

# COMPANY LAWYER BRIEFING

## Artificial intelligence in a digital age in China

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☞ keywords to be inserted by the indexer

The rapid development and wide application of artificial intelligence (AI) and the fast digitalisation in various aspects of social and economic life in China impose great challenges to privacy, personal information protection, and the data security of individuals and companies. The legislators and judiciary are facing dramatic surge in data and AI related legal litigation daily.

In April 2021, China's General Administration of Market Supervision fined China's e-commerce giant Alibaba Group, £2.09 billion for violating the Antitrust Law of China. It is the highest fine filed under China's Antitrust Law. In July 2021, a district court in Zhejiang Province ruled in favour of the claimant, Ms Hu, in *Ms Hu v Ctrip Business* for Ctrip's biased algorithm. Ctrip is a Chinese travel booking app equivalent to Booking.com and Airbnb. Since July 2021, Didi plc., the Chinese equivalent to Uber, is being investigated by the Cyberspace Administration of China. Didi Travel App was taken off the app stores because of its serious violation of law in collection and use of app user's personal data. The growing number of tech company related high profile cases has attracted wide media attention. It triggered China's rapid emergence of laws and regulations on data security, personal information protection, and AI in recent years.

In China data security and personal information protection rules are covered in its Criminal Law, Civil Code and a few regulations dedicated to data security and protection at the national level. Article 253 of the Criminal Law 2020 criminalises the sale or provision of citizens' personal information to others. A violation of this article could result in fixed-term imprisonment of up to three years and a fine. Part IV of the China's new Civil Code which came into force in January 2021 is dedicated to the protection of information and privacy of individuals. Article 1032 and 1034 of the Civil Code protect individuals' right to privacy and personal information. Article 1035 requires proper procedures to be followed and permission to be obtained from the individuals when processing individuals' personal information. The Cybersecurity Law of China was adopted in June 2017 imposing liabilities on cyber network operators to protect the information security of network users. It establishes a 'lawful, just and necessary' principle for the network operators during network user information collection and use. It imposes an obligation on cyber network operators to maintain the confidentiality of network users' information. The Data Security Law comes into effect in September 2021. The Data Security Law and the Cybersecurity Law form the basis for cybersecurity and data security in China. The former applies to any organisations and individuals who collect and process data. The latter mainly applies to cyber network operators. Conferring comprehensive data protection to individuals, the Personal Information Protection Law of China was passed by the National People's Congress in August 2021. It is the first law in China specifically focusing on the protection of personal information. The Personal Information Protection Law establishes the rules for the processing of personal information, the cross-border movement of personal information, rights of individuals in the processing of their personal information, obligations of personal information handlers, and departments that should be responsible for the protection of personal information. It lays down an 'informed-consent' principle for personal information processing. There have also been some regulations produced to confer data protection to special data subjects or data protection in a particular sector. Good examples of those will be the Children's Cyber Personal Information Protection Act published in October 2019 and the Rules for Vehicle Data Security Management which will take effect from October 2021.

In terms of AI regulation, a three-step strategy was proposed in the Development Plan for the Next Generation AI issued by the Chinese State Council in 2017. It proposed the preliminary establishment of AI ethics standards, AI government policy, and a regulation-making mechanism in certain areas by 2020. By 2025, a system of AI laws, AI ethical standards, and

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an AI policy-making mechanism should be formed to ensure the governments' capability to assess the safety and effectively control of an AI application. By 2030, a sophisticated system of AI regulations, AI ethical standards and AI government policy-making mechanism will be built. This Development Plan sets up the legislative goal for China's AI regulation. It also lays out the time frame for China's AI law-making.

At a regional level, there has been government-led AI promotion policies being produced in the Pearl River Delta and Yangtze River Delta. In the Pearl River Delta, the City of Shen Zhen is consulting on the draft of China's first regional AI Promotion Code (thereafter the Draft Code). The Draft Code encourages the development of the AI industry and the use of AI in public services, social governance, economic development in the Shen Zhen Special Economic Zone.

The Draft Code empowers the Shen Zhen government to produce a system of standards for public data and industry data use in relation to AI applications in order to standardise data usage rules and facilitate data interoperability. To promote the cross-border circulation of data, it is proposed to trial free data circulation in AI applications in Guangdong-Hong Kong-Macao Greater Bay Area (the GBA) as a regulatory sandbox. This seems to be a scheme which is similar to the EU Digital Single Market scheme.

According to the Draft Code, an AI Ethical Committee will be established to research and produce an ethical code for AI, and to detect and decide on cases that may

have important adverse social implication such as data monopoly, algorithm discrimination, AI abuse, deep fake, data poisoning, ethical code breach, unfair AI operation, etc. The production of AI industry policy making will be government-led with in-depth involvement of AI companies and other stakeholders. The Shen Zhen government will supervise AI applications according to their risk level, application scenario, as well as level and scope of impact. This is also similar to the recent risk-based regulation of AI proposed by EU policy makers.

Similar AI promotion schemes are being initiated in other regions in China such as Shanghai. The City of Shanghai published a policy paper in 2020 to promote the digital transformation of the city. In July 2021, the Shanghai Economic and Information Technology Commission produced a guidance on the promotion of the establishment of standardised system of next generation AI in the city.

It is yet to be observed to what extent those new laws, regulations, and policies on data use and AI can assist in filling in the regulatory gap and providing legal remedies for individuals in data and AI related legal litigation. It can be envisaged, however, that further new regulations and amendments on existing regulations will be constantly required in China because of the the fast evolvement of the algorithm and business model in the digital age.