Market Intelligence

ARTIFICIAL INTELLIGENCE
2022

Global interview panel led by Lisa Peets, Sam Jungyun Choi and Jiayen Ong of Covington & Burling LLP
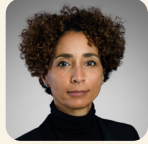
Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by Covington & Burling LLP, this Artificial Intelligence volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Government strategies
Ethics & human rights
Data protection & privacy
Industry sector application

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About the editors

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Lisa Peets leads the technology regulatory practice in Covington & Burling's London office and is a member of the firm's Management Committee. Ms Peets divides her time between London and Brussels, and her practice embraces regulatory counsel and legislative advocacy. In this context, she has worked closely with leading multinationals in a number of sectors, including some of the world's best-known technology companies.

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Jiayen Ong is an associate in the technology regulatory group in the London office. She has experience across a broad range of technology regulatory issues, with a focus on European data protection law and recent policies and legislation regarding innovative technologies.

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Middle East

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Tarek Khanachet advises clients across a broad range of complex international regulatory, government affairs and corporate matters focused on Turkey, the Middle East and the Gulf States. From 2011 to 2013, he was resident in Saudi Arabia, advising the Economic Cities Authority on regulatory developments, as well as outsourcing and licensing transactions. Mr Khanachet has extensive experience with government affairs and regulatory matters in the region, including advising government entities as well as private companies on matters as diverse as treaty interpretation, trade policy and market access issues and blocks. His corporate practice includes public–private partnerships, infrastructure projects, cross-border mergers and acquisitions, finance and commercial transactions. In addition to corporate and government affairs, Mr Khanachet has assisted clients with complex regulatory and white-collar enforce-ment and investigations.

Julie Teperow's practice includes counselling clients on local, regional and global compliance matters, across a wide range of industries on issues including data protection, cybersecurity, e-commerce and consumer protection. She also advises multina-tional companies on integrating issues on both local law and US law compliance, and counsels clients with complex cross-border compli-ance and regulatory issues by meaningfully engaging with clients and local counsel on legal and practical issues. Her practice also includes both employees and employers concerning local labour laws and procedures. Ms Teperow also has experience advising on various aspects of sport and sporting events, including risk management, venue and facilities leasing, and sponsorship and marketing.

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INSIDE TRACK

1   What is the current state of the law and regulation governing AI in your jurisdiction? How would you compare the level of regulation with that in other jurisdictions?

The Middle East does not have a regional overarching AI legal framework, and, with the recent exception of Egypt's new law regulating financial technology in the non-banking financial sector (discussed in further detail below), individual countries in the region do not have any laws or regulations that specifically address AI. Of course, many countries have laws and regulations that would apply to AI technologies. These include data protection laws, intellectual property laws, product safety and consumer protection regulations, medical devices regulations, financial services regulations and cybersecurity laws.

Countries in the Middle East have varied levels of applicable legislation. The countries that do have applicable laws have a level of regulation similar to that in other countries that rely on the application of laws that are not targeted at AI. Some countries in the region also have developed policy initiatives from which we expect AI-specific laws to result.

2   Has the government released a national strategy on AI? Are there any national efforts to create data sharing arrangements?

There is no Middle East or unified Gulf strategy on AI or related data sharing. However, many countries in the region have released national strategies and initiatives.

Qatar has developed and published the National Artificial Intelligence Strategy. Qatar's vision is to have AI so pervasive in all aspects of life, business and governance that Qatar is a role model for 'AI-'-X nation'. The 'AI-'-'X nation' is built on the pillars of talent, AI-augmented

Tarek Khanachet   Julie Teperow

jobs and a knowledge economy. The underlying goals are to develop world-class data and computing infrastructure, to establish a strong AI ethics and governance framework aligned to international norms, and to produce guidelines for the level of explainability required for different types of decisions made by AI algorithms.

In 2020, Jordan published its Artificial Intelligence Policy, which has five pillars: (1) governance; (2) legislative and regulatory environment; (3) digital infrastructure; (4) business and investment environment; and (5) capacity building. The Artificial Intelligence Policy aims to promote the use of AI in all vital economic sectors; build an enabling legislative, regulatory and technological environment for AI; develop a digital infrastructure that reflects AI needs and developments; build AI-specialised Jordanian capacities, expertise and skills; strengthen the role of the public sector in the use of AI (including an increase in public–private partnerships); strengthen the AI business environment

"Although many countries understand the importance of ethics in AI and have included an ethics component in their strategic AI visions, the UAE appears to be at the forefront with regard to implementation."

and increase investment in and support for AI-related initiatives and Jordanian IT start-ups; develop a system for research, development, application and experimentation related to AI; and raise public awareness and increase confidence in AI in the public sector and all facets of Jordanian society.

Saudi Arabia's 'Vision 2030' has a focus on AI, and this is augmented by a dedicated National Strategy for Data and AI. The Saudi Data and Artificial Intelligence Authority (SDAIA) is a government agency that is directly linked to the Prime Minister. SDAIA has three sub-entities: the National Information Center, National Data Management Office and National Center for AI. Saudi's plan specifically contemplates that AI-specific legislation will be enacted, under which these entities will operate.

The UAE has released its National Strategy for Artificial Intelligence 2031 (UAE Strategy). The UAE Strategy's emphasis is on the UAE's strategic objective of becoming a global leader in the responsible use of AI by 2031. The UAE aims to achieve this goal by adopting emerging

AI technologies across government and attracting top AI talent to the country to advance AI research and development. The UAE Strategy pledges to provide AI-related start-ups and developers with access to local data infrastructure and funding for projects. It categorises 'data sharing and governance' and the 'new generation of regional talent' as opportunities for the UAE to lead in the development and deployment of AI technologies.

The UAE has a dedicated Minister of State for Artificial Intelligence, Digital Economy and Remote Work Applications who has a mandate of transforming the UAE into a world leader in AI. The Office of the Minister of State for Artificial Intelligence aims to broker new partnerships (particularly in education and governance) and support other government ministries with incorporating AI technologies into their policies and projects. The UAE has also formed the Council for Artificial Intelligence and Blockchain (the Council), a specialised council comprising 17 members from various government ministries and authorities. The Council's mandate is to promote the success of the UAE Strategy by proposing policies to create an AI-friendly ecosystem, conducting advanced research in the AI sector, promoting collaboration between the public and private sectors to accelerate the adoption of AI, and engaging with international institutions on AI issues. The Council has not yet introduced AI laws or regulations.

Egypt's AI Strategy has the mission to create an AI industry in Egypt that has the relevant skills, technology, systems, infrastructure and governance mechanisms necessary to ensure its sustainability and competitiveness. The AI Strategy aims to: integrate AI technologies into government processes; encourage the use of AI to address Egypt's development needs; prepare Egyptian citizens for the use of AI at all levels of society through education, training and raising public awareness; and position Egypt as an AI leader at the regional and international levels.

Bahrain has implemented a regulatory sandbox as a framework and process to facilitate and encourage the development of digital technology. As part of these efforts, the Artificial Intelligence Society of Bahrain (the Society), an independent and voluntary technological society to promote and disseminate AI technology across Bahrain, has been set up. Members of the Society include private and public sector chief information officers, AI experts and entrepreneurs, and over 12 university scholars and professors. The main objectives of the Society are to support Bahrain's Economic Vision 2030 through the implementation of specific AI applications and technologies, make Bahrain a regional centre for AI research and development, and build a pool of AI expertise from executives and technical resources within the Society to promote AI in Bahrain and the region.

In Oman, the Ministry of Transport, Communications and Information Technology is currently working on introducing a national AI strategy in the near-future. This will consist of a plan with four main pillars, namely to: (1) use AI to boost productivity in diverse economic sectors; (2) develop human capabilities in AI; (3) accelerate AI adoption in service sectors; and (4) govern fair and ethical use of AI.

Some countries, such as Lebanon, continue to work on a draft strategy.

3 What is the government policy and strategy for managing the ethical and human rights issues raised by the deployment of AI?

Although many countries understand the importance of ethics in AI and have included an ethics component in their strategic AI visions, the UAE appears to be at the forefront with regard to implementation. For example, to address concerns about trust, privacy, transparency and associated issues, the UAE government has created a regional ethics council, designed to assess ethical principles, define ethical rules of engagement and set ethical policies required in an evolving

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AI world. In January 2019, Dubai launched official principles and guidelines for the ethical implementation of AI and an 'AI Ethics Self-Assessment Toolkit', which allows anyone implementing AI to self-assess their performance against a set of criteria to try to ensure an ethical approach. This is a voluntary process using the data from the toolkit to provide feedback to those using and developing AI to attempt to create fair and trusted AI systems that manage the potential tensions between innovation and values.

In August 2022, Jordan's Ministry of Digital Economy and Entrepreneurship announced that the Cabinet approved the National Charter of Ethics for Artificial Intelligence (the Charter) with which all government ministries, institutions and departments must comply. The Charter aims to create a common ethical base for AI, regulate the development of AI technologies and raise awareness of the risks that can result from AI practices that occur outside of a responsible and ethical framework. The Charter includes a set of guiding ethical principles including accountability, transparency, impartiality, respect

> "There is currently no AI-specific legislation in the various Middle Eastern countries. However, existing laws and regulations that apply to AI are applied and enforced by the relevant government authorities."

for privacy, promotion of human values and principles that promote the rule of law, human rights, democratic values and diversity.

Egypt is currently in the process of developing a comprehensive Egyptian Charter for Responsible AI (the Egyptian Charter). The Egyptian Charter will include guiding principles on the responsible and ethical development of AI as well as technical guidelines, and will be used by AI practitioners and companies in Egypt.

4   What is the government policy and strategy for managing the national security and trade implications of AI? Are there any trade restrictions that may apply to AI-based products?

There are no published policies or strategies specific to implications of AI for national security or trade. However, countries in the region have existing export control regulations that apply to certain AI-based products specifically designed for a military end use and have national security implications. At this stage, AI-specific trade controls is not a

focus. Instead, countries with AI initiatives are working to implement the AI vision set out in policy or national strategy.

5   How are AI-related data protection and privacy issues being addressed? Have these issues affected data sharing arrangements in any way?

Bahrain, Egypt, Kuwait, Lebanon, Qatar, Saudi Arabia and the UAE have all recently implemented data protection and privacy laws inspired by the EU General Data Protection Regulation (GDPR). These laws are both more and less restrictive than the GDPR in certain areas, depending on the jurisdiction. Some laws do not yet have implementing regulations or have only recently issued implementing regulations. The interpretation of these data protection laws is a development to watch closely in the region as it impacts AI and other privacy issues. Financial free zones in the UAE and Qatar also have similar laws in place. Oman's Personal Data Protection Law, also inspired by the GDPR, was issued in February 2022 and will come into force on 13 February 2023. Because the GDPR applies to all processing of personal data, countries with GDPR-like laws can look to the EU for guidance in the context of AI applications that are trained on personal data or involve the processing of personal data.

The Saudi Personal Data Protection Law (PDPL) was issued in September 2021, and developed by SDAIA. The PDPL, which came into effect on 23 March 2022, addresses the processing of personal data and the rights of personal data owners, and marks a new development in the Kingdom's approach to the protection of personal data. The notion of protecting personal data has existed for many years under existing Saudi law, but this is the first standalone and comprehensive legal framework protecting personal data. The PDPL remains subject to forthcoming implementing regulations.

QUESTIONS

The recent nature or absence of these types of laws in the region will present a significant challenge in the context of AI. A lack of developed guidelines for data protection and sharing could have a chilling effect on both local and cross-border AI deployment and development, even if other AI laws are implemented.

6   How are government authorities enforcing and monitoring compliance with AI legislation, regulations and practice guidance? Which entities are issuing and enforcing regulations, strategies and frameworks with respect to AI?

As already mentioned, there is currently no AI-specific legislation in the various Middle Eastern countries. However, existing laws and regulations that apply to AI are applied and enforced by the relevant government authorities. Countries that have developed data protection laws have data protection authorities that will likely become active in monitoring the collection and processing of data required for AI. However, as discussed above, various countries in the Middle East have set up committees and authorities to develop an AI vision and strategy, including applicable regulations. However, the focus of those committees and strategies to date has been primarily to encourage research and development.

7   Has your jurisdiction participated in any international frameworks for AI?

Because the strategies for most countries in the region are in the early stages of development, most countries have not yet participated in international frameworks for AI.

The UAE Minister for Artificial Intelligence and Invest India signed a memorandum of understanding in July 2018 to establish an AI

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partnership between the two nations. Three areas of focus for the partnership include open engagement, fostering innovative ecosystems and looking to the future. The collaboration has established an UAE–India AI Working Committee between the UAE Ministry for Artificial Intelligence, Invest India and Startup India, which will meet annually and focus on increasing investment for AI start-ups and research activities together with industry partners, in order to support the development of new AI technologies and services. The committee will also monitor technological and policy developments to help both nations maintain relevant regulatory frameworks and policies. Finally, the committee will share regulatory expertise to help AI start-ups integrate into each other's jurisdictions and develop the digital infrastructure to share data sets across borders.

8   What have been the most noteworthy AI-related developments over the past year in your jurisdiction?

Many countries in the region have only recently announced their AI initiatives and strategies. In terms of legal developments, the implementation of data protection laws in multiple jurisdictions is significant. We expect that other countries in the region will follow suit. Having a framework to protect privacy and confidentiality, while allowing for the data analytics necessary to drive AI, is important for AI to flourish in the region.

On 8 February 2022, Law No. 5 of 2022 Regulating the Development and Use of Financial Technology in the Non-Banking Financial Activities (the FinTech Law) was issued in Egypt (and came into effect on 9 February 2022). The FinTech Law defines financial technology as 'any mechanism that utilizes modern and innovative technology in the non-banking financial sector to support and facilitate financial services, financing and insurance activities using applications, software, digital platforms, *artificial intelligence*, or electronic records' (emphasis added). The FinTech Law prohibits entities from engaging in non-banking financial activities utilising financial technology without obtaining a license from the Financial Regulatory Authority and also regulates the use of financial technology in respect of data privacy considerations.

In other interesting developments, at the end of 2019, Abu Dhabi announced the launch of its own AI lab. Now both Dubai and Abu Dhabi have dedicated AI labs to accelerate the adoption of AI. Several first-of-a-kind projects have been initiated, which are expected to be transformative in various sectors. The UAE announced in 2021 the establishment of the first AI university, the Mohamed bin Zayed University of Artificial Intelligence, a graduate-level AI research institution providing both master's and doctoral degrees in order to

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increase scientific research and innovation, and develop an AI-savvy workforce.

Abu Dhabi National Oil Company's (ADNOC) Panorama Digital Command Center (Panorama) is using AI, data and advanced technologies to optimise performance. The Panorama facility uses smart analytical models, AI and data to generate operational insights and recommendations, which, according to ADNOC, has generated over US$1 billion (3.67 billion dirhams) in business value for ADNOC to date.

Working with industry, Saudi's SDAIA entered into partnership with Huawei to launch the National AI Capability Development Program. Huawei will bring an abundance of local and international experience from over 500 AI projects. This programme aims to cement Saudi Arabia as a global frontrunner in the adoption of AI.

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9 Which industry sectors have seen the most development in AI-based products and services in your jurisdiction?

The use of AI-based products in the region has grown considerably in the government and healthcare sectors.

Smart government projects to improve services have been at the forefront of regional activity. Governments in the region are focused on using AI to increase government speed, efficiency and effectiveness. These initiatives leverage AI technology to personalise and improve experiences. The UAE, Saudi Arabia, Qatar and Kuwait all have smart government initiatives.

On 28 September 2022, SDAIA and Saudi's Ministry of Economy and Planning entered into a memorandum of understanding to harness the use of data and AI in the development of plans and economic policies. The memorandum of understanding will allow for strategic

cooperation on developing indicators to monitor the impact and effectiveness of social and economic policies in Saudi Arabia, particularly using data modelling and simulation techniques. Both parties will also integrate the latest economic and scientific reports, as well as intelligence, into new social and economic policies to strengthen policymaking and economic growth.

Most countries in the region also have initiated plans to develop smart cities that use AI, data analysis and innovation to improve the quality of life and efficiency of urban operations and services while ensuring that cities meet the needs of residents.

The digital health sector has also seen an increase in AI-powered solutions through emerging technologies, including:

- apps that diagnose certain diseases;
- software tools that assist with the treatment of chronic diseases;
- platforms that facilitate communication between patients and healthcare providers;

- virtual reality or augmented reality tools that help administer healthcare; and

- research projects involving big data.

An online article in Omnia Health last year identifies Saudi Arabia and the UAE as leaders in this space. For example, Saudi Arabia will experience exponential AI benefits as the Spanish-based MedLab Media Group is working with both the private and public sectors to develop various customised AI solutions. *Wired* magazine reported that, for covid-19 vaccine distribution, Saudi Arabia developed an AI-powered solution to prioritise vaccine distribution based on data collected on age, profession, infection history, pregnancy status, weight and chronic disease.

The UAE has introduced projects to diagnose and monitor patients using AI technology, including a Dubai smart home care project that ensures homebound patients can be monitored effectively and efficiently, and an AI lab app, designed to sync to the fitness trackers of the user's choice and provide personalised coaching based on data collected from users. In the UAE, medical professionals have developed an AI algorithm for detecting tuberculosis that reduces screening time as part of the resident visa process.

10 Are there any pending or proposed legislative or regulatory initiatives in relation to AI?

Most countries in the region are in the nascent stages of setting out strategies to develop AI technology and the legislation required to regulate those technologies. At this stage, the focus is on research, development, education and infrastructure. We are not aware of pending or proposed legislative or regulatory initiatives.

11 What best practices would you recommend to assess and manage risks arising in the deployment of AI?

While countries in the region do not have specific AI legislation yet, various laws and regulations may nevertheless apply. Therefore, companies should be aware of these laws. In addition to compliance with those laws, companies should engage with government authorities in relevant sectors to obtain guidance on the application of the law to AI issues and technologies due to the undeveloped nature of law in this area and look to best practices in other, more developed jurisdictions to assess and manage risks. Separately, companies should stay on top of developments in AI law and regulation and seek to engage and inform government authorities to help shape AI policy.

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The Inside Track

What skills and experiences have helped you to navigate AI issues as a lawyer?

At Covington, we take a holistic approach to AI that integrates our deep understanding of technology and our global multi-disciplinary expertise. We have been working with clients on emerging technologies for decades and we have helped clients navigate evolving legal landscapes, including at the dawn of cellular technology and the internet. We draw on this experience and our deep understanding of technology, and leverage our international and multi-disciplinary approach. We also translate this expertise into practical guidance that clients can apply in their transactions, public policy matters and business operations.

Which areas of AI development are you most excited about and which do you think will offer the greatest opportunities?

The development of AI technology is affecting virtually every industry and has tremendous potential to promote the public good, including to help achieve the UN Sustainable Development Goals by 2030. For example, in the healthcare sector, AI may play an important role in mitigating the effects of covid-19, and it has the potential to improve outcomes while reducing costs, including by aiding in diagnosis and policing drug theft and abuse. AI also has the potential to enable more efficient use of energy and other resources, and to improve education, transportation, and health and safety. We are excited about the opportunities presented by AI.

What do you see as the greatest challenges facing both developers and society as a whole in relation to the deployment of AI?

AI has tremendous promise to advance economic and public good in many ways and it will be important to have policy frameworks that enable society to capitalise on these benefits while safeguarding against potential harm. Also, as this publication explains, several jurisdictions are advancing different approaches to AI. One of the great challenges is to develop harmonised policy approaches that achieve desired objectives. We have worked with stakeholders in the past to address these challenges with other technologies, such as the internet, and are optimistic that workable approaches can be crafted for AI.