ADVANT Beiten

CHINA: OVERVIEW OF REGULATORY FRAMEWORK FOR ARTIFICIAL INTELLIGENCE

Welcome to our newest China Q&A edition on the local regulatory framework governing artificial intelligence (**AI**). China progressively refines its AI regulatory framework and as these regulations evolve, businesses operating in China need to stay informed about new compliance obligations. China's "New Generation Artificial Intelligence Development Plan" (2017) outlines the country's ambition to become a world leader in AI by 2030. AI applications are widespread, ranging from autonomous vehicles and facial recognition to robotics and natural language processing. As AI technology advances, the Chinese government has also introduced a series of legal and regulatory measures to guide its development and mitigate associated risks.

Hence, what we set out in this publication are some of the most common questions we face in regard to AI regulatory matters. Thus, please read this publication to get a first understanding on the current AI legislation in China and for any specific question, please contact us anytime!

Q 1. What are the key laws and regulations governing AI in China and how does it compare to the European legal framework?

Answer: Several laws and administrative regulations form the backbone of China's AI legal framework:

- **Civil Code** (2021): Chapter 6 "Privacy and Personal Information Protection" in Part 4 "Personal Rights" establishes the foundation for the development of artificial intelligence, clarifies the protection principles of personal information and privacy and the rights and obligations of relevant subjects, and provides a basic legal basis for the protection of personal rights and interests involved in artificial intelligence in data collection and use.

- **Cybersecurity Law** (2017): It stipulates the security obligations of network operators, including ensuring the operational security and information security of the network. It requires AI-related network products and services to comply with cybersecurity standards and requirements, prevent cyber attacks, data leaks and other security issues, and ensure the cybersecurity of AI systems.

- **Personal Information Protection Law** (**PIPL**, 2021): It strictly regulates the processing of personal information and protects the rights of individuals to know and decide on their personal information. In the AI-application, a large amount of personal information is collected and processed. The law requires that the principles of legality, legitimacy and necessity must be followed to ensure the security and privacy of personal information.

- **Data Security Law** (2021): It emphasizes the protection and security management of data, clarifies the responsibilities and obligations of data processors and regulates the collection, storage, use, processing, transmission, provision and disclosure of data. The development of AI relies on a large amount of data. This law provides a legal framework for the security of AI data to prevent data from being illegally obtained, tampered with, or abused.

- **Provisions on the Management of Deep Synthesis of Internet Information Services** (2023): It regulates the application of deep synthesis technology, requiring service providers to prominently mark the content generated using their technology, and not to use deep synthesis technology to produce, publish, or disseminate false information, etc., prevent the use of artificial intelligence technology to generate and spread false content and maintain the authenticity and credibility of cyberspace.

- **Interim Measures for the Administration of Generative Artificial Intelligence Services** (2023): This is currently the main regulation in China to promote the healthy development and standardized application of generative AI. It stipulates the basic requirements for generative AI services, including technology research and development, data use, content management, etc., and requires service providers to protect the legitimate rights and interests of users, prevent the generation of harmful, false and other negative information, and promote the reasonable application and healthy development of generative AI.

- **Ethical Guidelines for the New Generation of AI** (2021): These guidelines are issued by the National New Generation Artificial Intelligence Governance Professional Committee aiming to integrate ethics into the entire life cycle of artificial intelligence and puts forward 6 basic ethical requirements and 18 specific ethical requirements for specific activities.

- **Opinions of the Supreme People's Court on Regulating and Strengthening the Judicial Application of Artificial Intelligence** (2022): It aims to promote the deep integration of AI with judicial work, clarify the guiding ideology, basic principles, and application scope of the judicial application of AI, regulate the application of judicial artificial intelligence technology, ensure judicial fairness and judicial security, and improve judicial efficiency and judicial management level.

While China's AI legal framework shares similarities with global trends, such as the European Union's AI Act, it also has some key focus areas that differentiate its focus:

- China places significant focus on AI's implications for national security, and in a much broader and ambiguous way than some European regulations.

- China has also more far-reaching requirements for data localization and cross-border data transfers.

- The Chinese government maintains active involvement in AI ethics and development, reflecting its top-down regulatory philosophy.

Q 2. How do Chinese regulators address ethical concerns in AI?

Answer: China's approach to AI ethics focuses on balancing innovation with responsibility. Ethical concerns are addressed through:

- **Transparent Development:** Developers must disclose methodologies and ensure explainability in AI decisions.
- **Non-Discrimination:** Algorithms should not discriminate based on race, gender, or other protected characteristics.
- **Human Oversight:** AI systems are required to have mechanisms for human intervention to prevent harm.
- **Accountability:** Operators and developers of AI systems are held accountable for potential risks or misuse.
- **Governance System and Institutional Guarantees:** China aims to improve the government's science and technology ethics management system, formulate and improve science and technology ethics norms and standards, and improve the level of legalization of science and technology ethics governance.

These guidelines align with international ethical standards but also reflect China's emphasis on societal stability and national security.

Q 3. What opportunities exist for foreign companies to invest in China's AI industry?

Answer: China's AI industry offers significant opportunities for foreign investors and potential key areas for investment include:

- **AI Research and Development (R&D):** China encourages collaboration in AI innovation, providing opportunities for foreign companies to establish joint research labs and participate in cutting-edge AI projects.

- **Technology Transfer:** With growing demand for advanced AI technologies, foreign companies can license proprietary software, algorithms, or tools to Chinese partners.

- **AI Applications:** High-growth sectors such as autonomous vehicles, smart manufacturing, healthcare, and fintech present significant market potential for deploying AI solutions.

- **Talent Development:** Companies can invest in AI education and training programs, leveraging China's massive pool of STEM graduates and tech-savvy workforce.

- **Venture Capital and Startups:** China's dynamic AI startup ecosystem offers opportunities for foreign investors to fund and collaborate with local innovators.

- **Policy and Infrastructure:** Government initiatives like the "New Generation AI Development Plan" and AI-focused industrial parks provide a favorable environment for investment.

Q 4. How does the 2024 Negative List regulate foreign investment in AI industry?

Answer: The Special Administrative Measures for Foreign Investment Access (Negative List) (2024 Edition) (**2024 Negative List**) is a key policy document that governs which industries are open to foreign investment in China and under what conditions. It plays a crucial role in defining the scope of foreign participation in the Chinese economy. The Negative List is divided into three broad categories: Prohibited, Restricted, and Permitted (not listed). The list is updated periodically by the National Development and Reform Commission (**NDRC**) and the Ministry of Commerce (**MOFCOM**) to reflect economic and policy changes.

Foreign investors must follow the guidelines specified in the list when establishing businesses, joint ventures, or other operations in China. In the prohibited sectors, foreign investment is completely banned. In the restricted sectors, foreign investment is allowed but under certain conditions or limitations (e.g. by limiting the proportion of foreign ownership or by subjecting foreign investments to specific government approvals or adherence to specific standards). All other industry sectors (i.e. those not listed under the prohibited or restricted sectors) are considered permitted. Hence, any industry sectors not listed in the Negative List is open to foreign investment under the same conditions as domestic investors.

Concerning foreign investment in AI related areas, the 2024 Negative List contains the following criteria:

- **Prohibited Sectors:** Foreign investment is prohibited in fields such as AI applications related to military technologies, critical cybersecurity tools, and sensitive information-processing algorithms.

- **Restricted Sectors:** In areas like AI technology for critical infrastructure, advanced robotics, and big data processing, foreign investments require joint ventures or partnerships with Chinese partners, and additional approval requirements apply.

- **Permitted Areas:** Foreign investors can feely participate in any AI-related projects that does not fall under the prohibited and restricted sectors (e.g. all manufacturing projects are permitted and thus foreign investors can freely invest in AI hardware equipment manufacturing).

This approach aligns with China's strategy to enhance its competitive edge in AI while leveraging global resources to accelerate the industry's growth and maintaining the government's oversight on critical AI technologies tied to national security and data governance.

Q 5. What are the challenges foreign investors face in China's AI sector and what legal precautions should foreign investors take when entering China's AI market?

Answer: Despite its potential, investing in China's AI sector involves challenges:

- **Regulatory Complexity:** Navigating China's dynamic and multilayered legal framework requires expertise and adaptation.

- **Data Localization Requirements:** Laws like the Cybersecurity Law mandate that certain types of data be stored within China, complicating cross-border operations.

- **IP Protection Concerns:** Foreign companies often worry about safeguarding their intellectual property when partnering with local entities.

- **Geopolitical Tensions:** China-foreign relations and export controls on critical technologies may affect foreign investments in sensitive AI areas.

Thus, foreign investors should adopt varied measures to mitigate the risks arising out of these challenges:

- **Conduct Thorough Due Diligence:** Understand local laws, business practices, and industry-specific regulations.

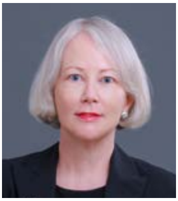
- **Compliance with Data Regulations:** Ensure adherence to laws like PIPL and the Data Security Law by establishing robust data governance practices.

- **Monitor Policy Changes:** AI regulations in China evolve rapidly, requiring constant vigilance to stay compliant.

- **Explore Local Cooperations:** Consider whether collaborations with Chinese companies can help to better navigate the local market and regulatory landscape and if so, implement clear contracts to protect the investors rights and interests.

Summary Recommendations: The outlook for foreign investment in China’s AI sectors remains promising but contingent on careful navigation of regulatory landscapes. China’s commitment to fostering AI innovation and its open stance on foreign investment in non-sensitive areas create opportunities. However, foreign companies must adopt proactive legal and operational strategies to succeed. By understanding the nuances of China‘s AI legal framework and adapting to its requirements, foreign investors can tap into one of the world‘s most dynamic AI markets.

Contacts



Susanne Rademacher
Rechtsanwältin | Partner
ADVANT Beiten
Susanne.Rademacher@advant-beiten.com

Dr Jenna Wang-Metzner
Juristin | Partner
ADVANT Beiten
Jenna.Wang@advant-beiten.com

Lelu Li
Rechtsanwältin | Partner
ADVANT Beiten
Lelu.Li@advant-beiten.com

Kelly Tang
Juristin | LL.B. | LL.M.
ADVANT Beiten
Kelly.Tang@advant-beiten.com

ADVANT Beiten in Beijing
Suite 3130 | 31st Floor
South Office Tower
Beijing Kerry Centre
1 Guang Hua Road
Chao Yang District
100020 Beijing, China
T: +86 10 85298110
www.advant-beiten.com

Our offices

BEIJING
Suite 3130 | 31st floor
South Office Tower
Beijing Kerry Centre
1 Guang Hua Road
Chao Yang District
100020 Beijing, China
beijing@advant-beiten.com
T: +86 10 85298110

BERLIN
Luetzowplatz 10
10785 Berlin
Germany
berlin@advant-beiten.com
T: +49 30 26471-0

BRUSSELS
Avenue Louise 489
1050 Brussels
Belgium
brussels@advant-beiten.com
T: +32 2 6390000

DUSSELDORF
Cecilienallee 7
40474 Dusseldorf
PO Box 30 02 64
40402 Dusseldorf
Germany
dusseldorf@advant-beiten.com
T: +49 211 518989-0

FRANKFURT
Mainzer Landstrasse 36
60325 Frankfurt/Main
Germany
frankfurt@advant-beiten.com
T: +49 69 756095-0

FREIBURG
Heinrich-von-Stephan-Strasse 25
79100 Freiburg im Breisgau
Germany
freiburg@advant-beiten.com
T: +49 761 150984-0

HAMBURG
Neuer Wall 72
20354 Hamburg
Germany
hamburg@advant-beiten.com
T: +49 40 688745-0

MOSCOW
Turchaninov Per. 6/2
119034 Moscow
Russia
moscow@advant-beiten.com
T: +7 495 2329635

MUNICH
Ganghoferstrasse 33
80339 Munich
PO Box 20 03 35
80003 Munich
Germany
munich@advant-beiten.com
T: +49 89 35065-0

Imprint
This publication is issued
by BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33, 80339 Munich, Germany
Registered under HR B 155350 at the Regional Court Munich/
VAT Reg. No.: DE811218811
For more information see:
https://www.advant-beiten.com/en/imprint

EDITOR IN CHARGE:
Susanne Rademacher