



ASIA

## “Hot Take” on Artificial Intelligence – Technology Practice Group

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## “Hot Take” on Artificial Intelligence – Technology Practice Group

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# Introduction

Artificial Intelligence (“AI”) promises to transform a lot of the ways in which we live and work. But adopting AI as part of your business or investing in AI can require good legal advice, especially given the fast moving and multi-varied nature of the AI and the legal regulations in this space.

We asked legal experts from Meritas Asia’s Technology Group, to give their thoughts to 4 standardised questions around AI, in the form of asking them for their “hot take” – each firm has set out a reply relevant to their jurisdiction, and has posted their own comments in their firms’ LinkedIn / web profiles.

We have collated the answers in this easy to read compilation – do take a moment to visit each firm’s site to learn more or get in touch with an expert.

***These firms are Part of the Meritas Asia Technology Practice Group!***

These firms are proud members of the Meritas Asia Technology Practice Group which is a practice group formed to co-ordinate and promote Meritas Asia law firms’ capabilities for clients who come from around the world that are interested in or have need for legal support in matters of technology law. Contact us to learn how we use the Meritas Law Firm network to help you in any part of the world.

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# Mainland, China



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## 1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?

China is taking a proactive approach to the development and regulation of AI. In addition to the PRC Cybersecurity Law, the PRC Data Security Law and the PRC Personal Information Protection Law, two other formal regulations were issued specifically to govern technology services. The first is the Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Services promulgated on 31 December 2021, and the other is the Provisions on the Administration of Deep Synthesis of Internet-based Information Services promulgated on 25 November 2022.

The Cyberspace Administration of China also recently issued a draft of the Measures for the Administration of Generative Artificial Intelligence Services for solicitation of comments. The draft attempts to set out conditions and requirements, identify the responsible entities and their respective liabilities, and solve other legal issues arising from the application of generative artificial intelligence services.

## 2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?

For clients who want to invest in an AI venture in China, we would suggest the following:

### **GET TO UNDERSTAND THE REGULATORY LANDSCAPE OF AI IN CHINA.**

China has a relatively complex legal environment, and its laws and regulations change frequently. Foreign investors who intend to invest in AI ventures in China should seek legal advice to understand the entry strategies and the latest regulatory requirements for AI ventures.

### **KNOW WHO YOU ARE DEALING WITH.**

Like other investment projects, it is essential to conduct legal and commercial due diligence on the prospective AI venture, including its financial status, management team,

technologies and intellectual property rights, and regulatory compliance performance. This will help foreign investors assess the risks and potential returns of the investment, and with the support of a reliable local law firm, choose the right legal structure for the investment.

### **SECURE THE INTELLECTUAL PROPERTY RIGHTS.**

Intellectual property and their creators are critical considerations for AI ventures. Before and after the investment, foreign investors should always take steps to ensure that the target has appropriate measures in place to protect its intellectual property interests.

## **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

AI is a regulated technology in China. In 2017, the State Council issued the New Generation Artificial Intelligence Development Plan, which not only expressly described AI as a technology, but also set out the strategic goals of AI development in China. This also includes the formulation of laws, regulations, and ethical norms to promote the sustained development and application of AI.

In response to the aforesaid policy, China has issued and implemented various action plans, regulations, and guidelines for using AI technology, covering areas such as intelligent robots, facial recognition, education, medical diagnosis, autonomous driving, supply chain, and judicial practice. For instance, in July 2021, the National Medical Product Administration issued the Guidelines for the Classification and Definition of Artificial Intelligence Medical Software Products, which defines two elements for Artificial Intelligence Medical Software Products (i.e., “based on medical device data” and “an independent software using AI technology to achieve the medical purpose”) and sets out rules on the classification of different types of AI medical software products from a management perspective.

## **4 Is there anything else you would like to mention in relation to AI?**

With the rapid development of AI technology in China, there is also growing controversy over its ethical and legal implications, including the potential risks of IP infringement, unfair competition, discrimination, false information, as well as data security and privacy issues.

In relation to the legal implications of AI technology, the most disputed issues include whether AI-generated results are protectable work under China’s IP system, whether robots using AI technology or an AI-driven system can be deemed as a legal entity in the jurisdiction of China, and ultimately, who should be responsible for the AI system. As AI becomes more widespread, issues concerning the use of AI need to be further addressed.

While China has made some progress in addressing these issues through various laws and regulations, there is still much work to be done to ensure that AI technology is used in a safe, ethical, and legitimate manner.

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# Hong Kong SAR



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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

Whilst the integration of AI in various industries is expected to become commonly accepted, the potential for misuse and abuse of the technology will be a legal concern. Reliance on AI to provide solutions may also have unintended legal and ethical consequences, especially if the data upon which algorithms are based off is incorrect.

According to a study conducted by the Consumer Council in 2022 on the use of AI in business-to-consumer e-commerce, the main issues and concerns raised by consumers related to the collection of data and its use, transparency of the information relied upon by the AI and responsibility for information generated by the AI

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

Clients looking to invest in any AI venture should be aware that AI is still in its early stages of development and commercial acceptance of the use of AI is still not widely adopted. Potential developments in the regulation of companies in the AI space may thus have a significant impact on how these AI companies are able to commercialise their products successfully.

Potential investors should also conduct sufficient due diligence on the intellectual property rights (copyrights and patents) owned by or created by the AI venture and consider potential licensing issues to ensure that the underlying AI does not infringe third party intellectual property rights.

## **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

No. Currently, Hong Kong does not have any specific legislation, guidelines or case law targeting the development or implementation of AI software.

The underlying development of AI is based on the collection and use of a consumer’s data profile which allows for AI to successfully learn and provide suitable solutions to the AI user. Thus, data protection legislation would be of the most relevance to AI. In Hong Kong, the collection of personal data is governed by the Personal Data (Privacy) Ordinance. However, the collection of data in general is not yet regulated and the misuse of such data would be governed under common law.

## **4 Is there anything else you would like to mention in relation to AI?**

With the many applications and uses of AI, aside from the ability to commercialise the use of AI, the potential social, ethical and moral considerations arising from the use of AI should be considered. If these risks cannot be properly managed, complete acceptance of AI will ultimately be difficult.

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# India



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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

At present, generative AI is not specifically regulated in India. The development and deployment of AI is governed through laws and policies related to privacy, data protection, intellectual property, cyber security, and regulations governing intermediary and digital platforms. However, the Government of India (“GOI”) is cognizant of the impact of generative AI across sectors and through its think-tank, published the National Strategy for Artificial Intelligence with the objective of developing an ecosystem for the research and adoption of AI. The Ministry of Electronics and Information Technology (“MEITY”), with a vision to ‘Make AI in India and Make AI work for India’, approved the implementation of the ‘National Program on Artificial Intelligence’. Alongside this, the GOI has also introduced initiatives to up-skill IT professionals and facilitate research and development through the National AI Portal. The Global Partnership on Artificial Intelligence was also founded to increase international collaboration on AI. Some key issues relating to AI regulation in India are as follows:

### **COPYRIGHTABILITY OF AI-GENERATED WORKS**

Under the Indian copyright law, AI is not recognized as an author of copyrightable works. Thus, the legal position on ownership of copyright in an AI-generated original work is unclear. Further, AI-based software is not patentable in India. However, an AI-based computer program may be protected as copyright. The idea and structure of an AI model and the underlying code may also be protected as a “trade secret”.

### **LIABILITY ISSUES IN AI-ASSISTED DECISION-MAKING**

India’s Consumer Protection Act 2019 does not provide explicit remedies against AI-related “product liability”. Further, while e-contracts and e-signatures are permitted, there is no clear position on the validity of “smart contracts” which generally form the basis of usage for any AI product.

### **DATA PRIVACY**

Privacy laws in India are currently set out under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011, which deal with sensitive personal data. Therefore, training AI on personal data and group-based data without the consent of data principals may lead to privacy issues and needs careful evaluation.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

The following are some key issues for investors to consider before investing in an AI venture in India:

### **FOREIGN INVESTMENT REGULATIONS**

Foreign investments in India are regulated by the foreign direct investment (“FDI”) regulations issued by the Reserve Bank of India. These regulations provide the conditions for investing in various sectors in India (such as, investment caps based on specific sectors specified in the FDI policy of India, regulatory approval requirements, and other investment conditions). Currently, foreign investments in AI-based businesses are not subject to any restrictions unless the AI venture specifically relates to a specified business sector, in which case the sectoral caps and conditions applicable to the relevant business sector may apply and legally viable investment structures will need to be evaluated.

### **LIABILITY ISSUES IN AI GENERATED WORKS**

Potential liability issues arising from AI-generated works such as (a) ownership and copyright concerns; and (b) content-related concerns in respect of the specific AI model or software need to be carefully evaluated prior to investments in AI ventures. Further, since AI models require data-sets to be trained on, adequate usage licenses should be acquired from the owners of such data-sets. Similarly, an AI-related service should not enable users to create works which violate content-related laws in India.

### **LIABILITY OF AI ASSISTED DECISION-MAKING**

The terms of use of an AI-based service should have sufficient liability disclaimers for (a) decisions taken on the basis of information supplied by AI; (b) the accuracy of AI-generated information; and (c) latent biases which may creep into the AI decision-making process.

### **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

At present, there is no specific regulation in India for generative AI. However, the development, deployment and actions of AI are governed through various Indian laws and policies such as those relating to privacy, data protection, intellectual property, cyber security and regulations governing intermediary and digital platforms. Specifically, the Information Technology Act 2000 and the rules thereunder require proactive monitoring of technology platforms. Further, publishing and sharing ‘deep fake’ videos without the consent of the persons in the videos attract punishment.

In our view, the more relevant question may be the potential time frame by which comprehensive regulatory framework for governing AI in India will be put in place. The GOI has begun the consultation process on the Digital India Act (“DIA”), which is poised to replace the Information Technology Act, 2000 and will regulate internet and AI activities in India. Alongside that, the GOI is also consulting stakeholders on the Digital Personal Data Protection Bill 2022 which will form the basis for India’s personal data protection regime. In recent dialogues by the MEITY on DIA, the following key themes were identified for regulation of AI through the DIA: a principles and rule-based approach, adjudication based on user harm, regulation of high-risk AI systems, content monetisation rules, ethical use of AI with redressal mechanisms, functional categorisation of intermediary platforms, and harmonisation with global norms. As a policy, the GOI may require investment in AI research and development in Indian start-ups to access Indian datasets.

### **4 Is there anything else you would like to mention in relation to AI?**

Recently, NASSCOM, the industry body representing IT business process management companies, released the “Guidelines for Generative AI” which provides for an indicative list of user harms and obligations for researchers, developers and users of Generative AI. The guidelines seek to aid mitigation of harms such as misinformation, privacy harms, infringement of intellectual property, academic malpractice, job displacements, carbon and water footprints, etc. The guidelines also impose obligations on researchers conducting fundamental and applied research on Generative AI models, which include demonstrating reasonable caution and foresight, transparency, accountability, reliability, safety, inclusion, etc. Accordingly, the regulation of AI should be principle-based, and the principles of fairness, accountability and transparency are an apposite starting point.

Other Indian laws that would be impacted by AI would also need to be updated. Some examples include:

- 1) updating competition laws to prevent the use of AI for anti-competitive practices;
- 2) updating India’s cyber-security framework to prevent AI-enabled cyber-attacks;
- 3) revisiting judicial and quasi-judicial processes to prevent discrimination due to biases for AI-based decision-making in employment and access to credit; and
- 4) revising intermediary liability frameworks to ensure deployment of resources against AI-enabled misinformation and bot activities.

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# Indonesia



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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

With regard to ChatGPT and generative AI, clients should be aware of, among others, the areas of intellectual property rights, data protection, consumer protection and liability issues.

In the area of intellectual property, it is important to ensure that the intellectual property rights in the AI are protected and that there is no infringement of the intellectual property rights of others. As for data protection, AI developers must comply with Indonesian Law No. 27 of 2022 on Protection of Personal Data and Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Electronic Information and Transaction, specifically in relation to the collecting and processing of personal data. In addition to that, developers must also ensure that their activities comply with Law No. 8 of 1999 on Consumer Protection to avoid misuse of AI-generated content which may mislead or exploit customers.

Therefore, it is important for developers to adhere to the appropriate policies and procedures to manage any potential issues on liability.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

We have 2 tips for the potential investor of an AI venture in Indonesia.

First, is to check whether the business activity of artificial intelligence is permitted to be fully owned by foreign shareholders. In this regard, per Governmental Regulation No. 5 of 2021, the business activity of artificial intelligence falls under the Indonesian Standard Industrial Classification Code #62015 – which can be fully owned by foreign shareholders (individual or legal entities). In relation to the foregoing, an AI venture is required to obtain business license in the form of Certificate Standard (*Sertifikat Standar*).

The second tip is to look into the requirements for foreign investors to invest in an AI venture. In 2021, Indonesian government issued BKPM Regulation 4 of 2021 which imposed a minimum of 10 billion rupiah, excluding any investments for land of buildings, in paid-up capital for all foreign investment companies.

### **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

Currently, there are no specific regulations on AI as a technology.

However, the government of Indonesia recognises the development and advancement of AI, and has embarked on a national strategy for the development of AI – the National Strategy on Artificial Intelligence for the years of 2020 - 2045. It is a national policy direction that sets out focus and priority areas for AI technology as a reference for ministries, agencies, local governments and other stakeholders in carrying out activities in the field of AI technology in Indonesia. As such, while there are no specific regulations on AI at present, specific arrangements and regulations will be expected from the Indonesian government in the future.

### **4 Is there anything else you would like to mention in relation to AI?**

N/A

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# Japan



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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

Until very recently, Japan’s approach to AI governance has been centered around respecting companies’ voluntary compliance with nonbinding guidelines and recommendations, standardizations, and audits. This was a soft-law approach. The aim was to create a legal framework that could respond flexibly and quickly to technological developments while ensuring that the benefits of AI were maximized and, theoretically, its risks were minimized.

However, Japan’s confident soft-law approach may be shifting with the release of the ruling government party’s AI White Paper: Japan’s National Strategy in the New Era of AI. The White Paper strikes an insecure tone, citing Japan’s lack of sufficient human resources, an insufficient quantity and quality of domestic data, lack of computing power, lack of impressive national programs and initiatives, and (most notably) lack of powerful AI “foundational models”.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

If you want to invest in an AI venture, you should first understand what it is and what industry it is in. You should also know the laws that apply to that industry. For example, if the AI venture is in finance or medicine, in Japan, there will be specific laws that apply, and likely some complications introduced by the inclusion of AI technology.

Some further research should also be done to figure out what risks there might be and whether the company has the right to use the technology it needs, the right to make the claims it will make about what its technology will do, and that the company has the right protection in place for that technology. If you are unsure about what to do, you should talk to a lawyer who is knowledgeable about AI and technology investments.

### **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

There is yet no specific law that regulates AI technology in Japan.

However, the White Paper’s recommendations are a broad call to the government of Japan to transform its policies in twelve specific areas in order to prepare for a new era of artificial intelligence. Among the recommendations are calls to analyze the status of AI regulations in the EU, United States, China, and other countries, and actively and strategically participate in international rule-making discussions on AI usage among those other countries.

### **4 Is there anything else you would like to mention in relation to AI?**

Existing legal frameworks may be insufficient for the regulation of AI. Since the beginning of 2023, emergent abilities of large language models (“LLMs”) have demonstrated that new classes of rights & responsibilities may be on the horizon. Through Chain-of-Thought and other techniques, LLMs have shown autonomous scientific research capabilities and abilities to handle complex tasks requiring reasoning, with applications spanning natural language, biology, chemistry, business management, and computer programming.

As LLMs are increasingly capable of taking actions and making decisions based on complex algorithms that are difficult to understand, these emergent abilities appear to be leading to a need for new classes of regulations recognizing entirely new rights and responsibilities, such as rights to interpretability, freedom from biased data, and freedom from persuasion. Persons impacted by the decisions of AI systems may demand transparency in the decision-making process of LLMs.

Legal systems may also need to consider whether and how rights may emerge related to the education of AI systems on one specific set of data over another. Ultimately, even foundational legal concepts such as a right to consent may need to be reconsidered in an era in which AI systems are capable of effective persuasion or distortion of populations’ opinions.

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# Korea



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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in Korea that you think are important for clients to know?**

Despite its popularity and outstanding performance, it should be noted that ChatGPT may create various legal risks, ranging from those relating to intellectual property to those relating to ethics.

Relating to copyright, among others, there are some issues as to (1) who rightfully owns the output of ChatGPT, (2) whether the output of ChatGPT is protected under the current regime of the Copyright Act of Korea, and (3) who would be responsible if the output of ChatGPT infringes others' intellectual property. So far, these issues have been regarded as potential issues. However, they will soon become real legal issues. As a matter of fact, certain protective measures relating to the use of ChatGPT are being taken by large companies in Korea to prevent problems such as information leaks from being caused by the misuse of ChatGPT. There are also concerns that generative AI may be abused in crimes. For instance, a user may ask a generative AI for the security vulnerabilities of a program, or create a malicious website by combining various functions of generative AI.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

We would advise that you understand the regulatory environment. AI is a rapidly evolving technology, and thus, the regulatory landscape is constantly changing.

Before investing, you should also conduct legal, financial and technical due diligence to figure out potential risks and make an informed investment decision. Through such due diligence, you should ensure that the venture legitimately owns or has the right to use the AI technology necessary for the intended business and that it has adequate intellectual property protections in place for the technology.

In the field of AI related business, intellectual property is often key to a venture's success. However, understanding the relevant regulatory environment and conducting the requisite

due diligence are not easy tasks. Therefore, it is advised that you seek advice from qualified attorneys with experience in AI and technology investments before embarking on such AI related investments.

### **3 Is AI as a technology currently regulated in your country, or should we be asking a different question? If so, what is the question?**

Yes, there are several regulations and governing bodies for AI in Korea, including:

- 1) the Framework Act on Intelligent Informatization, which was newly enacted in 2020 to establish an overall legal framework for the rapidly growing intelligent information technology such as AI;
- 2) the Personal Information Protection Act, which regulates the collection, use, and storage of personal information by AI systems; and
- 3) the Act on Promotion of Information and Communications Network Utilization and Information Protection, which regulates the use of AI for online advertising and marketing.

Generally, the Ministry of Science and ICT is responsible for overseeing and implementing policies related to AI in Korea. Particularly, on 17 December 2019, the Korean government established the National Strategy for AI and a task force team consisting of all relevant government ministries, with the vision of “Toward AI World Leader beyond IT”.

### **4 Is there anything else you would like to mention in relation to AI?**

There are some other legal issues relating to AI that are worth mentioning.

As AI becomes more advanced and capable of creating new works, issues will arise as to who owns the intellectual property rights to those works and who would be held responsible if AI infringes others’ intellectual property rights in creating those works. There are also questions relating to the parties who should be held responsible when an autonomous AI system causes harm or damage to persons and property. In particular, accidents involving AI-based self-driving cars bring about questions on who is ultimately responsible for such accidents. AI systems also tend to perpetuate or even amplify existing biases and discrimination, which in turn raises questions about how to ensure that AI is fair and unbiased. Lastly, there are also concerns regarding human rights abuse by AI. In fact, since 2021, human rights abuses in AI technology have been included in the annual reports issued by the National Human Rights Commission of Korea.

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# Malaysia

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## 1 **With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

ChatGPT and similar generative AI, with its advanced processing capabilities, are undoubtedly very useful technological aids. However, it has its risks and consequences especially if used wrongfully. Therefore, users need to be mindful of the pitfalls and issues that come with using such AI tools. For example:

### **LIABILITIES IN PROCESSING DATA**

Generative AI tools and applications typically work on a model that trains its dataset by accumulating vast amounts of data from its users into its system. When a user inputs data into the system, the system obtains that user’s information and data (which may include personal data). Through the AI tools’ interaction with its users, the tool may also retain and further process the data gathered. When generating a response or answer to a user, the initial data gathered as part of the tool’s dataset may end up being disclosed. Thus, proper safeguards need to be put in place to ensure that consent is obtained from the users who provide the data, that the data is used appropriately, and that the appropriate security measures are put in place.

### **COPYRIGHT INFRINGEMENT.**

The responses generated by the AI tool may potentially infringe third party intellectual property rights, especially if the responses are substantially based off or are similar to existing copyrighted materials. If so, a user who uses such a response may subject himself to legal action for infringement of third-party intellectual property rights.

## 2 **If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

As the use of AI is novel and nascent in Malaysia, we have yet to observe the government’s stance on regulating AI per se. Therefore, if a client is interested to invest in any AI venture, it is important to first understand its nature and the industry sector to be invested in.

Besides some of the general applicable laws such as personal data protection and intellectual property laws, the client also needs to be mindful of specific sectoral laws. For example, if the AI venture is in the financial sector, specific financial laws and regulations may apply. Likewise, for the medical sector, specific medical laws may also apply.

The client should also explore and ascertain whether there are special incentives and initiatives which may be applicable to the said AI venture. The Malaysian government’s initiatives in steering the growth of digital economy are driven by its agency, the Malaysia Digital Economy Corporation (“**MDEC**”), which welcomes investments in the artificial intelligence space by offering incentives and governance for growth of the digital economy. An AI venture may qualify for the “Malaysian Digital (“**MD**”)” status granted by the MDEC if its activities fall within the MD approved activities prescribed by MDEC. For AI Ventures that qualify for the MD status, the company would be entitled to a set of incentives, rights and privileges from the government of Malaysia. This includes tax incentives and exemption from the local ownership requirement. For more details, the client may refer to the MDEC website on Malaysian Digital Status.

### **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

Currently, no legislation has been enacted to specifically govern AI per se as a technology. However, existing laws (which are not specific to AI) may be still be applicable to the specific AI venture and/or technology as mentioned in the previous question.

It should be noted that the government of Malaysia has taken a receptive stance towards the adoption of AI in the economy. In 2018, the Kuala Lumpur City Council collaborated with Alibaba Cloud Intelligence to kick off the pilot test of an intelligent traffic management system to reduce traffic congestion in the city. On a policy governance level, the government’s receptiveness is also evident from the National Artificial Intelligence Roadmap 2021-2025 (“**AI-Rmap**”) which outlines a 5-year plan that aims to provide strategic directions and initiatives towards creating a thriving and sustainable AI innovation ecosystem in Malaysia. One of its strategic initiatives also aims to establish an AI Coordination and Implementation Unit for the implementation of the AI governance framework. The AI-Rmap represents the government’s recognition of the importance of AI Governance.

## 4 Is there anything else you would like to mention in relation to AI?

It is worth noting that AI has also been adopted by the legal fraternity in Malaysia. The East Malaysian courts (in Sabah and Sarawak) launched a pilot AI tool, now renamed as Artificial Intelligence in Court Sentencing (“**AiCOS**”), to assist judges with their sentencing decisions such that greater consistency in sentencing can be achieved. The AiCOS is currently deployed for one offence: Section 12(2) of the Dangerous Drugs Act 1952 regarding the possession, custody or control of dangerous drugs. The case of *Denis P. Modili v Public Prosecutor* BKL-83D-3506/12-2019 was the first case to deploy the AiCOS in sentencing.

The AI technology based-sentencing guideline was first intended to be introduced to some other lower courts in the peninsular of Malaysia. However, the plan did not materialize as there were concerns raised by the Bar Council on the impact of judges’ decisions being influenced or affected by AI.

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# Singapore

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## 1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?

Singapore has been actively updating its legal framework to keep up with the ever-evolving AI landscape. Legislation like the Personal Data Protection Act (“**PDPA**”), Cybersecurity Act (“**CSA**”) and the Computer Misuse Act (“**CMA**”) remain relevant amidst recent developments in AI. The Model AI Governance Framework (“**Model Framework**”) was also introduced to guide organisations in developing internal governance structures and measures that would ensure safe and ethical deployment of AI systems in their operations and product/service offerings. Further, the Copyright Act 2021 (“**CA 2021**”) includes a new exception permitting the copying of copyright works specifically for computational data analysis, the scope of which includes sentiment analysis, text and data mining, and training machine learning.

Various industry areas have also come up with their own sector-specific guidelines and regulations that are tailored to the unique risks and problems they face in the deployment of AI. These include:

- 1) **Healthcare:** AI in Healthcare Guidelines (“**AIHGle**”), Regulatory Guidelines for Software Medical Devices
- 2) **Transport:** Road Traffic (Autonomous Motor Vehicles) Rules 2017 and the Technical Reference 68
- 3) **Finance:** Principles to Promote Fairness, Ethics, Accountability and Transparency (“**FEAT**”) in the Use of AI and Data Analytics in Singapore’s Financial Sector

The Singapore government more recently established AI Verify, a practical toolkit to test the governance framework and software of organisations looking to deploy AI at scale. This is along with the launch on 7 June 2023, of the AI Verify Foundation to harness the collective power and contributions of the global open source community to develop AI testing tools for the responsible use of A.I. While the benefits of AI are undoubtedly recognised in Singapore, it is evident that the authorities have their fingers on the pulse and are ready to tackle new challenges that may arise with the use of AI.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

As standard protocol, one should always engage in due diligence before embarking on any investment, and this is especially so in the AI space.

Emergent generative A.I. for example is often trained on or utilises third party content or data. Whilst Singapore laws tend to be innovation-friendly (e.g. the provisions on computational data analysis under the CA 2021 support use of images to train image recognition, etc), it is still important to query data provenance, identify parameters under which the machine learning was executed, and what safeguards are in place and in use.

With the huge role that data plays in AI, compliance with data regulations should be at the forefront of any due diligence conducted. Data privacy assessments, audits, and reviews could be conducted to ensure that the collection, use, and disclosure of data complies with legislative requirements and that adequate measures are in place for such continued compliance.

It would also be prudent for investors to look into the potential legal liabilities involved in any AI venture. Regulations on AI continue to develop as AI systems evolve and break new ground in different industries. As such, ascertaining legal liabilities in the AI space is not as straight forward of a task as it is for ventures in other more traditional areas of investment.

## **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

No, AI as a technology is not specifically regulated in Singapore. Perhaps a better question to ask, is when AI would be regulated as such in Singapore. It may be a matter of when, not if. Historically, Singapore has waited to see how trends evolve elsewhere before becoming an early adopter, taking into account Singapore’s position as an open economy with a pro-innovation stance. Ethical norms are the source and orientation of many of the developments in this space, and may well prove to be the foundation for legislation.

Regardless, the lack of AI-specific legislation does not mean that the deployment of AI is left unregulated. As highlighted in the first question, the PDPA, CSA, CMA, CA 2021 as well as other industry-specific legislation like the Road Traffic (Autonomous Motor Vehicles) Rules are applicable to the use of AI and must be complied with to avoid hefty penalties.

Taking the various AI related legislation in view with our National Artificial Intelligence Strategy, it is evident that the Singapore government is cognisant of both the challenges

and opportunities that AI could potentially bring. The National AI Strategy outlines Singapore’s plans to deepen the use of AI to transform the economy, and will also address areas where attention is needed to manage new forms of risks that emerge when AI becomes more pervasive. Hence, it remains to be seen how Singapore will tread the unprecedented and unpredictable waters of the legal ramifications that AI implementation brings forth.

## **4 Is there anything else you would like to mention in relation to AI?**

The Info-communications Media Development Authority of Singapore (“**IMDA**”) has made efforts to implement, in practical terms, frameworks and policies for organisations to take note of in their adoption of AI. The Implementation and Self Assessment Guide for Organisations was created to serve as a self-assessment checklist that enables organisations to align and assess their AI governance practices in accordance to the Model Framework.

The IMDA also collaborated with the Singapore Computer Society to release the “AI Ethics and Governance Body of Knowledge” (“**BoK**”) – which our firm is honoured to have been involved in and contributed to. The BoK aims to enhance professional expertise on the responsible and ethical adoption of AI, and is expected to be a “living document” that will continually be updated to keep up with the rapid evolvement of the digital landscape.

As various areas of practice develop their own industry specific guidelines on the adoption of AI, it is expected that common principles will emerge and lead to agreed standards of implementation which would facilitate the growth of AI regulation.

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# Sri Lanka



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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

Sri Lanka is further away from developing generative AI due to the presently persistent socioeconomic issues within the country. It is apparent that the professionals in the country would be rather threatened in the face of such developments. It is important to note that Sri Lanka previously lacked personal data protection laws, amongst other things, until the implementation of the Personal Data Protection Act No 09 of 2022 (the "PDPA 2022").

As a result of the PDPA 2022, any form of infringement with regard to the personal or sensitive data of any natural person, living or deceased, could be curtailed within the legal boundaries of this act.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

The development of AI-generated images and text (such as ChatGPT) may give rise to legal concerns with regard to copyright and patent law, as well as the protection of one's right to privacy and publicity. Additionally, there may be moral concerns that would require the attention of legislators and the judiciary.

The legal parameters with reference to privacy, publicity, data protection, copyright, and patent law in Sri Lankan law should be taken into consideration before jumping into any AI venture.

## **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

Subject to the restrictions in the PDPA 2022, AI is not fully regulated in Sri Lanka. The question you should be asking is whether there is a favourable environment for AI to be introduced and implemented in Sri Lanka.

The Sri Lanka Association for Artificial Intelligence (“**SLAAI**”) is a non-profit scientific association that is dedicated to understanding the mechanisms, fundamental views, and emulation of intelligent behaviour in machines. SLAAI operated as the primary Artificial Intelligence Research group in Sri Lanka before its formal establishment in 2000. Therefore, it is our opinion that Sri Lanka possess the resources and manpower for the sustainable and proper regulation of AI. However, it is a matter of how, when and for what purpose the same is introduced, and there remains the question of whether it would have a negative impact on the professional climate of the country.

#### **4 Is there anything else you would like to mention in relation to AI?**

There are no specific concerns relating to AI within the boundaries of our jurisdiction, as there are no statutory regulations governing AI as of date. However, it is intimated that AI ventures implemented should be introduced in such a way that it is integrated into society without causing ripple effects within the community.

**Have a question? Please contact:**

**NEELAKANDAN & NEELAKANDAN** (<https://www.neelakandan.lk/>)

# Thailand



In conjunction with 

## 1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?

In 2018, Thailand issued the National Strategy No. 2 (2018-2037) for the digital economy that also focuses on generative AI. However, Thailand has not yet enacted any legislation to address generative AI. Given the continuous advancements and increasing integration of ChatGPT and other generative AI into society and the business sector, Thailand may issue specific legislation on AI usage in two to three years.

As of June 2023, the following are some of the laws related to AI in Thailand:

- 1) The Personal Data Protection Act B.E. 2562 (2019) (“**PDPA**”) dictates how AI systems will process personal data. Organizations using AI must comply with the PDPA to recognize data privacy rights.
- 2) The Copyright Act B.E. 2537 (1994) as amended governs the ownership and protection of original works created by AI.
- 3) The Computer-Related Crime Act B.E. 2550 (2007) as amended deals with the crimes involved with computer traffic and AI. As AI systems become more prevalent, the risk of them being used maliciously or becoming targets for cyber-attacks increases.
- 4) The Electronic Transactions Act B.E. 2544 (2001) as amended governs how businesses can enter into and enforce electronic transactions. There are some questions about how this law will be interpreted or applied to AI technologies.

## 2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?

The client should start with legal due diligence to understand the potential legal and regulatory risks and the legislations that recognize and protect the AI venture.

Several legislations govern foreign ownership in AI businesses. For example, the Foreign Business Act B.E. 2542 (1999) limits the maximum foreign ownership in a company at 49% unless the company is granted a Foreign Business License or a Foreign Business Certificate to operate an AI venture in Thailand. The Board of Investment of Thailand (“**BOI**”) offers various incentives to stimulate investments in certain industries. The AI venture may also be eligible for the incentives granted by the BOI.

If the client’s AI venture involves the collection or use of personal data, the client must comply with the requirements of the PDPA, such as obtaining explicit consent from data subjects before collecting or processing their sensitive personal data. The client should also be fully informed of the intellectual property laws that apply to the ownership of AI-generated content and inventions.

### **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

For now, Thailand does not have a specific AI law.

AI technology is regulated by the several laws discussed in our answers to Questions 1 and 2 above.

### **4 Is there anything else you would like to mention in relation to AI?**

Thailand’s industries have been adopting AI and its related technologies very fast. Their use has prompted a lot of legal and ethical challenges relating to privacy, transparency, potential bias, and accountability. Recognizing these challenges, the Office of the National Digital Economy and Society Commission, under the Ministry of Digital Economy and Society, issued the Digital Thailand AI Ethics Guideline in 2020 (“**Guideline 2020**”) to provide a framework for the development and use of AI technologies in Thailand. The key principles of the Guideline 2020 include promoting competitiveness and sustainable development, ensuring transparency, maintaining accountability and reliability, and protecting privacy. The Guideline 2020 encourages ethical AI practices and offers organizations clear standards to adhere to when developing or implementing AI solutions. It also serves as evidence of Thailand’s commitment to keep up with global AI ethics considerations.

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# Vietnam

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## **1 With ChatGPT and generative AI making headlines these days, what are some legal developments, issues or angles in your country that you think are important for clients to know?**

The Vietnamese government is taking steps to support the development of artificial intelligence (“AI”), with initiatives that foster innovation and entrepreneurship. For example, the government, itself, is investing in research and development, providing tax incentives for companies that adopt AI technology, and supporting the growth of the startup ecosystem. One example is the Vietnam AI Grand Challenge, a program launched in 2019 to encourage development of AI technology. It provides funding, support, and resources to AI startups and researchers, helping them to develop and commercialize their AI solutions.

Vietnam has also set up several AI Centers of Excellence in universities and research institutions to encourage the development of AI technology. The centers provide support and resources to researchers, and collaborate with industry partners to develop AI solutions for various sectors. AI has the potential to bring about significant changes in the way business is conducted and to drive economic growth in Vietnam.

## **2 If a client wants to invest in an AI venture in your country, what legal tips would you tell him before jumping in?**

The current regulatory framework for AI is incomplete. Even so, AI is set to make a profound impact on Vietnam’s economy. From improving manufacturing efficiency to revolutionizing healthcare and driving economic growth, AI has the potential to bring about significant changes and to help Vietnam accelerate its path of development. Vietnam has a good start to position itself at the forefront of the AI revolution, creating jobs and generating revenues.

To be sure, the adoption of AI will present challenges including the need for a skilled workforce with deeper skills. There will need to be appropriate regulations and policies to ensure that AI is used ethically and responsibly.

Some issues will need to be addressed. For instance:

- **Privacy and Data Protection:** AI systems collect and process vast amounts of data (often personal in nature), which raises privacy issues.
- **Bias and Discrimination:** AI systems have the potential to perpetuate and amplify human biases, which could lead to discrimination against certain groups of people.
- **Intellectual Property:** AI systems will certainly create new forms of intellectual property, such as patents, trademarks, and copyright – it can also be misused to create copyright violations.
- **Liability and Accountability:** AI systems can cause harm, and responsibility may be hard to fix.
- **Workplace and Employment:** The increasing use of AI in the workplace will have an impact on employment and can raise questions about the rights of workers.
- **Regulation:** Governments, including Vietnam’s, are grappling with ways to regulate the use of AI systems so that innovation and economic growth do not overwhelm public safety and privacy.
- **Ethical Considerations:** AI systems raise ethical questions about the appropriate use of technology and the role of humans to control and direct its development and use.

Nevertheless, the opportunities presented by AI are enormous, and the future looks bright for Vietnam’s AI enabled economy.

### **3 Is AI as a technology regulated in your country, or should we be asking a different question? If so, what is the question?**

To repeat, the current regulatory framework for AI is incomplete. But Directive No. 16 / CT-TTg dated May 4, 2017, of the Prime Minister on strengthening access capacity to the Fourth Industrial Revolution confirms that Vietnam views AI as a key technological innovation, fundamentally revolutionizing a multitude of processes and applications in the modern economy.

AI is the focus of much private development and investment. As such, legislative initiatives are underway. For the development of AI, large databases are required – ensuring appropriate regulations, putting mechanisms in place to manage such large data flows is critical.

Further, the Government has designated the Ministry of Planning and Investment to create a National Strategy on Industrial Revolution 4.0, which recognizes AI as a priority technology to focus on, and to promote its development. Generally, ministries and local governments

have demonstrated a keen interest in the development of AI. However, due to the relatively slow-moving nature of legislative initiatives, development of a robust legal framework for regulating AI technologies continues to lag. Even so, entrepreneurs are moving forward with development despite the lack of a complete legal framework.

#### **4 Is there anything else you would like to mention in relation to AI?**

The development of AI shows many positive outcomes, but there are also risks related to intellectual property, personal data rights, privacy, etc. Currently, there are gaps in the legal framework – we believe the government is committed to closing the gaps and is taking steps to ensure the development of appropriate regulations. But, despite the gaps, entrepreneurs are moving ahead.

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