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**Computer Law  
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## Asia pacific news

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### A B S T R A C T

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This column provides a country-by-country analysis of the latest legal developments, cases and issues relevant to the IT, media and telecommunications' industries in key jurisdictions across the Asia Pacific region. The articles appearing in this column are intended to serve as 'alerts' and are not submitted as detailed analyses of cases or legal developments.

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### 1. Hong Kong

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#### 1.1. Droning On – Hong Kong proposes new regulations for drones

On 3 April 2018, the Civil Aviation Department of Hong Kong (“CAD”) launched a 3-month public consultation (“Consultation Paper”) on the regulation of unmanned aircraft systems (“UAS”).

UASs, more commonly known as drones, have become prevalent for both recreational and commercial purposes globally. Some examples include taking aerial photos and videos at public and private events, carrying out inspections of crops or equipment, conducting search and rescue operations, and even the delivery of packages. However, of course, as with most technology, an increase in popularity leads to an increased awareness of the potential risks associated with UASs, the key

concerns of which revolve around personal injury and an invasion of privacy.

##### 1.1.1. Current regulations

Under the Air Navigation (Hong Kong) Order 1995 (Cap. 448C) (“Order”), UAS operators must obtain a Certificate of Registration and a Certificate of Airworthiness issued by the CAD (“Certificates”) in order to fly a UAS in Hong Kong, unless the UAS weighs no more than 7 kg (without fuel), and will only be used for recreational purposes. UASs that will be used for non-recreational (i.e. commercial) purposes, must obtain the Certificates, regardless of its size or weight. In addition, under the Air Transport (Licensing of Air Services) Regulations (Cap. 448A), any UAS used for hire or reward (e.g. for the provision of photography services, to deliver packages, etc), must apply to the CAD for a permit and comply with any conditions imposed by the CAD (“Permit”). Those that apply for Permits must have in place an insurance policy that covers third party liability for each single UAS operation.

All UASs, irrespective of size or purpose of use, are prohibited from recklessly or negligently causing or permitting a UAS to endanger any person or property. This may amount to an offence.

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Recreational UASs that weigh no more than 7 kg (without fuel) are classified as a “flying model aircraft”. Whilst exempt from the requirement to obtain the Certificates or Permit, operators are recommended to comply with the CAD’s guidelines on the Safety in Radio-Controlled Model Aircraft Flying (15 February 2015). It sets out safety measures for the flying of model aircrafts, e.g. they should not be flown over congested areas, should not fly 300 feet above ground level, and should only be flown during daylight hours.

Reported incidences over the last couple of years on the use of UASs in a manner that posed a risk to the public, have led the government to re-assess the effectiveness of the current regulatory regime. For example, on 2 December 2017, a man was arrested for allegedly flying a UAS over the Formula E race-track, thereby endangering the personal safety of individuals in breach of the Order. Recreational UASs that are less than 7 kg may still cause damage to property or result in personal injury, yet they are not currently subject to regulation under Hong Kong law.

### 1.1.2. Consultation proposal

Several jurisdictions in Asia have taken up the call to re-evaluate their current regulatory framework to address the evolving use and development of UASs, in order to provide protection where necessary to the public.

In an effort to keep pace, the Hong Kong government commissioned a study in March 2017 on international regulatory practices for UASs with a view to recommending amendments to Hong Kong’s current regulatory regime. On 12 March 2018, the Final Report on the Study on the Regulation of UAS in Hong Kong was issued (“Report”). This led to the launch of the Consultation Paper on 2 April 2018. The overall aim of the CAD is to introduce new regulations that protect public safety, without hindering the technological advancements or use of UASs.

Keeping in line with the approach of other jurisdictions, a risk-based approach has been proposed, where regulations that are more stringent apply to UASs that pose a higher risk. In summary, the recommendations put forward in the Report and set out in the Consultation Paper, are as follows:

- (1) Establish a UAS registration requirement for UASs over 250 g. Registered UASs should also be labelled with a unique registration number, so that they can be easily identified. This will help ensure that operators are held accountable for any injury or damage caused by their UASs.
- (2) Operating standards and requirements should be developed and based on different risk categories of UASs (e.g. based on weight, where it will be operated and how it will be operated), without differentiating between recreational or commercial operations. Currently, 3 main categories are proposed:
  - (a) Category A (low risk) – this is further divided into 2 subcategories, i.e. Category A1 for UASs that are 250 g or less, and Category A2 for UASs that are over 250 g but no more than 7 kg. Whilst CAD’s approval would not be needed to fly UASs that fall within Category A1, operators must still comply with certain conditions, e.g. must be flown only during the day, and

must be flown lower than 100 feet, etc. For Category A2, operators will need to register their UASs with the CAD and will be subject to other requirements, e.g. cannot fly over 300 feet, must be more than 50 metres away from any people or buildings, must have geo-awareness and flight log capabilities, etc.

- (b) Category B (regulated, lower risk) – this will apply to UASs over 7 kg but no more than 25 kg. The UAS would need: (i) to be registered; (ii) to obtain the CAD’s authorisation prior to operation; (iii) have geo-awareness and flight log capabilities; and (iv) a safety assessment conducted by the operators.
  - (c) Category C (regulated, higher risk) – this will apply to UASs that are over 25 kg, and would impose the most stringent regulations.
- (3) Implement training and assessment requirements in light of the different risk categories (the higher the risk, then the more complex the training and assessment).
  - (4) Developing a UAS map to set out no-fly zones and areas where UASs can be flown.
  - (5) Prescribe insurance requirements based on the different UAS risk categories. In particular, it is proposed that UASs in Category B or above should be covered by third party insurance.
  - (6) A further study to be conducted into the indoor operation of UAS.

### 1.1.3. Data privacy

Data privacy concerns have also been a focal point surrounding UAS operations. Whilst the CAD is focused on maintaining aviation safety, the protection of privacy falls within the remit of the Hong Kong Privacy Commissioner.

In Hong Kong, the Personal Data (Privacy) Ordinance (“PDPO”) regulates the collection and use of personal data. UASs that can record images or videos may be subject to the PDPO if they seek to collect personal data of the individuals captured. Hong Kong was one of the first jurisdictions in Asia to address specifically data privacy as it applies to UASs. On 31 March 2015, the Privacy Commissioner issued an updated Guidance on CCTV Surveillance and Use of Drones (“Guidance Note”).<sup>1</sup>

The practical recommendations relating to CCTV surveillance in the Guidance Note, apply equally to the use of UASs. In brief, operators of UASs need to assess:

- (a) whether the use of the UAS is necessary and proportionate to the benefit to be derived from using it;
- (b) whether there is a less privacy intrusive method available in order to achieve the same purpose; and
- (c) whether it has transparent policies and practices regarding the use of the UAS and any personal data collected, and has adequate measures in place to prevent unauthorised use or access of the UAS or personal data.

<sup>1</sup> [http://www.pcpd.org.hk/english/resources\\_centre/publications/files/GN\\_CCTV\\_Drones\\_e.pdf](http://www.pcpd.org.hk/english/resources_centre/publications/files/GN_CCTV_Drones_e.pdf).

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