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Hong Kong

Artificial Intelligence

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This country-specific Q&A provides an overview of artificial intelligence laws and regulations applicable in Hong Kong.

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Hong Kong: Artificial Intelligence

1. What are your country's legal definitions of "artificial intelligence"?

There is no legal definition of the term "artificial intelligence" in Hong Kong. However, the *Guidance on the Ethical Development and Use of Artificial Intelligence* and the *Artificial Intelligence: Model Personal Data Protection Framework* issued by the Office of the Privacy Commissioner for Personal Data both refer to artificial intelligence as "a family of technologies that involve the use of computer programmes and machines to mimic the problem-solving and decision-making capabilities of human beings".

2. Has your country developed a national strategy for artificial intelligence?

At present, there is no official strategy for artificial intelligence in Hong Kong and there is currently no indication that the Hong Kong government or the legislature intends to enact comprehensive AI legislation in Hong Kong.

That said, different governmental bodies have developed and published various guidelines and frameworks targeting different applications of AI, which include the *Guidance on Ethical Development and Use of Artificial Intelligence* and the *Artificial Intelligence: Model Personal Data Protection Framework* published by the Office of the Privacy Commissioner for Personal Data mentioned in paragraph 1 above.

It is also expected that Hong Kong will closely follow China's AI strategy.

3. Has your country implemented rules or guidelines (including voluntary standards and ethical principles) on artificial intelligence? If so, please provide a brief overview of said rules or guidelines. If no rules on artificial intelligence are in force in your jurisdiction, please (i) provide a short overview of the existing laws that potentially could be applied to artificial intelligence and the use of artificial intelligence, (ii) briefly outline the main difficulties in

interpreting such existing laws to suit the peculiarities of artificial intelligence, and (iii) summarize any draft laws, or legislative initiatives, on artificial intelligence.

There is currently no existing law, draft law or legislative initiative dedicated to AI or the regulation of AI in Hong Kong.

However, Hong Kong has implemented various guidelines and frameworks in governing the use of AI in the city.

As AI often involves the use of data sets containing the personal data of individuals during problem-solving and training, the Privacy (Data) Protection Ordinance ("PDPO") applies to AI. The PDPO stipulates six data protection principles, which broadly govern the collection, use, protection and treatment of personal data. Anyone creating and operating AI that handles personal data is obliged to always comply with these principles.

The Privacy Commissioner ("PCPD") has in August 2021 issued the *Guidance on the Ethical Development and Use of Artificial Intelligence* ("Guidance") which specifically applies to the use of AI when personal data is used to train or is analysed by an AI system.

The PCPD has also issued the *Artificial Intelligence: Model Personal Data Protection Framework* in June 2024 ("Model Framework"), setting out the PCPD's recommendations and best practices in complying with the legal requirements of the PDPO when implementing and using AI (including generative AI).

Apart from the PDPO, existing Hong Kong legislation and common law also apply to certain aspects of the use of AI in Hong Kong, for example, tort law and intellectual property rights.

The Office of the Government Chief Information Officer developed the Ethical Artificial Intelligence Framework to facilitate governmental bodies and departments in their planning, design and implementation of AI and big data applications using guiding principles, leading practices, and assessments in AI-powered IT projects.

The Hong Kong Monetary Authority ("HKMA") has issued circulars to provide guidance on the use of AI in the banking and financial industries. For example, the HKMA

in May 2024 updated its *Supervisory Policy Manual* in relation to manpower planning and training with the emergence of AI. Financial Institutions are recommended to be vigilant against over-reliance on AI and reminded of their obligation to properly assess the financial capabilities of clients and monitor the design and development of AI applications. Further, the use of AI does not mitigate the financial institutions' liabilities from the consequences of any conduct, nor should it allow any compromise of proper validation expected from financial institutions.

Other regulatory authorities, such as the Insurance Authority, have also issued similar circulars in relation to the existing regulatory framework as applied to AI.

Difficulties remain as none of the existing laws is custom-made for AI, and there remains considerable uncertainty and gaps within regulations. For example, the PDPO is only applicable where personal data is collated but not other types of data. There could also be uncertainty and issues in attributing liability (in tort law) and authorship/inventorship (in IP laws) to natural persons for tasks done by AI.

4. Which rules apply to defective artificial intelligence systems, i.e. artificial intelligence systems that do not provide the safety that the public at large is entitled to expect?

Under the principles of the law of the tort, any user of AI is expected to exercise a duty to take reasonable care when using AI.

In terms of negligence, the Hong Kong court will find a creator of AI to be in breach of duty of care if the following elements are satisfied:

- The respondent (i.e. the creator of AI) has reasonably contemplated that the actions to be taken by AI would injure the plaintiff;
- Proximity exists between the respondent and the plaintiff;
- The imposition of a duty of care is just and reasonable; and
- The imposition of a duty of care is consistent with public policy considerations.

In addition, the law of nuisance and the doctrine in *Ryland v Fletcher* (i.e. if a person keeps something that would likely cause mischief on their property, such person will be liable for any natural consequence flowing from that object's escape) applies in Hong Kong as well. If any nuisance is caused by AI being defective, which results in

intrusion and nuisance on the neighbour's property or otherwise hampers the enjoyment of such property, as long as all of the requisite elements of nuisance are satisfied and proved, the court may hold the creator and/or controller of AI liable for nuisance.

5. Please describe any civil and criminal liability rules that may apply in case of damages caused by artificial intelligence systems.

Other than the civil liabilities under tort law mentioned above, any person who without lawful excuse destroys or causes any damage to property belonging to another with the intention to do so, or being reckless as to whether the property will be destroyed or damaged, may be charged with criminal damage under section 60 of the Crimes Ordinance (Cap. 200), with the offender being liable to imprisonment for up to 10 years. If it is proved that the offender has the intention of destroying or causing any damage so as to endanger the life of another or is reckless as to whether the life of another will be endangered, the offender is liable to imprisonment for life.

Damage under this offence is widely defined and covers physical harm that is both permanent and temporary, tangible and intangible, and any injury that impairs the value and usefulness of the property.

The above offences apply to users of AI; therefore, if an AI user commits the offences by using AI, they may be charged with criminal damage and be liable to the respective penalties on top of civil liabilities.

6. Who is responsible for any harm caused by an AI system? And how is the liability allocated between the developer, the user and the victim?

It depends on the cause of the harm. If the defect is caused by the developer, the developer may be sued and be held liable for negligence. If the harm is caused by usage by a particular user and is not attributable to the creator of the AI system, the liability should be borne by the user.

Whether the victim will also be liable depends on the circumstances of each incident. Under tort law, for example, if the harm caused is partly attributed to the victim, it is possible the respondent may not be held fully liable for the harm caused to the victim.

7. What burden of proof will have to be satisfied

for the victim of the damage to obtain compensation?

As with all claimants in the law of tort, the victim suffering any damage due to the use of AI will need to prove, on the balance of probabilities, that the respondent has been negligent in their usage of AI, applying the principles set out in paragraph 4 above. If the respondent (i.e., the user of AI) has been convicted of any offence arising out of the negligence claimed by the claimant (for example, the user has been convicted of criminal damage), the respondent is presumed to have been negligent unless they can prove otherwise on balance of probabilities.

8. Is the use of artificial intelligence insured and/or insurable in your jurisdiction?

The use of AI is insurable in Hong Kong. Whether a particular use of AI is insured depends on the insurance policy taken out by the relevant AI user. Given that AI is commonly used by entities in Hong Kong to perform key elements of their businesses (such as managing inventory and client accounts), it is anticipated that the existing business-related insurance policies taken out by such entities would have covered the use of AI in the course of business.

9. Can artificial intelligence be named an inventor in a patent application filed in your jurisdiction?

At present, the Patents Ordinance (Cap 514) does not recognise non-humans as inventors. There is also no case law or statutory guidelines in Hong Kong concerning inventions generated by AI. It is likely that Hong Kong courts will adopt the position in other common law jurisdictions, particularly the UK, that AI does not have the personhood to be named as an inventor in a patent application (*Thaler v Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49, UK Supreme Court decision issued on 20 December 2023).

10. Do images generated by and/or with artificial intelligence benefit from copyright protection in your jurisdiction? If so, who is the authorship attributed to?

The answer is uncertain.

Images generated by and with AI could in theory fall under copyright protection in Hong Kong as it falls within the definition of graphic work and artistic work under

section 5 of the Copyright Ordinance (Cap 528). Unlike jurisdictions like the US where there are express court/tribunal decisions disqualifying AI-generated work from copyright protection on the grounds that the work was not created by a human author, section 11(3) of the Copyright Ordinance could potentially allow such AI-generated work to be protected by copyright by attributing authorship to "*the person by whom the arrangements necessary for the creation of the work are undertaken*".

Applying section 11(3), if the image in question is generated by AI without human interference, it is possible that the programmer of AI and/or any other person whose contribution is proved to be necessary for the creation of the image will be attributed authorship of such image. If, however, the image is created by a person using AI, in theory, the human creator, the programmer of AI and/or also any other person whose contribution is proved to be necessary for the creation of the image should be entitled to claim authorship of such image. Note that there is, however, currently no case law in Hong Kong or other common law jurisdictions with similar provisions in their copyright legislation (such as the UK), as to how the aforementioned provision operates in relation to AI-generated work, particularly since multiple persons (users, programmers, authors of training data) will be involved in making the necessary arrangements.

11. What are the main issues to consider when using artificial intelligence systems in the workplace?

Businesses in Hong Kong are increasingly reliant on AI in daily operations and delivery of services to clients. Examples include managing the personal data of staff or potential candidates for human resources purposes, maintaining client accounts, setting up manufacturing procedures, handling account matters, and addressing clients' enquiries.

Apart from the data privacy issues to be discussed in paragraph 12 below, the use of AI does not exempt the company using AI in its operations from being liable for damage to property or personal injury caused by AI. As such, contractually, if a party fails to perform any contract due to mistakes and errors caused by the malfunctioning or breakdown of AI, that party is still in breach of the contract in question.

Another issue that may be caused by reliance of AI in the workplace is the potential bias and discrimination that AI may cause. For example, in the context of recruitment, candidates may be exposed to AI-induced biases and

discrimination. There are reports that AI recruitment tools have discriminated against female candidates, as the historical data learned by the system mostly came from men's resumes.

12. What privacy issues arise from the use of artificial intelligence?

In light of the fact that AI's capabilities are to a large extent driven by collection, analysis and application of data (which, more often than not, means personal data), business users of AI may tend to take a more aggressive approach when collecting personal data of customers, which increases the risks of data subjects being exposed to excessive, unjustified, and perhaps unauthorised mass data collection. For example, data pertaining to consumer activities, both online and offline, are tracked to help AI make predictions.

In addition, after analysing and matching the massive data collected from different datasets, AI may even be able to generate dossiers for individual data subjects which may be used for purposes other than those for which the personal data is collected in the first place.

Another common risk is the leakage of personal data. Given that the data collected needs to be stored and maintained (very likely in cloud servers), the data is exposed to potential security breaches, hacking, wrongful manipulation of data and other forms of misuse of data or other forms of cyberattack by a third party.

13. How is data scraping regulated in your jurisdiction from an IP, privacy and competition point of view?

For data privacy, data scraping of personal data is governed by the Privacy (Data) Protection Ordinance. Please refer to Q3 above. In essence, there is no blanket ban on data scraping for personal data, but there is also no special treatment for personal data collated via data scraping. Personal data collated via data scraping will need to be processed, stored and used just the same as personal data collected by other means, adopting the same data protection principles under the Privacy (Data) Protection Ordinance.

In terms of IP, there is currently no legislative provisions specific to data scraping under any of the existing IP legislation. However, in the *Public Consultation Paper on Copyright and Artificial Intelligence* issued by the government in July 2024, the government signaled that it is minded to introduce certain data mining exception to

the Copyright Ordinance (i.e. data scraping would not constitute copyright infringement). The government is minded to introduce certain safeguards provisions for the data scraping exemption, such as an opt-out option and/or restriction on dealing with copies of data collated via data scraping. Whether such an exemption will ultimately be added and, if so, the exact permutation of the provisions, are still unknown.

In relation to competition law, there is no development in Hong Kong specific to AI.

14. To what extent is the prohibition of data scraping in the terms of use of a website enforceable?

See answer to Q13 above. In essence, there is no specific prohibition against data scraping in law. Restriction against data scraping of certain material (e.g. personal data; copyright materials) are regulated by existing laws and existing enforcement mechanism.

15. Have the privacy authorities of your jurisdiction issued guidelines on artificial intelligence?

See paragraphs 3 and 13 on the *Guidance on the Ethical Development and Use of Artificial Intelligence* and the *Artificial Intelligence: Model Personal Data Protection Framework*.

16. Have the privacy authorities of your jurisdiction discussed cases involving artificial intelligence?

Although AI become more commonly used in Hong Kong in recent years, there has not been any reported litigation or investigation involving AI in relation to privacy or data privacy matters.

However, of the complaints reported by the Office of the Privacy Commissioner for Personal Data, one concerns a complaint made by an employee dissatisfied with his employer's installation of a security camera with facial recognition function not only for security purposes but also for recording attendance without the employee's knowledge or consent. The PCPD took the view that the employer had other means to achieve those dual purposes, and data subjects were not given free and informed choices before their biometric data was collected. The PCPD recommended that the employer consider less privacy-intrusive alternatives and formulate

privacy policies in compliance with the PDPO.

17. Have your national courts already managed cases involving artificial intelligence?

The Hong Kong courts have briefly touched on the issue of artificial intelligence in the defamation case of *Dr Yeung Sau Shing Albert v Google Inc* (No 2) [2015] 1 HKLRD 26.

The claimant is a famous businessman in Hong Kong known for his presence in the media and entertainment sector. When the claimant's name was entered on the defendant Google's search engine, its auto-complete function provided suggestions such as "triad" to complete the phrase. The claimant's case was that Google published (or caused to be published) words that are defamatory in nature, while Google's position was that the results produced by the search engine were automated and based on algorithms which collect, analyse and apply data from the Internet, and as such, Google should not be considered a publisher.

The court took the view that while AI was deployed to mine data from previous searches and existing content on the Internet, the fact that the algorithm and AI was indeed deployed by Google to generate predictive keywords meant that Google did not merely pass information from one place to another, its AI had processed the relevant content before coming up with suggestions for autocomplete, and, thus, may be considered as publisher of defamatory comments.

18. Does your country have a regulator or authority responsible for supervising the use and development of artificial intelligence?

Hong Kong does not currently have any regulator or authority that is specifically dedicated to monitoring the use of AI. The use of AI is generally regulated through guidelines and principles of various bodies, as set out in paragraph 3 above.

19. How would you define the use of artificial intelligence by businesses in your jurisdiction? Is it widespread or limited?

While AI is increasingly used by companies and organisations in Hong Kong, it is currently mainly used to power chatbots and marketing analytics to improve customer experience. It is reported that a handful of shopping malls or commercial buildings adopt AI for

building management purposes, such as disinfecting and sanitising public areas. Autonomous vehicles are not yet roadworthy as such, but trials have been allowed.

The potential of AI has not been fully explored in Hong Kong. Still, the potential benefits brought about by using AI are apparent, more businesses are moving to integrate AI into their daily operations to save costs and increase efficiency. For example, banks are using various AI tools to assist with due diligence on account opening and detecting money laundering activities. A survey conducted by the US tech firm Cisco shows that only 28% of businesses in Hong Kong believe that they are ready for to implement AI in their businesses.

20. Is artificial intelligence being used in the legal sector, by lawyers and/or in-house counsels? If so, how?

The legal sector has started to embrace AI to increase efficiency and reduce costs. While some law firms develop in-house tailor-made AI tools, others turn to experts in this area for their services. Magic circle firms are among the forerunners of the use of AI in legal work.

International firms are reported to have started to automate drafting of documents and conducting research through Harvey, the generative AI built on Open AI's GPT AI, specifically targeting law firms as its client base. The legal research company Casetext also launched its AI legal assistant CoCounsel using GPT-4 to expedite tasks such as research and document review.

That said, generative AI has its limits. The content generated by AI is largely based on previous advice, research and/or documents, so AI may not be suitable for high-level strategic work that requires a fair amount of critical thinking or handling complicated scenarios (e.g. those involving ethical issues). Current AI algorithms appear to be incapable of understanding truth and meaning, thus giving rise to the phenomenon of "hallucinations" – AI algorithms making up things (such as non-existent case laws). The increasing use of AI in law firms allows lawyers to focus on work that actually requires skills such as conducting negotiations, although this would not save time as a lawyer would still have to review the generated product to ensure it is proper and accurate.

On 20 January 2024, the Law Society of Hong Kong (the professional association of solicitors in Hong Kong with statutory powers to regulate the professional conduct of solicitors) issued a Position Paper on the *Impact of Artificial Intelligence on the Legal Profession*, setting out

current trends of use of AI in the legal profession and concerns arising therefrom, emphasizing that lawyers' professional, ethical duties and values should not change with the adoption of AI.

21. What are the 5 key challenges and the 5 key opportunities raised by artificial intelligence for lawyers in your jurisdiction?

The key challenges and opportunities associated with AI for lawyers in Hong Kong are as follows: –

Challenges

- While AI is able to review and analyse voluminous case laws and other documents in a split second, the product generated by AI is also highly dependent on the quantity and quality of materials in its database. That means AI built on a biased or incomplete database or inherently faulty algorithms may generate inaccurate results.
- Depending on the quality of AI systems and the nature of tasks AI is assigned, the effort required of lawyers to review the products generated by AI to ensure they are proper and accurate and to communicate the products to clients effectively and empathetically may not always substantially increase the efficiency of work and reduce costs.
- AI operates on the prompts and instructions from human users. Lawyers and staff using AI need proper training to use the AI tools properly and effectively and to maximise the benefits brought about by the use of AI. Due to the phenomenon of "hallucinations", lawyers and staff will also need to incur extra costs in verifying data generated by AI.
- Security and maintenance of AI and databases are very important, even more so in the legal sector given the sheer volume of privileged and confidential material accessed and kept by law firms. Ensuring AI and databases are safe and secure could mean additional costs and effort for law firms.
- As with other industries, AI competes with human labour. Lawyers and supporting staff in

certain practice areas of law (especially non-contentious ones) may be more susceptible to replacement by AI in the long run as AI becomes smarter.

Opportunities

- More mundane tasks can now be automated through the use of AI which would allow lawyers to focus on tasks that cannot be performed by AI, including high-level strategic tasks and client management.
- AI works around the clock and does not take leave. As computational capabilities advance, AI will be able to work faster. This could substantially increase the productivity of law firms using AI.
- AI is driven by data and is technically not prone to human error.
- Maintaining AI may be cheaper than employing human staff. Using AI may, therefore, reduce the costs of practising law and bring down the costs of legal services to the benefit of society as a whole.
- AI is programmed to learn from archives and experience. The more frequently an AI model is used, the better and more reliable the products it will be able to generate.

22. Where do you see the most significant legal developments in artificial intelligence in your jurisdiction in the next 12 months?

Currently, the regulatory landscape in Hong Kong is rather light when it comes to AI, and it is not expected to change in the near future. There is no overarching legislation regulating the use of AI, and there does not currently appear to be a legislative plan for one. The existing guidelines and principles mainly provide guidance on the use of personal data.

In light of the Hong Kong government's commitment to develop AI-related industries in the future in line with China's national strategy, it can be expected legal developments in AI in Hong Kong in the next 12 months will mainly consist of soft laws and policy guidelines in various areas where AI is used (after consultation with stakeholders and the community), instead of legislating for a comprehensive AI law.

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