation and other compliance provisions and not to exaggerate the publicity of asset management products or mislead investors with the help of AI. It also requires avoidance of using ordinary consumers' trust in technology to enable investment fraud and reminds financial institutions not to rely too much on fixed procedures to carry out investment, neglecting manual review and monitoring.

In addition, another major area of application for AI technology is network search services. At present, with the help of AI algorithms, many search engines provide the information and knowledge needed by a vast number of network users. The Regulations on the Management of Algorithm Recommendation for Internet Information Services, which came into effect on 1 March 2022, require that algorithm recommendation service providers should regularly review, evaluate and verify the mechanism, model, data and application results of the algorithm and should not set up algorithm models that violate laws and regulations or ethics, such

as inducing users to indulge in excessive consumption. The Regulations address the impact of AI algorithms on internet search services, particularly focusing on the recommendation mechanisms employed by search engines when providing information to users. It underscores the responsibility of algorithm recommendation service providers. This helps prevent the misuse of algorithms and mitigates potential issues like misleading users and inducing addiction and excessive consumption.

Relying on the Social Platform to Extensively Carry Out Multi-Dimensional Academic Exchanges That Echo Theory and Practice

In 2017, the New Generation of Artificial Intelligence Development Plan issued by the State Council of the People's Republic of China proposed enhanced risk awareness, attached importance to risk assessment and prevention, strengthened forward-looking prevention and restraint guidance, focused on the impact on employment in the near future and on the impact on social ethics in the long term, so as to ensure that the development of AI is regulated within a safe and controllable range. The standardised application of AI technology depends not only on the prudent work of government departments and industry organisations, but also on social platforms and associations to enhance the exchange of compliance experience of AI technology.

The Chinese Association for Artificial Intelligence ('CAAI') was established in China as early as 1981. The Society is a high-level and national social organisation that integrates AI technology academic theory, industrial application and talent cultivation. At present, it has 61 branches, including 52 professional committees and nine working committees, including the Artificial Intelligence and Security Committee, which has organised several national academic forums on AI and security and set up an academic platform for interdisciplinary exchanges between network security and AI in China.

In addition to national organisations, local AI social organisations in various parts of China are also strong. As far as Shanghai is concerned, it has established the

The Chinese Association for Artificial Intelligence ('CAAI') was established in China as early as 1981.

Shanghai Artificial Intelligence Association ('SAIA'), which is a non-profit social organisation representing the nature of Shanghai's AI industry. On 3 September 2022, the Association held the Trusted Privacy Computing Summit Forum, which focused on the theme of Entering the Age of Data Privacy, Trusted Privacy Computing Escorts the High-quality Development of Digital Economy. Dawn Song, the 'mother of internet security', a professor in the Department of Computer Science at the University of California, Berkeley, was invited to share the development of privacy protection, data security and personal information protection technology. Also, the Institute of Cloud Computing and Big Data of the China Academy of Information and Communications and Ant Group, a well-known large enterprise, sent staff to share the practical experience of data security to help the development of AI with data security.

After decades of development, the national and local social platforms and associations of China have become an important support for the construction of AI technology compliance in China and have effectively complemented the work of the government and industry organisations.

Concluding Remarks

Artificial intelligence is a new challenge and opportunity facing all countries in the world today. Chinese President Xi Jinping pays great attention to the development of AI technology, emphasising the need to strengthen the assessment and prevention of potential risks in the development of AI, safeguard the interests of the people and national security and ensure that AI is safe, reliable and controllable. We believe that it is the common demand of people to turn challenges into opportunities and avoid the chaos of unbridled growth while promoting social and economic development with the help of AI. Responding to social demands and sharing the wisdom of the rule of law is the public welfare value of a lawyer.



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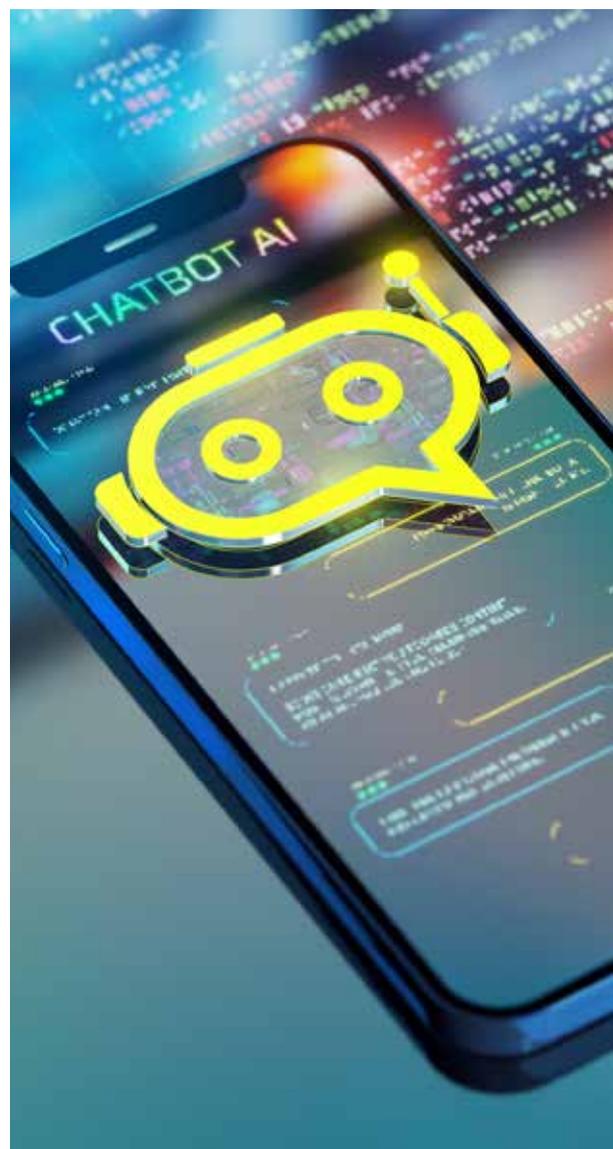


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Legal Practice of AI Compliance in China: Key Obligations of Measures for the Administration of Generative Artificial Intelligence Services

On 13 July 2023, the Measures for the Administration of Generative Artificial Intelligence Services was announced by the Cyberspace Administration of China, which mainly takes an encouraging attitude towards generative artificial intelligence technology and also clarifies the responsibilities of service providers. As a pioneering guidance, it has certain significance for the current development and supervision of artificial intelligence ('AI') technology in China. Based on the analysis of the Measures, this article intends to discuss some legal reflections and put forward legal suggestions on several types of risks arising in the development of generative AI technology.



Introduction

At the beginning of 2023, ChatGPT, a product created by OpenAI, became popular on the global Internet and became a phenomenal application in the field of artificial intelligence ('AI'). ChatGPT is the latest generation of AI language models released by OpenAI, which is a remarkable achievement in natural language processing ('NLP'). Artificial intelligence technology seems to have pressed the fast forward button.

It is not just technology that is in fast forward: legislators and regulators around the world are responding to potential risks at a rare rate. Similarly, Chinese regulators are also clearly aware of the risks posed by new AI products; although there is no special law at the legal

level, China has quickly introduced new management measures for AI.

On 13 July 2023, the Measures for the Administration of Generative Artificial Intelligence Services ('Measures') was announced by the Cyberspace Administration of China, jointly with another six ministries.¹ This article will interpret the main clauses in the new Measures by combining the previous legislative context and law enforcement practice, and further analysis and thoughts will also be made on the legal supervision of AI technology.

Risks and Challenges Posed by Generative AI Analysis of the Working Mechanism of AI

To better identify and regulate risks, obtaining an understanding of how generative AI works is the first step. Taking ChatGPT as an example, it is well known that internet search engines—such as Google, Baidu or Microsoft Bing—are capable of performing a large number of database lookups and providing a series of matches that may answer a person's query. The power of ChatGPT lies in its ability to generate a so-called corpus based on large amounts of text data: it has been trained to interpret the context and meaning of specific queries and to generate relevant answers in grammatically correct natural language, enabling effective communication on almost any topic in a human-like way. Learning language models by training AI neural networks at scale, ChatGPT uses it to generate naturally flowing text or complete other natural language processing tasks. From the above AI creation mechanism, it can be seen that the contents generated by AI are the result of applying algorithms, rules and models.

Thus, through applying algorithms, rules and models, risks including data governance risks, algorithm bias and copyright infringement have also emerged.

New Risks Arising From Generative AI

Prior to the new generative AI regulations, the Cyberspace Administration of China and another four ministries and commissions issued the Provisions on the Administration of Algorithm Recommendations for Internet Information Services ('Algorithm Provisions') in December 2021 and the Provisions on the Administration of Deep Synthesis of Internet-based Information Services ('Deep Synthesis Provisions') in November 2022.



Compared with previous AI technologies, generative AI can directly use natural language to interact with computers. The threshold for use is lower, the user experience is better and the contents, including generated text, pictures, sounds, videos and codes, are very close to or of a higher quality content than produced by a natural person.² This also makes it more confusing and potentially harmful once it is abused or misused.

With the emergence of intelligence brought about by the application of technologies, generative AI not only improves the quality of content output, but also makes the operation of algorithms more unpredictable and extends more hidden and uncontrollable legal risks on the basis of 'weak artificial intelligence' in the past. In its actual operation, generative AI needs to go through three stages of 'data input, algorithm operation and content output', which involve different types of legal risks such as data governance risks, algorithm bias and copyright infringement.

Compliance Obligations for Providing Generative AI Products or Services

Measures for the Administration of Generative Artificial Intelligence Services

The Measures for the Administration of Generative Artificial Intelligence Services, published recently in China, consists of five chapters. In addition to the emphasis on personal information protection, the Measures mainly adopt an encouraging attitude towards generative AI technology and also clarify the responsibilities of service providers, as well as taking more refined regulatory measures. These are discussed in more detail below.

Adhere to the Principle of Attaching Equal Importance to Development and Security, Encourage the Development of AI Technology

The newly introduced Measures adopt an encouraging attitude towards generative AI technology.

According to Article V, the Measures encourage innovative application of generative AI technology in all industries and fields, generation of positive, healthy, and upwardly good-quality content, exploration and optimisation of application scenarios and building an application ecosystem. It also supports industry organisations, enterprises, educational and scientific research institutions, public cultural institutions, relevant

professional institutions, etc., to collaborate in areas such as generative AI technology innovation, data resource construction, transformation, and application and risks prevention.

Moreover, as specified in Article VI, the Measures encourage independent innovation in basic technologies such as generative AI algorithms, frameworks, chips and supporting software platforms, carrying out international exchanges and cooperation on an equal and mutually beneficial basis and participation in the formulation of international rules related to generative AI.

In general, it can be seen from the new Measures that China currently encourages generative AI, which to a certain extent provides institutional support for the innovation and development of AI technology in the future.

It Strengthens the Main Responsibility of Enterprises and Content Providers

The new Measures stipulate that it applies to the use of generative AI technology to provide services that generate text, images, audio, video and other content to the public within the territory of the People's Republic of China. This definition is not an exhaustive list and is not limited to technical routes such as large language models, neural networks or deep synthesis and the core qualification is 'generate', especially content that did not exist before.

Compared with previous regulations, the Measures have enhanced accountability requirements for generative AI service providers, which is required in Article VII, which provides that:

Generative AI service providers shall lawfully carry out training data processing activities such as pre-training and optimized training, and comply with the following provisions: (1) Using data and basic models with lawful sources; (2) Where intellectual property rights are involved, the intellectual property rights enjoyed by others in accordance with law must not be infringed; (3) Where personal information is involved, the individual's consent shall be obtained or other circumstances provided for by laws and administrative regulations are complied with; (4) Employ effective measures to improve the quality of training data, enhancing the authenticity, accuracy,

objectivity, and diversity of training data; (5) Other relevant provisions of laws and administrative regulations such as the Cybersecurity Law of the People's Republic of China, Data Security Law of the People's Republic of China, Personal Information Protection Law of the People's Republic of China, and relevant regulatory requirements of relevant competent departments.

Otherwise, Chapter III has seven articles to regulate the responsibilities and obligations of service providers. Under the Measures, service providers shall lawfully bear responsibility for producers of online information content and perform network information security obligations. Where personal information is involved, service providers shall bear the responsibility of the personal information processor in accordance with the law and perform personal information protection obligations. Providers shall sign a service agreement with the generative AI service users who register their services to clarify the rights and obligations of both parties.

The overall Measures mainly focus on the addition of service provider obligations and emphasise the importance of clarifying service provider obligations in the current development of AI technology. In general, it is a guiding and programmatic provision, and there are no detailed provisions on the risks that may arise in the development of generative AI.

It Stipulates Generative AI Service Specifications

Generative AI has many characteristics that previous technologies did not have. In view of its technical characteristics, the Measures improve the scientific supervision method that is compatible with innovation and development, which is to urge regulatory authorities to adopt more refined management measures and realise the synchronous evolution and synergy of technological innovation and regulatory innovation.

Artificial intelligence algorithms have specific behavioural characteristics, which are manifested in uncontrollable behaviour and impenetrable decision-making mechanisms, which brings difficulties to AI

supervision. To this end, the Measures are in line with existing norms such as the Algorithm Provisions and Deep Synthesis Provisions, continuing the previous regulatory means, clarifying the principle of categorical and hierarchical supervision and improving China's AI governance system.

First, it clarifies the requirements for security assessment and algorithm filing. The Measures make it clear that those who provide generative AI services with public opinion attributes or social mobilisation capabilities shall carry out security assessments in accordance with relevant national provisions and perform the procedures for algorithm filing, modification and cancellation in accordance with the Algorithm Provisions.

The second is to clarify the requirements for information disclosure. The Measures clearly stipulate that the relevant competent authorities carry out supervision and inspection of generative AI services according to their duties and the providers shall cooperate in accordance with the law, including explaining the source, scale, type, labelling rules and algorithm mechanism, etc., of the training data as required as well as providing necessary technical and data support and assistance.

Regulatory Practices Under the New Measures

The Measures for the Administration of Generative Artificial Intelligence Services took effect on 15 August 2023. Since the promulgation, due to the promotion of the new Measures, major applications and network platforms in China have made regulatory reviews of relevant AI generative software.

On 1 August 2023, a number of AIGC-related apps, including the iFLYTEK, were removed from the App Store. Deep Synthesis Technology ('DST') and generative AI services (including ChatGPT) have corresponding regulatory measures and DST must meet licensing requirements to operate in China, including obtaining a licence. The main reason for the removal of relevant apps is that the Measures were implemented on 15 August and the removed apps are not standardised enough in terms of data collection and use, and it will take some time to re-list.

Compared with previous AI technologies, generative AI can directly use natural language to interact with computers.

The removal of AIGC-related apps once again highlights the importance and rectification of the regulatory authorities in the field of AI in China. The promulgation of the Measures provides clear norms and guidelines for the healthy development of the AIGC industry. For enterprises, it is necessary to strengthen their own compliance awareness and standardise data collection and use to meet regulatory requirements. For regulatory authorities, it is necessary to strengthen the supervision of the AIGC field, establish a sound regulatory mechanism, protect the rights and interests of users and promote the sustainable development of the whole industry.

Legal Analysis and Thoughts on Generative AI Overview

For the implementation of the Measures for the Administration of Generative Artificial Intelligence Services, due to the various types of issues involved in generative AI technology itself, legal issues such as ethics, personal information protection and intellectual property rights need to develop in terms of technological development and are not mature at this stage. Therefore, the author believes that the Measures are essentially building growth and space for legal supervision and AI industrial development, which mainly plays a guiding role at this stage, that is, promoting technological development on the one hand and ensuring safety on the other hand. For the development of generative AI technology and the industry, more detailed and specific legal regulations are needed for the emerging issues.

The future of AI is limitless and factors such as increasingly mature technology, prominent cost reduction and efficiency enhancement advantages and growing market demands are destined to become a new round of market battles.³ However, the 'heat' of technology must face the 'cold' of the law. While we hope that AI will become a new economic growth point, we have to face some legal questions arising therefrom:

1. How is the massive content generated by AI regulated?
2. How are data mining and rights protection in AI production balanced?
3. Is content generated by AI copyrighted?

Regulation of the Massive Content Generated by AI

How content generated by AI is governed and regulated is a concern for all sectors of society. The Measures for the Administration of Generative Artificial Intelligence Services, as well as the Draft issued in April 2023, which put forward a number of regulations for generative AI services, emphasised the responsibility of generative AI product providers, highlighted the protection of personal information, clarified the mandatory requirements for filing and reporting security assessments with regulatory authorities and repeatedly reiterated the need to start from the data source to ensure the authenticity and accuracy of 'generated content', etc., opening the way for regulatory supervision of the generative AI industry in China.

In addition to strengthening the obligations of service providers, there are four aspects to consider the issues related to the supervision of generative AI: first, when to intervene in the regulation—it is necessary to consider the degree of risk caused by the negative externalities of the technology; the second is the choice of regulatory objects—whether to choose the technology and services themselves or to consider the risks and legal benefits behind them; the third is to achieve a balance between result-oriented and process-oriented supervision; and the last is to consider infrastructure construction and the improvement of the regulatory ecology.

Issues on the Attribution Boundary of Data, Algorithms and Other Protectable Content

Training data is the most important link in the AI industry and the rational use of data mining is also an urgent problem to be solved. The collection, screening and sorting of data requires a lot of intelligence and labour, which is similar to the traditional creation process of a work.

On the other hand, algorithms are widely used in the generation process of AI as a program or calculation method. However, the Copyright Law of the People's Republic of China generally does not protect obvious facts as tools or methods, which has led to controversy over whether algorithms should have copyright protection. Further study and discussion is required.

The Impact of Technological Development on Copyright Ownership

First of all, the content generated by AI is often created by AI programs and whether it shall be regarded as the

product of human intellectual labour and thus enjoy copyright protection is a key issue in contention.

At the same time, technological development also poses challenges to copyright owners. There may be a large amount of data and information in the content generated by AI which poses a new test to the boundary issue of copyright ownership. For example, if an AI-generated musical work uses a large amount of sampled audio and the sampled audio may be the original work of someone else, does it need to obtain copyright permission for the original work? This involves the copyright attribution boundary of AIGC. Relevant judicial practices and legislative provisions need to be resolved in light of specific circumstances.

Proposal for Legislation

Although the newly issued Measures in China respond well to the challenges brought by generative AI, with the rapid development of AI technology it is still necessary to adjust and refine it in a timely manner according to technological progress and industrial development in the future. First, under the general idea of classification and grading, rules and guidelines applicable to different industries and fields shall be issued in a timely manner to improve the pertinence and operability of the rules. Second, legal responsibilities in different scenarios shall be clearly and reasonably allocated to avoid excessive compliance obligations on some service providers. Third, the forces of social supervision can be added to promote a joint supervision as 'government-society',⁴ allowing a full role to be played by social organisations in industry self-discipline and increasing the breadth and depth of supervision.

In addition to the Measures that China has already issued, the enactment of other laws and regulations is also imminent. In view of the above issues, the relevant legal provisions and judicial interpretations shall be continuously improved and further refined.

First of all, it is necessary to clarify the evaluation criteria for the creativity and originality of content generated by AI and establish corresponding identification and evaluation mechanisms.

Second, the issue of attribution of data also needs to be further studied and defined to provide a clear explanation for the dispute. In addition, in view of the rapid development of technology and the lag of the

law, it is necessary to formulate specific laws and policies to deal with the issue of regulation of generative AI, which will provide a clear legal basis and protection for relevant subjects and help promote technological innovation and application.

Moreover, international cooperation is also an effective way to solve the problem of generative AI. Through international exchanges and cooperation, advanced experience and judicial practice will be considered, formulating corresponding legal provisions and interpretations in combination with the actual domestic situation.

Notes

¹ National Development and Reform Commission, Ministry of Education of the People's Republic of China, Ministry of Science and Technology of the People's Republic of China, Ministry of Industry and Information Technology of the People's Republic of China, Ministry of Public Security of the People's Republic of China, and National Radio and Television Administration.

² Wang Xinrui, 'Expert Interpretation for Main Systems and Compliance Obligations of the "Administrative Measures for Generative Artificial Intelligence Services (Draft for Comment)"': see <https://mp.weixin.qq.com/s/-3iB7LrD2VGEAS17YK3A> (visited on 2 August 2023).

³ Zhang Wei, 'AIGC Could be the Biggest Change in Content Production in 2023:

The Critical Moment in Governing AIGC has Arrived', Legal Daily, p 7, published on 12 May 2023.

⁴ Wang Lingguang, Han Xilin, 'Risks and Regulations of Generative AI', Democracy and Legislation Times, p 3, Vol 111, published on 2 August 2023.

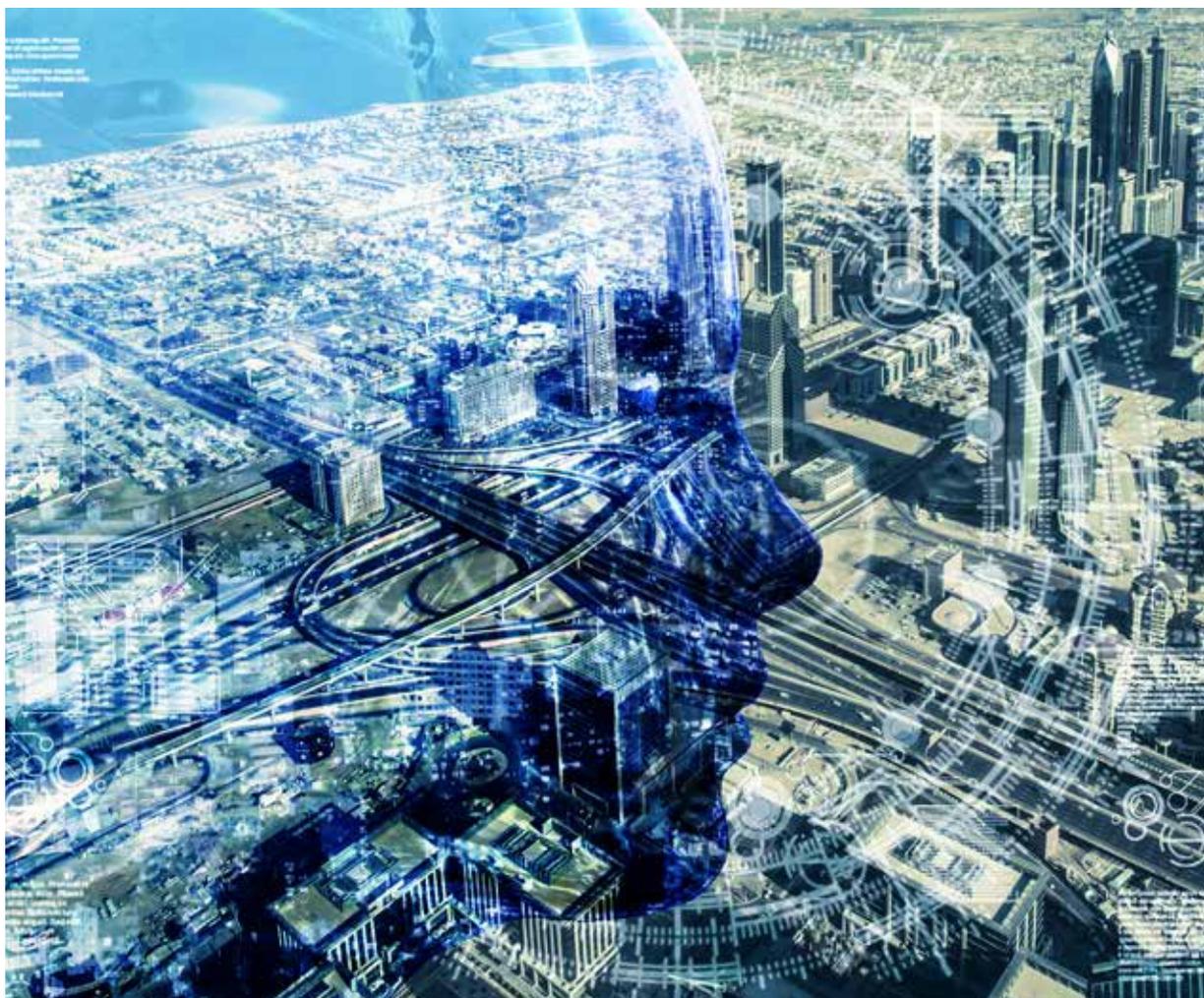


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Artificial Intelligence and the Law: UAE Perspective

What are the recent news, issues or trends in artificial intelligence ('AI') and the law in the UAE? The UAE shines in cutting-edge tech and unveiling game-changing AI innovations. This article explores the latest AI initiatives, showcasing their potential impact and the nation's visionary approach. In law, AI's rise is evident, enhancing corporate legal services and practice management. Contracts benefit too, as AI streamlines drafting, management and updates. Using past data, prediction tech guides legal strategies for future success.



Leading the Future: Unveiling the UAE's AI Strategy

The UAE aims to lead in artificial intelligence ('AI') by 2031, aligning with its Centennial 2071 goal. The UAE's AI strategy aims to boost government performance at all levels, using an integrated smart digital system that can overcome challenges and provide quick efficient solutions, making the UAE the first in the field of AI investments in various sectors and create a new vital market with high economic value.

The AI strategy emphasises and targets various sectors such as education, the economy, governance, health, space, environment and community happiness, spanning sectors like energy and tourism. The UAE AI and Blockchain Council will oversee implementation, involving local and federal entities. The strategy's eight objectives include fostering an AI ecosystem, enhancing sectors with AI, attracting talent and ensuring robust governance. The UAE's diverse, tech-savvy community and global appeal attracts top talent for practical AI implementations across sectors.

In the era of technological acceleration, the UAE has emerged as a trailblazer in fostering innovation through strategic initiatives. One such avenue is the UAE's visionary approach to incentivise overseas companies in the realm of AI. Moreover, the nation has demonstrated its commitment to nurturing homegrown AI enterprises by providing comprehensive business support. This introduction delves into the innovative landscape where international companies are encouraged to contribute to the UAE's AI ecosystem and local AI firms are empowered to thrive through strategic assistance.

AI Incentive for Overseas Companies and Business Support for UAE AI Firms

Increased foreign direct investment ('FDI') is key to boosting the UAE's industrial growth by infusing technology and expertise. To attract more FDI, the UAE plans to relax investment regulations, allowing 100 per cent foreign ownership in mainland companies (with certain exceptions). Encouraging local-global AI collaborations and incentivising international companies to establish regional HQs aims to stimulate tech transfer and economic growth. Governments can aid businesses by providing guidance, financial support and acting as coordinators, overcoming barriers and enhancing international market access.

Recent Innovations in AI

Igniting Innovation: The Dubai Centre for Artificial Intelligence

Amidst the ever-evolving landscape of technological progress, Dubai stands at the forefront with its visionary approach to AI. The Dubai Centre for Artificial Intelligence is a testament to the UAE's commitment to harnessing the power of AI for the betterment of society and industry.

The UAE has established a dedicated Ministry of State for AI, Digital Economy and Remote Work Application, showcasing its commitment to harnessing the potential of emerging technologies.

With a dedicated Ministry for AI and a recent launch of the Centre, Dubai strives to seamlessly integrate cutting-edge tech across sectors. This initiative accelerates adaptive services in line with rapid technological change. A key focus is enabling government bodies to enhance services and productivity using generative AI tools.

Tomorrow's Policing: AI-Powered Dubai Smart Police Station

In the forefront of technological innovation, Dubai has unveiled a remarkable fusion of AI and law enforcement—the AI-powered smart police station. This pioneering concept combines advanced artificial intelligence with the essential functions of a police station, reimagining the way that public safety is upheld. This introduction delves into the groundbreaking realm where AI-driven efficiencies intersect with traditional law enforcement, highlighting how Dubai's smart police station exemplifies Dubai's commitment to creating a safer and smarter future.

Dubai's pioneering Smart Police Stations ('SPS'), the world's first unmanned units, elevate community satisfaction to 99.8 per cent. AI-managed with 100k+ multilingual transactions, they ensure rapid responses within 1.5 minutes and round-the-clock services for residents, visitors and tourists. These stations integrate cutting-edge tech to innovate law enforcement services, including AI-driven inquiries, facial recognition, crime pattern analysis, streamlined digital reporting and AI-enhanced surveillance. The future holds predictive policing, behavioural analytics and real-time crime tracking.

Dubai's Smart Police Station initiative exemplifies the integration of AI and technology to enhance law enforcement services. These smart police stations utilise advanced technologies to offer innovative and efficient services to the public.

Innovation Nexus: Exploring Dubai's AI Lab Advancements

Dubai's pioneering AI Lab, in partnership with IBM, is propelling Dubai towards global smart leadership. By integrating AI into government services and experiences, it enhances citizens' lives and visitor satisfaction. The aim is an efficient, interconnected and joyful city, achieved through AI-driven solutions across sectors. Through workshops and collaboration, the UAE is equipping partners to implement tailored AI applications. The vision is to seamlessly integrate AI into the city's core, creating a groundbreaking roadmap for the future.

Safeguarding the Future: Dubai's Proactive Cybersecurity Strategy

Dubai has introduced the second phase of the Dubai Cyber Security Strategy. This strategic move is focused on creating a secure cyberspace and fortifying the city's digital infrastructure. Managed by the Dubai Electronic Security Centre, an integral part of Digital Dubai, this initiative is aligned with the Cybersecurity Pillar of Digital Dubai's Strategy.

The new strategy's four pillars include building a cyber-secure society, nurturing innovation, establishing a resilient cyber city and actively engaging in cyber collaboration. These pillars cater to the evolving challenges of the digital age and emphasise skills development, innovation, crisis response and collaborative efforts within Dubai and on the global stage.

Since its successful launch in 2017, the Dubai Cyber Security Strategy has safeguarded against cyber risks, fostered innovation and contributed to the emirate's growth and prosperity. This commitment underscores Dubai's dedication to becoming a global leader in cybersecurity and its ongoing journey of digital transformation.

Forging Ahead: Dubai's Dynamic Blockchain Strategy

Amid digital transformation, Dubai's Blockchain Strategy is visionary, reshaping industries through blockchain's potential. The UAE Council for AI and Blockchain fosters an AI-friendly ecosystem, research and sector collaboration for AI adoption.

Launched by His Highness Sheikh Hamdan, the strategy, a partnership between the Digital Dubai Office and Dubai Future Foundation, enhances experiences through cutting-edge tech like blockchain, aligning with His Highness Sheikh Mohammed bin Rashid Al Maktoum's vision.

Blockchain's secure transactions are pivotal. The strategy solidifies Dubai's tech leadership, aiming to pioneer urban tech worldwide. Success could establish Dubai as the first blockchain-powered government, revolutionising economies.

Blockchain technology can yield massive savings, unlocking billions in document processing. Core objectives include government efficiency, new industries and global blockchain leadership.

In essence, Dubai's Blockchain Strategy leads toward a tech-advanced future, redefining experiences and economies via blockchain's transformative power.

Pioneering the Future: Autonomous Vehicles Redefining Transportation

In July 2023, the UAE granted its first national licence for self-driving cars, a pioneering move toward autonomous vehicles. WeRide received the licence after a year of testing its Robotaxi on UAE roads. This aligns with Dubai's aim for 25 per cent fully autonomous transportation by 2030, showcasing the UAE as a mobility innovator. The initiative is supported by Law No 9 of 2023 issued in April giving Dubai's Roads and Transport Authority the power to regulate autonomous vehicles, ensuring safety standards, ownership transfers, outlining licensing procedures and addressing liability frameworks for accidents. The law holds operators responsible for damages or harm caused by autonomous vehicles while exempting the Road Transport Authority from liability due to vehicle usage.

The UAE Unveils Introduction of AI Tutor to Elevate Learning and Education

The UAE is making significant strides in education transformation with the introduction of AI tutors. Collaborating with tech giants like OpenAI and Microsoft, the Ministry of Education aims to create interactive and personalised learning experiences. These AI tutors will adapt to students' learning styles and strengths, revolutionising education. This initiative aligns with the theme of the World Government Summit 2023

held in Dubai in February 2023, showcasing the UAE's commitment to innovation in education.

Introducing UAI Brand: Where Innovation Meets Identity

In modern branding, the UAI Brand stands out as a symbol of innovation and identity, blending technology with personality. It was established by the UAE to attract global AI talent and businesses. This system has four levels: Public Sector, Private Sector, Institutional and Product. The UAI mark signifies ethical AI excellence, awarded via a rigorous certification process. The UAE aims to become a global AI hub, hosting conferences and nurturing startups. The brand is backed by significant progress in the field.

Unveiling the Virtual Asset Regulatory Authority (VARA): Navigating the Future of Digital Finance

In an era marked by the rapid rise of virtual assets and digital finance, Dubai has taken a groundbreaking step with the establishment of the Virtual Assets Regulatory Authority ('VARA'). This introduction offers an insightful exploration into the realm of VARA, shedding light on how it aims to shape the landscape of virtual assets, cryptocurrencies and related technologies.

By creating a digital economy, [VARA was established and authorised by Law No 4 of 2022 Regulating Virtual Assets in the Emirate of Dubai ('Dubai VA Law') to regulate Virtual Assets and Virtual Asset Service Providers ('VASPs'). VARA hopes to position the United Arab Emirates as a global leader in the virtual assets industry. VARA Dubai oversees the issuance and trading of Virtual Assets and Virtual Tokens, as well as promoting these assets to attract investors and financial institutions.

The primary goal of VARA Dubai is to protect UAE enterprises and individuals from the illegal or fraudulent use of virtual assets. The organisation will regulate virtual assets by closely monitoring the crypto industry and its developments. Among its primary mission lines are the growth of a non-restrictive regulatory framework and the education of the public about the risks and laws surrounding crypto.

In February 2023, the Virtual Assets and Related Activities Regulations 2023 have been enacted with a view to advance the above objectives. These Regulations set out the regulatory framework governing Virtual Assets and all related activities.

Navigating the Digital Landscape: UAE Cybercrime and Data Protection Laws in the Age of AI

Introduction

In an era defined by rapid technological advancements and the proliferation of AI, the UAE has fortified its legal framework to address the evolving challenges of cybersecurity and data privacy. The introduction below provides a comprehensive overview of the UAE's Cybercrime Law and Data Protection Law in the context of AI, shedding light on how these laws intersect with the complex terrain of AI-driven technologies.

UAE Cybercrime Law

In the dynamic realm of technology and its associated challenges, the UAE has taken proactive measures to address the growing concern of cybercrime. With the emergence of AI as a transformative force, the intersection of AI and the UAE's new Cybercrime Law No 34/2021 ('Cybercrime Law') has become a critical focal point. This introduction offers a glimpse into how the UAE's legal framework navigates the intricate landscape of cybercrime in the context of AI, exploring the measures in place to counter digital threats while harnessing the potential of AI-driven advancements.

Certainly, the new Cybercrime Law reflects its proactive approach to safeguarding its citizens, entities and digital infrastructure in the face of increasing technological advancements, including the expansion of AI and the digital economy. This law reinforces the nation's commitment to cybersecurity and addresses the evolving landscape of cyber threats. Below are some detailed aspects of the law. The updated UAE Cybercrime Law has expanded its scope to cover cybercrimes planned or funded within the UAE, threatening its interests or citizens. It includes specific offences relevant to critical industries like banking, media, healthcare and scientific institutions. There are elevated penalties for hacking activities targeting government organisations and data, with distinct offences related to unauthorised access and hacking. Penalties for hacking healthcare, scientific, media or banking systems can result in fines ranging from AED500,000 to AED3 million and potential imprisonment. Illegally accessing or tampering with government data may lead to a prison term of at least 10 years and a fine of up to AED5 million.

UAE Data Protection Law

In the rapidly evolving landscape of data-driven technologies, the UAE has recognised the pivotal

role that personal data plays in shaping the future. In alignment with this digital transformation, the UAE has enacted a robust personal data protection law—the UAE Data Protection Law (Federal Law No 45 of 2021) ('Data Protection Law')—that harmonises technological advancements with the imperative of safeguarding individuals' privacy. This overview delves into the foundational principles and intricate nuances of the UAE's personal data protection framework, shedding light on its relevance and implications for both AI and the broader spectrum of data-driven activities.

The Data Protection Law regulates the collection and processing of personal data, aligning with global privacy standards. This move includes the establishment of a national data privacy regulator called the UAE Data Office, responsible for tasks like proposing data protection policies, setting standards for assessing data use, creating complaint systems and issuing guidelines.

Similar to the EU's GDPR, the Data Protection Law will have extraterritorial applicability. It will cover organisations within the UAE processing personal data of individuals inside or outside the country, as well as those outside the UAE processing personal data of individuals within the UAE. This development marks a significant step towards safeguarding individual privacy and data security within the UAE.

What is the Impact of AI on Corporate Legal Services?

AI has been making significant strides in the legal field, encompassing various areas such as contract analysis, legal research, document review and more.

AI offers diverse applications in the legal field, automating various aspects of legal practice. Machine learning enhances legal research by identifying relevant topics, making connections between subjects and providing search query suggestions. Language analytics powered by AI assist in understanding and simplifying complex legal language, clauses, extracting key phrases from extensive texts and improving legal research accuracy.

AI-driven analytics play a pivotal role in deriving insights from large data sets, enabling predictive analytics for forecasting outcomes and decision

making. Attorneys can anticipate case durations, settlement amounts and motion outcomes through data analysis, aiding in strategic planning.

In law firms, AI-powered chatbots streamline client interactions by addressing routine inquiries promptly, freeing lawyers to focus on higher-level matters and using OpenAI and ChatGPT to draft letters, legal notices, agreements, etc. Automation facilitates tasks like scheduling, client intake and email communication.

While AI has transformed legal practices, it is not anticipated to replace human lawyers. Instead, legal professionals are embracing AI's capabilities to enhance their work through data-driven insights, efficient research and improved client services.

The impact of AI in law is significant, but human expertise remains a cornerstone of the legal profession.

How Can AI Improve Legal Practice Management?

AI has the potential to enhance legal practice management in several ways:

1. **Time tracking and billing.** AI can automate time tracking for billable hours, streamlining the billing process and reducing administrative burden.
2. **Resource allocation.** AI analytics can help law firms allocate resources more efficiently based on historical data and workload.
3. **Client interaction.** AI-powered chatbots and virtual assistants can handle initial client inquiries, schedule appointments and provide basic legal information.
4. **Workflow optimisation.** AI can suggest optimal workflows, manage deadlines and automate routine tasks.

How Can AI Help With Contract Drafting, Management and Updates?

AI can transform contract-related processes:

1. **Drafting assistance.** AI tools can analyse existing contracts, extract relevant clauses and propose clauses for new contracts based on a company's templates and preferences.

2. **Contract review and analysis.** AI can identify potential risks, ambiguities and discrepancies in contracts, ensuring accuracy and compliance.
3. **Contract lifecycle management.** AI can track contract milestones, notify stakeholders about upcoming renewals or amendments and manage version control.
4. **Updates and compliance.** AI can monitor contracts for regulatory changes or triggering events and suggest necessary amendments.

AI significantly transforms corporate legal services and improves management such as:

- a. AI tools handle KYC, due diligence, contract review and document analysis, boosting efficiency.
- b. Rapidly processes massive documents for info and issues—valuable in e-discovery during litigation.
- c. Conducts legal research, analyses statutes and case law for faster, comprehensive insights.
- d. Assists in contract drafting, suggesting clauses and meeting specific needs.
- e. Streamlines time tracking, billing and ensures data security.
- f. AI-powered chatbots manage inquiries, appointments and basic legal info.
- g. Revolutionises legal services via automation, improved decision making and cost reduction.

In a nutshell, AI empowers legal professionals to offer strategic insights, enhance services and streamline workflows.

How Does Prediction Technology (Analysis of Past Legal Data) Provide Insights to Future Outcomes?

Using historical legal data, AI-driven prediction technology anticipates future legal outcomes. By analysing past cases, arguments and rulings, it offers insights into how similar situations might develop. This helps lawyers devise strategies, assess settlements and make informed decisions.

Conclusion

In conclusion, AI is changing how law works. It is helping with tasks, making managing law firms easier, improving how contracts are handled and even guessing legal outcomes. Although we need to think about ethics and rules, using AI in law could make things faster, cheaper and give better legal advice. So, AI is changing law for the better!

AI's impact on law is considerable, yet human expertise remains an important cornerstone. While AI enhances efficiency and streamlines processes, it cannot replicate human judgment, ethical insights and nuanced interpersonal skills.

AI indeed transforms law, boosting efficiency and insights. Yet, human qualities like judgement, empathy and creativity remain vital for justice and diverse client needs. The synergy between AI and human expertise blends innovation and wisdom, enhancing the legal profession while preserving its essence.



Suneer Kumar
Partner, Alsuwaidi & Company,
Dubai

Suneer Kumar is a Partner, Corporate and Commercial Practice Group, in Alsuwaidi & Company, Dubai and is a seasoned corporate commercial lawyer specialising in diverse legal areas including real estate, commercial, education, energy, employment, media and technology. He is proficient in providing strategic legal guidance to businesses in navigating complex corporate transactions, merger and acquisitions, media regulations and technological innovations and offering comprehensive legal solutions to address the unique challenges and opportunities that arise in today's dynamic business landscape.



Q&A with Eunice Tan

Tell us about your years growing up, such as interests, hobbies and causes that you are passionate about. What are some of the childhood experiences that shaped you?

I grew up in Manila, Philippines, in a home that encouraged reading and creativity. My mother stayed home to take care of the children while my father worked—this was the norm then. But my mother encouraged her daughters (we were two girls) to have a 'back-up skill' in case our chosen profession did not work out. My skill was classical piano, which I studied for a number of years. I was an above average pianist but by no means a prodigy, and so I had to work hard. The experience taught me the value of discipline, patience and attention to detail. There is no shortcut to excellence.

Why did you choose to work in the law? Describe your career trajectory.

My father was a well-respected Philippine lawyer who encouraged me and my eldest sibling to follow in his footsteps. After he passed away, my brother and I honoured his wish and studied law. While in law school, I enjoyed learning the material and realised that I had found my calling.

I've always wanted to work abroad as a lawyer and after practising in Manila for a short time, I moved to Singapore and worked at a law firm focusing on corporate restructuring and transactional work. After several years, I decided to expand my skills and joined an international law firm to advise families on private client and regulatory matters affecting them.

Eventually, my career took me inhouse to a global trust and corporate services company. My broad experience handling corporate and transactional matters and trusts and regulatory issues proved useful when dealing with family-owned trust and corporate structures and fiduciary business in general.

What is the biggest challenge you have faced to date and how did you overcome it?

In every stage of your life, there will always be challenges to test you. One of my biggest challenges this year was prepping for and taking a three-hour oral exam to become admitted as a Hong Kong solicitor while in my second trimester of pregnancy. I had to juggle full-time work, my pregnancy symptoms and reviewing for the exam.

As for the exam day itself, I knew I could not last the duration of the exam without having to break to eat a snack and drink. The exam was timed and I was informed that they could not stop the time for any breaks. This made me a little anxious. Thankfully, everything turned out well and I passed the exam. The examiners were understanding and in fact I rather enjoyed speaking for two hours straight—I am not often given that chance!

Looking back, I would not have been able to overcome this challenge without asking for support, the most crucial of which was my husband's support and encouragement. This gave me the necessary pressure to bite the bullet and finish the task at hand.

How did you become associated with the IPBA? What does the IPBA mean to you and what do you think other people should know about the IPBA?

While I was working in Singapore, my then boss, Arthur Loke, encouraged me to attend the IPBA Annual Conference in Vancouver. I had a wonderful time and made some life-long connections!

The IPBA is a special organisation. It is more than just an association of lawyers from around the world, it is a community of legal professionals who come together to support one another, develop their areas of practice, learn from or mentor each other and form lasting friendships. The Annual Conference, in particular, is a wonderful event that has it all: serious panel and speaking discussions on legal issues, professional networking opportunities, tourist outings and, of course, a big party!

Finally some quick questions...What is a motto you live by?

Nothing worthwhile is ever easy.

What would you say to your 20-year-old self?

Always listen to your gut; it will never lead you astray. Prioritise your health—join a swim club and master all four strokes. That way, you don't have to struggle decades later as an amateur swimmer!

What is your favourite book?

One of the most impactful books in my life is *Man's Search for Meaning* by Viktor Frankl. It has been decades since I first read it, but the message that sticks is the power of your mind and your attitude in life. There are things that happen that are beyond your control. What you can control is how you respond to each situation. Frankl wrote about adopting this mindset to sustain him through the horrors of the Nazi concentration camps. No matter how hopeless things seem to be, having a strong sense of purpose and responsibility was how he was able to find the strength to survive. Time and again, I remember the lessons from this book.

If I could be any superhero, I would be ...

There's a minor Marvel superhero called Cypher who has the ability to translate any language, whether spoken or written, human or alien in origin, including codes and computer software. I am not necessarily a fan of this character, but I would love to have these abilities. This means that, at any given time, I am able to understand any person asking me for assistance and can try to help.

Publications Committee Guidelines for Publication of Articles in the IPBA Journal

We are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. From time to time, issues of the Journal will be themed. Please send: (1) your article to both **James Jung** at jjung@collaw.edu.au and **Olivia Kung** at olivia.kung@onc.hk; (2) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme; (3) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)); and (4) your biography of approximately 30 to 50 words.

The requirements for publication of an article in the *IPBA Journal* are as follows:

1. The article has not been previously published in any journal or publication;
2. The article is of good quality both in terms of technical input and topical interest for IPBA members;
3. The article is not written to publicise the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words;
5. The article must be written in English (with British English spelling), and the author must ensure that it meets international business standards;
6. The article is written by an IPBA member. Co-authors must also be IPBA members; and
7. Contributors must agree to and abide by the copyright guidelines of the IPBA. These include, but are not limited to
 - a. An author may provide a link on the website of his/her firm or his/her personal website/ social media page to the page of the Journal on which the first page of his/her article appears; and
 - b. An author may not post on any site an entire PDF of the Journal in which the article authored by him/her appears.

In Remembrance of Dr Sang-Kyu Rhi, Longtime IPBA Supporter and Past President



Dr Sang-Kyu Rhi, a longtime supporter and Past President of the IPBA, died on 16 August 2023, aged 90. Dr Rhi, Of Counsel at K1 Chamber in Seoul, served as the IPBA President from 2004 to 2005 and chaired the first IPBA Conference in Seoul, South Korea in 2004.



He was a respected government officer, professor, scholar as well as a practising lawyer. During his busy days as a practising lawyer, he was actively involved in the foundation of, and activities in, international organisations of lawyers such as the IPBA. In the last part of his life, he devoted himself to the study, teaching, translation and writing of Buddhism and published many of his own books and translations of Buddhist Sutras. This year, he was able to complete the last mission in his life, translation of the entire 80 books of the Avatamska Sutra into Korean, the culmination of years of work.

Dr Rhi is survived by his loving wife, along with four children and six grandchildren.

If you would like to send your condolences, please email Jihn U Rhi (Dr Rhi's eldest son and past Korea JCM) at [jihnrhi@k1chamber.com](mailto:jihn.rhi@k1chamber.com).

IPBA New Members June to August 2023

We are pleased to introduce our new IPBA members who joined our association from June to August 2023. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Australia , Dominique Grigg <i>Harleigh Hanrahan & Associates</i>	Japan , Kohji Hayakawa <i>Anderson Mori and Tomotsune</i>
China , Yunbo Yu <i>Deheng Law Firm</i>	Japan , Fumiaki Matsuoka <i>Atsumi & Sakai</i>
China , Yi (David) Zhang <i>Allbright Law Offices</i>	Japan , Tetsuma Sawaguchi <i>Atsumi & Sakai</i>
France , Pierre de Roquefeuil <i>Roquefeuil Avocats</i>	Japan , Kota Suzuki <i>Nagashima Ohno & Tsunematsu</i>
Germany , Christoph Hawlitschek <i>Flick Gocke Schaumburg Rechtsanwälte Wirtschaftsprüfer Steuerberater Partnerschaft Mbb</i>	Japan , Masahiro Yano <i>Anderson, Mori & Tomotsune</i>
Germany , Martin Imhof <i>Heuking Kuhn Luer Wojtek PartGmbB</i>	Japan , Yukihiro Terazawa <i>Morrison & Foerster LLP</i>
Germany , Sarah Wolf <i>Huth Dietrich Hahn</i>	Nepal , Anjan Neupane <i>Neupane Law Associates</i>
Germany , Madeleine Martinek <i>Luther Law Firm</i>	New Zealand , Joo Yeon Leenoh <i>K3 Legal</i>
India , Amar Gahlot <i>Metalegal Advocates</i>	Pakistan , Rabel Akhund <i>Akhund Forbes</i>
India , Vikas Kumar <i>Metalegal Advocates</i>	Philippines , Christiana Andrea Daroy-Golez <i>Romulo Mabanta Buenaventura Sayoc & Delos Angeles</i>
India , Ambarish <i>Shardul Amarchand Mangaldas & Co.</i>	Philippines , Jay Masangcay <i>Masangcay Renegado & Partners</i>
India , Shivank Diddi <i>Khaitan & Co LLP</i>	Singapore , Claire Chong <i>Nagashima Ohno & Tsunematsu</i>
India , Pavan Kumar Rao Polkampally <i>Sr Legal Partners</i>	United Kingdom , Hannah Fry <i>39 Essex Chambers</i>
India , Rohit Jain <i>Economic Laws Practice (elp)</i>	United States , Yusuke Hisashi <i>Gamma Law</i>
Indonesia , Mohamad Kadri <i>Pt Pertamina (persero)</i>	United States , Nan Sato <i>Fisher Phillips</i>
Japan , Chisako Takaya <i>Mori Hamada & Matsumoto</i>	United States , Daniel Jang <i>Ankura</i>
Japan , Masahisa Ikeda <i>Shearman & Sterling LLP</i>	Vietnam , Mai Nguyen Thi Tuyet <i>Indochine Counsel</i>
Japan , Yuriko Asada <i>Oh-Ebashi LPC & Partners</i>	Vietnam , Ngu Truong Huu <i>Indochine Counsel</i>
Japan , Yuki Tsuda <i>T&K Partners</i>	

IPBA Scholarship Programme

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is now accepting applications for the IPBA Scholarship Programme to enable practising lawyers to attend the IPBA Annual Meeting & Conference to be held in Tokyo, 24–27 April 2024.

What is the Inter-Pacific Bar Association?

The Inter-Pacific Bar Association is an international association of business and commercial lawyers with a focus on the Asia-Pacific region. Members are either Asia-Pacific residents or have a strong interest in this part of the world. The IPBA was founded in April 1991 at an organising conference held in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since then, it has grown to become the pre-eminent organisation in respect of law and business within Asia with a membership of over 1,000 lawyers from 65 jurisdictions around the world. IPBA members include a large number of lawyers practising in the Asia-Pacific region and throughout the world that have a cross-border practice involving the Asia-Pacific region.

What is the Inter-Pacific Bar Association Annual Meeting and Conference?

One of the highlights of the year for the IPBA is its annual conference, which has become the 'must-attend event' for international lawyers practising in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, sessions are presented by the IPBA's 24 specialist committees and one Ad Hoc committee. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet colleagues from around the world and to share the latest developments in cross-border practice and professional development in the Asia-Pacific region. Previous annual conferences have been held in Tokyo, Sydney, Taipei, Singapore, San Francisco, Manila,

Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, Los Angeles, Kyoto/Osaka, Shanghai and Dubai.

What is the IPBA Scholarship Programme?

The IPBA Scholarship Programme was originally established in honour of the memory of M.S. Lin of Taipei, who was one of the founders and a Past President of the IPBA. Today it operates to bring to the IPBA Annual Meeting and Conference lawyers who would not otherwise be able to attend and who would both contribute to, and benefit from, attending. The Scholarship Programme is also intended to endorse the IPBA's mission to develop the law and its practice in the Asia-Pacific region. Currently, the scholarships are principally funded by The Japan Fund, established and supported by lawyers in Japan to honour the IPBA's accomplishments since its founding; the Host Committee of the Annual Meeting and Conference in Vancouver, Canada, 2014; and a generous donation by the family of M.S. Lin, a Past President of the IPBA.

During the conference, the Scholars will enjoy the opportunity to meet key members of the legal community of the Asia-Pacific region through a series of unique and prestigious receptions, lectures, workshops and social events. Each selected Scholar will be responsible to attend the Conference in its entirety and to provide a report of his/her experience to the IPBA after the conference. The program aims to provide the Scholars with substantial tools and cross-border knowledge to assist them in building their careers in their home country. Following the conference, the Scholars will enjoy three years of IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.



Who is Eligible to be an IPBA Scholar?

There are two categories of lawyers eligible to become an IPBA Scholar:

1. Lawyers from Developing Countries

To be eligible, the applicants must:

- a. be a citizen of and be admitted to practice in Bangladesh, Cambodia, Laos, Mongolia, Myanmar, Nepal or the Pacific Islands;
- b. be fluent in both written and spoken English (the conference language); and
- c. currently maintain a cross-border practice or desire to become engaged in cross-border practice.

2. Young Lawyers

To be eligible, the applicants must:

- a. be under 35 years of age at the time of application and have less than seven years of post-qualification experience;
- b. be fluent in both written and spoken English, the official language of the IPBA;
- c. have taken an active role in the legal profession in his/her country; and
- d. currently maintain a cross-border practice or desire to become engaged in cross-border practice.

Preference will be given to applicants who would be otherwise unable to attend the conference because of personal or family financial circumstances and/or because they are working for a small firm without a budget to allow them to attend.

Former Scholars will only be considered under extraordinary circumstances.

How to Apply to Become an IPBA Scholar

To apply for an IPBA Scholarship, complete an application form and return it to the IPBA Secretariat in Tokyo no later than 30 September 2023. Application forms are available either through the IPBA website (<https://ipba.org>) or by contacting the IPBA Secretariat (ipbascholarships@ipba.org).

Completed applications should be sent by e-mail attachment to:

The IPBA Secretariat

E-mail: ipbascholarships@ipba.org

What happens once a candidate is selected?

1. The IPBA will notify each successful applicant that he or she has been awarded an IPBA Scholarship. The notification will be provided at least two months prior to the start of the IPBA Annual Conference. Unsuccessful candidates will also be notified.
2. Airfare will be agreed upon, reimbursed or paid for and accommodation will be arranged and paid for by the IPBA Secretariat after consultation with the successful applicants. The Scholar should understand that there shall be no deviation from the conference schedule in terms of flights and accommodation and no family members, friends or colleagues may stay in the accommodation with the Scholar.
3. A liaison appointed by the IPBA will introduce each Scholar to the IPBA and help the Scholar obtain the utmost benefit from the IPBA Annual Conference.
4. Each selected scholar will be responsible to attend all of the Conference and to provide a report of his/her experience to the IPBA after the Conference.

The IPBA Secretariat

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Members' Notes

Truong Huu Ngu, Vietnam



Truong Huu Ngu, an equity partner at Indochine Counsel and a recent inductee to the IPBA, co-authored the Google top-ranked 'Vietnam Merger Control Guide' in June. He is scheduled to deliver a keynote, alongside a representative from Vietnam's National Competition Commission, at a September seminar titled 'Economic Concentration Notification in M&A Transactions in Vietnam: Insights from Insiders'. Ngu remains dedicated to demystifying Vietnamese merger control law for all who are concerned.

Gmeleen Tomboc, Singapore



Gmeleen Tomboc joined Gurin Energy as Deputy Chief Commercial Officer. Based in Singapore, she assists in managing new projects, strategic partnerships and other commercial arrangements in solar, wind and battery storage projects across Asia. Prior to joining Gurin Energy, she advised on M&A and debt and equity financings in the General Counsel division of Credit Suisse.

Stephan Wilske, Germany



Stephan Wilske is one of the editors-in-chief of the newly launched Transatlantic Law Journal (TLJ) of the German-American Lawyers' Association. The first issue will be published in August 2023. On 9 May 2023, Stephan Wilske was a panelist for Session 3, 'Abuse of Arbitral Processes' at the International Arbitration Colloquium 2023: State Sovereignty and Immunity in Commercial Arbitration organised by the Asian International Arbitration Centre (AIAC) in Kuala Lumpur.

Olivia Kung, Hong Kong



Olivia Kung joined ONC Lawyers as a Partner. Based in Hong Kong, she acts in litigation matters covering a wide variety of areas, including complex property ownership disputes, director and shareholder disputes, oral and written contract disputes, fraud cases, injunction proceedings, debt recovery, insolvency and bankruptcy. Olivia also specialises in international arbitration, personal injury and criminal defence matters.



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A photograph of a traditional Korean palace building with a curved, tiled roof and a stone lion sculpture in the foreground. The building features intricate wooden carvings and a dark, layered roof structure. The stone lion is a large, detailed sculpture with a fierce expression, standing on a tiered base. The sky is a clear, light blue.

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Kim & Chang is Korea's most trusted law firm and one of Asia's leading law firms. We are committed to providing legal counsel of the highest quality to our clients around the globe.

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