

Hong Kong (Special Administrative Region)

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1. What is the understanding or definition of AI in your jurisdiction?

The Hong Kong Special Administrative Region ('Hong Kong') enjoys a special one-country, two-systems arrangement with the People's Republic of China. Hong Kong is a common law jurisdiction, where the law is formed not only by statute but also case law. The Rule of Law serves as a keystone to this legal system. There is a robust and independent judiciary, and cases from other common law jurisdictions are considered persuasive, though not binding. Former foreign judges of the judiciary in common law jurisdictions outside of Hong Kong are also invited to sit at the Court of Final Appeal.

There is no statutory definition of artificial intelligence (AI) under Hong Kong laws. Despite not having an official statutory definition or specific legislation in relation to AI, there is a generally accepted understanding that AI means emerging technological programs/robots that use, inter alia, algorithms, Big Data learning and machine learning to perform tasks traditionally performed by humans. Types of AI tools include natural language processing, programmed data collection and data analytics, and chatbots.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Hong Kong legal practice, it is common to use external service providers, such as companies that have adopted natural language processing and machine learning programs, to conduct translation work, and or companies that provide electronic discovery and due diligence services, to complete these tasks more efficiently.

Many law firms also have contract template generating programs and document management systems that allow for the categorisation of documents, which assist with data segregation requirements under certain regulations. Some law firms utilise chatbots to facilitate initial instruction and provide preliminary answers as to black letter law. The Law Society of Hong Kong has also been exploring the use of chatbots for its enquiry handling operations.¹¹¹

As a result of the general adjournment period of the courts due to Covid-19, in the Guidance Note for Remote Hearings for Civil Business in the High Court published

¹¹¹ See <http://hk-lawyer.org/content/chatbots> accessed 6 July 2020.

by the Hong Kong Judiciary on 2 April 2020,¹¹² and on 8 June 2020,¹¹³ the court also endorsed alternative ways, other than physical court appearance, to continue court proceedings. The guidelines apply on a ‘technology neutral basis’ to the possible use of various types of electronic means in phases, and it may be possible for further and more enhanced technological tools, such as AI, to be used in the future.

An online dispute resolution platform, electronic Business Related Arbitration & Mediation system (eBRAM),¹¹⁴ which makes use of AI tools, has been established and is due to be open for use by lawyers or parties in person for certain cases.¹¹⁵

The Hong Kong International Arbitration Centre, a leading dispute resolution organisation situated in Hong Kong, which enables arbitration, mediation, adjudication and domain name dispute resolution, also offers users integrated virtual hearing services.¹¹⁶

3. If yes, are these AI tools different regarding

- **independent law firms;**
 - **international law firms; and**
 - **in-house counsel;**
- and what are these differences?**

Rolling out AI tools is quite costly. Not only are there the expenses of engaging subcontractors to prepare the programs or preparing them in-house, time and resources also have to be invested in monitoring, maintaining and troubleshooting the systems. Training personnel is also necessary to ensure the AI tools are used properly.

That is why it is more common for international law firms in Hong Kong to have more advanced or a greater variety of AI tools (eg chatbot frequently asked questions (FAQs), contract template generating tools, e-discovery, e-due diligence and document management platforms) compared with independent/local law firms.

In-house counsel may have even fewer resources than law firms as they serve more of a back-office function and may have less budget to spend. However, they have the option of engaging external counsel to assist with their work, and can make use of independent/local law firms and international law firms depending on the task, and thereby can benefit from the AI tools that those firms use.

112 See www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase1_20200402.pdf accessed 6 July 2020.

113 See https://www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase2_20200608.pdf accessed 16 September 2020.

114 See <http://ebram.org/> accessed 6 July 2020.

115 See question 9 for more details.

116 See www.hkiac.org/content/virtual-hearings accessed 6 July 2020.

4. What is the current or planned regulatory approach on AI in general?

There is no current Hong Kong legislation specifically focusing on AI. Many of the Ordinances in existence are also technology neutral (eg, the Personal Data (Privacy) Ordinance (Cap 486) (the 'PDPO')).

However, there have been several guidelines issued by regulators whose organisations are applicable to AI. For example, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Privacy Commissioner of the Personal Data (PCPD) have all issued guidelines that relate to AI or the internet of things. Regulators can consider whether the circumstances relating to a breach of guidelines would evidence a breach of the relevant ordinances.

The PCPD has been advocating the adoption of data ethics to balance out the data economy and technological developments with the need to protect personal data. The Ethical Accountability Framework for Hong Kong, China, which is a report prepared for the Office of the PCPD, also discusses AI tools and how AI is changing the scene for data processing activities. The PCPD noted that the current regulatory regime may not adequately address the data protection risks that arise from advanced data processing activities, which is why it considered the concept of data ethics as the way forward.

The General Data Protection Regulation (GDPR) has extraterritorial jurisdiction, and is applicable for Hong Kong businesses under certain circumstances. Where it applies, the provisions relating to, inter alia, 'automated processing' and so on apply in Hong Kong and should be complied with if Hong Kong companies or firms utilise such technologies and/or AI tools.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

The PCPD co-sponsored the Declaration on Ethics and Data Protection, which was passed in October 2018 at the 40th International Conference on Data Protection and Privacy Commissioners held in Brussels. The declaration provided for six guiding principles to preserve human rights in the development of AI. The principles are as follows:

1. fairness;
2. continued attention and vigilance;
3. transparency and intelligibility;
4. ethics by design;
5. empowerment of every individual; and
6. reducing and mitigating biases or discrimination.¹¹⁷

¹¹⁷ See www.pcpd.org.hk/english/news_events/media_statements/files/Paper_GroovingPrivacyEvolutionwithDataEthics_Feb2019.pdf accessed 6 July 2020.

The PCPD was also involved in preparing 'Data Stewardship Accountability, Data Impact Assessments and Oversight Models – Detailed Support for an Ethical Accountability Framework' guidance. Organisations can consider the guidance on how to act ethically and apply equitable principles 'particularly in advanced data processing activities, such as AI and machine learning, and the application of knowledge to enable data-driver innovation to reach its full potential'.¹¹⁸ Organisations are to understand and evaluate how their activities positively or negatively impact the parties, act as data stewards rather than data custodians, and consider whether the outcomes of their AI and machine learning processing activities are legal, fair and just. Although this guidance is not a regulation or requiring mandatory compliance, the document serves as a framework for law firms and other businesses to consider how their data is collected and used in light of the technology they may utilise. The approach taken by the PCPD here is to promote awareness of the concept of data stewardship and accountability where AI and machine learning is used, and to promote organisational policies and change of culture and conduct to achieve this.

6. Is free data access an issue in relation with AI?

For AI tools to run smoothly, it is important to have a large and/or accurate set of data inputted so that machine learning can be conducted properly. Data bias or inaccurate data will greatly affect the function of the AI tools.

There is a large amount of data that relates to personal information. Under the PDPO, data is to be collected (to the extent necessary and not excessively) and used only for the purposes for which it is collected (pursuant to the consent provided). If the purpose for using the personal data in a data analytics or machine learning scenario was not communicated to the data subject (ie, the person who the personal information pertains to), that may amount to a breach of the law.

Therefore, a balance has to be struck between the use and development of AI tools using these types of data, and the protection of personal data and privacy. Please also see the data stewardship and data ethics principles that were discussed in questions 4 and 5.

Furthermore, Hong Kong law firms and companies need to comply with the GDPR where they, inter alia, collect, hold or process personal data of European Union residents. Provisions relating to the personal information being collected (using various methods, including AI tools such as 'automated decision-making') and its use will also be subject to similar considerations outlined above in relation to the PDPO.

¹¹⁸ See www.pcpd.org.hk/misc/files/Ethical_Accountability_Framework_Detailed_Support.pdf accessed 6 July 2020.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To the author's best knowledge, there are no published court cases relating to the provision of legal services using AI. However, Hong Kong also looks to other common law cases as reference, and this serves as persuasive, but not binding, authority.

In the Court of First Instance defamation case *Dr Yeung Sau Shing Albert v Google Inc (No 2) (2014)* HKEC 1782, a question arose as to whether Google had in fact published the alleged defamatory content or if it was a passive facilitator of information by way of its artificial intelligence based auto-complete and search engine systems. Though the Court considered that it is arguable that through the automated algorithmic processes (which collects and collates information from search requests and web content to present them to users as auto-complete and predictive keyword searches), Google would not be a mere passive facilitator and may be considered a publisher, the Court left the discussion open for the Court of Appeal on that point due to the differing foreign case law and the significance and inter-lay of this technology and defamation law.

There have been cases where the Courts have sanctioned the use of alternative technological means to further court cases.

A recent Hong Kong decision in *Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Mei Ah (HK) Co Ltd* [2020] HKCFI 347, *Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Silver Kent Technology Ltd* [2020] HKCFI 347 and *Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Silver Kent Technology Ltd* [2020] HKCFI 347 (the 'Cyberworks case') has explored the use of technology to conduct court hearings. Traditionally, attendance at Hong Kong courts required the physical attendance of the parties and/or their lawyers. With the general court closure (except those of an urgent and essential nature, and certain criminal matters) commencing 29 January 2020 and continuing at the time of the hearing of that case caused by Covid-19 (the 'General Adjournment Period' or GAP), many proceedings had to be adjourned. The *Cyberworks* case, which was ruled on 21 February 2020 (decision published on 28 February 2020), resulted in an unprecedented confirmation of the legality of telephone hearings relating to High Court proceedings under the Hong Kong legal framework. This ruling demonstrates that the court will consider the enhanced use of technology tools to move forward to enable justice to be done.

Subsequent to the *Cyberworks* case, on 2 April 2020, the Hong Kong Judiciary (the 'Judiciary') also published a Guidance Note for Remote Hearings for Civil Business in the High Court to provide an alternative way to continue court proceedings rather than physically appearing in court. This is the first of its kind. The Judiciary noted that, at the current time, trials are not suitable for remote hearings. The guidelines apply on a 'technology neutral basis' to the possible use of various types of electronic means in phases.

The first phase to remote hearings by videoconferencing facilities (VCF) in civil cases in the Court of Appeal and the Court of First Instance of the High Court was during the GAP. As at 8 April 2020, two cases were heard, with one taking place at the Court of Appeal and the other at the Court of First Instance. On 8 June 2020, the Hong Kong Judiciary published a Guidance Note for remote hearings for civil business in the Civil Courts.¹¹⁹ This note is to be read in conjunction with the Guidance Notice issued on 2 April 2020, and sets out the phase 2 developments for alternative modes of court hearing disposal. It provides for expanded videoconferencing facilities and telephone remote hearing practice to be applicable to the Court of Appeal of the High Court, the Court of First Instance of the High Court, the Competition Tribunal, the District Court and the Family Court.

More VCF hearings are expected in the near future. As at the time of writing this piece, the judiciary has not yet published details on the additional phases.

In the case of Hong Kong Court of First Instance of *Hwang Joon Sang And Future Cell Plus Co, Ltd v Golden Electronics Inc, Worldbest Global Supplier Inc, Harmony Electronics Inc, Quantum Electronics Inc, Jin Miao International Limited, Vivien Chung Ying-Yin, Magic Electronics Inc, BC Century Technology Limited, Chen Nien Fang, Chen Yi Kuei, China Dynamic Limited, Chiu Wei Fen, Chou Lin Chiao, Glory Dynamic Limited, Hsu Wei Lun, Hu Hong Bin, Imperial Dragon Limited, Lin Chih Cheng, Liu Mei Ting, Magic Crystal Limited, Niu Hsiu Chen, Su Chao Ming, Su Kuang Hong, Su Pei I, Tsai Pao Tsai, Wang Chao Cheng, Wang Hui Min, and Chou Pei Fen* (2020) HKCFI 1084, the Hong Kong Courts allowed for a novel mode of ordinary service of court documents. In that case, the Court held that any document, not being an originating process or one requiring personal service, may be served by providing access to an online data room with authorisation by the court. This decision can be made by courts pursuant to Order 65(1)(d) of the Rules of the High Court, where the court can, on a case by case basis, consider alternative methods of service in various situations.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Hong Kong lawyers are to abide by the Hong Kong Solicitors' Guide to Professional Conduct. Although solicitors may use information communication technology available at the time of the use, Chapter 1.07 of the Hong Kong Solicitors' Guide sets out that, even with such use, solicitors are still responsible and bound by the duties relating to professional conduct.¹²⁰ In other words, lawyers can use AI tools where they see fit (eg, document management tools, electronic discovery and

¹¹⁹ See https://www.judiciary.hk/doc/en/court_services_facilities/guidance_note_for_remote_hearings_phase2_20200608.pdf accessed 16 September 2020.

¹²⁰ *The Hong Kong Solicitors' Guide to Professional Conduct* (The Law Society of Hong Kong, 2020) (vol 1).

template generating tools), but they must ensure that they comply with the Hong Kong Solicitors' Guide to Professional Conduct, practice directions and applicable laws governing their legal practice.

9. What is the role of the national bar organisations or other official professional institutions?

For several years now, the Hong Kong Government has been promoting 'LawTech', which is the concept of law and technology. Its aim is to make use of technology in providing legal services to the public.

On 8 April 2020, as part of the measures to ease the economic and commercial challenges posed by Covid-19, the Hong Kong Government announced the establishment of the LawTech Fund and the Covid-19 Online Dispute Resolution (ODR) Scheme.

The LawTech Fund aims to assist small and medium-sized law firms (where there are five or fewer solicitors) and some small barristers' chambers in procuring and upgrading information technology systems (eg, hardware, servers, computer equipment, software, databases, networks, cloud-based services and other information technological tools), and funding their staff for LawTech training courses. A joint committee established by the Law Society of Hong Kong and the Hong Kong Bar Association will process and assess the applications for the fund, as well as arrange the disbursement of the funding. Eligible firms and chambers can receive a reimbursement of up to HK\$50,000. The fund is envisaged to benefit over 60 per cent of law firms and over 50 per cent of barristers' chambers in Hong Kong (ie, a total of around 700 firms/chambers).¹²¹

The ORD Scheme was established in anticipation of the disputes arising from or relating to Covid-19.¹²² It will use the dispute resolution platform eBRAM,¹²³ which makes use of AI tools. eBRAM allows for various dispute resolution services, such as negotiation, mediation and arbitration, to be conducted online. Lawyers can participate in the process along with clients who cannot physically meet face-to-face for those proceedings/sessions, and allows for continuity of lawyer dispute resolution services despite the effects of Covid-19 and/or travel-related delays, and enables a more speedy and cost-effective way to resolve disputes.

The Law Society of Hong Kong also arranges and hosts many conferences open to both local and international participants, and for the past several years, such conferences have contained at least one session on AI and legal practice. One of the more prominent conferences was the ABC to Building a Smart Belt and Road: Law and Artificial Intelligence, Blockchain and Cloud, which took place on Friday

121 See www.info.gov.hk/gia/general/202004/27/P2020042700514.htm accessed 6 July 2020.

122 See www.news.gov.hk/eng/2020/04/20200413/20200413_110404_476.html accessed 6 July 2020.

123 See www.doj.gov.hk/eng/public/blog/20190807_blog1.html accessed 6 July 2020.

28 September 2018, with sessions focusing on AI tools.¹²⁴ Such conferences explore the various opportunities, risks and liabilities that are involved in AI and legal practice.

Risk management courses relating to, inter alia, cybersecurity, data privacy and the cloud, are also provided by the Hong Kong Academy of Law, which is a subsidiary entity under the Law Society of Hong Kong. These courses aim to educate practitioners as to the risks and ways to manage those risks where technologies are used in firms, and attendees are awarded continual professional education points. To renew a solicitors' practicing certificate in Hong Kong, generally, 15 points is required on an annual basis.

Hackathons have also been organised by the Law Society of Hong on using AI to solve problems and providing better access to justice. The themes for the hackathons that have been conducted so far have been to encourage cross-disciplinary innovation and collaboration in relation to various legal issues that people may encounter on a day-to-day basis.¹²⁵

¹²⁴ See www.hklawsoc-beltandroad.com/en/index accessed 6 July 2020.

¹²⁵ See www.hk-lawyer.org/content/belt-road-justice-challenge-cultivating-innovation-hackathon accessed 6 July 2020.