

No. 116 | December 2024

# IPBA

Journal

Navigating the  
Compliance Landscape



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**Publisher:** Ninehills Media Limited

**Editor:** Paul Davis

**Editorial:** Kiri Cowie, Julie Yao

**Design:** Ester Wensing

**Advertising Sales:** Jennifer Luk  
[jennifer@ninehillsmedia.com](mailto:jennifer@ninehillsmedia.com)

ISSN 1469-6495

IPBA is incorporated in Singapore. Company registration number:  
201526931R

IPBA Journal is the official journal of the Inter-Pacific Bar Association. Copyright in all material published in the journal is retained by the IPBA.

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Miyuki Ishiguro

I hope that you had a wonderful holiday season with your family and friends. In Japan, most people could enjoy nine consecutive days off, a period which was much longer than usual years. During this long and relaxed period, I thought about several compliance issues surrounding our legal market and tried to find something which can be shared with you. In my search, I came across a Japanese book entitled 'Why Don't Girls from Rural Areas Aim to Enter Tokyo University?' I realised again the importance of eliminating the gender gap in Japan

## The President's Message

before the penetration of compliance. So, this time let me share with you what I discovered from this book.

This book was written by two female students at Tokyo University, which is the highest ranked public university in Japan, and both were selected in 2024 as part of the 'Next 100' young persons who are hoped to save the world by Forbes Japan. Both were born and raised in rural areas in Japan. One of the main reasons that they made this book is the very low global ranking of Japan in terms of gender gap. Every year the gender gap index is published by the World Economic Forum, and in 2024 the rank of Japan was 118th among 146 countries. Japan is particularly far behind in the areas of politics and economics. The percentage of women in the Japanese Diet is only 9.7 per cent, the percentage of women in management positions or above at Japanese private entities is just 13.2 per cent; both are much lower than the 30 per cent average in other countries.

These phenomena are derived from the gender gap in education, especially in higher education. It may be a surprising fact that the percentage of female students at Tokyo University is only 20 per cent, while at top-tier universities in the US and the UK, such as Harvard, Stanford and Oxford, it is around 50 per cent; even in East Asia, 48 per cent at Beijing University and 41 per cent at Seoul University are female. When I saw this analysis in the book, I was really surprised that nothing has changed since my girlhood days in the past, a long time ago. I was also born

and raised in a very rural area in Japan and it was common (except for my mother) that girls were not expected to enter top-tier schools. This is also regarded as an unconscious bias in society that cannot be removed or changed easily or in a short period of time, but in 50 years this unconscious bias has not changed at all, especially in the rural areas in Japan.

To solve this serious issue, the book provides solutions for problems or obstacles in intangible and tangible fields. Improvements in intangible fields include fostering self-evaluation and capabilities of female students through mentoring approaches and bootstrapping programs to eliminate the unconscious bias of parents and those in the lives of the female students through endorsements of the government. Solutions in tangible fields include political recommendations to national and local governments to eliminate discrimination against women in social resources and systems and to change rules and governmental policies to solve the gender gap in Japan. After reading this book, I really recognised again the importance of changing the unconscious bias which can be promoted by myself as a citizen and I firmly decided to do this in 2025 as one of my New Year's resolutions.

When you read my message, our Annual Conference in Chicago will be approaching. I really look forward to seeing you in Chicago, which will offer you fantastic entertainment and opportunities to absorb new and renewed knowledge and information. See you soon!

# The Secretary-General's Message

Compliance is not a static concept but one that has undergone continuous transformation in the last 50 years. Ironically, new rules on compliance are made in the aftermath of scandals and even economic upheavals. This phenomenon raises the question of whether the development of compliance is a product of reaction rather than of innovation.

For most of us who have been practising for a few decades, our first encounter with compliance was in relation to corruption, particularly where it affects cross-border transactions and international business organisations. Today, it has evolved into a multi-headed hydra that includes the stakeholders theory, corporate social responsibility, corporate governance, white collar crime prevention, the environment, inclusion and diversity, cultural sensitivity, data privacy and even AI. We also have the catch-all abbreviation, 'ESG', a byword that has gained adherents in the last few years. Compliance has become a doctrine whereby a venture, organised for the purpose of maximising profit and shareholder wealth, is tasked with the pursuit of lofty goals which may not be in consonance with its objectives. The standards of behaviour can vary from the regulatory to the customary. Standards, regulations and norms can also vary between and among jurisdictions. It is in some ways counterintuitive, in the absence of a specific law or regulation, for a business organisation to take any action that is contrary to profit maximisation. Consequently, some authors argue that compliance is in consonance with the object of preserving and advancing

a company's value and profit. All this, in my view, should be analysed in the context of a corporation as a nexus of contracts where statutes focus on the duties of those who govern the corporation vis-à-vis their obligation to those who have invested their treasure in that enterprise. I look forward to leafing through this edition of the Journal and learn from our fellow IPBA members their thoughts and experiences on the multiple and ever-changing facets on compliance.

Unlike a business organisation, the IPBA does not have profit as its principal goal. However, very much like any business organisation, we are aware of the need for compliance and we have done much in this area in the last 12 months. We have adopted more stringent audit standards which include consolidation of our accounts with the SPVs or host committees of the various annual conferences, we have been careful in adopting measures to ensure that we are compliant with tax regulations in the various jurisdictions where we hold events and our Chief Technology Officer, Robert Quon, has been introducing improvements in our data privacy policy. This is just to mention a few of the areas where we have been working with respect to compliance. We are, after all, an organisation of business lawyers and compliance is a task that we need to undertake.

By the time you receive this Journal we will be very close to our Annual Conference in Chicago. I hope you are all as excited as I am to see our old friends and to make new ones. The conference proper will have one innovation never tried in our prior

annual conferences—we will be having sessions of only 60 minutes as compared to 90 minutes at our prior conferences. This will result in about 30 per cent more sessions. The committee chairs and vice-chairs have been very busy organising the sessions and I am sure we will all enjoy engaging with our fellow IPBA members during these sessions, as all IPBA members are passionate about their craft. Our President-Elect Michael Chu and the hardworking members of the US Host Committee eagerly await to welcome you to Chicago!



Jose Cochingyan III

## Publication Committee Chair's Message



Olivia Kung

Dear Readers,

Welcome to the second edition of our relaunched Journal, brimming with new perspectives and updates designed to inform and inspire. This issue continues to explore the fascinating world of law through fresh lenses—quirky global legislation, evolving legal trends, cultural highlights and snapshots from recent IPBA events.

The modern compliance landscape grows more complex by the day. Organisations worldwide grapple with challenges spurred by rapid technological advancements, particularly in Artificial Intelligence (AI) and generative AI, alongside mounting pressures tied to climate action, ESG (Environmental, Social and Governance) mandates, geopolitical shifts, and a surge in financial crimes. Cyberattacks, social media scams, and digital fraud compound these risks, making robust compliance strategies not just advisable but essential.

Meanwhile, the push toward Corporate Sustainability Reporting (CSR) has introduced stringent new frameworks, demanding transparency and accountability from businesses. As AI adoption accelerates, so too do ethical and regulatory dilemmas—issues we cannot afford to overlook.

We're thrilled by the outpouring of contributions from our members, whose expertise spans jurisdictions and specialties. Their articles dissect pressing challenges, share innovative strategies, and offer actionable guidance—a treasure trove for

compliance professionals and legal practitioners alike.

Finally, mark your calendars! Our Annual Conference in Chicago promises to be a cornerstone event for networking, learning, and collaboration. We can't wait to reconnect in person and explore these critical topics together.

Here's to another edition of knowledge sharing and growth. Dive in, stay curious, and see you in the Windy City!





## Canada

### IPBA North American Regional Conference in Toronto

The second IPBA North American regional conference of the year took place in Toronto on October 9, 2024. Co-sponsored by Canadian national firms Fasken Martineau DuMoulin LLP and Borden Ladner Gervais LLP, and inspired by Election Day 2024 in the United States, the conference offered panels focused on regulatory, mergers and acquisitions and dispute resolution topics with speakers from the United States, Canada and Asia. Attendants were welcomed by IPBA President-Elect Michael Chu, who also provided a preview of the 2025 Annual General Meeting and Conference to be held in the beautiful city of Chicago from 23–26 April 2025, and by Jurisdictional Council Member for Canada, Dierk Ullrich.

The Impact of the US Elections on the Global Regulatory Environment

**Moderator:** *Dierk Ullrich (Partner, Fasken Martineau DuMoulin)*  
**Panellists:** *Jana del-Cerro (Partner, Crowell & Moring); Kazuhide Ueno (Partner, TMI Associates); and*

*Clifford Sosnow (Partner, Fasken Martineau DuMoulin LLP)*

The first session of the day considered the impact of the US elections on the global regulatory environment. Jana del-Cerro, Clifford Sosnow and Kazuhide Ueno respectively provided views from inside the US, Canada and Japan on what the elections and Harris or Trump presidencies may mean for each country. While focused on trade and investment, the presenters touched upon a wide range of issues. Ms Del-Cerro set the stage by providing the audience with an introduction to the foreign policy platforms of the Democratic and Republican parties and how they may influence US approaches on outward facing regulatory issues after the elections. Panelists discussed the United States Mexico and Canada Agreement (USMCA), which governs the largest free trade region in the world, and the US-Japan Trade Agreement (USJTA) and what to expect for each under a Democratic or Republican President in the US. Ms del-Cerro and Mr Sosnow reviewed existing trade tensions between the US and Canada and how they might be influenced by the joint party interim review

mechanism under the USMCA, which will be triggered on 1 July 2026, during the term of the next US President, the available dispute resolution and termination mechanisms under and their potential impact on the joint party negotiations. Mr Ueno highlighted the different features of the USJTA, compared it to the USMCA, and offered insights on Japanese perspectives on trade issues with the US. The panel further shared their views on Mr Trump's commitment to increase tariffs on all goods entering the US, including from Canada and Japan and possible retaliatory responses by other countries. This led to a discussion on how the US, Canadian and Japanese relationships to China might evolve under either a Harris or Trump presidency. Other matters touched upon by the panellists included critical minerals, energy and the environment.

### Government Control of Cross-Border M&A—A North American Perspective

**Moderator:** *Martin Glass (Partner, Jenner & Block LLP)*  
**Panellists:** *Jack Yu (Partner, Fasken Martineau DuMoulin LLP); Carlos Cerquiera (Partner, Borden Ladner Gervais LLP); Evan Chuck*

*(Partner, Crowell & Moring); and Donald E. Batterson (Partner, Jenner & Block LLP)*

In the second panel of the day panellists explored the regulatory environment for cross-border M&A. Panellists began by noting that the strong US dollar provided an economic headwind to inbound M&A into North America. Panellists remarked that since 2016, there has been what some perceive as essentially a tit-for-tat regulatory skirmish between the US and China. Examples include China denying access to critical minerals to certain foreign participants and China's Anti-Foreign Sanctions Law which provides legal grounds for the Chinese government authorities to take countermeasures against 'discriminatorily restrictive' foreign sanctions. This has contributed to the overall chilling effect on M&A activity between China and North America. Additionally, outside of the M&A context itself, panellists remarked that the US Uyghur Forced Labor Prevention Act (UFLPA), which is a US federal law that aims to prevent goods made with forced labour in China's Xinjinag Uyghur Autonomous Region from entering the US market, requires very detailed research on the ultimate source of any good originating from China. Panellists remarked on the complexities of complying with the UFLPA when dealing with complex products with thousands of constituent components.

Canadian panellists noted an uptick in investment into Canada by investors from Japan and South Korea. In Canada, the authorities tasked with enforcing the Investment Canada Act are increasingly relying on their ability to block transactions for 'national security concerns'. Panellists noted that this standard is applied very broadly and that this has had a chilling effect on

inbound transactions into Canada. Both US and Canadian panellists remarked that minority investments, offshoring of North American businesses and the direct greenfield opening of new business in the US and Canada by investors from certain jurisdictions have all increased as a result of the more challenging regulatory environment. Panellists expected this state of affairs to continue for the foreseeable future.

### Revisiting Established 'Truths' about International Dispute Resolution in a Changing World

*Moderator: Hugh Meighen (Partner, Borden Ladner Gervais LLP)*

*Panellists: Michael Williams (Partner, Kirkland & Ellis LLP) and Hironobu Tsukamoto (Partner, Nagashima Ohno & Tsunematsu LLP)*

In the final panel of the day, the focus shifted to disputes and specifically the topic of 'Revisiting Established 'Truths' about International Dispute Resolution in a Changing World'. The panellists provided insights from different jurisdictions: Mr Michael Williams (Washington, DC) commented on established 'truths' from the American perspective, while Hironobu Tsukamoto (New York; Japan) commented on the issues based on his familiarity with Japanese clients and laws. The panel was moderated by Hugh Meighen of Borden Ladner Gervais LLP, who also provided a Canadian perspective when appropriate. The panel touched on several topics that appeared ripe for reassessment, including the ongoing popularity of arbitration over public litigation, the reticence of Japanese clients to engage in arbitration or litigation, the risks posed by US discovery rights and practice to foreign parties, and the effect of 'decoupling' between China and the US on dispute resolution.

The purpose of the panel was to revisit these topics and mantras, which have long been established as 'common wisdom', and assess whether any new developments might test our assumptions. Overall, the panellists seemed to confirm several enduring truths. For example, when asked if US-style discovery and depositions were as difficult as many foreign parties imagine, Mr Williams responded that, in fact, they might be worse. Mr Tsukamoto confirmed that these procedures remain unfamiliar to Japanese parties and only the most sophisticated parties in Japan would be likely to have substantial experience with US litigation practices. In other areas, there was room to add nuance to the established 'truth'. For instance, on the question of whether Japanese clients were reluctant to engage in litigation or arbitration, the collective view was that this hostility towards litigation may be softening, especially amongst those Japanese multinationals with consistent investment and operations in the United States or elsewhere. The panel was received well by audience members and provided an excellent close to the day.

Participants, panellists and moderators rounded off the day with a cocktail reception and dinner enjoying the fine foods and wines offered by Canada's largest city.

### Dierk Ullrich

*Partner, Fasken Martineau DuMoulin, Vancouver*

### Martin Glass

*Partner, Jenner & Block LLP, New York*

### Hugh Meighen

*Partner, Borden Ladner Gervais LLP, Toronto*

## Webinar

### Diversity Data: Dilemmas, Legal Nuances and Best Practices for Diversity Data Collection, Analysis and Us Introduction

On 4 December 2024, the Inter-Pacific Bar Association's Employment and Immigration Committee hosted a webinar on collecting and leveraging diversity data in Diversity, Equity, and Inclusion ('DEI') initiatives in the workplace. Moderated by Frédérique David from Harlay Avocats, Paris and Veena Gopalakrishnan from Trilegal, Bangalore, the Panel comprised a diverse range of partners from law firms around the world: Kiersten Lucas from Stephenson Harwood, Dubai; Hiroyuki Kanae from Anderson Mori & Tomotsune, Tokyo; Simon Gorham from Boodle Hatfield, London and Trent Sutton from Littler, Singapore.

### The Link Between Data Collection and DEI

'It is a capital mistake to theorise before one has data'—the quote that opened the webinar's discussion—signifies the critical role of data in informed decision-making, especially in DEI initiatives. The panellists emphasised the vital role of data in measuring DEI progress and pinpointing areas for improvement. While its collection is traditionally associated with productivity metrics, data collection is equally impactful for DEI efforts.

Simon Gorham discussed here how diversity is intrinsically linked to creativity and workplace liveliness, which are key factors in employee retention and attraction. Kiersten Lucas then emphasised that diversity encompasses factors beyond race and gender, including nationality, religion, culture and language. However, this broader understanding

of diversity must align with the regulatory landscape of the region where an organisation operates.

### Collection, Use and Protection of DEI Data

Legal frameworks for data collection vary significantly across jurisdictions, posing unique challenges for organisations. Some regions lack specific regulations, while others mandate reporting on areas like pay gaps. Therefore, DEI data collection practices must be tailored to local requirements, focusing on identifying diversity gaps, measuring initiative success and ensuring legal compliance. Transparency is crucial; organisations must clearly articulate how the collected data will be used and stored to build trust.

Frédérique David underlined the significance of following strict data protection and privacy standards, specifically the General Data Protection Regulation ('GDPR') in Europe, which is stricter with sensitive data. Organisations must navigate varying global regulations, such as the 'right to be forgotten' and data transfer restrictions.

### Best Practices for Data Collection and Use

Understanding and adhering to local regulations ensures that DEI efforts are both compliant and impactful. Trent Sutton addressed the significance of confidentiality and anti-discrimination regulations. He emphasised the need for companies to keep personal data distinct from hiring decisions and adhering to state-specific data usage and breach regulations. Further, anonymising data protects employee privacy and minimises the risk of misuse while

preserving the ability to assess diversity metrics effectively.

Veena Gopalakrishnan then emphasised the issues that organisations face when collecting sensitive data due to concerns about misuse, and the need for preventing discrimination. Even if organisations don't intentionally collect sensitive data, they must still implement anti-discrimination policies and address related issues effectively.

Hiroyuki Kanae highlighted the importance of data in determining if diversity efforts are effective and where adjustments are needed. He emphasised the significance of mandatory data collection in Japan, while also pointing out that some data is challenging and may not be collected in all jurisdictions.

### Conclusion

Ultimately, the collection and use of DEI data is pivotal for fostering inclusive workplaces. By prioritising trust, transparency and legal compliance, organisations can leverage data to drive meaningful change, ensuring that their DEI programs are not only effective but also aligned with evolving societal and regulatory expectations.

*Frédérique David*

*Partner, Harlay Avocats, Paris*





## Host City Guide: Chicago

Culture, history, nightlife, gourmet cuisine and stunning architecture—Chicago, the Windy City, has it all. Whether you are marvelling at towering skyscrapers, strolling along scenic lakefronts, roaring with the crowd at Wrigley Field or tucking into Chicago's famous deep-dish pizza, there is no shortage of excitement in this incredible city. Chicago has been named the 'Best Big City in America' by Condé Nast Traveler readers for an unprecedented eight consecutive years. Here are eight attractions that contributed to that ranking, which you can add to your list when visiting the city.

### 1. Millennium Park

One of Chicago's most famous public spaces, Millennium Park, is a one-stop destination for anyone looking to enjoy art, architecture and nature. The Park is home to the other-worldly Cloud Gate (aka, 'The Bean'), a massive reflective sculpture that attracts visitors from all over the world. The Park also boasts lush gardens, a pavilion for live music and the Crown Fountain, with its unique interactive features. Millennium Park is an excellent spot to relax, take photos and experience the heart of downtown Chicago.

### 2. The Art Institute of Chicago

Steps away from Millennium Park, the Art Institute of Chicago is home to a world-class collection featuring paintings by Georges Seurat, one of Van Gogh's three Bedroom paintings (the only one that can be enjoyed outside Europe) and the iconic American Gothic by Grant Wood; prints such as Hokusai's 'The Great Wave'; photographs; textiles; books from as far back as the 1400s; drawings and watercolours by O'Keeffe, Miró, Lichtenstein and Warhol; and so much more. End your day at the Museum's café or bar and stop by the museum shop to pick up a memento or two.

### 3. Navy Pier

This historic site on Lake Michigan is the place to go for a fun-filled day by the water, offering a variety of activities for all ages. Ride on the iconic Centennial Wheel, take a scenic boat tour, feast at one of a myriad of restaurants, shop at the many stores or simply stroll along the Pier and take in the stunning lake views. Navy Pier is perfect for families, couples

or anyone wanting a relaxing and picturesque experience topped off by unique entertainment options.

### 4. Willis Tower Skydeck (Sears Tower)

Upon its completion in 1973, Willis Tower (formerly Sears Tower) was the tallest building in the world and held that distinction for 25 years. The Skydeck on the 103rd floor is still the highest observation deck in the US, offering panoramic views of Chicago and beyond. Thrill-seekers can also step onto The Ledge, a set of glass balconies extending out from the





building that make you feel like you're standing on top of the city. This birds-eye view is not for the faint of heart!

### 5. Shedd Aquarium

Shedd Aquarium is one of the world's largest indoor aquariums and contains over 1500 species of 32,000 animals, including fish, birds, marine mammals, reptiles and insects. Experience up-close encounters with marine life at special exhibits like Amazon Rising, a walk-through flooded forest recreation of the Amazon River and surrounding jungle and Wild Reef, which recreates the vibrant coral reefs of the Philippines. Catch one of the shows, take the 75-minute guided tour or explore on your own.

### 6. Lincoln Park Zoo

Beginning in 1868 with two pairs of swans, Lincoln Park Zoo is now home to close to 200 unique animal species, from the Aardvark to the Yellow-spotted Amazon River Turtle. More than 850 plant species provide an oasis of

scenic gardens, making it the perfect place for a relaxing day surrounded by nature. Best of all, admission is free!

### 7. The Riverwalk

The 1.25-mile Riverwalk along the Chicago River is divided into six distinct spaces that are integrated with the surroundings to provide independent experiences connected by the path. It is the perfect place for a leisurely walk, a bike ride or a boat tour. The best time is sunset, when the water reflects the city lights, giving you some truly magical views.

### 8. Dining

Chicago is ranked as the #1 foodie city in the Midwest and spoils visitors with an array of exclusive restaurants as well as down-to-earth eateries specialising in local favourites.

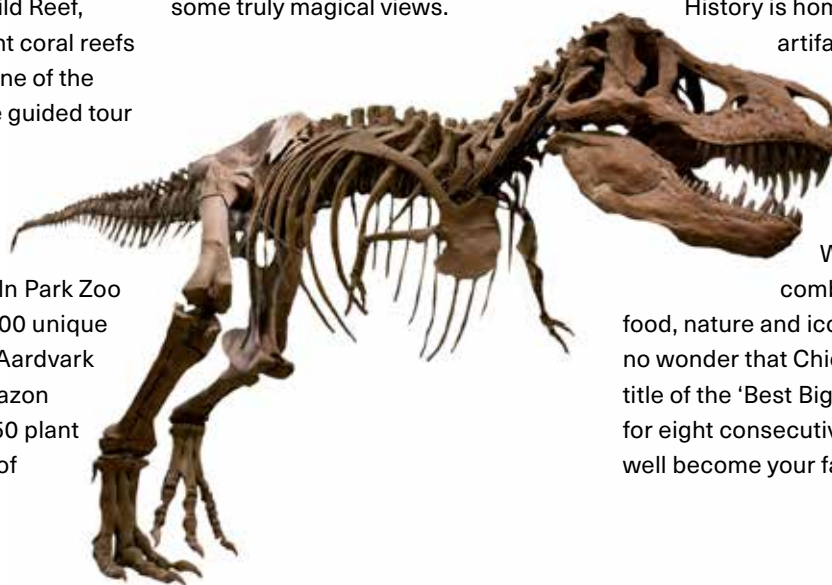
Everyone knows about the famous Chicago deep-dish pizza, but don't forget to try Chicago-style hot dogs, Italian beef sandwiches, Polish sausages, the Rainbow Cone, Chicago-style popcorn . . . the list is endless!



### 9. Bonus

Where can you see the largest T-Rex ever discovered? In Chicago, of course! The Field Museum of Natural History is home to 40 million artifacts, including Sue the T-Rex and one of the largest collections of jade in America.

With its unique combination of culture, food, nature and iconic landmarks, it is no wonder that Chicago has held the title of the 'Best Big City in America' for eight consecutive years. It may well become your favourite city too!





# Something New



## Competition Law—Latest Update on Antitrust Dispute Settlements in India

Out-of-court settlements in antitrust disputes between parties is strictly not an option under the Indian Competition Act 2002 ('the Act') (as amended). The intent of the legislation, of not having a settlement remedy between parties to the dispute in antitrust matters in India, seems to be due to the following reasons:

1. the alleged market distortion raised by a complainant/informant cannot be settled between such informant and the respondent without the scrutiny of the allegations by the Competition Commission of India ('CCI') since the CCI is mandated to remedy any alleged market distortion arising out of the business conduct of an enterprise;
2. the CCI has *suo motu* powers to investigate any information alleging to be in contravention of any antitrust provision of the Act, hence, even if the parties to the alleged dispute decide to settle such disputes beyond the purview and without a review of the CCI, they are prohibited from doing so since the market is presumed to have already been distorted by the conduct of the respondent(s)

in an *ex post facto* legal scenario; therefore, if such conduct is not remedied by an appropriate final order of the CCI, the Act could become infructuous to the detriment of other stakeholders, including the end consumers; and

3. the remedies intended under the Act are '*in rem*' and not '*in personam*' hence, sanctions against an alleged contravener and/or an enterprise, subject to the rule of reasons, are the only logical conclusion in meeting the objective of the public interest.

The Act is a piece of civil legislation, hence voices were raised from time to time by aggrieved parties that as the out-of-court settlement of civil disputes is in vogue in India, the same remediation processes should be introduced in the substantive law enabling parties to minimise waiting periods in reaching finality, besides a reduction in the costs of litigation.

Now, fast forward. On 11 April 2023 the Act has comprehensively been amended, *inter alia*, to include the enabling provision of 'settlement' options for parties, if they so desire to avail of this statutory benefit. However,

the enabling provision of settlement of disputes between parties to any antitrust dispute has only been made available to respondents in an alleged breach of the Act in respect of vertical restraints and abuse of dominance. This means that respondents do not have any option to avail of this benefit if they are involved in either cartels and/or bid rigging. This is rightly so, as the Act has comprehensive leniency programme provisions for early detection and remediation of cartels via the Lesser Penalty Regulations 2009 ('the Regulation'), read with section 46 of the Act. In terms of this Regulation, any member or members, who is/are actively involved in cartels and/or bid rigging, as the case may be, may voluntarily blow the whistle of the anti-competitive practice among competitors through an unconditional affidavit duly supported by full disclosure of vital and true evidence of such cartels/bid rigging. The first applicant who helps the CCI in forming the *prima facie* view, gets first priority status and subsequent applicants may get second and third priority statuses respectively depending on the stage at which they join the ongoing leniency programme investigation proceedings. The first applicant normally gets a benefit of 100 per cent immunity from



penalties as do the individuals of the enterprise. The second and the third applicants, including the enterprises, may get immunities of up to 50 per cent and 30 per cent, depending on the quality of the evidence they may disclose under unconditional affidavits.

A Settlement Application, per the new rules, may be filed by any respondent(s) allegedly involved in either a vertical restraint business relationship or an abuse of dominance position when the informant (complainant) *prima facie* makes out a case against the respondent(s) enabling the CCI to direct the office of the Director General ('DG') to commence a full-fledged investigation on the allegations against the respondent(s).

The Settlement Applicant ('the Applicant') may file an application in the prescribed format with the prescribed filing fee, as per the procedural regulations, as soon as the investigation report of the DG is completed and shared with the respondent(s). Here again, in case there is more than one Applicant, then a priority or marker status could be created among those Applicants as the CCI may deem fit in this behalf. The CCI will compute a penalty both upon the individual(s) and the enterprise(s) based on the quality of the evidence, the nature, gravity and impact of the contravention, besides continued cooperation with the CCI until the passing of the final order.

The CCI, in exercise of its discretion on the merits, may reject a Settlement Application. No applicant will have any right of appeal before the Court of First Appeal (the National Company Law Appellate Tribunal/NCLAT) in terms

of section 53B of the Act. However, in the case of rejection of the Settlement Application, the CCI may proceed to pass the final order under section 27 of the Act against the Applicant and such an order is appealable before the NCLAT under section 53B. Despite the Applicant not having a right of appeal before the NCLAT under the settlement proceedings, it may face a follow-on action or claim of compensation from all of those who may have been aggrieved by its conduct. Thus, the intent of the new rule is that settlement benefits may be available on the merits to a willing Applicant, but such a benefit would render no right of appeal and no immunity from follow-on actions claims as may be filed by any party aggrieved against the Applicant.

Interestingly, the Supreme Court of India on 20 December 2024 rejected the Special Leave Petition ('SLP'), filed by the CCI against a Delhi High Court Division Bench Order dated 14 August 2024. The extract of the essential portion of the order of the Supreme Court is given below:

On facts, no case for interference is made out in exercise our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petitions are accordingly dismissed. However, question of law is kept open.

The rejection of the SLP by the Supreme Court of India in the above-quoted matter arose out of a decision of the Delhi High Court Division Bench's Order wherein the said Court allowed a settlement of a dispute allegedly brought before the CCI by an Informant against JCB, the UK incorporated enterprise, which operated via its wholly owned Indian subsidiary. The Commission, after examining the facts of the allegations and supporting corroborating evidence furnished by the Informant, formed a *prima facie* view, *inter alia*, agreeing with the contentions of the allegations and directed the DG to carry out a detailed investigation. The DG, while conducting the investigation, directed the respondent (JCB) to furnish all relevant facts for



further review by it. The JCB failed to provide the necessary documents which was a breach of the provisions of the Act relating to non-compliance with a statutory request for information which led to and prompted the DG to move an application before the Chief Metropolitan Magistrate ('CMM') praying for the issuance of a Warrant to cause an unannounced search and seizure operations ('Dawn Raid') at the premises of the delinquent respondent, JCB. Aggrieved by some alleged procedural irregularities of the DG, JCB moved a Constitutional Writ Petition before the High Court of Delhi against the CCI and the DG. During the continuance of the Writ Petition, the Informant and JCB entered into an out-of-court settlement agreement and adduced the evidence of the same before the High Court. The High Court allowed the settlement agreement between the parties. Against such order of the High Court, the CCI moved the SLP before the Supreme Court of India, *inter alia*, submitting that the Act did not provide any mechanism of settlement out of court by the parties and hence the Order of the Division Bench of the High Court must be set aside. The Supreme Court did not agree with the contentions of the CCI and passed the final order on 20 December 2024 confirming the order dated 14 August 2024 of the Delhi High Court.

The Order of the Supreme Court binds the CCI and all inferior courts below the Supreme Court of India. It is not out of place to mention that the benefits of settlement were not available until 11 April 2023 under the Act, hence the joint action of the Informant and JCB relating to entering into a settlement agreement prior to 11 April 2023 was void. The Act confers exclusive jurisdiction on the CCI to adjudicate all antitrust disputes and additionally

bars all civil courts of India from adjudicating any antitrust disputes. To the contrary, the Supreme Court disposed of the SLP filed by the CCI on 20 December 2024 which primarily arose out of a settlement agreement entered into between two disputing parties who already had submitted to the jurisdiction of the CCI and the DG a long time ago. Thus, we now have a 'catch-22' situation. On the one hand we have the binding ratio of the Supreme Court upon the CCI and, on the other hand, the legislative intent of the Act prior to 11 April 2023 and continuing to this date is that no civil court of India can adjudicate any antitrust dispute.

The latest development has unambiguously indicated that the CCI has moved on as per the mandate conferred upon it by the amended Competition Act and the first Settlement Order under the amended Act has been passed and a brief overview of the same is given below.

On 21 April 2025, the CCI passed the first ever Settlement Order in terms of the amended Competition Act. Based on the allegations of abuse of dominance against Google in the Android TV Operating Systems and related App Store markets in India, the CCI's order is a landmark development in the competition law space. Indian Settlement under the Competition Act came into being on 6 March 2024, months before the Order passed by the Supreme Court of India. The investigation wing of the CCI, based on evidence, found Google to have abused its dominant position. Google contended that the calculation of the



settlement amount should be based on the direct revenue generated from the Android TV business through video-on-demand and ads on the platform. However, the CCI did not agree with the contentions.

Based on facts and merits, a 15% settlement discount to a base penal amount, coupled with mitigating circumstances, the final settlement amount was computed and arrived at INR 202.4 million (approximately US\$2.38 million). The law does not provide any right of appeal to Google (Settlement Applicant) but could pose unforeseen challenges of follow-on actions and claim of damages by anyone aggrieved by the anti-competitive business conduct of Google in identical relevant markets within India.

*Manas Kumar Chaudhuri*

*Partner and Lawyer, Khaitan & Co, Delhi*

## Endnotes

<sup>1</sup> Competition Act 2002, ss 3 and 4.

<sup>2</sup> The CCI's observations in the case of *XYZ v Indian Oil Corporation Ltd* that, 'a ruling/action by the CCI is a decision in rem and one which is intended to achieve market correction'.

<sup>3</sup> *Samir Agarwal v CCI & Ors* Civil Appeal No 3100 of 2020, 15 December 2020 (order of the Supreme Court of India).

<sup>4</sup> Competition Act 2002, s 48A (as amended)

<sup>5</sup> *Ibid*, ss 60 and 61.

## Public Procurement: The Battleground Between the European Union and Third Countries

Public procurement is a key mechanism through which public institutions and certain regulated sectors, such as energy, water, public transport and postal services, acquire goods, services and infrastructure projects from private enterprises. Within EU Member States, procurement is governed by national legislation, but contracts that exceed specific thresholds must comply with harmonised EU rules, set out primarily in the Public Procurement Directive 2014/24/EU and the Utilities Directive 2014/25/EU. These Directives establish a framework that ensures fair competition, transparency, and equal access to procurement opportunities across the EU market.

Every year, the EU public authorities collectively allocate around 14 per cent of the Bloc's GDP to procurement, making them dominant buyers in sectors such as transport, healthcare, waste management and education. Beyond merely fulfilling administrative needs, public procurement plays a strategic role in fostering economic growth, innovation and social inclusion.

Despite its commitment to open markets through agreements such as the WTO Government Procurement Agreement ('GPA') and bilateral trade deals, the EU is facing increasing tensions over third-country participation in its procurement market. This is because, while EU businesses gain only limited access to global procurement opportunities (approximately €10 billion out of an estimated €8 trillion worldwide), third-country companies may, in many

cases, bid freely for EU contracts. This imbalance has led to growing concerns over the fairness of competition and the broader economic implications of an asymmetrically open procurement system.

Moreover, third-country bidders often operate under different regulatory frameworks, without the stringent environmental, social and labour standards required of EU companies. This discrepancy has raised alarms over unfair competitive advantages and potential market distortions. Chinese firms, in particular, have been at the centre of these debates, securing significant infrastructure projects in Europe under schemes like the Belt and Road Initiative.

On 22 October 2024 in case C-652/22 Kolin, the CJEU issued a ruling stating that contractors from third countries do not have a guaranteed right of access to the European public procurement market. According to this judgment, discriminatory practices based on the origin of such contractors are permissible, and most importantly, such contractors cannot invoke violations of EU law if denied access to a public tender.

For now, the Kolin ruling serves as an interpretation of the existing rules on access to public procurement within the single market and does not, in itself, mandate any immediate changes to the established procurement practices of EU Member States. The decision on whether to admit a third-country contractor to an EU public procurement procedure (or subject it to any less favourable conditions)

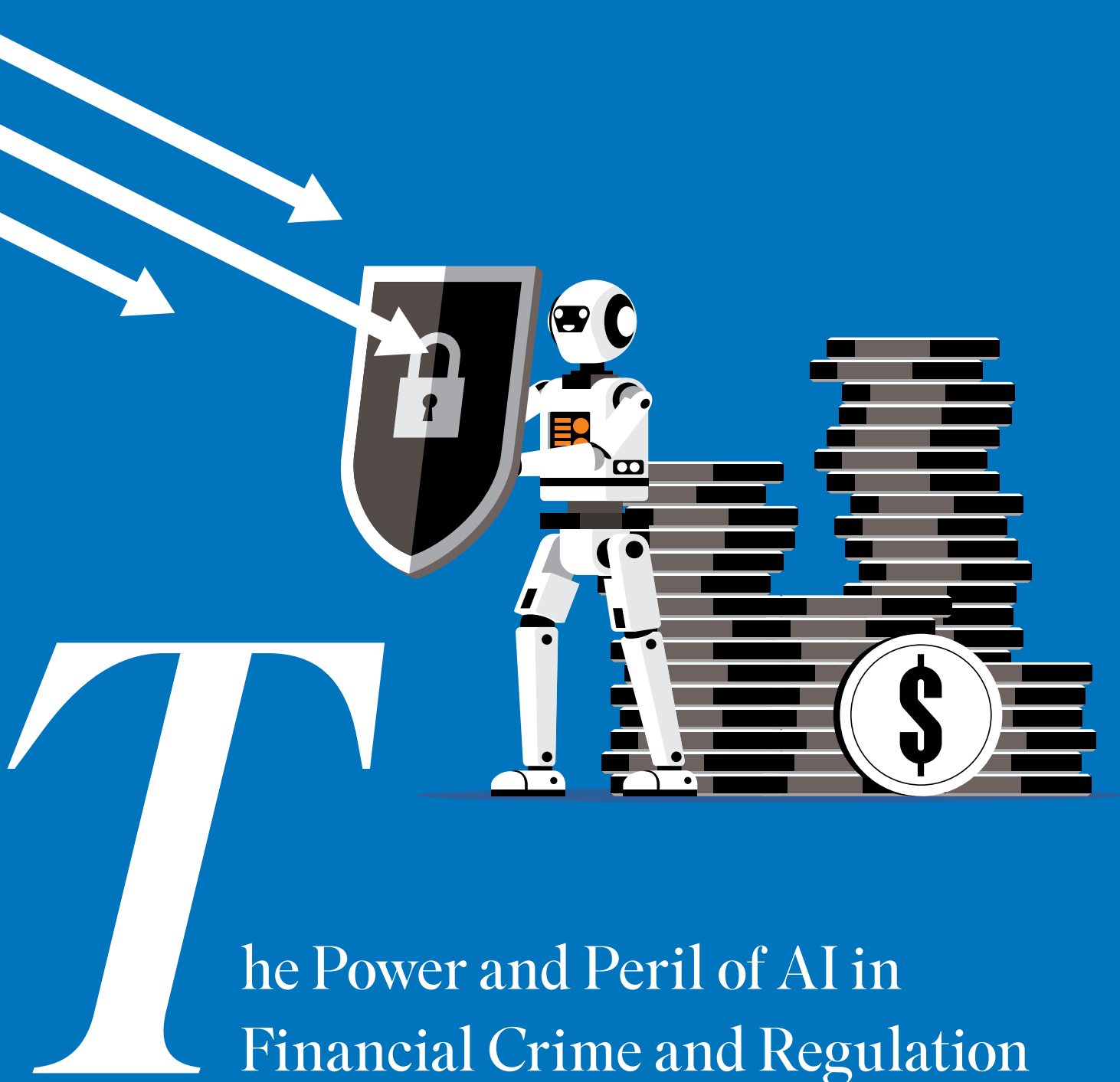
has been left to the discretion of contracting authorities. The CJEU explicitly stated in its ruling that this cannot be subject to national law, because the regulation of trade relations with third countries is within the exclusive competence of the EU.

However, without changes to national legislation that would explicitly define the treatment of third-country entities, it may be difficult for contracting authorities to depart from the established practice of formally treating all bidders equally in public tenders. Another case, C-266/22, ruled on 13 March 2025, involves a Chinese contractor that was excluded from a public procurement tender in Romania because the definition of 'contractor' under Romanian public procurement law did not include entities from China. The outcome of this case further shapes the legal landscape for third-country participation in EU procurement accepting the domestic legislation having an effect to prohibit access to EU public contracts for third-country bidders.

The battle over who gets access to Europe's lucrative public contracts reflects a broader geopolitical struggle; one where economic interests, regulatory standards and strategic autonomy are all at stake. In this evolving landscape, public procurement is no longer just a bureaucratic process: it is becoming a high-stakes competition on the global stage.

*Mirella Lechna-Marchewka*  
Managing Partner, Wardyński & Partners, Wrocław





# The Power and Peril of AI in Financial Crime and Regulation

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The article explores the dual nature of Artificial Intelligence in the financial sector. It discusses how AI offers powerful tools for detecting and preventing financial crimes like fraud and money laundering, while also highlighting the new risks and challenges AI itself introduces, such as sophisticated scams and the potential for algorithmic bias. Furthermore, the article examines how regulatory bodies are grappling with these advancements, trying to harness AI's potential for better compliance and oversight while mitigating its inherent dangers.

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## Introduction

In 2023, a finance executive at a multinational corporation authorised a US\$25 million transfer, believing he was speaking with the company's CFO on a video call. The problem? The CFO never made the request—the entire call was a deepfake, generated by artificial intelligence ('AI'). This incident is not an outlier but a harbinger of how AI is transforming financial crimes, making them more sophisticated and harder to detect.

AI's rapid evolution has created a paradox in the financial sector. On one hand, it enables criminals to execute fraud, manipulate markets and launder money with unprecedented efficiency. On the other hand, AI is also emerging as a critical tool for regulators, financial institutions and law enforcement agencies to detect, prevent and combat financial crimes in real time. However, the increasing complexity of AI systems introduces transparency challenges, making it difficult to trace and explain automated decisions. Additionally, AI's vulnerability to cyber-attacks raises concerns about data breaches and financial losses, while over-reliance on AI may reduce human oversight, leading to potential errors or system failures. The global shift towards AI in finance requires a deeper understanding of both its potential benefits and risks.

## How AI is Enabling Financial Crimes

Artificial intelligence is aiding financial crimes into sophisticated fraud through market manipulation, money laundering and various other techniques. AI is leveraged to automate and execute illicit activities with greater precision, making detection and prevention increasingly challenging.

### AI-Powered Fraud and Cybercrimes

**1. Deepfakes and identity theft:** AI-generated deepfakes are being used to bypass traditional identity verification in banking and insurance. Fraudsters can manipulate biometric authentication systems, creating realistic fake identities of executives to authorise fraudulent transactions. Deepfake videos and voice synthesis have enabled high-profile scams.

**2. AI-driven social engineering:** Phishing attacks and Business Email Compromise ('BEC') scams have become more sophisticated with AI-powered chatbots and voice cloning. AI algorithms analyse communication patterns to craft hyper-personalised phishing emails, increasing the success rate of scams. Cybercriminals also use AI to clone voices, enabling them to bypass voice authentication

security measures and trick employees into transferring funds.

### Market Manipulation and Insider Trading

**1. AI and High-Frequency Trading ('HFT'):** AI-driven trading algorithms execute thousands of trades within milliseconds, creating opportunities for market manipulation. Criminals use AI-powered HFT to exploit price discrepancies, artificially inflate stock values and manipulate trading patterns to deceive investors.

**2. Sentiment analysis manipulation:** AI analyses financial news, social media trends and public sentiment to predict market movements. Cybercriminals exploit this by deploying AI bots to spread misinformation, manipulate investor sentiment and trigger price fluctuations.

### Money Laundering and Dark Web Transactions

**1. Automated money laundering:** AI has enhanced money laundering techniques by automating the layering process—breaking down illicit funds into smaller transactions to evade detection. AI-powered transaction monitoring tools, ironically designed for security, are also manipulated.

**2. Crypto and blockchain exploitation:** AI-driven bots automate crypto mixing services, making illegal transactions nearly impossible to trace. AI is used to generate thousands of microtransactions across multiple wallets, obfuscating the origins of illicit funds. AI-powered trading bots also exploit decentralised finance ('DeFi') platforms, enabling money laundering while bypassing traditional anti-money laundering ('AML') measures.

## Legal Challenge: The Regulatory Gap

### Legal Frameworks Struggle to Keep Up with Rapid Technology Advancements

AI-driven financial crimes pose a significant challenge for regulators, as existing legal frameworks struggle to keep pace with the rapid advancements in technology. While AI is revolutionising financial services, its potential for misuse underscores the urgent need for regulatory evolution.

### The Challenge of Regulating AI in Financial Crimes

**1. Lack of AI-specific laws:** Most financial crime regulations were drafted before AI became a dominant force in the financial sector. Existing anti-money laundering ('AML'), fraud prevention and cybersecurity laws primarily address traditional financial crimes, leaving AI-driven threats in a grey area.

**2. Jurisdictional complexity:** Financial crimes powered by AI are inherently global, yet regulatory frameworks remain fragmented across jurisdictions. AI-driven frauds, money laundering schemes and cyberattacks can originate in one country while targeting victims in another, exploiting loopholes in international cooperation.

## Ethical and Legal Dilemmas

**1. Bias in AI detection systems:** AI-powered fraud detection tools are not immune to biases, leading to false positives or negatives. Algorithms trained on biased datasets may disproportionately flag legitimate transactions from certain demographics while failing to detect sophisticated fraud patterns. This not only affects financial institutions but also raises ethical concerns about fairness and due process in financial regulation.

**2. Privacy concerns:** AI-driven surveillance tools used to detect financial crimes often rely on extensive data collection and monitoring. This raises significant privacy concerns, especially under laws like the EU General Data Protection Regulation ('GDPR') and India's Digital Personal Data Protection ('DPDP') Act. The balance between financial security and individual privacy rights remains a contentious issue.

## Existing Global Regulatory Efforts

**1. European Union's AI Act:** The EU's AI Act categorises AI applications by risk level, with financial fraud prevention falling under high-risk use cases. It mandates transparency, explainability and accountability in AI-driven financial decision-making, aiming to curb AI-enabled financial crimes while ensuring compliance with data protection laws.

**2. US Anti-financial crime frameworks:** The Financial Crimes Enforcement Network ('FinCEN') plays a critical role in AI-driven AML compliance in the US. AI is being integrated into FinCEN's financial crime monitoring systems, but regulatory gaps persist in addressing AI's role in money laundering, fraud, and cybersecurity breaches.

**3. India's legislation and legal framework:** The Digital Personal Data Protection (DPDP) Act, 2023 in India aims to address privacy concerns related to the processing of personal data, including its use in the context of financial sector. AI systems in finance rely on personal data for fraud detection and identity verification, but these technologies can be exploited for malicious activities like identity theft and phishing through deepfake impersonation. The DPDP

Act mitigates these risks by requiring consent for data collection and limiting its use to specified purposes. It also grants individuals control over their data, allowing them to request corrections or deletions, which helps prevent AI-driven financial crimes. In addition, India has established a committee to bring a legal framework to address AI-related financial crimes, primarily led by the Reserve Bank of India ('RBI'). The RBI's Framework for Responsible and Ethical Enablement of AI ('FREE-AI') initiative involves developing guidelines for the ethical use of AI in the financial sector.

## AI as the Solution: How Regulators Can Leverage AI as a Tool to Combat Financial Crimes

While AI is being exploited for financial crimes, it is also one of the most powerful tools for combating them. Regulators and financial institutions are increasingly deploying AI-driven solutions to detect fraud, enhance compliance and strengthen cyber security, as discussed below.

Regulating AI should go beyond merely mitigating risks—it should also empower financial regulators with AI-driven solutions. By leveraging AI for fraud detection, compliance and cybersecurity, regulators can proactively combat financial crimes while ensuring a more transparent and resilient financial system.

## AI in Fraud Detection and Prevention

**1. Predictive analytics:** AI models analyse historical financial data to identify suspicious patterns and predict fraudulent behaviour before it occurs. By recognising anomalies in transaction flows, AI helps regulators and banks proactively prevent financial crimes rather than reacting after the fact.

**2. AI-powered AML systems:** Machine learning algorithms improve AML measures by detecting complex laundering techniques that traditional rule-based systems often miss. AI-driven AML tools continuously adapt to evolving threats, tracking suspicious activities in real-time and enhancing financial crime investigations.

## Real-Time AI Compliance Monitoring

**RegTech Solutions:** AI-driven regulatory technology ('RegTech') enables automated compliance monitoring, reducing the burden on financial institutions. AI systems analyse regulatory updates, flag potential compliance breaches and provide real-time risk assessments, ensuring organisations remain compliant with evolving financial regulations.



## AI in Cybersecurity and Threat Intelligence

**1. AI-based threat hunting:** Regulators and financial institutions use AI to detect cyber threats by continuously monitoring networks for anomalies. AI-powered cybersecurity tools analyse vast datasets in real time, identifying potential hacking attempts, insider threats and AI-driven cyber fraud schemes.

**2. AI-generated risk reports:** AI automates regulatory reporting by generating risk assessment reports, fraud detection summaries and compliance documentation. These AI-driven tools streamline regulatory audits, reducing human errors and ensuring accurate financial crime reporting.

## Conclusion

As financial crimes grow more sophisticated with AI, regulatory frameworks must evolve to address both risks and opportunities. Traditional financial crime laws are insufficient against AI-driven threats, making AI-specific regulations essential. Governments must implement dynamic legal frameworks that not only mitigate risks but also integrate AI-driven fraud detection, AML compliance and cybersecurity measures. However, regulation alone is not enough—collaboration between regulatory bodies, financial institutions and AI developers is crucial to ensure that compliance measures remain effective without stifling innovation.

At the same time, ethical considerations must guide AI's role in financial regulation. Transparency, accountability and fairness in AI-driven compliance systems are necessary to prevent biases and disproportionate enforcement. While AI enables financial crimes, it also provides the most advanced tools to prevent them. Striking a balance between innovation and security requires proactive and adaptive regulation. If harnessed responsibly, AI can transition from being a tool of exploitation to a powerful shield, fortifying financial systems against emerging threats while maintaining trust and integrity in the sector.

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# Navigating India's Evolving Compliance Landscape

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This article examines the evolving compliance landscape in India, driven by technological advancements, environmental concerns and increasing financial crimes. It focuses on the regulatory challenges posed by artificial intelligence, data protection and corporate governance, offering insights into existing frameworks such as the Companies Act 2013 and the Digital Personal Data Protection Act 2023. With specific emphasis on small and medium enterprises, the article provides practical recommendations for businesses to navigate compliance effectively in an interconnected world economy.

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## Introduction

The compliance framework in India has been rather dynamic with advancements in technology and cumulative socio-environmental issues, increasing the need for effective governance mechanisms. The rise of artificial intelligence ('AI') and generative AI and their availability and adoption on a broad scale have imperative ethical, legal and regulatory challenges, demanding greater accountability and transparency. Exploitation of these technologies contributes towards rising cybersecurity breaches and financial crimes across digital platforms, as businesses face mounting pressure for accountability in relation to environmental, social and governance ('ESG') issues. Such convergence of issues compels businesses towards a more proactive and structured approach to complying with laws.

The compliance landscape specifically poses significant difficulties for small and medium sized enterprises ('SMEs') on account of resource constraints. However, the role of compliance transcends beyond being a mere technical

obligation as it can be an instrumental strategy in building trust, resilience and sustainability through an increasingly complex and interconnected world economy. Additionally, the expenditure entailed towards defending themselves in such a situation, including penalties, reputational loss and loss of business opportunities, often far outweighs the investment required for maintaining proper compliance mechanisms.

This article discusses the legislation and compliance measures instituted in India to handle the pressing technological, social, monetary and environmental issues emerging today and offers pragmatic suggestions to corporates, including SMEs, in terms of ensuring compliance with laws using the resources available to them.

### Corporate Governance in India

The evolving landscape of corporate governance legislation in India demonstrates the commitment of the government and sectoral regulators to promote transparency, accountability, sustainability and ethical business practices, while also building the Indian image at a global level.

The Companies Act 2013 ('the Act') prescribes corporate governance through mandated board composition requirements, enhanced disclosure norms, including for undertaking related party transactions, stakeholder protection mechanisms and director accountability measures. The Act prescribes forming committees like audit, nomination and remuneration and corporate social responsibility ('CSR') for certain classes of companies. Companies meeting specified thresholds must undertake mandatory CSR activities and constitute CSR committees to oversee these initiatives. The Act further provides for a serious fraud investigation office to handle corporate fraud, supported by the Prevention of Corruption Act 1988, which regulates bribery and illegal asset acquisition in commercial organisations. While gaps remain in addressing private-sector corruption, organisations have implemented robust internal anti-corruption policies, complemented by relevant regulations.

The Securities and Exchange Board of India ('SEBI'), India's securities market regulator, has established the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 for listed entities. These regulations incorporate new disclosure norms, business responsibility reporting requirements and stricter regulations on related party transactions to align Indian corporate governance with global standards.

SEBI, along with sectoral regulators like the Reserve Bank of India and Insurance Regulatory and Development Authority of India, imposes additional governance norms on particular businesses. In response to the growing emphasis on ESG, SEBI introduced the Business Responsibility and Sustainability Report in 2021, applicable to the top 1,000 listed companies, standardising ESG disclosures and advancing India's sustainability goals.

### India's Push Towards Responsible AI Regulation

The swift expansion of India's AI industry necessitates proper data rights, protection measures and governance frameworks. While major jurisdictions worldwide adopt varied approaches, from the EU's comprehensive AI Act to the US's sector-specific guidance, India is developing a balanced framework that reflects its unique position as a technology hub. While there is no dedicated regulatory framework or legislation in India that regulates AI per se, existing legislation like the Information Technology Act ('IT Act'), Digital Personal Data Protection Act 2023 ('DPDPA') and intellectual property ('IP') related laws continue to apply to the use of AI. The IT Act, along with associated rules, serves as the primary legislation governing data protection in India. The DPDPA advances this framework through robust standards aligned with global requirements, particularly relevant to AI development. The DPDPA encompasses all digital personal data, mandates explicit consent for data processing and establishes comprehensive governance frameworks.

India's legal framework addresses AI-related risks, including the misuse of foundation models, particularly deepfakes, through existing laws such as the IT Act, Bharatiya Nyaya Samhita 2023 and the Copyright Act 1957 ('Copyright Act'), which criminalises activities like identity theft, defamation and the dissemination of obscene material. Additionally, child protection laws and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 ('Intermediary Rules') require content removal and harm prevention. However, to enforce compliance with these legislations, advanced technologies and tools like traceability mechanisms and watermarking are required to be incorporated in the system.

Further, the impact of AI on IP is crucial, as algorithms, data and software are eligible for protection under IP laws in India. While the government maintains that existing copyright law adequately addresses AI-generated works,<sup>1</sup> India continues examining the patentability of AI-generated inventions, with



the India 'DABUS case',<sup>2</sup> involving non-human inventorship, under consideration by the Indian Patent Office. The use of generative AI raises significant questions regarding copyright infringement. For instance, training models run on copyrighted data produce datasets from copyrighted works, the usage of which is unauthorised and may therefore amount to infringement. The Copyright Act provides narrow exceptions for non-commercial personal use of copyrighted works, but the ability to copyright AI-generated works presents a challenge to the traditional requirement of human authorship. This requires stricter compliance measures and clear rules regarding the liability for potential infringement.

Further, with the rapid growth of the AI ecosystem, acceleration of applications and technological advancement and fundamental shifts in outputs, regulation has presented challenges that conventional governance frameworks are not equipped to solve. A 'techno-legal' approach, integrating technology with legal frameworks, offers a scalable solution by automating compliance, enhancing monitoring and distributing liability across value chains. Tools like 'consent artefacts' and unique digital identities could track activities, foster accountability and enable self-regulation within the ecosystem. Government authorities and AI developers can work collaboratively in designing automated systems. Compliance with risk management ensures that these systems will periodically be reassessed for fairness, security and respect for fundamental rights. A robust regulatory framework should envisage the principles of AI governance while allowing flexibility for future innovation. The lawmakers and regulators also recognise the critical challenge of algorithmic bias and discrimination in AI systems, particularly in sensitive areas such as employment, financial services and criminal justice, mandating regular audits and impact assessments to ensure fair and unbiased outcomes across diverse demographic groups.

To overcome the gap of a dedicated AI regulatory framework, the Indian government is considering specific regulation through the proposed Digital India Act. The Ministry of Electronics and Information Technology ('MeitY') has indicated that high-risk AI will be regulated to protect users and amendments to existing guidelines may address issues like deepfakes and unlawful content. Various government agencies have issued guidelines on AI, highlighting compliance areas such as preventing unlawful content, ensuring transparency and implementing security

measures. In recognition of these challenges, MeitY established a sub-committee to develop a comprehensive AI governance framework. Referring to mechanisms established by OECD, NITI Aayog and NASSCOM, the sub-committee has proposed principles for AI governance with an emphasis on the Indian context for operationalisation. The guiding principles include transparency in providing appropriate information about AI systems, accountability by defining obligations of developers and deployers, safety and reliability, privacy and security, fairness and non-discrimination, respect for human values, inclusive and sustainable innovation to provide equitable benefits and sustainable development, and digital-by-design governance to optimally reap the technological benefits for effective regulation and compliance.

Therefore, to understand AI governance in India, regulators must now secure traceability and transparency in AI systems concerning liability and risk management. Existing sectoral laws should be evaluated and assessed in the context of their relevance to AI. However, in order to combat cross-sectoral risks and fragmented regulatory approaches, it is imperative that a high-level umbrella framework covering all regulatory sectors be established. In light of the same, the sub-committee has proposed the establishment of an Inter-Ministerial AI Coordination Committee under the leadership of the Principal Scientific Adviser, a multi-stakeholder Advisory Group, and joined by key regulators, representatives of industry and academia members. This committee will assist in aligning efforts across sectors through coordinated implementation of accountability laws, guidance, mainstreaming responsible AI practices and will promote the curation of India-specific datasets to improve fairness and transparency. Collaboration across sectors would ensure efficient, long-term governance of AI systems. Further, the establishment of a technical secretariat by MeitY is also proposed to serve as a focal point for technical advisory and coordination in India's AI ecosystem and it would also host an AI incident database to document and mitigate real-world risks and foster industry collaboration on voluntary transparency and risk-mitigation measures.

### Impact of the Compliance Environment on Small and Medium Sized Enterprises

SMEs often opt for conducting their business through proprietorship or partnership entities, as they are subject to fewer and less stringent regulatory requirements. Under the Act, small companies benefit from various exemptions regarding financial reporting, board meetings and other

requirements. However, effective compliance remains crucial for long-term success and risk management.

For effective compliance management, SMEs should consider implementing integrated technology solutions such as compliance management software, automated regulatory update systems and digital documentation platforms. These tools can significantly reduce the manual burden of compliance while improving accuracy and reporting capabilities. Cloud-based solutions offer particular advantages through scalability and cost-effectiveness.

The cost-benefit analysis for undertaking legal and regulatory compliance should consider both direct and indirect factors. Direct costs include implementation of compliance systems, training staff and tracking ongoing maintenance, while benefits encompass risk mitigation, operational efficiencies and enhanced business opportunities. SMEs should also consider strategic partnerships with compliance service providers, utilising shared service models to optimise resources while ensuring comprehensive coverage. Regular training and capacity building programs are essential for maintaining effective compliance. These programs should cover both technical requirements and the broader strategic importance of compliance in building business resilience and stakeholder trust.

## Conclusion

India's compliance environment has evolved significantly, driven by technological advancement, increased awareness of environmental and social responsibilities and the rising prevalence of financial crimes. The Act, alongside sector-specific regulations and frameworks like the DPDPA, underscores the government's commitment to enhancing corporate governance, data security and anti-corruption measures. While large corporations adapt to stringent requirements, SMEs benefit from calibrated provisions supporting their growth.

A proactive regulation addressing AI, ESG imperatives and cybersecurity is expected to provide a balance with policy support for innovation. Given the formative state of the AI sector, an activity-based regulatory approach appears most appropriate, complemented by industry self-regulation. As India continues to develop its unique approach to AI governance, it has the potential to emerge as a key architect of global frameworks, particularly for developing economies navigating similar technological transitions.

Corporations undertaking business in India in the AI sector should thoroughly evaluate AI compliances with data protection regulations, IP rights and sector-specific requirements. Clear IP rights can offer competitive advantages through licensing agreements. Additionally, businesses should have strategies for addressing unresolved legal issues such as copyright protection and patenting for AI-generated inventions. Given the fast-changing regulatory environment, extensive representations and warranties and covenants related to assurance of AI regulatory compliance, IP rights and data security may become standard practice. This dynamic regulatory environment exemplifies India's distinctive approach to technological governance that balances innovation with responsibility, and global standards with local needs, potentially creating a new paradigm for emerging digital economies.

## Endnotes

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# China's Experience and Optimisation Paths for SME Compliance



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Corporate compliance has become an increasingly important focus for small and medium-sized enterprises ('SMEs') in China. This article explores China's evolving legal and regulatory framework for corporate compliance, outlines strategic recommendations for SMEs to navigate complex compliance environments, and discusses ways to optimise compliance measures, ultimately helping SMEs to strengthen their operations and ensure sustainable growth.

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### China's Legal Framework Related to Corporate Compliance

At the national law level, China has yet to enact a specific law governing corporate compliance. Instead, relevant compliance requirements are dispersed across multiple laws in various domains. These laws collectively form the general corporate compliance framework in China.

For example, from a market competition perspective, the Anti-Unfair Competition Law mandates that enterprises must comply with both legal and ethical standards in their operations, prohibiting practices that disrupt market competition or harm the legitimate rights of other enterprises or consumers. In the realm of anti-corruption, the Supervision Law oversees the prevention of corruption, bribery, abuse of power, mismanagement of state assets, etc. Additionally, the Cybersecurity Law and Data Security Law impose obligations on network operators to safeguard data from theft or tampering and data processors to establish comprehensive data security management systems, ensuring data integrity.

At the level of normative documents, the central government and the Supreme People's Court have issued guidelines to help enterprises implement compliance management. For instance, in December 2018, the National Development and Reform Commission and seven other ministries issued the 'Guidelines for the Compliance Management of Enterprises Overseas Operations'. In August 2022, the State-owned Assets Supervision and Administration Commission issued the 'Regulations on Compliance Management for Central Enterprises'. Furthermore, in 2023, the Supreme People's Court's 'Guiding Opinions on Optimizing the Legal Environment to Promote the Development of the Private Economy' emphasised the importance of compliance reform for private enterprises involved in criminal cases and encouraged enterprises to operate lawfully.

Local governments and the China National Institute of Standardization have issued additional guidelines and standards aligned with international norms. On 12

October 2022, the National Standardization Administration Committee released the national standard GB/T 35770-2022, titled 'Compliance Management Systems—Requirements with Guidance for Use', which is in line with the International Organization for Standardization's ISO 37301:2021. In August 2023, the Shenzhen Municipal Administration for Market Regulation introduced the 'Enterprise Compliance Management System (DB4403/T 350-2023)', the country's first local compliance standard for enterprises, offering comprehensive guidance for enterprises in Shenzhen to develop their compliance systems.

Although no specific law targets SME compliance, the Small and Medium-sized Enterprise Promotion Law stresses the importance of compliance with national laws and regulations, urging enterprises to standardise their internal management. Moreover, the China Association of Small and Medium Enterprises ('CASME') has issued a group standard of 'Effectiveness Evaluation of Compliance Management Systems for SMEs', providing practical evaluation methods and forward-looking guidance for SMEs seeking to build compliance management systems.

### Strategic Recommendations for SMEs to Navigate Complex Compliance Environments

In response to the challenges faced by SMEs in developing compliance management systems—such as lack of compliance awareness, absence of proper systematic support and insufficient resources—the following strategic recommendations are offered to help SMEs adapt to a rapidly evolving compliance landscape.

First, strengthening compliance awareness and building a corporate compliance culture is essential. The enterprise leader must serve as the compliance culture champion, setting an example for the entire organisation. This is particularly crucial for SMEs, where the leader's commitment to compliance plays a pivotal role in preventing violations. SMEs should integrate compliance principles into their corporate culture by regularly holding compliance

training sessions, sharing case studies and ensuring that all employees understand the significance of compliance and voluntarily adhere to it.

Second, SMEs should actively seek professional support from third parties to address the lack of professional knowledge in compliance management. Third-party agencies, with their expertise in compliance management, can provide comprehensive and scientifically grounded guidance. By collaborating with these agencies, SMEs can efficiently establish or improve their compliance systems, ensuring their effectiveness and soundness.

Additionally, SMEs should leverage support from external forces such as local governments and industry associations. Government bodies and industry associations play key roles in fostering the development of compliance systems in SMEs. SMEs should stay informed about government policies and industry trends, actively apply for funding opportunities, and participate in training and other initiatives organised by governmental agencies or industry associations. These efforts can provide significant momentum for building robust compliance systems.

### Optimisation Methods for SME Compliance in China

First, the Simplified Compliance System should be continually optimised. Drawing from comparative laws, countries like the US, the UK, France, Australia, Canada and Singapore have implemented the regimes of 'Deferred Prosecution Agreements' and 'Non-Prosecution Agreements' for enterprises. In recent years, China has also begun exploring the 'Corporate Compliance Non-Prosecution System', which aligns with international best practices while considering China's unique circumstances. For this purpose, the Supreme People's Procuratorate, in collaboration with nine other departments, issued the 'Guiding Opinions on Establishing a Third-Party Supervision and Evaluation Mechanism for Enterprises Involved in Cases (Trial)', which distinguishes between full compliance and simplified compliance processes. Simplified compliance is particularly suitable for SMEs with clear compliance issues and straightforward evaluation requirements. However, this system is currently applied within the criminal law context only and it is recommended that it be expanded to civil and commercial cases.

To ensure the system's effectiveness, it is crucial to uphold the principle of necessity, striking a balance between meeting complex compliance requirements and minimising

the impact on enterprises. Furthermore, adherence to the principle of proportionality is essential—this involves optimising staffing, streamlining inspection processes and reducing resource expenditures. Such measures ensure that compliance costs are aligned with the scale of the enterprise, preventing the risk of 'over-compliance'.

Second, the promotion of compliance coaching systems is critical. Administrative agencies should continue playing a leading role in guiding SMEs through compliance processes. When SMEs encounter compliance challenges, these agencies should step in with timely support and relief measures to ensure the continued progress of compliance activities. In recent years, the state-owned Assets Supervision and Administration Commission and local administrative departments have been instrumental in driving compliance reforms across various types of enterprises, from state-owned to private. Looking ahead, these agencies should further provide economical, flexible and instructive guidance to foster the standardisation and internationalisation of SME compliance practices.

Simultaneously, administrative agencies should encourage the participation of larger enterprises, enabling them to support SMEs in their compliance journey. These large enterprises can offer targeted assistance to help SMEs address their compliance needs efficiently and effectively.

### Conclusion

Corporate compliance presents both a challenge and an opportunity for SMEs in China. It offers a chance to upgrade compliance management systems and enhance competitiveness. SMEs should proactively respond to national directives and invest in building strong compliance foundations, ensuring their long-term growth and sustainability.



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## ligning Business Objectives With Evolving Compliance Challenges in India's Digital and Technological Landscape

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India's digital and technological revolution is propelling the nation to new heights on the global stage, redefining its economic and strategic significance. However, this unprecedented growth is accompanied by complex regulatory challenges, particularly in data security, privacy and ethical governance. For businesses aiming to sustain and scale their operations, it is crucial to align their strategies with India's rapidly evolving compliance frameworks. This analysis examines the multifaceted challenges businesses face, the opportunities emerging from a well-regulated digital ecosystem and innovative solutions that enable organisations to thrive. By navigating these complexities with agility and foresight, businesses can not only ensure compliance but also position themselves as leaders in India's dynamic and transformative digital economy.

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## Introduction to Compliance Landscape in India

The aftermath of COVID-19, clubbed with rapid technological evolution, has significantly impacted all facets of an individual's life. This transformative shift has compelled the global business community to keep pace with an increasingly dynamic and complex landscape affecting diverse body corporates across jurisdictions. As India sets its sights on surpassing a US\$5 trillion GDP by 2030, driven by strategic economic reforms, digital transformation and a surge in manufacturing, businesses are under heightened pressure to remain competitive. This requires compliance with both national and international regulations, mitigation of legal risks, building credibility and ensuring operational transparency. To position themselves for long-term success in an increasingly interconnected global economy, body corporates must embrace and adapt to these shifting regulatory challenges. Rapid digital and technological advancements drives seamless digitalisation, globalisation and regulatory compliances for body corporates wherein tools like AI and block chain enables efficient operations, real-time compliance and adaptability to evolving regulations.

In India, compliance is a critical element of the business environment, shaped by a complex web of laws and regulations that businesses must navigate for lawful and sustainable operations. This requires a deep understanding of central and state laws, judicial precedents and evolving frameworks. Compliance is largely divided into statutory, regulatory and financial types, with challenges arising from the sheer volume of legislation, frequent amendments and varying enforcement across jurisdictions, making body corporates apprehensive of its presence. Despite its complexity, the post-COVID-19 digital shift has driven businesses to adopt innovative technologies like automation, AI and data analytics, which streamline compliance, enhance efficiency and help meet regulatory demands more effectively.

This article provides an in-depth analysis of India's evolving compliance landscape, focusing on the intersection of digital and technological advancements with regulatory obligations. It explores how these innovations are reshaping compliance practices and helping businesses navigate the increasingly complex regulatory environment with greater ease and precision.

## Key Regulatory Bodies Overseeing Compliance in Indian Corporates

India's corporate landscape is governed by diverse regulatory bodies, each ensuring compliance, safeguarding

stakeholder interests and maintaining industry standards and collectively ensuring a robust and compliant corporate ecosystem in India. Key regulators include:

1. **Ministry of Corporate Affairs ('MCA'):** Oversees company registration, corporate filings, and governance standards.
2. **Registrar of Companies ('ROC'):** Maintains corporate records and monitors compliance through filings and updates.
3. **Securities and Exchange Board of India ('SEBI'):** Regulates publicly listed companies, protects investors and ensures market stability.
4. **Reserve Bank of India ('RBI'):** Governs financial stability, oversees foreign exchange under the Foreign Exchange Management Act ('FEMA') and enforces banking norms and digital banking standards.
5. **Sector-Specific authorities:** Bodies like the Telecom Regulatory Authority of India (telecom), Insurance Regulatory and Development Authority (insurance), Petroleum and Natural Gas Regulatory Board (petroleum) and Central Electricity Regulatory Commission (power) address industry-specific compliance needs.

## Overview of Existing Compliance Requirements in India

The compliance framework in India spans multiple sectors, providing businesses, including Small Medium Enterprises, with the necessary guidelines to avoid legal penalties, build a trustworthy business environment and operate within the boundaries of India's diverse legal and regulatory landscape:

1. **Company incorporation and filing requirements:** To register a company, documents like the Memorandum of Association ('MOA') and Articles of Association ('AOA') must be submitted, followed by annual filings to maintain legal compliance.
2. **Tax compliance:** Businesses need to follow GST, income tax and TDS (Tax Deducted at Source) regulations, with timely payments being critical to prevent penalties.
3. **Employment law compliance:** Companies are required to comply with employment laws such as provident fund

and gratuity laws to ensure that employees' rights are protected and to avoid potential disputes.

4. **Corporate Social Responsibility ('CSR'):** Companies exceeding specific thresholds are obligated to engage in CSR, supporting societal development while meeting government requirements.
5. **Compliance in banking and financial services:** Financial entities are required to follow RBI and SEBI regulations to uphold operational stability and protect the interests of consumers.
6. **Manufacturing and environmental compliance:** Manufacturing companies are required to secure environmental clearances, obtain pollution control certifications and comply with labour laws. Furthermore, it is advisable to adhere to the recent guidelines on prevention of greenwashing to ensure responsible and transparent environmental claims.
7. **E-commerce and data protection compliance:** E-commerce businesses are required to comply with stringent data privacy regulations, including the Digital Personal Data Protection Act 2023 ('DPDP') and the Draft Rules 2025<sup>1</sup> that aim to provide detailed guidelines for implementation, to ensure protection of customer data, promote transparency in data handling practices and prevent misuse.
8. **Safety Regulations and operational compliances:** Businesses must comply with sector-specific regulations, including timely renewal of operational consents, certified sanction plans and occupancy certificates, ensuring legal and operational compliance.

### Recent Trends in Digital and Technological Compliance

India's compliance landscape is expanding beyond traditional sectors like taxation, labour, environment and corporate governance, particularly in light of the country's ongoing digitalisation and technological advancements. Corporates are increasingly focusing on Environmental, Social and Governance ('ESG') compliance, where sustainable business practices are being prioritised by both industry leaders and stakeholders. In parallel, the rise of artificial intelligence, generative AI and block chain is driving a major transformation in the digital compliance ecosystem. This shift is particularly evident with the introduction of new

data protection laws in India, aimed at aligning with global data protection regulations and ensuring compliance in an increasingly interconnected digital world.

Recent advancements in India's Digital Public Infrastructure ('DPI') have ushered in transformative changes, with ground-breaking initiatives such as Aadhaar, the Unified Payments Interface ('UPI') and Digi Locker leading the change. Viewed as the backbone of India's digital-first vision, the DPI has been pivotal in driving financial inclusion and enhancing long-term economic accessibility. In a remarkably short span, the DPI has made significant contributions across critical sectors. Aadhaar has become the bedrock of digital identity, providing a secure and verifiable means of identification for citizens. Meanwhile, UPI has revolutionised the digital payment ecosystem, enabling effortless transactions in the convenience of homes and offices, further promoting a cashless, efficient economy.<sup>2</sup> These innovations are not just reshaping India's digital infrastructure but are also laying the foundation for a more inclusive, transparent and accessible future.

India, inspired by the European Union AI Act<sup>3</sup>, is taking a balanced approach to regulate AI by fostering innovation while ensuring accountability. In March 2024, the government issued an advisory mandating intermediaries and platforms to assess the reliability and potential risks of AI models before public deployment, prioritising safety and ethical use, hence imposing compliances on the platforms deploying untested AI models. Complementing the Information Technology Act 2000, which governs digital transactions, cybersecurity and e-governance, India is aiming to introduce the Digital India Act. This legislation aims to promote an open internet, bridge disparities between digital news publishers and tech giants and strengthen the regulatory framework. These initiatives align with the Atmanirbhar Bharat vision, driving India toward a five trillion dollar economy while positioning the nation as a global hub for innovation and entrepreneurship.

The 'Start-up India' initiative, launched in alignment with the 'Make in India' mission to establish India as a global manufacturing hub, also faces the challenges of stringent compliances. While increased regulations raise compliance costs and dis-incentivise start-ups, targeted relaxations, such as self-certifications in labour and environmental laws, income tax exemptions for the first three years and reduced frequency of board meetings is helping in fostering customer trust and support long-term business growth.



As India strives to strengthen its digital infrastructure, it faces emerging challenges such as data breaches, user content concerns, cybersecurity threats and the complexities surrounding cross-border data transfers. These challenges have underscored the need for robust regulatory frameworks. In response, the 2023 Digital Personal Data Protection Act<sup>4</sup> aims to balance accessibility and compliance by instituting stringent measures for data protection, privacy standards, informed consent, data erasure, the appointment of digital nominees and user-friendly mechanisms for data management. The recently published Draft Rules for 2025 further align with India's 'digital by design' approach, digitising the entire data management, processing and erasure process. This innovation enables citizens to manage their data and operate effectively, even in the event of data breaches. Additionally, the integration of automated identity verification tools, such as Aadhaar-based digital Know Your Customer ('KYC') services, plays a key role in reducing data breach risks and ensuring privacy protection across large-scale national platforms. Together, these efforts are paving the way for a more secure, transparent and resilient digital ecosystem in India.

### Balancing Compliance and Innovation

The rise of technologies like generative AI, block chain and ethical AI has expanded the scope for predictive compliance monitoring. As countries, including India, work to align with

global standards for data flow and technological progress, India's Digital Personal Data Protection Act 2023 ('DPDP'), and its Digital Public Infrastructure ('DPI') model aims to create a comprehensive compliance ecosystem drawing reference from international regulations like the GDPR.

India's internal digital governance model has been further solidified with the advent of advance technological practices such as DPI in digital identity inclusion, the Account Aggregator framework launched by the RBI facilitating consent based data-sharing between financial institutions, the Ayushman Bharat Digital Mission in the healthcare sector facilitating the digital health ecosystem by providing for digital ID's and health records, the digital FASTag digital cashless toll tax collection portal using the RFID technology to enhance transport efficiency while adhering to compliance obligations and the Government e-Marketplace ('GeM') portal exemplifying digital transparency in public procurement administered by the Ministry of Commerce and Industry. These advancements demonstrate India's ability to integrate regulatory compliance with digital innovation, positioning the country as a global leader in digital transformation.

### Impact and Challenges of Regulatory Compliances On Small and Medium Enterprises

In today's rapidly evolving digital and technological landscape, Small and Medium Enterprises ('SMEs') strive



for inclusive growth to expand and compete with larger enterprises, wherein the commercial landscape is driven by SMEs fostering entrepreneurial initiatives, aligning with public aspirations to boost economic activities. These efforts significantly contribute to India's goal of becoming a five trillion economy by enhancing trade modalities and innovation. However, addressing regulatory compliance efficiently becomes essential for sustainable growth too. Digital and technological advancements can act as catalysts, simplifying compliance burdens through automation and innovation, thus enabling SMEs to stay competitive.

SMEs often face challenges such as financial constraints, resource limitations, internal resistance and vulnerability to cyber threats due to inadequate security measures. Moreover, the absence of a robust digital strategy can hinder their ability to adapt effectively. To navigate these complexities, SMEs need to stay updated with regulatory requirements and deploy a dedicated team to monitor evolving compliance mandates. Seeking expert advice in areas like tax and legal matters is crucial, along with maintaining a detailed compliance checklist, implementing compliance systems on time and conducting regular internal audits. Employee awareness and education are equally important, as is leveraging technology effectively to ensure seamless compliance while maintaining control over its role in the process.

### Way Forward

India is rapidly evolving into a global business hub, driven by digitalisation and alignment with international standards. By integrating innovation with its compliance framework, the country is shaping a secure, transparent and resilient digital economy. Collaborative efforts among regulators, industry leaders and tech innovators are fostering sustainable development, ethical governance and data protection. India's strategic use of Regulatory Technology enables businesses to meet evolving regulatory demands efficiently and serves as a compelling model for balancing technological growth with strong governance, positioning India as a leader in digital transformation and regulatory excellence.

### Endnotes

<sup>1</sup> The draft DPDP Rules 2025, published by the Ministry of Electronics and Information Technology ('Meity') on 3 January 2025, are currently at the public consultation stage.

<sup>2</sup> In October 2024, the Unified Payments Interface achieved a landmark milestone by seamlessly processing 16.58 billion financial transactions in one single month; available at <https://pib.gov.in/PressReleasePage.aspx?PRID=2079544#:~:text=In%20October%202024%2C%20Unified%20Payments,role%20in%20India's%20digital%20transformation.>

<sup>3</sup> The European Union Artificial Act was passed by the European Union on 13 March 2024.

<sup>4</sup> The 2023 DPDP Act is pending implementation and is awaiting finalisation of the draft Rules 2025 (recently published on 3 January 2025 for public consultation) to ensure its operationalisation.



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# E

## SG in Taiwan: A Driving Force for Corporate Responsibility and Competitiveness

This article discusses Taiwan's efforts to integrate Environmental, Social and Governance ('ESG') practices into corporate culture and governance. It highlights the government's policies, such as the 2023 'Sustainable Development Action Plan' and provides examples of how ESG benefits companies, including through government procurement and favourable credit terms. It emphasises that both large and small businesses can leverage ESG to improve competitiveness and sustainability.

## Introduction

In recent years, ESG factors have garnered significant global attention. Taiwanese businesses and the government have also recognised that adopting sustainable and socially responsible business models is crucial for the competitiveness of companies in the future.

Although ESG was once reviewed as 'soft law', Taiwan has progressively amended its regulations. Companies are now required to disclose governance reports in their annual reports, publicly listed companies must prepare sustainability reports with specific chapters on climate-related information and listed companies are mandated to conduct greenhouse gas inventory and assurance. These regulations have gradually made ESG compliance a statutory obligation.

Research shows that adopting ESG principles offers numerous benefits: it can reduce operational risks, increase market transparency, stimulate innovation opportunities, attract sustainable talent, draw investment, reduce legal risks and enhance international competitiveness. While the benefits of ESG adoption are widely recognised, some commentators question whether ESG truly brings these significant benefits. A key issue is whether companies with strong ESG performance attract more investment or if only those that are already performing well focus on ESG. This might create a positive feedback loop, where successful companies pay more attention to ESG, further enhancing their market position. However, the question remains: does ESG drive success or does it merely reflect it?

Despite these doubts, the Taiwanese government continues to actively promote ESG as a strategic initiative to strengthen Taiwan's competitiveness in the world. ESG has become an integral part of Taiwan's policies, aimed at enhancing Taiwan's position in the global market and strengthening its economic competitiveness.

## Taiwan's ESG Measures and Government Support

Over the past decade, Taiwan's government has made substantial progress in embedding ESG principles into

corporate governance frameworks. Building on these efforts, in 2023 the government introduced the 'Sustainable Development Action Plan for Listed Companies'. This Plan aims to accelerate the adoption of sustainable development goals across the corporate sector, with a particular focus on governance, innovation, transparency and digitalisation, and outlines five key initiatives:

1. **Leading corporate net zero initiatives:** This includes promoting carbon reduction targets and action plans for listed companies and assisting in the establishment of emissions trading platforms.
2. **Deepening corporate sustainability governance culture:** Starting in 2024, listed company boards must appoint at least one director of a different gender. Beginning in 2025, emerging stock companies will adopt a post-nomination system for director elections. The government also aims to link executive compensation to ESG performance.
3. **Improving sustainability information disclosure:** From 2025, listed companies with a market capitalisation below NT\$20 billion will be required to prepare sustainability reports to enhance non-financial information disclosure. The Taiwan Stock Exchange and the Taipei Exchange will also audit sustainability reports and strengthen third-party verification.
4. **Enhancing stakeholder communication:** From 2024, listed companies must upload meeting handbooks and annual reports to designated platforms before their shareholder meetings to increase investor participation.
5. **Promoting ESG ratings and digitalisation:** This includes the creation of a digital platform for sustainability reports and the development of an ESG information platform. The government aims to push for ESG evaluations and create ESG-related indices (for example, carbon efficiency index, human capital index) to guide market funds towards sustainable development.



## ESG Examples

With the government's resources directed towards guiding and promoting ESG and active participation from private enterprises, ESG has shifted from a consensus to a concrete action plan. When ESG brings direct benefits to businesses, companies are more motivated to align with these practices. Below are two examples to illustrate this:

**1. ESG in government procurement:** Taiwan has incorporated ESG indicators into its procurement processes and established a Corporate Social Responsibility ('CSR') scoring system. This system encourages suppliers to gain points by meeting social and environmental objectives, including:

- **Employee salary increases:** Suppliers who raise the salaries of at least 80 percent of their employees or commit to paying at least NT\$30,000 to full-time employees in government procurement contracts can earn points.
- **Work-life balance:** Suppliers offering measures such as family-friendly policies (for example, parental leave), gender equality and flexible work arrangements also earn points.
- **Green procurement:** Suppliers who commit to purchasing green products and report these activities to the Environmental Protection Administration ('EPA') are also rewarded with points.

The total score from these indicators can reach up to six points, which can significantly influence a company's competitiveness in bidding for government contracts. In summary, companies that raise salaries, offer work-life balance measures or engage in green procurement, gain higher scores, improving their chances of participating in government procurement, thus boosting their business opportunities. This strengthens the link between ESG and commercial success.

**2. ESG trigger clauses in credit agreements:** Another important development is that many financial institutions in Taiwan have incorporated ESG indicators into their credit agreements through 'ESG trigger clauses'. When a company achieves certain ESG milestones, these indicators can directly influence the company's loan interest rates. For example:

- Environmental Performance Triggers:
  - **Carbon emissions reduction:** Achieving specified carbon reduction or carbon-neutral goals can lead to lower interest rates.
  - **Renewable energy consumption:** Increasing renewable energy usage by a set percentage may result in better loan terms.
  - **Energy efficiency improvements:** Meeting energy efficiency benchmarks could trigger favourable financial incentives.
- Social Performance Triggers:
  - **Gender diversity on the Board:** Including at least one female director can lead to reduced interest rates.
  - **Employee welfare and safety:** Improving welfare and safety standards may qualify a company for lower loan rates.
- Governance Performance Triggers:
  - **Corporate governance standards:** Implementing stronger governance practices can enhance loan terms.
  - **ESG reporting and transparency:** Meeting ESG disclosure standards (for example, TCFD) can trigger more favourable financial conditions.
- Third-Party ESG Rating Triggers:
  - **Rating improvement:** An improved ESG rating from agencies like Sustainalytics or MSCI may result in better loan terms.
  - **Positive rating targets:** Surpassing a specified ESG rating (for example, BBB) could trigger reduced interest rates or other benefits.

When companies meet these ESG indicators, they can enjoy lower loan interest rates, which further encourages the adoption of sustainable practices and improves financial performance. These mechanisms demonstrate that ESG is not only a compliance requirement but also provides tangible

financial returns, offering clear incentives for businesses to align with ESG principles. As Taiwan's Financial Supervisory Commission ('FSC') chairperson once stated, 'We hope that the financial industry's money can change the earth's tomorrow'.

### The Impact of ESG on Small and Medium-Sized Enterprises ('SMEs')

The two examples above demonstrate that ESG practices are not limited to large corporations or major enterprises. Government procurement projects are not solely restricted to large-scale infrastructure projects; even small-scale service or product procurements can offer additional points in the evaluation process for small businesses that implement strong ESG practices, thereby increasing their chances of securing contracts. Furthermore, financing is a universal need for all businesses. Small and medium-sized enterprises ('SMEs') could potentially negotiate with banks to establish more suitable ESG trigger indicators tailored to their size and capacity. This would allow SMEs to access more favourable financing conditions under ESG frameworks, making it easier for them to achieve their sustainability goals while improving their financial terms.

Some experts believe that SMEs with innovative ideas often demonstrate greater resilience in transforming or implementing sustainable ESG practices. Unlike large corporations, SMEs typically have more limited resources, which leads them to approach sustainability issues from a different perspective. SMEs do not need to address all areas of ESG like large companies do. Instead, they can focus on specific issues, which can be a more efficient execution strategy. This focused approach allows them to make better use of their limited resources and achieve more tangible results. For example, SMEs can concentrate on reducing carbon emissions, improving employee welfare or supporting local communities, without requiring massive structural changes or large-scale financial investments. In Taiwan, some small enterprises have already achieved carbon neutrality. This flexible and focused strategy often leads to more innovative and impactful solutions, allowing SMEs to become more agile and competitive participants in the journey toward a sustainable future.

### The Impact of ESG on Corporate Culture and Competitiveness

As ESG principles gradually become embedded in the core culture of Taiwanese companies, this transformation has received dual support from both market forces and

government policies. For Taiwanese businesses, ESG has become a standard that must be followed. Companies that fail to keep pace with this trend will find it difficult to secure a position in the global market.

The Taiwanese government's emphasis on ESG not only aims to create a sustainable business environment domestically but also seeks to enhance Taiwan's competitive advantage in the global market. As other countries adopt similar ESG frameworks, Taiwan's ESG policies help maintain its competitiveness in Asia and around the world.

### Conclusion: A Future of Shared Prosperity

ESG embodies both idealism and pragmatism. Taiwanese business leaders have increasingly realised that ESG not only brings tangible benefits but also significantly enhances corporate reputation. As previously mentioned, when competing products are similar, consumers tend to favour brands with a strong ESG track record. Moreover, from an international supply chain perspective, implementing ESG is not only crucial for business survival but also a strategic pathway to unlock further growth opportunities.

As an integral member of the global community, Taiwan actively guides its businesses to align with international responsibility standards, striving for not only economic growth but also social and environmental sustainability. By continually strengthening ESG practices, Taiwan aims to empower its enterprises to sustain a competitive edge in the global market while contributing to a more sustainable and prosperous future.



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# Generative AI, AI Emissions and ESG Compliance Challenges: The Indian Perspective





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The article discusses the impact brought in by Generative AI and its implications of its adoption in day-to-day affairs from the lens of ESG compliance, governance and energy-associated emissions from the perspective of India.

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## Introduction

The advent of generative AI has revolutionised various sectors, presenting some extraordinary capabilities in content creation, data analysis and automation. However, this technological leap comes with significant environmental, social and governance ('ESG') implications. In India, where the tech industry is burgeoning, understanding and tackling these challenges is crucial for sustainable evolution and growth. This article explores the intersection of generative AI, AI emissions and ESG compliance from an Indian perspective. It delves into the environmental impact of AI, highlighting the carbon footprint associated with large-scale AI models and the need for sustainable practices. The discussion extends to the social implications, including moral and social considerations and the potential for AI to exacerbate existing inequalities. Governance challenges are also addressed, focusing on the statutory landscape in India and the need for effective frameworks to ensure further accountability in AI deployment. The article aims to provide a comprehensive overview of the current state and prospective directions for aligning generative AI with ESG principles in India.

## Generative Artificial Intelligence

The rise of Generative Artificial Intelligence ('Generative AI') has awed the whole world with its capabilities to perform not just basic processes but tasks carrying substantial importance as well, transforming industries like content creation, data analysis and automation at an unprecedented pace. However, as has been rightly said by Voltaire, a French author, that 'with great power comes great responsibility', Generative AI has to be sensitised as it raises significant concerns, among other aspects, with reference to the principles of ESG.

Generative AI refers to that emerging powerful technology belonging to the Artificial Intelligence Systems that not only just analyses existing data but creates novel content from available data and by learning patterns, having gained quite some recognition in processing novel text, images, music and what not.

## Energy and Emissions Issues

It is an admitted position, as has been said by the Chief of Open AI, Mr Sam Altman, that the Generative AI industry is

heading for an energy crisis.<sup>1</sup> Generative AI systems, though being capable of processing extremely complex tasks in the quickest of time, would however not be able to function or survive if not provided with the power (electricity) and water for them to work, thereby posing a potential concern if the same is being trusted with greater responsibilities or if the same is being trusted by industries carrying higher stakes, such as the armed forces or medical sector.

Further, functioning of the data centres required for Generative AI causes substantial emission of greenhouse gases and water depletion to an unimaginable extent. Furthermore, the pace at which the data centres as well as the energy consumption are growing to keep up with the growth of Generative AI, regardless of how proactively the government promotes the same, are not at par with the resources and ultimately putting the environment at risk.<sup>2</sup> To draw a comparison of the emissions, training a single large AI model can be equivalent to the emissions produced by five to seven cars in their lifetime.

The cost of growth and development should not be at the expense of the future itself, hence, in order for the world to sustainably exist with Generative AI, urgent measures like green and sustainable AI development, renewable powered data centres, regulatory and industry collaboration, a circular economy for AI hardware, and awareness and accountability have to be addressed and adopted.<sup>3</sup> Not just the above measures, but a conscious approach of development while keeping the environment as an important stakeholder in mind, can take the Generative AI sector to a longer sustainable path.

## Social Implications

Coming to the social implications of Generative AI, be it equity, morality or responsibility, considering the fact that Generative AI is not a natural person and being a creation of humans, coupled with the fact that the same possesses the capability of processing and performing tasks much closer and equivalent to those done by a human, although much quicker in time, it does require sensitisation to such a level so as to make sure that the same does not act detrimentally but for the benefit of society.

As humans, we perform some restrictions or rather have checks and balances when it comes to putting out words or work. The same is required for Generative AI since it is so volatile, being in the initial stages of its development, and also because it carries the potential threat of causing an outrage for its inadvertent language or bluntness. Generative AI also poses a potential threat in exacerbating any existing inequalities due to norms which differ by culture, region and language, and as there is no standard for what constitutes sensitive content. Further, distinct cultural values act as a challenge for deploying a Generative AI Model in the global sphere as what may be appropriate in one culture or one geographical area may be unsafe in another. Not limited to the above, Generative AI further poses a potential threat as it can cause bias, stereotypes and representational harm, privacy concerns, the sharing of misleading information and deepfakes, over reliance on issues and economy and labour market concerns, etc.<sup>4</sup>

In order to mitigate the challenges pertaining to society, Generative AI should be subjected to social impact evaluation just as it is subject to undergo performance evaluations. Furthermore, a better democratic process for developing and deploying systems and safety provisions such as content moderation should work with marginalised populations in order to mitigate the potential damage that Generative AI could inflict on the society.

### Governance

With regards to the governance of AI, the same can be said to be in its infancy, not just in India but globally where issues such as accountability, bias, and the safety and security of AI processes and outcomes are being grappled with.<sup>5</sup> It is a fact that more than 77 per cent of global devices use AI as an essential feature<sup>6</sup> and the AI industry is expected to add US\$15.7 trillion to the world's GDP.<sup>7</sup> Regardless of how quick the growth of AI is projected, the governance of the same is still at a very nascent level.

In the Indian context, the country promotes a pro-innovation approach when it comes to AI, as has been reflected in the G20 Ministerial Declaration during India's presidency which stated that the G20 would 'pursue a pro-innovation regulatory/governance approach that maximises the benefits and takes into account the risks associated with the use of AI'. Further, an AI Advisory Body was also set up in October 2023 and several guidelines have been formulated by Niti Ayog including one named as

the National Strategy for AI (2018).<sup>8</sup> Further, in August 2023 Microsoft highlighted a five-point approach for governance of AI in India.<sup>9</sup>

Although Generative AI poses serious threats relating to malicious use, algorithmic discrimination, transparency failure, loss of control due to no human involvement, bias, privacy, deepfakes, etc., and it requires urgent action to be taken ultimately giving rise to the formulation of appropriate laws, however, there have been two approaches going on in the country where on one side a strong push for appropriate laws is evident, but on the other side it is believed that there is an unnecessary rush to create and circulate legislative drafts.<sup>10</sup> Regardless, the Indian government is building a consensus while adopting an informed and cautious approach by tasking the Principal Scientific Advisor with advising the Prime Minister and his cabinet on strategic guidance on AI regulation.<sup>11</sup>

A comprehensive policy action plan for AI governance in India includes understanding AI risks and benefits, classifying risks, identifying legal gaps, encouraging self-regulation, empowering the government and adopting a 'whole of government' approach. Understanding AI capabilities is crucial for risk assessments, similar to measures in the US and studies by Indian agencies like the Competition Commission of India. Risk classification should target high-risk AI applications, coordinated by inter-ministerial committees or parliamentary bodies. A gap analysis can pinpoint regulatory needs. A light-touch, principle-based self-regulation is recommended initially, alongside voluntary industry commitments. Empowering the government and fostering expert consultations will ensure robust, adaptive AI governance in India.

### ESG Compliance

Generative AI is witnessing exponential growth, as is peoples' reliance on it, however, the same has to comply with the ESG principles in order for it to be sustainable to effectively and efficiently serve its purpose. Such exponential growth and reliance cannot be at the expense of nature and the future. Some of the initiatives which can be undertaken in order for Generative AI to comply with the ESG principles in India are as follows:

1. **Environment sustainability:** This can be achieved by the promotion of Green AI practices such as conducting carbon footprint audits, incentive programmes for sustainable practices, development of new models

which function with less resources, recycling and e-waste management, etc.

2. **Social responsibility:** The promotion of ethical AI development practices and also education and skills development can be achieved by the inclusion of diverse data sets, social and practical evaluation of the AI and AI literacy programmes, etc.
3. **Governance framework:** in order for a country like India to achieve this as a target, it has to establish a robust legal mechanism with AI-specific legislation and AI risk categorisation. Further, a nationalised AI regulatory body must be created to overlook the compliance with ESG principles and mandating the public reporting of the impacts of an AI model by individuals for the body to make informed decisions.

Other than the above, a collaboration between the government, concerned stakeholders and the private sector should be facilitated for research and innovation purposes as well as for the purpose of facilitation of informed policy formulation.<sup>12</sup>

## Conclusion

Integrating generative AI with ESG principles presents a complex challenge that demands a collaborative and well-planned strategy. By emphasising sustainability, promoting equitable progress and establishing strong governance frameworks, India can leverage the transformative power of AI while addressing its associated risks. Such an approach not only aligns with global ESG benchmarks but also underscores India's dedication to fostering sustainable and inclusive growth in the digital era.

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<sup>12</sup> 'AI's Impact on Our Sustainable Future: A Guiding Framework for Responsible AI Integration Into ESG Paradigms'; accessible at <https://20965052.fs1.hubspotusercontent-na1.net/hubfs/20965052/AIs%20Impact%20on%20Our%20Sustainable%20Future%20White%20Paper%20V1.pdf>.



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# A rgentina: A New Focus of Attention and Frameworks



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Argentina is a large and rich Latin American country that seems to have left behind several years of doubts about its economic model and direction. New President Milei has become a world leader in deregulation, market liberalisation, fiscal public policy behaviour and freedom. To fully benefit from this context, however, improving ESG and compliance standards remains a key challenge.

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## Introduction

One of the key steps towards the new Argentine pro-market era that President Milei inaugurated has been the enactment and implementation in 2024 of Law No 27,742, named the 'Basis and Starting Points for the Freedom of Argentines' ('New Basis Law'), which greatly impacts various sectors of society and the economy and facilitates significant investments under promotional regimes with tax, FX, customs and stability benefits. Asian investments in oil and gas, renewables, mining, agribusiness and infrastructure are beginning to represent new attractive opportunities for players and lawyers. Additionally, the current geopolitical context, with US-China tensions, also generates investors seeking new investment alternatives, which Argentina (and Latin America) should be able to attract.

However, in our southern countries, local companies, regulators and local markets should still improve in several aspects to fully benefit from these new contexts. One aspect that needs enhancement to meet the demands of international investors is Environment, Social and Governance ('ESG') practices, integration strategies, compliance and reporting.

The purpose of this article is to provide some highlights on the New Basis Law as a clear milestone that is attracting strong interest in Argentina, but to point out how several ESG issues still need more local work within this favourable context.

## The New Basis Law

Argentina has the second largest reserve of non-conventional gas and the fourth largest reserve of non-conventional oil, and to maximise the exploitation of these reserves, President Milei has facilitated deep changes for the Energy Sector. Among different issues, the New Basis Law eliminates restrictions in order to allow third parties (non-producers) to carry out activities related to natural gas processing and liquefaction, as well as transportation and storage of hydrocarbons, establishes a legal framework for the private sector to develop energy

infrastructure, and promotes the relationship between energy and the environment.

For example, the New Basis Law provides the right of producers to freely commercialise, export, transport and industrialise hydrocarbons and their derivatives and prohibits the Executive Power (President) from intervening or fixing prices. In the upstream, the New Basis Law removes the need for authorisation or permits for surface recognition and modifies the acquisition regime and terms of non-conventional concessions from the reconversion of conventional concessions. The New Basis Law also provides a large number of amendments and novelties for the midstream sector. What is normal and already occurs in developed countries can now also occur in Argentina.

In order to gain infrastructure capabilities of local and foreign companies, the New Basis Law also introduces a series of amendments to the Public Works Concession Law, aimed at enhancing flexibility, certainty and stability. These amendments, inspired by the Chilean model of public concessions and the Public-Private Partnership Law, aim to encourage private investment in infrastructure in an Argentine context in which public works have been strongly reduced to cut public expenses.

In this respect, to decrease the fiscal deficit and bureaucracy, the Argentine New Basis Law declared a public emergency on administrative, economic, financial and energy matters for one year, approved the status of several state-owned companies as 'subject to privatisation' and granted to President Milei the powers to reduce the State sector. Under such powers, the National Government has, for example, initiated the privatisation of a huge state-owned railway company.

Logically, many foreign investors do not rely on local law and question what happens under litigation. Under the New Basis Law, contracts may include mechanisms for dispute prevention and resolution, such as conciliation or arbitration, and provide that technical or economic disputes may be submitted to a Technical Panel or Arbitration Tribunal.

Tax and economic incentives are a core chapter of the New Basis Law. An innovative promotion tool was incorporated to the Argentine legal system, called the Incentive Regime for Large Investments ('RIGI'). The main objective of the RIGI is creating conditions of predictability, stability and legal certainty for large projects and protecting investors against potential non-compliances by the Government of Argentina. To that end, the RIGI provides a legal framework for investment promotion unlike anything in the Argentine rules and laws, with a comprehensive system of tax, customs and foreign exchange incentives, as well as guarantees and stability. This system is considerably superior to previous incentive frameworks.

The RIGI regime could be applicable to projects in the forestry, tourism, infrastructure, mining, technology, oil and gas, energy, and iron and steel industries that meets certain criteria. Basically, the project must involve a long-term investment and a minimum investment amount in computable assets equal to or higher than US\$200 million. The deadline for submitting the application request is two years after the New Basis Law, and once approved, the project will benefit from state incentives, guarantees and stability as of the date of adhesion.

Some of the several benefits are: (1) income tax is reduced from 35 per cent to 25 per cent; (2) new beneficial alternatives for the depreciation of the assets; (3) the reduction of income tax on dividends and profits to 3.50 per cent (instead of the 7 per cent income tax rate currently applicable); (4) a new value added tax ('VAT') regime has been put in place; (5) tax on debits and credits on bank accounts can be computed as a credit for income tax; (6) exceptions from import duties, statistical fees and any other advanced payment regime on definitive and/or temporary imports of new capital goods, parts, pieces, components and raw materials; and (7) a largely beneficial FX regime applicable to collections of proceeds from exports of goods.

The New Basis Law assures the referred regulatory stability regarding tax, customs and FX regulations for 30 years. This stability implies that the incentives mentioned above may not be hindered or reduced by any future regulation.

### Challenges on ESG and Compliance

The New Basis Law is just one example of many new laws and (de)regulation of the Argentine framework. Every day the Argentine National Government analyses and implements additional changes to Argentina's economic

and legal basis, to obtain the world's confidence that this change will not be reversed.

Argentina is thus experiencing an increasing investment mood, particularly in oil and gas, renewables, mining, agribusiness and technology, but at the same time the country also faces the fact that international investors in general have heightened their scrutiny of how businesses actually impact sustainable development, social welfare and ethical governance practices. In spite of new winds blowing in the US that seem to remain distanced from environmental and sustainable approaches, integrating ESG considerations into business plans continues to be a fundamental expectation to attract new investments and to successfully conduct due diligence on potential acquisitions with such higher scrutiny on ESG matters and strategising post-closing integration.

In emerging markets such as Argentina and Latin America in general, there is still limited ESG awareness, practices and reporting ESG regulatory frameworks and the scarce public information complicates the process of integrating ESG into investment decisions. Limited regulatory enforcement and fragmented reporting practices are also an issue.

It is generally known that integrating ESG criteria into investment decisions requires adopting specific strategies that can be tailored to the nature of the business, the sector and the regional context. Among the classical ESG investment strategies, impact investment and ESG integration are two important ones:

1. **Impact investment** aims to generate measurable social and environmental benefits alongside financial returns, for example, energy efficiency initiatives that reduce carbon emissions and promote sustainability. Better measurement of these benefits is still pending in the region.
2. **ESG integration**, in turn, involves incorporating a comprehensive and systematic analysis of the impact ESG factors into the overall investment assessment process and requires investors to assess both the risks and the opportunities presented by ESG factors into a specific process. In Latin America, ESG integration is becoming increasingly important as investors seek to identify companies that are well positioned to capitalise on the New Basis Law and the growing demand for



sustainable and responsible business practices in the region. For example, in the energy sector, companies that are transitioning to renewable energy sources are likely to benefit from the RIGI incentives and growing consumer demand for clean energy solutions.

In Latin America, the lack of reliable data for this purpose is also an issue. Artificial intelligence for public information still does not provide sufficient and irrefutable information. While some large publicly traded companies in the region have begun to disclose ESG data, many small and medium-sized companies do not have the resources or the infrastructure to collect and report on their ESG performance. In Argentina, for example, there are no comprehensive regulations that require companies to disclose their ESG performance, although some progress has been made with the introduction of voluntary guidelines. The National Securities Commission ('CNV') has issued guidelines that encourage publicly traded companies to report on their ESG practices, but these guidelines are not mandatory, and compliance is still relatively low.

As a result, many potential ESG risks go unnoticed in traditional due diligences, which can even lead to post-closing issues. This is significant because the post-closing integration of ESG strategies (to align the target company's ESG practices with those of the acquiring company) is one of the most important aspects of ensuring the long-term success of an M&A transaction.

It is essential to establish measurable actions, monitoring and reporting mechanisms to track the target company's progress in implementing ESG initiatives. Regular reporting on ESG performance will also help demonstrate accountability to stakeholders and ensure the company stays on track to meet its sustainability goals.

### ESG Projects under Current World Economic Context

ESG projects face more difficulties when located in emerging markets because this may increase the inherent risk, which generates a premium to compensate such additional risks. But in addition to the local context, some recent events could temporarily affect the attractiveness of ESG investments globally and their ability to obtain financing.

Higher interest rates and fears of a global recession also increase the cost of capital, especially in ESG projects,

which can lead to cancellations or delays due to becoming financially unviable. Furthermore, since ESG projects generally involve novel technologies whose results lack the same level of provenance as traditional technologies, this also results in a higher risk premium due to the additional uncertainty.

Finally, the recent protectionist measures adopted by the Trump administration in the US may have a temporary negative impact on investors' risk appetite. Regulatory changes that discourage the use of cleaner, more environmentally friendly energy or technologies will partly affect investment in ESG projects.

### Conclusion

In conclusion, deregulation and strong economic incentives are new key words for Argentina (the New Basis Law is one example), although the local market could still take new steps in the ESG process to benefit significantly from the international investment environment.



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# The Role of Human Oversight in AI Decision-Making—Some Practical Recommendations



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Rapidly advancing AI technology is reshaping core aspects of how we do business, from contract drafting to supply-chain management to customer service. Simultaneously, global laws and regulations are trying to keep pace, reflecting intensifying concerns over privacy and security risks. We see heightened online fraud and cybersecurity threats, underscored by incidents where AI-driven systems missed red flags or inadvertently facilitated misconduct.

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While AI excels at complex analyses and rapid decision-making, it carries inherent risks: model bias, potential IP infringements and the ever-present threat of 'AI hallucinations,' where a system generates false or misleading information with impressive confidence. With the added backdrop of geopolitical tensions, small to medium enterprises ('SMEs') and larger businesses face a challenge—how do you reap the efficiency gains AI promises while ensuring your business remains on the right side of the law?

### AI Raises the Stakes for Businesses

Generative AI can streamline a wide spectrum of tasks—ranging from drafting vendor agreements to monitoring risk assessments in financial transactions. Such technology eases the administrative burden on legal teams, freeing them to focus on higher-value strategic activities. Yet the same technology can trigger new legal risks if deployed without sufficient guardrails. For instance, an AI drafting tool may inadvertently incorporate copyrighted material, as many AI systems are trained on vast datasets that include protected works like articles, books and designs—often without the creator's consent. This practice not only raises ethical concerns but also exposes businesses to potential copyright infringement risks, making it critical to scrutinise how AI tools are developed and deployed.

For businesses of all sizes, the key is in striking the right balance—thoughtfully investing in AI while balancing cost and compliance, with a robust plan for human oversight.

### The Invaluable Role of Human Oversight in AI

No matter how advanced AI becomes, it still requires human judgment to correct mistakes, ensure fairness, and uphold ethical standards. Here are reasons why a hands-on approach is essential:

#### Accountability

AI systems may process information, but they cannot assume legal or ethical responsibility. Businesses need real people—lawyers, compliance officers and knowledgeable

staff—to own the outcomes of AI-driven decisions. In the financial sector, AI is used to detect fraudulent activities, but human analysts review flagged transactions to verify accuracy and reduce false positives.

Organizations that emphasise transparent and responsible AI practices see greater acceptance in the integration of these technologies. Focusing on ethical AI use and transparency are better able to navigate the challenges of AI deployment.

#### Fairness

Bias can creep into AI models through skewed training data or flawed assumptions. Such biases can lead to discriminatory contract terms, credit evaluations or even hiring decisions.

A notable example is Amazon's AI recruiting tool, developed in 2014, which was found to discriminate against women because it was trained predominantly on resumes from men.

This underscores the need for human oversight to identify and rectify biases in AI systems, before they influence decisions that could harm individuals or perpetuate inequities.

#### Transparency

The challenges that created Amazon's biased tool still persist. Many companies continue to adopt unregulated AI systems with limited transparency about their data sources, deployment strategies or the tools' impacts on workers. This lack of accountability creates a blind spot in understanding the broader consequences of AI implementation, making human involvement essential to ensure these systems operate ethically and equitably.

A system's decision-making process can be opaque, leaving affected parties confused or mistrustful. Having a human on hand allows for clear explanations and fosters greater trust in the outcomes of AI analyses.



## Error Correction

Even cutting-edge AI models, including large language models ('LLMs'), can produce erroneous outputs—commonly referred to as 'hallucinations'. These are false or misleading pieces of information delivered with unwarranted confidence. In 2023, a lawyer named Steven Schwartz used ChatGPT to research precedents for a lawsuit against Colombian airline Avianca. Unbeknownst to Schwartz, the AI provided six fabricated cases, complete with false names, docket numbers and internal citations. Schwartz explained to the court that it was his first time using ChatGPT for legal research and that he was 'unaware of the possibility that its content could be false.' Schwartz's failure to verify the AI's output not only undermined his case but also resulted in a US\$5,000 fine imposed by a US District Judge.

This incident is one of the many serious consequences of unverified AI outputs in high-stakes contexts, underscoring the critical role of human oversight.

## Key Legal and Regulatory Pressures

Efficient AI oversight takes on added urgency in light of key pressures shaping today's legal environment:

### Data Privacy & Security

AI solutions often require large datasets, potentially laden with sensitive personal information. Failure to encrypt, anonymize, or securely store these records could violate laws such as the EU GDPR or local data protection statutes. Implementing strict data governance and maintaining clear documentation of data usage is paramount—particularly if you operate across multiple jurisdictions.

### Corporate Sustainability Reporting & ESG

More regulations mandate environmental, social and governance ('ESG') disclosures, particularly in the European Union under frameworks like the Corporate Sustainability Reporting Directive ('CSRD'). AI can help interpret and document these ESG clauses, but errors might result in underreporting or misrepresentations, posing compliance risks. Deploying AI-driven contract analytics can uncover supply-chain or carbon-reduction obligations, but human oversight ensures such obligations are integrated authentically into your business practices.

### Financial Crime & Fraud

Criminal enterprises can exploit AI systems for complex money-laundering or fraudulent schemes. On the flip side, businesses can use AI to flag suspicious payments

or vendor terms. The catch: AI can produce both false positives (wrongfully flagging an activity or transaction as suspicious) and false negatives (missing an actual risk/threat). Regular human audits of AI-driven alerts, cross-checking watchlists such as the US Office of Foreign Assets Control ('OFAC'), and refining detection thresholds are vital to avoid paralyzing a company's compliance team with questionable 'hits'.

## Cross-Border & Geopolitical Complexities

Global supply chains and partnerships create overlapping compliance demands, magnified by AI analyses that might not account for a local sanction or trade restriction. For businesses that rely on overseas suppliers or clients, a centralised contract repository with AI-driven conflict detection will prove useful. Even so, there should still be in-house legal or outside counsel who would confirm compliance with local laws.

## Practical Recommendations for Businesses

Organisations across the spectrum—whether a lean startup or a multinational corporation—are adopting AI tools to streamline contract management, compliance checks, and due diligence. However, as emphasised in the previous section, integrating AI effectively requires a careful approach that balances speed, accuracy and the human oversight essential to preserving legal integrity. Below are some of the practical strategies to consider:

### 1. Start with a Risk-Based Approach

Organisations often start with the notion that the highest-value or most complex contracts should benefit from AI first. Yet, risk-averse teams may shy away from deploying cutting-edge tools on critical deals without proven success. A more pragmatic approach is to identify where AI can be deployed most effectively and with the biggest impact—that is, scenarios where existing data sets, standard legal language and repeated patterns form a robust foundation for automated review.

For instance, non-disclosure agreements ('NDAs') and service agreements are often prime targets because they follow well-established templates and legal norms. Teams can fine-tune AI models to excel at:

- **Clause Consistency:** Ensuring standard agreements and clauses adhere to best known practices.
- **Boilerplate Language Verification:** Checking that

frequently used clauses (e.g., indemnification, dispute resolution) match a 'playbook' library.

- **Compliance References:** Flagging references to regulatory frameworks (HIPAA and GDPR for example) that appear straightforward yet critical.

According to a 2024 Deloitte report on AI in legal services, firms that began by applying AI to highly templated, repeatable contract types reported stronger adoption rates and a 25 per cent drop in drafting errors. Once the tool demonstrates consistent accuracy with these 'low-hanging fruit' clauses, legal teams gain confidence to expand AI usage to more nuanced or higher-value deals—like complex M&A or intricate IP licensing—armed with proven workflows and well-trained models.

## 2. Adopt Technology Incrementally

Large-scale technology overhauls can overwhelm not just smaller legal departments but also sprawling multinational teams. As soon as ROI is clearly demonstrated (for instance,

a tangible drop in negotiation time or fewer contract disputes), it becomes easier to secure buy-in from senior leadership to expand AI usage into multi-jurisdictional or supply-chain compliance initiatives.

## 3. Maintain Human Oversight & Ongoing Training

No AI model is infallible. Systems may generate hallucinations or embed subtle biases, especially when analysing large volumes of legal language or cross-border requirements. This makes human judgment indispensable. Some contract-managed services today incorporate human-in-the-loop integration, where expert legal reviewers validate crucial clause extractions, compliance data and risk assessments before finalising any agreement. Periodic training sessions on data privacy, industry regulations and ethical AI considerations help staff at all levels—paralegals, contract administrators and in-house lawyers—stay vigilant. As Gartner noted in its 2025 Market Guide for AI Compliance, businesses that maintained structured 'AI oversight boards' or training programs reported up to 40 per cent fewer escalations of AI-related errors.



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#### 4. Build a Holistic Governance Framework

Even the most advanced contract analytics won't suffice without robust policies guiding their deployment. Organisations of every scale—from local manufacturing firms to multinational finance corporations—are forming cross-functional working groups that unite legal, IT, procurement and finance. Such teams actively monitor evolving regulations (e.g., new data privacy laws or ESG mandates) and establish escalation pathways for suspicious AI outputs. Some providers now offer 'intelligent digitisation' and 'contract managed services' that combine advanced analytics with specialised teams: for instance, they embed a professional 'playbook management' approach to keep standard clauses current with emerging laws, or 'legal data scientists' who ensure the extracted metadata aligns with internal risk thresholds.

The NIST AI Risk Management Framework (developed by the US National Institute of Standards and Technology) is one widely recognized model that can be tailored to legal settings. By way of an example, Workday, a provider of enterprise cloud applications, has utilised the NIST AI Risk Management Framework to enhance its AI governance. By aligning their responsible AI practices with the framework, Workday established an AI Advisory Board comprising senior leadership across various departments, with the goal of maintaining customer trust and adhering to core company values while innovating with AI.

By mapping AI usage to a recognised framework like the NIST, legal teams can systematically identify, measure and manage AI risks while creating thorough documentation for accountability. Organisations that combine these governance pillars with specialised managed services or in-house 'AI stewards' typically achieve better alignment between legal requirements and innovative technology, all while keeping pace with shifting regulations.

#### Conclusion: Charting a Responsible AI Future

AI has evolved from a novelty to a practical necessity—for law departments, for SMEs and for multinational corporations. A 2024 survey found that over 70 per cent of in-house legal teams plan to embed AI-driven contract tools within the next two years, a leap driven not just by the pursuit of efficiency but also by the complexity of cross-border legal and compliance mandates. Generative AI holds immense promise in streamlining legal workflows, analysing contracts, and detecting potential risks faster than any human could.

Yet, harnessing AI responsibly is equally crucial to maintaining stakeholder confidence. Thoughtful AI adoption, undergirded by clear policies, cross-functional governance and human expertise, transforms mere digital tools into strategic assets. Contracts can become engines of revenue growth, supply-chain optimization and global expansion—while also mitigating costly legal exposures.

Robust human oversight—through designated compliance officers, legal counsel or cross-functional committees—remains the linchpin that balances innovation and accountability.

Now is the time to adopt a 'start small but think big' philosophy. Pilot AI where it adds immediate value, invest in training and refine your models' outputs continuously. Consider partnering with trusted legal-tech providers or specialised managed-service experts who understand the finer points of both AI's capabilities and the high-stakes compliance demands businesses face. By embracing these principles, organisations can harness generative AI effectively—protecting stakeholders, satisfying regulatory requirements and building a foundation for sustained growth in an era of constant change.



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Eunice Tan is the Chief Legal Officer at Execo, a global legal service provider focused on integrating AI technologies into managed legal services. With over 16 years of cross-border legal experience, she has held senior in-house roles and practiced at international firms including Gowling WLG and Stephenson Harwood (Singapore) Alliance. She has led complex corporate restructurings, cross-border M&A, regulatory compliance, and supported enterprise and legal risk mitigation across jurisdictions. At Execo, Eunice is advancing the use of AI to enhance legal service delivery and respond to evolving legal and business needs.



# Did You Know?

## Interesting Laws Around the World



### One City, Two Conveyancing Systems

Many may be familiar with the “One Country, Two Systems” principle as it pertains to Hong Kong, but it’s less known that Hong Kong operates under two distinct conveyancing systems depending on the property’s location.

#### Historical Background

Hong Kong became a British colony as a result of the First and Second Opium Wars. Following these conflicts, Hong Kong Island and Kowloon were ceded to Britain indefinitely under the 1842 Treaty of Nanking and the 1860 Convention of Peking. Conversely, the New Territories were leased to Britain for 99 years under the 1898 Second Convention of Peking. This lease

expired in 1997, necessitating the return of the entire territory—including Hong Kong Island and Kowloon—to China in accordance with the Sino-British Joint Declaration of 1984. Consequently, the British regarded the New Territories as a temporary holding, which led them to maintain many customary land practices and village structures to avoid conflicts with local indigenous communities.

#### The Small House Policy (Ding Right)

A feature unique to the New Territories, the Small House Policy allows male indigenous villagers—specifically the descendants of families that were present before 1898—to construct a village house (丁屋) on ancestral land at minimal expense. This colonial-era

policy, codified in 1972, was preserved after 1997 to honour ‘traditional rights’ outlined in the Basic Law. In the New Territories, much of the land continues to be held under customary tenure, such as clan-owned ‘ancestral land’ or Tso/Tong trusts, which existed prior to British rule. These arrangements were upheld by colonial authorities and remain legally recognized today.

#### Dual System

In urban areas, namely Hong Kong Island and Kowloon, property transactions are governed by modern leasehold laws. In contrast, parts of the New Territories incorporate a blend of British-derived property laws and traditional Chinese customs.

In summary, the unique property laws of the New Territories arise from its leasehold history, colonial compromises aimed at preserving local customs, and the constitutional guarantees established post-1997. These factors underscore Hong Kong’s distinctive combination of colonial influence, Chinese tradition and contemporary governance.

*Olivia Kung*

*Partner, ONC Lawyers, Hong Kong*





# Celebrations

*Enjoy the Spring Festival and the Year of the Snake*



Chinese New Year, also known as the 'Spring Festival', is the oldest and most important traditional festival in Chinese culture. The Spring Festival is a public holiday in almost 20 countries and is celebrated in various ways by about one-fifth of humanity. UNESCO inscribed the Spring Festival social practices of the Chinese people in celebration of the traditional new year on the Representative List of the Intangible Cultural Heritage of Humanity on 4 December 2024.

The Spring Festival marks the bidding farewell of the old year and the beginning of the new year with various celebrations of praying for good fortune and family reunions. The celebrations called 'guonian' (crossing the year) usually begin from New Year's Eve (subject to the Chinese traditional calendar) when families gather for a grand feast, stay up late for the new year and concludes with the Chinese Lantern Festival (Yuanxiao Festival) when families dine together with a traditional dish called Tangyuan.

Diverse Spring Festival customs and traditions across China vividly reflect the richness and variety of Chinese culture, including but not limited to putting up Spring Festival couplets and festive paintings, hanging red lanterns, wearing new clothes, having family reunion dinners, giving children red envelopes (hongbao), visiting relatives and friends to exchange greetings, and Spring Festival community

performances and arts such as dragon (loong) and lion dances, temple fairs.

The Spring Festival embodies the values cherished by the Chinese nation and civilisation such as amity, peace and harmony. It is the most cherished festival of the Chinese people and can be enjoyed by the world.

### The Year of the Snake Signifies a Fresh Start and Prosperity

January 2025 will usher in the Year of the Snake, the sixth of the 12 zodiac signs in the Chinese traditional calendar. The 12 zodiac animals in the calendar's 12-year cycle are the Rat, Ox, Tiger, Rabbit, Dragon, Snake, Horse, Goat, Monkey, Rooster, Dog and Pig.

In some cultures, snakes may be portrayed as dark and evil. However, in Chinese culture the snake symbolises wisdom, mystery and sophistication. Even in Chinese mythology, the goddess, the creator of humanity and protector of the world, Nüwa, is depicted with the upper body of a woman and the lower body of a snake.

Thus, a snake is also associated with auspiciousness and fortune. Since snakes sleep in Winter and revive and shed their skin in Spring, this year also symbolises fresh starts, personal growth and inspires true potential.

People born in the Year of the Snake are believed to possess keen



observation skills, intelligence, caution and decisiveness.

Further, according to the ancient Chinese calendar, this year is the year of 'Yi (乙) Si (巳)'. Yi symbolises wood while Si is fire. Under the 'Five Elements Theory', wood nourishes fire, therefore this year is infused with the hope for growth, creativity, renewal and the embrace of new ventures.

### Conclusion

The Spring Festival is the most significant celebration in China, while the Year of the Snake represents intelligence, spirituality, prosperity and good fortune in 2025. It is time for us to embrace the power of the Snake Year, shed our old skin and step into a prosperous future. We sincerely wish you all '蛇行天下' ('Roaming the world with wisdom, fortune and growth like a snake') in the Year of the Snake.

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# IPBA NEW MEMBERS

September to November 2024

We are pleased to introduce our new IPBA members who joined our association from September to November 2024. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

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