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Philippines
TMT

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This country-specific Q&A provides an overview of tmt laws and regulations applicable in Philippines.

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Philippines: TMT

1. Is there a single regulatory regime that governs software?

There is currently no single regulatory regime that specifically governs software. Several laws regulate the different aspects of the software industry, such as the Data Privacy Act of 2012 ("DPA"), Cybercrime Prevention Act ("CPA"), Electronic Commerce Act, Consumer Protection Act and the Intellectual Property Code of the Philippines ("IP Code").

2. How are proprietary rights in software and associated materials protected?

Under Philippine Law, intellectual properties are protected under the IP Code. Depending on the material or work, an asset may be considered as a copyright, patent, or a trademark. Software may be protected under a copyright or patent.

The IP Code protects proprietary rights in software by granting the registered owner of the intellectual property several exclusive rights, including the right to reproduce, distribute, display, or use the software. The owners can also license or assign their rights to others, granting them specific permissions to use the software under certain conditions. Transfer Arrangement such as Technology Transfer Arrangement, are commonly used to define the terms of use and restrictions of the intellectual property rights over the software.

3. In the event that software is developed by a software developer, consultant or other party for a customer, who will own the resulting proprietary rights in the newly created software in the absence of any agreed contractual position?

Under the IP Code, the person who commissions the work shall own the patent (and consequently the proprietary rights), unless otherwise agreed upon by the customer and the developer or consultant. If the invention was made in the course of the developer/consultant's employment, the following rules shall apply:

- The patent shall belong to the employee if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities, and materials of the employer.
- The patent shall belong to the employer if the invention is the result of the performance of his regularly assigned duties unless there is an express or implied agreement saying otherwise.

4. Are there any specific laws that govern the harm / liability caused by Software / computer systems?

There are currently no specific laws that govern the harm and liability caused by software and computer systems. However, the provisions of Consumer Act of the Philippines ("Consumer Act") apply to protect consumers from the hazards of goods and services released in the market. Under the Consumer Act, a seller or supplier may be liable for deceptive products. The DPA also applies if the software is used to collect or process personal information and data breaches occur.

5. To the extent not covered by (4) above, are there any specific laws that govern the use (or misuse) of software / computer systems?

The CPA governs the misuse of software and computer systems. It punishes several acts committed on the cyberspace, such as illegal access of a computer system, system and interference, illegal interception, computer-related forgery, computer-related fraud, and computer related identity theft. It also penalizes misuse of devices, such as the use of a computer program designed to commit any of offenses aforementioned.

The E-Commerce Act also penalizes hacking, piracy, and violations of the Consumer Act or other relevant laws when such act is committed through the use of electronic data messages or electronic documents or used to facilitate e-commerce transactions.

6. Other than as identified elsewhere in this overview, are there any technology-specific laws that govern the provision of software between a software vendor and customer, including any laws that govern the use of cloud technology?

Other than the Consumer Act and E-Commerce Act as indicated above, there are currently no specific technology laws that govern provisions of software between a vendor and customer. Software agreement would generally be covered by the contractual stipulations of the parties. However, software vendors may be required to comply with certain standards and requirements depending on the nature and intended use of the software.

a. Cloud First Policy

The Department of Information and Communications Technology's ("DICT") Departmental Circular ("DC") No. 2017-002, as amended by DC No. 2020-010, provided for the Philippine government's Cloud First Policy (the "Cloud First Policy"). Under the Cloud First Policy, government departments and agencies are mandated to utilize cloud computing solutions as a primary part of their infrastructure planning and procurement. Government agencies are recommended to select the appropriate cloud deployment model according to the agency's specific needs and the type of data it handles.

Through the Cloud First Policy, the Philippine government aims to eliminate the duplication of hardware and systems and fragmentation of databases and promote the use of cloud computing technology to reduce costs, increase employee productivity, and develop excellent online services for Philippine citizens.

b. Policy on Cloud Computing for Financial Institutions

The *Bangko Sentral ng Pilipinas* ("BSP") issued BSP Circular No. 808, which pertains to guidelines on information technology risk management for all banks and other BSP-supervised institutions. Under BSP Circular No. 808, a financial institution is required to consult the BSP before making any significant commitment on cloud computing. The BSP only allows the use of public cloud computing models for non-core operations and business processes that do not directly involve sensitive data.

7. Is it typical for a software vendor to cap its maximum financial liability to a customer in a software transaction? If 'yes', what would be considered a market standard level of cap?

There are currently no market-standard financial liability caps as regards software transactions. Liability caps are generally determined by the agreement of the parties.

8. Please comment on whether any of the following areas of liability would typically be excluded from any financial cap on the software vendor's liability to the customer or subject to a separate enhanced cap in a negotiated software transaction (i.e. unlimited liability): (a) confidentiality breaches; (b) data protection breaches; (c) data security breaches (including loss of data); (d) IPR infringement claims; (e) breaches of applicable law; (f) regulatory fines; (g) wilful or deliberate breaches.

There are currently no set standards regarding excluded liability from any financial cap in the Philippines. Exclusions, if any, would be negotiated by the parties.

9. Is it normal practice for software source codes to be held in escrow for the benefit of the software licensee? If so, who are the typical escrow providers used? Is an equivalent service offered for cloud-based software?

It is not common in the Philippines to hold in escrow the software source codes for the benefit of the software licensee.

10. Are there any export controls that apply to software transactions?

There are currently no export controls in the Philippines that apply to software transactions. However, if the software transaction involves the transfer of intellectual property rights, it may be classified as a technology transfer which must be registered with the Bureau of Trademarks. The registration thereof operates as a notice to third parties, including foreign parties, that the subject of the Technology Transfer Arrangement is protected by the Trademark laws of the Philippines.

Software transactions are also covered by the Strategic Management Trade Act, which provides that the export of strategic and military goods or goods of high military importance (*e.g.,* software) are prohibited or are subject to specific conditions (*i.e.,* exporter must be registered, and the export of the goods must be authorized by the Strategic Trade Management Office of the DTI).

11. Other than as identified elsewhere in this questionnaire, are there any specific technology

laws that govern IT outsourcing transactions?

There are currently no specific technology laws that govern IT outsourcing transactions. IT outsourcing transactions are generally governed by the contractual stipulations of the parties. However, some IT service providers may be required to comply with certain standards and requirements for regulated industries, such as banking and insurance.

For example, the BSP has issued specific guidelines for BSP-Supervised Financial Institutions ("BSFIs"), such as banks and non-bank financial institutions that outsource certain services to third parties.

12. Please summarise the principal laws (present or impending), if any, that protect individual staff in the event that the service they perform is transferred to a third party IT outsource provider, including a brief explanation of the general purpose of those laws.

An outsourcing of IT services does not necessarily involve the transfer of employees, assets, or third-party contracts, except if there is a contractual arrangement to that effect. Outsourcing of services does not automatically terminate the employment relationship. The employee who performs the services that will be transferred to a third-party IT outsource provider is still protected by Philippine labor laws. Thus, even if the services performed by an employee are outsourced to a third party, the employees cannot be terminated unless there are just or authorized causes. Just causes for termination include serious misconduct, wilful disobedience or gross and habitual neglect of duties, while authorized causes include redundancy, installation of labor-saving devices or cessation of operation of the establishment.

In terminating the services of an employee, the employer is required to comply with both substantive due process (*i.e.,* the cause for dismissal must be allowed under law) and procedural due process. Likewise, if the employee will be terminated due to an authorized cause, the employee must be paid separate pay.

13. Please summarise the principal laws (present or impending), if any, that govern telecommunications networks and/or services, including a brief explanation of the general purpose of those laws.

The main law that regulates communications networks and services in the Philippines is the Philippine Telecommunications Policy Act ("PTPA"). In particular, the PTPA governs the development of telecommunications and the delivery of public telecommunications services in the country.

The Public Service Act, as amended ("PSA"), also regulates the provision of public service in the Philippines and considers the provision of telecommunications as a public service.

The Policy Guidelines on the Co-Location and Sharing of Passive Telecommunications Tower Infrastructure for Macro Cell Sites (the "PTTI Policy") also governs the co-location and sharing of Passive Telecommunications Tower Infrastructures by Independent Tower Companies ("ITCs") and Mobile Network Operators ("MNOs"). It aims to promote the accessibility and development of reliable information and communications technology throughout the country.

Telecommunications networks are also undoubtedly involved in the processing of personal data, and as such, are covered by the Data Privacy Act of 2012 ("DPA").

There are also several pending bills before the House or Representatives and the Senate, which include **1) House Bill No. 8098 and Senate Bill No. 575, otherwise known as the "Telecommunications Coverage Data Disclosure Act"** which requires all PTEs, including internet service providers ("ISPs"), operating in the Philippines to disclose and publish, on an annual basis, their coverage data; **2) House Bill No. 8221 and Senate Bill No. 1381, otherwise known as the "Better Internet Act",** which requires PTEs and ISPs to provide their subscribers with a minimum download speed for paid internet services; and **3) House Bill No. 10215**, which seeks to amend the Public Telecommunications Policy Act and penalize the telecommunications companies for failing to reach the compulsory internet speed targets.

14. What are the principal standard development organisations governing the development of technical standards in relation to mobile communications and newer connected technologies such as digital health or connected and autonomous vehicles?

The DICT is the primary entity of the executive branch of the Government responsible for planning, developing, and promoting the national Information and Communication Technology ("ICT") development agenda. One of the

attached agencies of the DICT is the National Telecommunications Commission ("NTC") which specifically oversees all telecommunication services, including radio stations, telephone systems, cable companies, satellite television providers, and internet services.

In relation to digital health, the Department of Health ("DOH") in collaboration with the Philippine Health Insurance Corporation ("PhilHealth") and Department of Science and Technology ("DOST") has established the Philippine eHealth Strategic Plan ("PEHSP") to promote inter-operability among various eHealth initiatives. Among the initiatives is the creation of a web-linked community where people can discuss specific health issues and matters and have access to research databases and other resources relating to information about health.

As regards autonomous car technologies, there are currently no existing standards regulating these types of vehicles. Nonetheless, the Department of Transportation ("DOTr"), through the Land Transportation Office ("LTO"), is at the forefront of the land transport sector and is responsible for enforcing regulations in the transportation system.

15. How do technical standards facilitating interoperability between connected devices impact the development of connected technologies?

As technical standards encourage increased interoperability between connected devices, the Philippines has seen a rise in the use of connected technologies in other fields including health, autonomous vehicles, and ecommerce. In the regulatory context, such unprecedented developments called for amendments of existing regulations to include situations not contemplated in the present rules.

16. When negotiating agreements which involve mobile communications or other connected technologies, are there any different considerations in respect of liabilities/warranties relating to standard essential patents (SEPs)?

Since there are no guidelines yet governing SEPs in the Philippines, liabilities and/or warranties with respect to agreements relating to SEPs may depend on the agreement of the parties and as provided in the Intellectual Property Code.

17. Which body(ies), if any, is/are responsible for data protection regulation?

The National Privacy Commission is the primary body responsible for administering and implementing the provisions of the DPA and monitoring and ensuring compliance with international standards set for data protection.

18. Please summarise the principal laws (present or impending), if any, that that govern data protection, including a brief explanation of the general purpose of those laws.

The DPA governs the protection and processing of personal data in the Philippines. The DPA protects personal data in three (3) ways:

First, there must be lawful basis to use or process personal data. Before any entity may be able to collect or use personal data, the data subject must either give express consent or there must be some legal obligation the information is going to be used for.

Second, entities that maintain personal data have certain obligations, such as confidentiality and integrity of such data. Such entities are required to have appropriate and reasonable measures to prevent data breaches or possible loss of data. They are also required to notify data subjects in case there is any data breach.

Lastly, data subjects have certain rights with respect to their personal data, such as the rights to access and erasure of their personal data, and right to damages for any violation of their rights.

Any person that violates the provisions of the DPA may be held liable for monetary penalties and imprisonment.

19. What is the maximum sanction that can be imposed by a regulator in the event of a breach of any applicable data protection laws?

The maximum fine for breach of the DPA is PhP5 million for a combination or series of violations of the DPA. For a single act, the maximum penalty of PhP4 million may be imposed for the unauthorized use or processing of sensitive personal information such as the race, criminal history, sexual life, or government-issued identifiers of a data subject.

20. Do technology contracts in your country typically refer to external data protection regimes, e.g. EU GDPR or CCPA, even where the contract has no clear international element?

Technology contracts may refer to external data protection regimes, even when the contract has no clear international element. The parties are free to stipulate the applicability of other external data protection regime if they deem it essential or necessary for the transaction. However, it is not a common practice.

21. Which body(ies), if any, is/are responsible for the regulation of artificial intelligence?

The Philippine legal system does not have a legal framework that specifically regulates artificial intelligence ("AI"). However, there are several bills pending in Congress aiming to increase research on AI and its potential in helping improve Filipinos' lives.

22. Please summarise the principal laws (present or impending), if any, that that govern the deployment and use of artificial intelligence, including a brief explanation of the general purpose of those laws.

The Philippines does not have any principal law governing the deployment and use of AI. However, there are several bills pending before the Legislative department addressing this matter — House Bill 7913, House Bill 7396, and House Bill 9448.

House Bill No. 7913 or the proposed "Artificial Intellection (AI) Regulation Act" aims to establish the Philippine Council on Artificial Intelligence – a policy-making and advisory body of experts under the DOST. Among others, its functions include the conduct of an evaluation on the impact of AI systems and development of AI economies in the country, review existing policies on AI, and the determination of the structures or parameters under which AI systems may operate in the country

House Bill No. 7396 or the proposed "Act Promoting the Development and Regulation of AI in the Philippines" seeks to create the Artificial Intelligence Development Authority ("AIDA"). The AIDA will have the general mandate and power to oversee the development and deployment of AI technologies, ensure compliance with AI ethics, principles, and guidelines, and protect the rights and welfare of individuals and communities affected by AI technologies.

House Bill No. 9448 and Senate Resolution No. 791 or the proposed "Protection of Labor Against Artificial Intelligence Automation Act" prohibits the replacement of human workers, displacement, loss of security of tenure, or diminution of existing salaries and/or benefits because of the adoption and use of AI and automation technologies in the workplace.

Suppletorily, the general doctrines of contract, civil and tort laws still cover liabilities for stipulated obligations and negligence may also govern the use of AI. AI software is also copyrightable and patentable works that are protected by Intellectual Property laws.

23. Are there any specific legal provisions (present or impending) in respect of the deployment and use of Large Language Models and/or generative AI?

Currently, there are no present or impending legal provisions in respect of the deployment and use of Large Language Models and/or generative AI.

24. Do technology contracts in your jurisdiction typically contain either mandatory (e.g mandated by statute) or recommended provisions dealing with AI risk? If so, what issues or risks need to be addressed or considered in such provisions?

Technology contracts in the Philippines do not typically contain mandatory provisions dealing with AI risk given that there is a lack of specific legislation regulating AI development and deployment. However, considering that there are several AI-related bills pending before the House of Representatives, there is a high probability that the Philippine regulatory landscape will enforce a more defined parameters under which AI systems may operate in the country.

25. Do software or technology contracts in your jurisdiction typically contain provisions regarding the application or treatment of copyright or other intellectual property rights, or the ownership of outputs in the context of the use of AI systems?

Inasmuch as software or technology contracts are deemed as copyrightable and patentable works, these contracts may contain provisions on the reciprocal rights and responsibilities of the parties involved in accordance with the Intellectual Property Code of the Philippines.

26. What are the principal laws (present or impending), if any, that govern (i) blockchain specifically (if any) and (ii) digital assets, including a brief explanation of the general purpose of those laws?

a. Blockchains

There are currently no laws that govern and regulate blockchains specifically. The blockchain technology itself, however, may be governed by the IP Code as the technology may be considered as patentable and its codes copyrightable. Its use as a ledger to facilitate transactions and transfer of data may be governed by the DPA, civil code provisions, and, depending on its content, may be governed by Philippine criminal laws.

Meanwhile, House Bill No. 0658, otherwise known as "An Act Establishing the Basic Regulatory Framework for Blockchain Technology in the Philippines" was filed before the House of Representatives on 01 July 2022. "House Bill No. 0658 sought to (i) identify the permitted and restricted use of blockchain technology; (ii) encourage the use of blockchain in the broader economy and the technology in human development programs; and (iii) establishes the BSP as the regulatory and policymaking body for the use of blockchain in the financial sector.

b. Digital Assets

Presently, the Philippines does not have a dedicated framework dealing with the issuance, offer, distribution, or sale of digital assets and tokens. Previously, the SEC has issued draft rules for initial coin offering ("ICO") in 2018 and draft rules for a digital asset exchange ("DAE") in 2019. However, these regulations have not yet been finalized and published, and, therefore not yet in force.

The proposed ICO rules primarily govern the conduct of ICOs. On the other hand, the proposed DAE rules primarily govern the registration and operation of an exchange where digital assets are traded on, if such online platform is accessible in or from the Philippines.

While there is no specific law dedicated solely to digital assets, the Securities Regulation Code ("SRC"), which is the primary law governing securities and investments in the Philippines, may be deemed to apply to certain types of digital assets that may be deemed as securities and, therefore, subject to certain requirements prior to its sale or offering to the public.

27. Please summarise the principal laws (present or impending), if any, that govern search engines and marketplaces, including a brief explanation of the general purpose of those laws.

Businesses conducted through search engines and e-marketplaces are governed by the Philippine National Standard ("PNS") 2155 and Joint Administrative Order ("JAO") No. 22-01.

The PNS 2155 was issued by the DTI as a national standard guideline for online retailers and e-marketplaces. It provides guidelines for pre-purchase, purchase, and post-purchase activities as well as provisions for customer support and merchant verification.

JAO No. 22-01 was issued to provide guidelines in e-commerce transactions for online businesses and online consumers. Under JAO No. 22-01, all online businesses must comply with the rules on warranty under the Civil Code and rules on warranty, labelling, and defective products and services under the Consumer Act.

28. Please summarise the principal laws (present or impending), if any, that govern social media, including a brief explanation of the general purpose of those laws?

Although the Philippines has consistently ranked among the top counties in the world in terms of social media use, there is no specific law therein which regulates social media platforms. However, such platform providers, along with its users, are still subject to several related laws, such as the DPA and the CPA, and may be penalized in case of violation.

29. What are your top 3 predictions for significant developments in technology law in the next 3 years?

a. Laws regulating Artificial Intelligence

Considering that AI has been becoming a powerful tool used by individuals for analysing and computing large sums of data, there may be several legislations in the future which intend to regulate AI and its use. Notably, there are already a number of bills pending in Philippines Congress aiming to increase research on AI to identify the potential uses in helping improve Filipinos' lives and prevent its abuse.

b. Tightening the regulations on digital assets and crypto exchanges

With the collapse of FTX last year, countries with crypto-friendly laws and regulations may be under pressure to tighten these laws and regulations. Digital assets may be treated similar to "property" or "securities", which will require strict regulation and oversight. Tightening of regulations would ensure that consumers, especially non-sophisticated consumers, are protected from the dangers in crypto trading and false crypto advertising.

c. Stronger Antitrust and Competition Regulation of Digital Marketplaces

Due to the lockdowns imposed in 2020, consumers were forced to rely on digital marketplaces. While buying through digital marketplaces offered convenience, antirust issues emerged because of the market control and dominance of existing digital marketplaces. Laws related to the regulation of the digital marketplace and online platforms may be developed in the next few years to address competition concerns and abuse of dominant position by existing players in the industry.

30. Do technology contracts in your country commonly include provisions to address sustainability / net-zero obligations or similar environmental commitments?

Technology contracts in the Philippines do not typically include provisions to address sustainability, net-zero obligations, or similar environmental commitments. Environmental commitments are usually undertaken by way of corporate sustainability commitments in compliance with the Environmental, Social, and Governance ("ESG") criteria and the Code of Corporate Governance.

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