Taiwan

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Taiwan: Artificial Intelligence

1. What are your countries legal definitions of "artificial intelligence"?

At the time of writing, there is no official legal definition of artificial intelligence under current Taiwan laws and regulations, while the "Guidelines for the Use of Artificial Intelligence (AI) in the Financial Industry" ("Financial Industry AI Guidelines") issued in June 2024 by Taiwan's financial regulator, the Financial Supervisory Commission ("FSC") define "AI systems" as "systems that learn from large amounts of data and use machine learning or related model-building algorithms to perform perception, prediction, decision-making, planning, reasoning, communication, etc. to imitate human learning, thinking and reaction patterns".

In 2023, the government unveiled the "Taiwan AI Action Plan 2.0," building on earlier initiatives with a focus on five core objectives: expanding and optimizing talent, advancing technology and industrial development, enhancing operational environments, increasing international influence, and tackling human and societal issues. Moreover, in the inauguration speech of Taiwan's newly elected President Lai on May 20, 2024, he emphasized the nation's commitment to becoming an "Island of Artificial Intelligence" in response to global and technological challenges. This vision includes promoting the industrialization of AI, fast-tracking innovative AI applications, and incorporating AI across various sectors. The overarching goal is to harness AI computing power to boost national strength, military capabilities, human resources, and economic growth.

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

Yes, Taiwan government announced the "Taiwan AI Action Plan" in 2018 to declare Taiwan's goal to become an important partner in the value chain of global AI technology and intelligence systems and to leverage the advantages of software and hardware techniques to promote AI technology across industries. According to the Taiwan AI Action Plan, the government's view is that Taiwan is well positioned to take advantage of the opportunities in developing AI-related industries.

According to related news reports in 2022, the next phase of the Taiwan AI Action Plan will focus on explainable and trustworthy AI, as well as the development of advanced technologies for small and medium-sized enterprises such as joint learning, automated machine learning tools, self-supervised learning and migration learning, and low-code platforms to accelerate AI development. Meanwhile, the Industrial Technology Research Institute ("ITRI") is dedicated to establishing the infrastructure of AI governance, such as an AI testing and evaluation centre to measure AI risks, model performance and robustness. ITRI will also set up an AI product-validation mechanism which aims to promote the development of the industry.

Also, the Ministry of Economic Affairs established the AI on Chip Taiwan Alliance (AITA) in order to create a complete industrial chain from upstream to downstream in 2019 and continues to actively promote industrial chains and international co-operation. By early July of 2024, the AITA had approximately 160 members, including companies related to integrated circuit design, manufacturing, packaging and testing, system applications, and academic research business.

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.

In 2019, the Ministry of Science and Technology under the Executive Yuan (the Cabinet) announced the "AI Technology R&D Guidelines" to demonstrate the Taiwan government's commitment to improving Taiwan's AI R&D environment. The government expects the participants to always be aware of the Guidelines when conducting relevant activities and endeavouring to build an AI-embedded society with three core values, which are "Human-centred Values", "Sustainable Developments"

and "Diversity and Inclusion". Based on the above three core values, the following eight guidelines were published under the AI Technology R&D Guidelines for the guidance of AI participants, so that a solid AI R&D environment and society that connect to the global AI trends may be established: "Common Good and Well-being", "Fairness and Non-discrimination", "Autonomy and Control", "Safety", "Privacy and Data Governance", "Transparency and Traceability", "Explainability" and "Accountability and Communication".

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?

Please see below our responses to Question 5 regarding the Consumer Protection Act.

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

Civil liability:

As AI has not yet been recognised as a legal entity under current Taiwan law, it cannot be liable for any civil liability under current Taiwan law. Therefore, in case of tort liability arising from the use of AI technology, the injured party would still need to prove that the torts fall within any of the specific types of tort under the Civil Code and/or the Consumer Protection Act ("CPA").

For example, the manufacturer of a self-driving car may be held liable under Article 7 of the CPA if the court considers that it is unable to prove that the car has met and complied with the contemporary technical and professional standards of reasonably expected safety requirements before such car was released on to the market. The injured person may also wish to prove and convince the judge that the self-driving vehicle falls within the definition of "automobile" and the user should be considered the "driver" under Article 191−2 of the Civil Code. In addition, the injured person would also bear the burden to prove that the "user" was negligent when using the self-driving vehicle if such person wishes to establish a claim under Article 184 of the Civil Code (i.e., the general tort).

Criminal liability:

Criminal liability under Taiwan law typically requires a person's mental state to allow "intention" or "negligence".

AI itself would not be capable of acquiring the aforementioned "mental state" and therefore of committing a criminal offence. In addition, in principle, only natural persons are deemed capable of committing crimes, save for certain exceptional circumstances where legal persons may be subject to criminal fines. Given that, similarly to the discussion on tort liability, with regard to the issue of determining whether a criminal offence has been committed, one would need to prove the required conditions of criminal liability, such as "intention" or "negligence" and "causation" on the part of the person "using" or "behind" the AI.

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?

Please see our responses to above Question 5.

7. What burden of proof will have to be satisfied for the victim of the damage to obtain compensation?

Please see our responses to Question 5.

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

At this stage, we have not seen any news about any insurance product specifically covering AI liability or liability stemming from the use of AI. However, the views of many experts and scholars indicate that the insurers should strive to design suitable AI liability insurance products in collaboration with car manufacturers and software companies (in the context of insurance for liability caused by self-driving cars) as well as the hospitals, medical doctors and software companies (in the context of insurance for liability caused by medical AI). There are also articles by legal scholars which analyze the possible mechanisms for covering and allocating the risks and liabilities caused by AI, such as liability insurance or special compensation funds.

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

In judicial practice, an artificial intelligence device cannot be named as an inventor of a patent. Judgments from the Taiwan Intellectual Property and Commercial Court hold that a patent invention is the creative output of the human spirit, and cannot be created by an artificial

intelligence device; from the perspective of Taiwan law, only natural or legal persons can enjoy such rights.

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?

Determining the owner of the intellectual property in an AI-created work is expected to be a legal issue that will be widely discussed as the use of AI becomes more widespread. According to the views of many experts and scholars, currently AI learns through computer software designed by humans, which is called "deep learning". In addition to responding to human query inputs, AI is able to use its limited intrinsic perception and logic to help its users make decisions. In other words, as AI already has the ability of deep learning, it is not merely a tool for humans. However, there would be issues as to whether AI has the ability to create an "original expression" under copyright law. In this regard, we believe that as of now, as AI is still not a "person" from a legal perspective, work created by AI cannot be copyrighted — such view is also generally supported by a letter of interpretation issued by Taiwan's Intellectual Property Office (IPO) dated April 20, 2018 (Ref. No.: 1070420).

In general, our preliminary view is that such issues might not be resolved under the current IP regime in Taiwan; it is a real challenge faced by, and needs to be addressed by, the government, legislators, representatives of the court system, and other legal practitioners in the future along with the development of AI.

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

Two trending issues with AI tools, such as ChatGPT:

1. Confidentiality: As ChatGPT collected data from the users, it is generally suggested that confidential or sensitive information (e.g., trade secret) should be removed or "de-identified" before using ChatGPT.
2. Correctness: It is still the general view that content (especially facts) provided by ChatGPT might not necessarily be factually accurate, and the information generated by ChatGPT would need to be verified independently in order not to make mistakes in the workplace due to the use of inaccurate information generated by ChatGPT.

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

In Taiwan, personal data is protected by Taiwan's Personal Data Protection Act ("PDPA"). The collection, processing and use of any personal data are generally subject to notice and consent requirements under the PDPA. Pursuant to the PDPA, personal data is defined broadly as the name, date of birth, ID card number, passport number, characteristics, fingerprints, marital status, family information, education, occupation, medical record, medical treatment and health examination information, genetic information, information about sex life, criminal record, contact information, financial conditions, social activities and other information that may directly or indirectly identify an individual.

Under the PDPA, unless otherwise specified by law, a company is generally required to give notice to (notice requirement) and obtain consent from (consent requirement) an individual before collecting, processing or using any of said individual's personal data, subject to certain exemptions. To satisfy the notice requirement, certain matters must be communicated to the individual, such as the purposes for which his or her data is collected, the type of the personal data and the term, area and persons authorised to use the data, among other things.

In addition, "sensitive personal data" (i.e., personal data pertaining to a natural person's medical records, healthcare, genetics, sex life, physical examination, and criminal records) would be subject to stricter regulations under the PDPA. For example, the consent must be made in writing, and the following must be complied with: (i) the collection, processing or use must not exceed the necessary scope of the specific purpose(s); (ii) the collection, processing or use based solely on the consent of the data subject is not otherwise prohibited by law; and (iii) such consent is not given by the data subject out of his/her free will.

AI technology has not changed said requirements. If a company wishes to collect, process and use any individual's personal data using AI technology or exploring the data with AI technology, it will be subject to the obligations under the PDPA as advised above.

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

There are no laws and regulations specifically promulgated or amended for regulating data scraping in

relation to IP, privacy and competition in Taiwan. One needs to look into the current IP laws, the Personal Data Protection Act ("PDPA"), and the Fair Trade Act ("FTA") to examine any legal issue that may arise .

In the field of IP, for example, if data scraping would involve the "reproduction" of copyrighted work of another, then it might constitute copyright infringement.

Regarding privacy, it is less likely that any data scraping activities would constitute violation of the PDPA if such activities only capture data generally available on the Internet.

In terms of competition law, Article 25 of the FTA prohibits enterprises from having any deceptive or obviously unfair conduct that can affect trading order. There was a case where an entity in the real estate industry scrapped data from a competitor's website/App and made such scrapped data available at such entity's own App. This act was found to have violated Article 25 of the FTA by the competent authority and the Taiwan Intellectual Property and Commercial Court.

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

From a Taiwan legal viewpoint, the prohibition of data scraping in the terms of use of a website may be enforceable if there is evidence that may prove that the visitor has been clearly inform of the terms of use (including such prohibition) and given consent to such terms of use (e.g, clicking the bottom "I agree" in order to continue to browse the website).

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

No.

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

While the privacy authorities in Taiwan did not discuss any cases specifically on the use of or developments in AI, it is noteworthy that in August of 2022, Taiwan's Constitutional Court rendered its judgment on the issue regarding research database of the National Health Insurance (the "NHI"), holding that because the PDPA and

the National Health Insurance Act (the "NHI Act") are inadequate in terms of data protection and privacy, the relevant laws should be amended or new laws should be specifically promulgated within three years of the date of the judgment to address the following issues: (1) the establishment of an independent supervisory mechanism for the protection of personal data; (2) the requirements and controls governing the use of the NHI data by the competent authority for the purpose of establishing databases, as well as the release of the personal data; and (3) the rules relating to the cessation (opt-out) of the use of the NHI data as requested by the data subject.

There have been ongoing discussions as to how to make good use of the NHI data. Industry players are therefore suggested to closely monitor the regulatory developments following the abovementioned judgment of the Constitutional Court, as well as any possible impact on the future use of the NHI data.

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

There exists no court decision that specifically addresses issues arising out of AI, except for the judgments from the Taiwan Intellectual Property and Commercial Court as discussed in our responses to Question 9 above (i.e., a patent invention is the creative output of the human spirit, and cannot be created by an artificial intelligence device; from the perspective of Taiwan law, only natural or legal persons can enjoy such rights).

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

The Ministry of Digital Affairs ("MODA") was formally established under the Executive Yuan (the Cabinet) for matters in relation to facilitating Taiwan's digital development of its telecommunications, information, cyber security, internet and communications industries, coordinating national digital policies, supervising national cyber security policies, managing communications and digital resources and assisting digital transformation. There are two subordinate agencies under the MODA — the Administration of Digital Industries and the Administration of Cyber Security. According to the Organization Act of the Administration for Digital Industries, Ministry of Digital Affairs, the Administration of Digital Industries is in charge of providing guidance and incentives for interdisciplinary digital innovation of AI, big data, platform economy, or other digital economy related industries.

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

In Taiwan, the use of AI has been more and more widespread, and the use cases can be found in industries such as transportation, healthcare, financial services, retail, media, etc. For example:

In transportation, the sandbox law for autonomous and self-driving vehicles, the Unmanned Vehicle Technology Innovation and Experiment Act (the Unmanned Vehicle Sandbox Act), provides a friendlier environment to test the applications of AI and the Internet of Things (IOT) in transportation. As of 2 July 2024, almost 20 innovative experimentations have been approved to enter the sandbox, and the commercial launch of them is generally expected as long as the results of the experiments are positive.

As to financial services, robo-adviser services (i.e., online securities investment consulting services using automation tools and algorithms) evolve with the promulgation and the subsequent amendments to the "Operating Rules for Securities Investment Consulting Enterprises Using Automated Tools to Provide Consulting Service".

In healthcare, major medical research institutions in Taiwan have been developing AI algorithms to be used for cardiovascular risk assessment, diagnosing cancer lesions at an early stage, accelerating the image recognition, among other things.

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

It is not surprising if any individual Taiwan lawyers or in-house counsels use tools such as ChatGPT for their work. According to our understanding, there are law firms that are discussing whether to set internal policies governing lawyers'/employees' use of ChatGPT in the office, and the rules or restrictions on the types of work products that may involve the assistance of ChatGPT, as well as relevant restrictions to protect client confidentiality.

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

The following are certain challenges raised by AI that have been discussed by lawyers in Taiwan: (1) types of

work at risk of being replaced by AI (i.e., replacement of legal-related human resources); (2) clients' unwillingness to pay for certain services that can be invoiced traditionally; (3) less opportunities for junior lawyers to get trained as their predecessors before the AI era; (4) the need to spend more time and energy to acquire the skills and knowledge needed for using AI; and (5) potential risk of being surpassed by competitors who are better at utilizing AI technologies.

Lawyers in Taiwan also have discussed the following potential opportunities that may arise due to the development of AI in private practice: (1) lawyers can be released from the more trivial tasks to higher-value work; (2) increase efficiency in completing the tasks; (3) provide services with more objective foundations and analysis to customers; (4) automate tasks; (5) potential feasibility to move from human-rendered services to services without human intervention (e.g., software, AI as legal services developed by the firm, etc.).

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

As artificial intelligence continues to evolve, there has been increasing debate in Taiwan about the need for specific AI legislation. Since 2019, legislators have proposed draft bills such as the "Basic Law for the Development of Artificial Intelligence" and the "Act for the Development and Management of Artificial Intelligence." Private organizations have also put forth their own proposals. Additionally, the Executive Yuan (cabinet) is preparing to introduce its version of the Basic Law for Artificial Intelligence, which is anticipated to be announced by the end of 2024. The progression of this legislative process will be closely watched.

Additionally, it is important to note that in August 2023, the Executive Yuan (Taiwan's cabinet) released guidelines for the use of generative AI by the Executive Yuan and its subordinate government authorities and agencies.

Regarding the financial sector, Taiwan's Financial Supervisory Commission (FSC) introduced the "Core Principles and Related Promotion Policies for the Use of Artificial Intelligence (AI) by the Financial Industry" in October 2023. Subsequently, on June 20, 2024, the FSC issued the "Guidelines for the Use of Artificial Intelligence (AI) in the Financial Industry" ("Financial Industry AI Guidelines"). These guidelines are intended to serve as a reference for financial institutions in the implementation, application, and oversight of AI technologies. The FSC

has clarified that the Financial Industry AI Guidelines are intended as administrative guidance. Financial industry associations that have developed their own self-regulatory frameworks for AI usage can integrate the key points and measures from these Guidelines into their own regulations. In the absence of such self-regulations, financial institutions are advised to adhere to these Guidelines for the implementation, utilization, and management of AI systems.

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