

CLIENT UPDATE

IN READINESS FOR THE USE OF ARTIFICIAL INTELLIGENCE

Background

Mexico initially adopted the OECD AI Principles in 2019, and ratified its updated version in May 2024. The National Institute for Access to Information and Personal Data Protection issued in 2022 Guidelines for the Utilization of Personal Data arising from the Use of Artificial Intelligence. The Guidelines set forth a checklist so that obligated parties (as described in the Guidelines) may verify whether a product or service that uses Artificial Intelligence complies with applicable obligations concerning the use of personal data. In addition, Mexico is party to international conventions governing intellectual property. Violations to the above-mentioned provisions may subject violators to civil and criminal liabilities imposed under Mexican law.

As mentioned above, the above provisions are included in an array of national and international regulations adopted by Mexico. So far, there is no unified law that governs Artificial Intelligence (“AI”) in Mexico.

Mexico is keeping track of the approval process of the European Union Artificial Intelligence Act (the “EU AI Act”), and it is likely to model a new statute that will consider such Act as guidance, either because some Mexican providers, distributors and users of AI related systems will be subject to the same, or because it will provide a uniform frame of reference for Mexican persons working in domestic and international transactions.

The EU AI Act is still subject to the approval process of EU organs, as well as to the implementation of regulations to be adopted by appropriate bodies of the same. We do not know for certain what the future holds in this respect.

However, Mexican corporations may start preparatory steps that will make it easier and more expedient to implement a future unified statute governing AI in Mexico.

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The adoption of such steps will put those corporations acting now in the best possible shape to timely implement the expected statute.

The following is a list of preparatory steps, suggested for such a purpose.

EU AI Act

The EU Artificial Intelligence Act was adopted on March 13, 2024. It will enter into force twenty days after its publication in the EU official Journal, and be fully applicable 24 months after its entry into force, except for bans on prohibited practices, which will apply six months after the entry into force date, and other interspersed dates of entry into force for specific chapters.

The EU AI Act defines “AI system” as a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

Prohibited Practices

The EU AI Act prohibits certain practices that include:

- (a) AI that deploys subliminal techniques;
- (b) that exploits vulnerabilities;
- (c) that infers personality characteristics;
- (d) that makes risk assessments, on the basis of social scores that lead to unrelated or unjustified/disproportionate detrimental or unfavourable treatment;
- (e) that creates facial recognition databases from the internet;
- (f) that infers emotions;
- (g) that categorizes on the basis of biometric data;
- (h) that recognizes persons in publicly accessible spaces, unless certain purposes related to law enforcement are present.

It is advisable to consider terminating these uses of AI, regardless of whether a Mexican person is likely to fall within the scope of the EU AI Act.

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Preparation of Controls for Safe Use of AI

Companies should spend time and effort now, developing controls for AI focusing on managing operational risk and stressing safe, secure and high-value uses of AI.

The following aspects should be included:

- developing a system for identifying uses of AI;
- assessing the risk of such uses;
- Putting in place a process for documenting approvals and risk-accepting of any uses to be related to the production of goods and services;
- Review practices to consider when adopting chatbots, including inform consumers that they are talking with a chatbot, ensure that same are safe and accurate, consider whether chatbots are appropriate for complicated high-impact inquiries.

The control framework proposed to be thought of now, should concentrate on how to develop a framework that works for your business. Developing this framework now will put you in the best possible position to sort out the landscape of AI regulation in a timely and effective manner.

Financial institutions are likely to be made subject to specific rules issued by Mexican regulators. However, the above-mentioned suggested preparatory steps, are likely to put them in the front row of the starting line, when such rules are issued.

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Please do not hesitate to contact us with any questions.

Berdeja Abogados, S.C.

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