

Regulatory and legislation: China's Interim Measures for the Management of Generative Artificial Intelligence Services officially implemented

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Executive summary

Amidst the rapid development of Artificial Intelligence ('AI'), countries around the world have put forward regulations on AI technologies and related products and the People's Republic of China ('China') is no exception. On 13 July 2023, the Cyberspace Administration of China ('CAC'), along with six other Chinese regulators, jointly issued Interim Measures for the Management of Generative Artificial Intelligence Services ('Interim Measures') and announced that the Interim Measures will come into effect

on 15 August 2023. Overall, the Interim Measures reflect feedback from different stakeholders on the previously released Draft Measures for the Management of Generative Artificial Intelligence Services ('Draft Measures') which were released on 11 April 2023, as well as focusing on setting out the rights and responsibilities of providers and users of AI, and demonstrating Chinese legislative support of innovation and development of AI.

1. A strategy balancing encouragement and regulation

Based on the regulatory framework established by the Draft Measures, article 3 of the Interim Measures adopts rules derived from China's Scientific and Technological Progress Law. The Interim Measures seek to encourage platform construction, independent innovation, international exchange, and development of generative AI technology in various fields, whilst making AI subject to reasonable supervision, as stated in the newly added articles 4 and 5. This demonstrates China's forward-looking vision as well as its global ambitions regarding AI. In terms of legal consequences, in order to better balance the technological

development and regulatory needs, article 21 removes the stringent measures that were present in the Draft Measures such as fines and termination of services upon noncompliance or violation. Where there is no effective provision under current Chinese laws and administrative regulations, the rules encourages service providers and users' own self-correction in accordance with provided guidance. If there is a refusal to self-correct or indications of serious violations of the regulations, the competent department will suspend relevant services.

2. Refinement of the scope of application



The Draft Measures required anyone who ‘develops and uses generative AI products to provide services to the public in China’ to comply with the relevant rules. The Interim Measures remove the reference to ‘develops’ and narrow the scope of service regulation from both those directly or indirectly providing services to the domestic public, to only those directly providing services to the domestic public.

In addition, the Interim Measures add a new express exception that they do not apply to institutions that conduct research and development, and use generative AI technology, providing they do not provide generative AI services to the public. Such excluded institutions include industry associations, enterprises, education and research

institutions, public cultural bodies and professional bodies.

Due to the specificity of the aforementioned list, PwC believes that this exclusion may be intended to leave room for future separate legislation applicable to these classes, such that legislation can be tailored to the relevant industry and uphold applicable industry standards. However, according to the general provisions of the scope of application in the Interim Measures, the provision of generative AI services to persons other than the public (regardless of whether the provider belongs to the subject type in the exception) falls outside the scope of the Interim Measures. Therefore, the language and terminology used in this article appears insufficiently precise.

3. Paving the way for a new regulatory framework



The Interim Measures has set up four new systems for the provision of generative AI services, which PwC believes will serve as the key regulatory basis going forward.

- i. **Graded and categorised supervision¹:** Article 16 stipulates that the relevant state authorities shall formulate graded and categorised supervision based on industries and fields. This article applies horizontally by specifying that the providers will be regulated by different departments according to their categories, instead of being generalised as provided for in the European Union’s draft AI Act (‘EU AI Act’). Article 16 also applies vertically by providing for regulation of generative AI based on a classification system. However, the specific classifications are yet to be released by competent authorities. For comparison and reference, the draft EU AI Act takes a risk-based approach to AI, and classifies AI systems into: unacceptable, high, limited and minimal risk systems. The proposed EU regulatory framework varies across each different taxonomy, such as banning it, highly monitoring it, and allowing self-regulation.
- ii. **Service agreements between providers and users:** Article 9 of the Interim Measures stipulates that ‘providers must sign service agreements with users who register for their generative AI services, setting out the rights and obligations of both parties’. This article differs from the Draft Measures, which placed most of the responsibility on providers, in that risks may now be allocated between providers and users. This opens the door for providers and users to share risks. However, the Interim Measures have not given details as to the content of the service agreements

and their implementation. Given the information asymmetry between providers and users, if parties are allowed to freely define the content of service agreements, users may be forced to accept many unfair terms exempting providers from legal liability. Therefore, referring to China’s current regulatory model for standard contracts for personal information exportation, PwC predicts that similar guiding documents on the content of AI service agreements may be issued in the future.

- iii. **Regulation on AI provided from outside China:** Article 20 of the Interim Measures stipulates that ‘where generative AI services provided from outside China do not meet the requirements of China’s laws, administrative regulations, or these [Interim] Measures, the state internet information department shall notify the relevant authority to employ technical measures and other necessary measures to address it’. This means that if illegal or irregular behaviour in cross-border AI services is detected, the CAC may use technical means to block and intercept such breaches. This provides a legal basis for China’s administrators to further manage generative overseas AI technologies.
- iv. **Foreign investment in generative AI services:** Article 23 of the Interim Measures states that ‘foreign investment in generative AI services shall comply with laws and administrative regulations related to foreign investment’. The current scope of regulation of foreign investment law does not include generative AI services, and this therefore hints that generative AI services may be the focus of regulation in foreign investment in the future.

¹ <https://www.zhonglun.com/Content/2023/07-14/1750556565.html>

4. Balancing and adjusting compliance requirements for providers



The Draft Measures had put forward several compliance requirements for generative AI in areas of data security, content compliance and protection of intellectual property. However, the nature of these compliance obligations made them difficult to enforce, as they are usually in the form of promises and guarantees. Please see PwC's [previous publication \(in Chinese\)](#) on this topic.

Article 7 of the Interim Measures specifies the compliance requirements of the providers in the 3 three respective

categories, streamlining the onboarding process. In particular, relative to the Draft Measures, the wording has been changed from 'ensure' to 'increase' when describing the obligations of providers to 'increase' the transparency, accuracy, objectivity, and diversity when handling data training. This narrows the previously absolute obligation to a due diligence commitment, and addresses the potential obstacle of not being able to trace the source of information when there is non-compliance of providers' obligations.

5. Other obligations for providers



The Interim Measures, relative to the Draft Measures, make some adjustments to the legal responsibilities of providers. Such responsibilities include performance of security assessments and filings on algorithms, data tagging and data labelling. Providers were also obliged to carry out real-name verification, apply anti-addiction measures, guide users' scientific understanding, adopt mechanisms for complaints and reports, provide stable and sustained services, and effect model optimisation. The details are as follows:

- i. **Security assessments and filings on algorithms:** As mentioned above, the Draft Measures set out the obligation to carry out security assessments and filings on algorithms, but it did not specify the subject of such obligation. The Interim Measures apply this obligation to 'those providing generative AI services with public opinion properties or the capacity for social mobilisation'. Such providers shall carry out security assessments in accordance with relevant state provisions and make required filings in respect of their algorithms.
- ii. **Data tagging:** Providers are required to carry out data labelling in the process of research and development. When compared with the Draft Measures, the Interim Measures add to the obligation of providers to carry out assessments of quality of data tagging and carry out spot checks to verify the accuracy of tagged content.
- iii. **Identification obligations:** Providers are required to label AI-generated content to distinguish it from other content, to avoid confusing the public. The Interim Measures do not make any changes to the language used in the Draft Measures.

- iv. **Real-name verification:** The Draft Measures contained a requirement to conduct user real-name verification. This requirement is not included in the Interim Measures.
- v. **Anti-addiction measures and guiding users' scientific understanding:** Providers must adopt anti-addiction measures and guide users' scientific understanding and lawful use of generative AI technology. Compared to the Draft Measures, the Interim Measures stress the protection of minors in this way.
- vi. **Mechanisms for complaints and reports:** Providers shall establish a mechanism to handle complaints and reports. The Interim Measures also add a new obligation for providers to publish their complaints handling procedures.
- vii. **Provision of stable and sustained services:** The providers shall ensure the smooth and sustained running of its services and products. While the Draft Measures sought to regulate the entire lifecycle of the provision of generative AI services, the Interim Measures only requires the stability 'throughout the course of services'. This leaves more room for carrying out technical maintenances and system upgrades following the launch of services.
- viii. **Model optimisation :** In a situation where AI-generated content constitutes a breach of law, the Interim Measures has deleted the deadline for providers' performance of model optimisation that was referred to in the Draft Measures, and added an obligation to make a report to the relevant supervisory authority. This relaxation enables providers to handle model optimisation at their own pace, taking into account difficulties in doing so quickly.

Conclusions and outlook



As a brand-new product of the big data era, the regulatory framework for generative AI is being explored worldwide. China's Interim Measures can be seen as pioneering, and can be seen as China's first attempt to legislate in the field of AI, paving the way for a more systematic and detailed regulatory framework in the future.

According to the latest news, the drafting of an AI law has been included in the State Council's 2023 legislative plan. It is believed that AI will be the focus of future legislation, indicating China's determination and motivation to regulate AI. PwC will continue to monitor the introduction of

subsequent laws in order to provide timely and accurate legal and consulting services to clients.

PwC expects that the implementation of the Interim Measures will bring more legal protections and institutional innovations to the development of China's generative AI field. At the same time, it is also anticipated that China's legislators will continue to maintain an open and innovative approach towards the regulation of AI in order to create an increasingly fair, transparent and level playing field as part of the future regulatory landscape.

Contact us



If you would like to have a deeper understanding of the Interim Measures, the guidelines or compliance suggestions, please contact us:

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