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ARTIFICIAL INTELLIGENCE (AI) AND CORPORATE GOVERNANCE: RETHINKING DIRECTORS' LEGAL RESPONSIBILITIES IN MALAYSIA

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Abstract

The rapid advancement of artificial intelligence (AI) has significantly transformed corporate governance, introducing both opportunities and challenges for directors in fulfilling their legal responsibilities. As AI increasingly integrates into corporate decision-making and compliance mechanisms, directors face heightened expectations to manage complex technological risks while ensuring accountability and transparency. However, the absence of clear regulatory frameworks complicates their ability to navigate these challenges, raising critical concerns about the adequacy of existing corporate law principles. This paper explores the legal implications of AI on directors' fiduciary and statutory duties, particularly in the context of risk management and decision-making. Despite the well-established principles of directors' fiduciary and statutory duties, there is limited clarity on how these obligations extend to decisions influenced by AI systems, leaving accountability in cases of AI-driven errors or fraud largely unexplored. The research highlights the pressing need for updated governance models and regulatory guidelines through a qualitative, doctrinal analysis of legal literature and comparative case studies, including incidents involving deepfake scams in Malaysia and Singapore. The findings underscore that while AI enhances efficiency, it also amplifies risks, placing an increased burden on directors to exercise due diligence and adapt to emerging threats. The paper concludes by emphasizing the importance of proactive legal reforms to support directors in navigating the evolving corporate landscape shaped by AI.

Keywords: Artificial Intelligence, Directors' Legal Responsibilities, AI Risk Management, AI Scams, Deepfake Risks.

1. INTRODUCTION

Artificial Intelligence (AI) is increasingly reshaping corporate governance by enhancing transparency, improving risk management, and enabling more efficient decision-making (Trabelsi, 2024; Gilson, 2016). By processing vast amounts of information far more rapidly than humans, AI can facilitate more accurate and data-driven judgments, indirectly supporting boards of directors in fulfilling their governance responsibilities (Wang et al., 2018). This technological shift presents opportunities for stronger corporate oversight but simultaneously introduces novel challenges that demand closer legal examination.

Despite its potential, AI heightens directors' duty of care and responsibility to exercise due diligence, particularly as new forms of risk emerge. Tools such as deepfakes expose corporations to fraud and scams that specifically target senior management, raising concerns about directors' preparedness to anticipate and mitigate these threats. The absence of clear regulatory frameworks in jurisdictions such as Malaysia and Singapore compounds this issue, leaving directors uncertain about their accountability when AI-driven errors or misconduct occur. These developments highlight a pressing gap in existing corporate law principles, which have yet to fully address the implications of AI integration.

This paper therefore examines the legal challenges posed by AI in corporate decision-making and governance. It evaluates the extent to which AI affects directors' fiduciary and statutory duties, with emphasis on their duty of care and diligence, and analyses real-world risks associated with AI through comparative case studies, including incidents of deepfake scams in Malaysia and Singapore. Ultimately, the study seeks to propose governance and legal reforms that can better support directors in navigating the evolving corporate landscape shaped by AI.

2. LITERATURE REVIEW

Artificial Intelligence (AI) systems are founded on the principle of knowledge and skill sharing among multiple intelligent agents, which must effectively organise and coordinate their actions to achieve a unified objective. These systems are structured around complex models of interaction, resulting in strategies such as cooperation, coordination, and negotiation. The application of modularity within these systems reduces the complexity of their overall design and enhances their maintainability (Saba et al., 2021).

AI enhances efficiency by automating routine tasks, allowing human resources to focus on strategic, value-added activities, thereby supporting the core objectives of corporate governance through cost savings and increased productivity (Ustahaliloğlu, 2025). AI is expected to significantly influence corporate governance by facilitating the development and implementation of a wide array of new governance mechanisms and systems (Hilb, 2020). In the realm of corporate governance, AI plays a pivotal role in facilitating better and faster decisions (Verma & Jana, 2024).

The modern advance technologies require corporate governance to innovate and adapt — not just in terms of technology but also in how we view trust, accountability, and decision-making from a basic perspective (Reich-Graefe, 2013). The integration of AI compels companies and boards to rethink foundational governance principles and how they are applied in an increasingly automated environment.

The concept of a 'self-driving subsidiary' brings to the forefront familiar legal challenges, including inefficient risk-taking by shareholders and managers, the issue of 'judgment proofing,' and the potential for shareholder liability through veil piercing doctrines in cases of abuse of the corporate structure. However, the presence of autonomous AI decision-making within corporations may significantly intensify these concerns (Armour & Eidenmueller, 2019). These developments compel a re-examination of directors' responsibilities and corporate legal frameworks in order to maintain accountability and protect stakeholder interests in an AI-driven corporate landscape.

Organizations may be targeted through various means such as payment fraud, stock manipulation driven by fabricated events or automated bots, and orchestrated malicious bank runs (Bateman, 2020). Among the well-known AI method is deepfake. Deepfakes are synthetic media content created by AI that allows the fraudulent phone calls appear more genuine, believable, and lifelike, thereby increasing the victim's trust and boosting the chances of the scam succeeding (de Rancourt-Raymond & Smaili, 2023). Vishing, or deepfake voice phishing, involves using artificially cloned voices to conduct social engineering attacks over the phone. Fraudsters create fake audio or video clips that imitate authoritative figures within an organization to gain access to sensitive data or resources. These cloned voices are typically generated using artificial intelligence (de Rancourt-Raymond & Smaili, 2023). This increases the chances of scam and financial fraud in a corporation.

However, the current literature largely focuses on the potential efficiency and decision-making benefits of AI in corporate governance while giving insufficient attention to the legal implications for directors' duties when autonomous systems malfunction or are exploited through fraud. Much of the scholarship emphasizes technological innovation and organizational performance, but there is limited doctrinal analysis of how established principles of corporate law adapt when directors rely on AI-driven processes in fulfilling their fiduciary and statutory responsibilities. This limitation highlights the need for deeper inquiry into how corporate governance frameworks can meaningfully integrate AI while ensuring accountability and safeguarding stakeholders' interests.

Theoretically, this study is underpinned by corporate governance theory, which emphasizes accountability, transparency, and the alignment of managerial conduct with shareholder and stakeholder interests. Within this context, agency theory provides an important lens, as AI adoption introduces new agency problems by shifting part of decision-making power from human directors to autonomous systems, thereby complicating issues of control, oversight, and responsibility. Similarly, risk governance models reinforce the argument that directors must not only anticipate and mitigate traditional financial or operational risks but also adapt to novel technological risks such as deepfakes, vishing, and AI-driven fraud. By drawing on these theoretical perspectives, the research situates AI not merely as a technological advancement but as a governance challenge that compels a re-examination of directors' duties within contemporary corporate law.

This gap underscores the pressing need for legal scholarship and reform to clarify directors' responsibilities in the context of AI, ensuring that corporate governance frameworks evolve in step with emerging technological risks.

3. METHODOLOGY

This research uses doctrinal qualitative method through literature review and descriptive method. According to Pradeep (2019), doctrinal studies involve with searching unknown facts with the help of review of legal materials to conclude on the matters connected to legal system, policies, laws and judgments of the judiciary without depending on primary study from the field. Doctrinal research is specifically appropriate for this study as it allows a systematic analysis of directors' duties within existing legal frameworks while assessing how these duties respond to novel risks introduced by AI.

According to Pradeep (2019), legal research focused on analysing the impact of legislations through established legal propositions and testing it logically. In order to obtain established legal propositions, thorough research is done through the analysis of the recent statutory amendment in relating to topic. Aside from the analysis of the statute, case law being one of the authoritative references under the scope of the research is also being referred. The use of case law is particularly important in examining how judicial reasoning may be extended to situations involving AI-related risks.

Safdar, M.Abbo, Knobloch, & K.Seo (2016), stated that the qualitative method is used to identify topics related to the researcher. As such, the focus on the discussions made through literature review whereby the relevant legal articles and statutes are being referred to. Hence, this research uses library-based research as the main source, by referring to the primary and secondary sources available. Primary legal sources such as laws enacted by legislatures or better known as statute such as of the Companies Act 2016 is actively referred to especially in overseeing the statutory

duties of a director. Secondary sources referred to are legal commentaries and books in related to the director duties and AI are also referred to. In addition, this study incorporates comparative case studies, with cases involving AI-related fraud and deepfake scams in Malaysia and Singapore selected due to their relevance in illustrating how directors' duties are tested in practice. These case studies are analysed descriptively to evaluate how existing legal doctrines apply, and to identify gaps where reforms may be necessary.

This combined doctrinal and case study approach ensures both theoretical depth and practical relevance, enabling the research to bridge legal principles with real-world corporate risks.

4. DISCUSSION

4.1 Directors' Duties: Fiduciary and Statutory Perspective

Directors' duties under company law can be broadly divided into two categories: fiduciary duties and statutory duties. Fiduciary duties arise from equitable and common law principles, founded on a relationship of trust and confidence between directors and the company. As noted by Havenga (1997), these duties have evolved through judicial decisions and coexist with statutory obligations codified in legislation such as the Companies Act 2016 (CA 2016).

Figure 1.0 illustrates the framework of directors' duties in Malaysia, mapping fiduciary obligations such as acting in good faith and avoiding conflicts of interest alongside statutory duties under the CA 2016. This framework is particularly relevant when assessing directors' accountability for emerging technological risks such as AI-driven fraud.

1. Duty to Act in Good Faith in the Interests of the Company

This fundamental duty requires directors to act honestly and in what they believe to be the best interests of the company. In *Re Smith and Fawcett Ltd* [1942] 1 All ER 542, the court held that directors must exercise their discretion bona fide and not for any collateral purpose. This was echoed in the Malaysian case of *Ng Pak Cheong v. Global Insurance Co Sdn Bhd* [1995] 1 MLJ 64, where directors were found to owe fiduciary duties to act in the company's interest. This duty is now embedded in Section 213(1) of the CA 2016.

2. Duty to Exercise Powers for Proper Purposes

Directors are not only required to act in good faith but also to exercise their powers for the purposes for which they were conferred. This dual obligation is also found in Section 213(1). In *See Teow Chuan v. Tunku Nadzaruddin Ibni Tuanku Ja'afar* [2007] 2 MLJ 212, the Court of Appeal held that the directors' decision to retire another director was motivated by improper purposes, rendering their actions invalid.

3. Duty to Exercise Reasonable Care, Diligence and Skill

Directors are expected to perform their duties with a level of competence reflective of an ordinary prudent person in a similar position. The principle is illustrated in *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407. Statutorily, Section 213(2) of the CA 2016 outlines this duty, and Section 214(1) of the CA 2016 provides a 'business judgment rule' that protects directors who act in good faith, for a proper purpose, and in the best interest of the company.

4. Duty to Avoid Conflicts of Interest

The duty to avoid conflicts between personal interests and fiduciary obligations is strictly enforced. In *Aberdeen Railway Co v. Blaikie Bros* [1854] 1 Macq 461, the court held that a director who had an interest in a contract entered into by the company had breached his duty, even though the contract appeared fair. Malaysian law reflects this principle in Section 218 of the CA 2016.

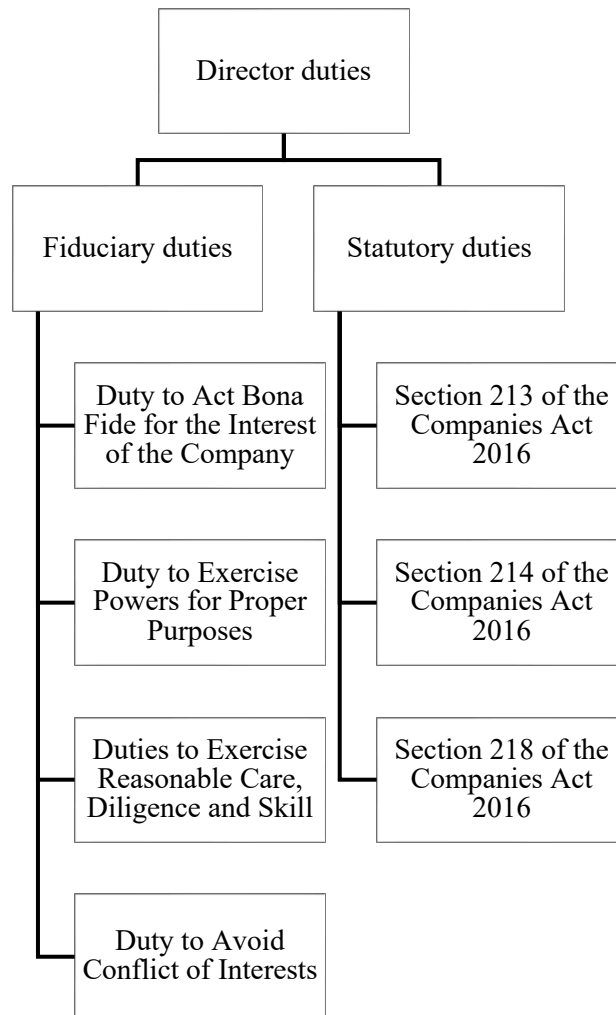


Figure 1.0 – The framework of director’s duty in Malaysia

4.2 Case Study 1: Deepfake Fraud Incident in a Malaysian Bank

Recently, the Malaysian financial industry was shaken by an attempted fraud involving the use of deepfake technology to impersonate a senior executive. According to The Edge Markets (2024), scammers used AI to convincingly impersonate a Singapore-based colleague in a short Zoom call and reinforced the deception via WhatsApp messages, nearly tricking the bank’s CFO into authorizing a transfer of US\$985,426 (around RM4.77 million). The incident only came to light after the transaction was halted, and disciplinary action was later taken against the executive involved.

Reflection

Although the immediate actor was a CFO and not a director, this case underscores important reflections on directors' fiduciary and statutory duties. The duty of care, skill, and diligence requires directors to ensure that their companies are adequately equipped to handle emerging risks such as AI-enabled scams. Directors cannot rely solely on operational staff but must ensure that sufficient training, verification procedures, and fraud-prevention mechanisms are embedded in corporate governance structures.

From a reform perspective, this incident demonstrates the need for Malaysian law to go beyond general duties in the CA 2016 by incorporating explicit statutory expectations regarding AI and cyber risk oversight. For example, amendments to the Companies Act or binding guidelines under the MCCG could require directors to demonstrate proactive oversight of digital risks. Such reforms would better align Malaysian practice with global governance trends.

4.3 Case Study 2: Multinational Firm Scammed by Deepfake Tech in Singapore

In April 2025, a finance director at a multinational company in Singapore was nearly deceived into transferring S\$670,000 (US\$495,000) through a deepfake scam. As reported in *The Straits Times* (2025), scammers replicated the voices and appearances of senior executives during a video call, making the fraud highly convincing.

Reflection

This case further illustrates how directors' duty of care extends to overseeing cybersecurity and AI-related risks. Boards must ensure that risk management frameworks are updated to address emerging threats, including deepfakes and AI-driven impersonation fraud. While the victim was an executive, directors retain the ultimate responsibility for ensuring adequate oversight, training, and verification systems are in place.

4.4 Comparative Analysis on AI Governance in Corporate Practice

As AI becomes integral to corporate operations, jurisdictions like the UK and Singapore are adapting governance frameworks to address related risks. Both prioritize transparency, accountability, and ethical AI use, but differ in regulatory philosophy and implementation.

Figure 2.0 (TAGF model) illustrates how Transparency, Accountability, Governance, and Fairness are integrated as pillars of AI governance. When applied to directors' duties, the TAGF model provides a useful lens for assessing whether companies' AI risk management practices meet international expectations. For instance, transparency corresponds to directors' obligation of disclosure, accountability aligns with fiduciary duties, governance reflects statutory oversight under the CA 2016, and fairness ensures that corporate decision-making does not expose stakeholders to undue technological risks.

Aspect	United Kingdom	Singapore	Malaysia
Regulatory Approach	Principles-based approach reflected in UK AI Strategy (2019) and Financial Conduct Authority (FCA) guidance	Prescriptive approach seen in Monetary Authority of Singapore (MAS)'s Model AI	Hybrid approach; no dedicated AI Act yet, but reliance on sectoral regulations such as Bank Negara Malaysia's Risk

	on AI use in financial services	Governance Framework and Personal Data Protection Commission (PDPC) guidelines	Management in Technology (RMiT) Policy (2020) and Malaysian Code on Corporate Governance (MCCG 2021) emphasising accountability, integrity, and risk oversight
Key Regulatory Bodies	Financial Conduct Authority (FCA): Financial Services and Markets Act 2000 Competition and Markets Authority (CMA): Competition Act 1998 Information Commissioner’s Office (ICO): Data Protection Act 2018 (UK GDPR)	Monetary Authority of Singapore (MAS): Monetary Authority of Singapore Act (Chapter 186) Personal Data Protection Commission (PDPC): Personal Data Protection Act 2012	Bank Negara Malaysia (BNM): Financial Services Act 2013 and RMiT Policy 2020 Securities Commission Malaysia (SC): Capital Markets and Services Act 2007 Department of Personal Data Protection (JPDP): Personal Data Protection Act 2010
Focus Areas	Transparency and accountability emphasized under UK AI Strategy and ICO’s Data Protection Act 2018 (aligned with GDPR)	Emphasis on ethical AI use and risk management under MAS Model AI Governance Framework and PDPA	Emphasis on cyber resilience, technology risk management, and data protection under BNM RMiT Policy, SC Guidelines on Technology Risk Management, and PDPA 2010
Board-Level Oversight	Directors’ duties derive from Companies Act 2006, including duties of care, skill, and diligence extended to technology risks	Directors’ duties in managing technology risks outlined under Singapore Companies Act (Cap. 50), with MAS Guidelines on Risk Management	Directors’ duties under Companies Act 2016 (ss. 210–213) include acting in good faith and with reasonable care, skill, and diligence, extended by MCCG 2021 to cover emerging technology and cyber risks
AI Ethics Framework	UK AI Strategy outlines responsible AI aligned with human rights and ethical principles	MAS Model AI Governance Framework provides practical ethical standards and transparency principles	Malaysia has no standalone AI ethics law, but National AI Roadmap 2021–2025 promotes responsible, trustworthy AI; MCCG 2021 encourages boards to adopt sustainability and ethical

			considerations in technology adoption
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A comparative review highlights that while the United Kingdom adopts a principles-based framework and Singapore relies on prescriptive regulatory models, Malaysia demonstrates a hybrid but fragmented approach. Oversight in Malaysia is largely sectoral, driven by Bank Negara Malaysia’s RMiT Policy, the Securities Commission’s technology risk guidelines, and the Personal Data Protection Act 2010, rather than a dedicated AI regulatory framework. Although the Malaysian Code on Corporate Governance (MCCG 2021) encourages boards to integrate technology and ethical considerations, the absence of a unified AI governance framework creates ambiguity in directors’ duties when addressing AI-related risks. From the perspective of agency theory, this ambiguity raises concerns over whether directors are adequately monitoring technological risks to protect shareholders’ interests. Similarly, risk governance theory underscores the importance of proactive oversight in mitigating emerging AI risks, which Malaysia’s fragmented framework currently struggles to ensure. This gap highlights the urgent need for clearer regulatory guidance to align directors’ duties with evolving AI challenges.

Malaysia’s AI governance framework is still in its early stages compared to the more mature systems in the UK and Singapore. Malaysia must continue to build on this momentum by refining its AI governance strategy (Said & Nabilah, 2024). While the UK has a well-established AI Strategy and Singapore offers a detailed Model AI Governance Framework, Malaysia’s National AI Framework provides broad strategic guidance but lacks the sector-specific regulations and practical implementation details needed for effective oversight. Additionally, although the Companies Act 2016 sets out directors’ general duties, Malaysia has yet to explicitly incorporate AI risk management and oversight into these responsibilities, unlike Singapore where AI governance is mandatory in certain sectors such as financial sector (Monetary Authority of Singapore [MAS], 2024) and the UK where directors are encouraged to actively oversee AI risks (Roberts et al., 2023). On the ethical front, Malaysia only recently introduced its AI Ethics Framework in 2020, aligned with ASEAN principles, which is still being developed and operationalized. This contrasts with the UK and Singapore, where well-defined and publicly endorsed ethical AI standards are already integrated into corporate governance practices.

5. SUGGESTION AND RECOMMENDATION

In order to bridge the gap between the traditional director duties and the AI-driven corporate governance, it is recommendable for the Board of Director to adopt the Technology-Aware Governance Framework (TAGF). TAGF integrates legal and technological principles into a cohesive model to guide directors in AI governance. Building on these findings, this paper proposes the Technology-Aware Governance Framework (TAGF) as a practical model to equip directors with the necessary tools to govern AI responsibly while fulfilling their fiduciary and statutory duties.

Figure 2.0 illustrates the TAGF model, which integrates legal and technological principles into a cohesive governance approach. It evolves around three key features:

TAGF – Key Feature 1: AI Risk Governance Charter

The first feature emphasizes the importance of adopting a board-level charter specifically addressing AI governance. This charter should outline clear responsibilities for AI oversight and

include the appointment of specialized personnel such as digital risk advisors or AI risk experts who can provide informed guidance and ensure that AI-related decisions are aligned with the company's governance objectives.

The purpose of the AI Risk Governance Charter is to safeguard the company and its stakeholders from unforeseen risks associated with the use of artificial intelligence. By providing clear oversight structures and risk management protocols, the Charter supports directors in fulfilling their statutory and fiduciary duties within the rapidly evolving landscape of emerging technologies. Additionally, it fosters a culture of proactive governance, ensuring that digital systems and AI-driven decisions are managed responsibly, ethically, and in alignment with the company's long-term strategic objectives.

TAGF – Key Feature 2: Enhanced Duty of Care Standards

The duty of care expected from directors should be updated to reflect the growing use of AI in corporate decision-making. Directors should have a basic understanding of digital technologies so they can make informed choices when AI is involved. This means they should receive proper training on emerging technologies—especially high-risk tools like generative AI and deepfakes. Additionally, when dealing with complex or sensitive AI systems, directors should be encouraged to seek expert advice or independent validation to ensure the tools are reliable, safe, and used responsibly.

To enhance the duty of care in the AI era, directors must first build basic digital literacy through targeted training on emerging technologies like generative AI and deepfakes. This empowers them to make informed decisions and engage critically with AI-related issues. Secondly, boards should adopt AI-aware governance practices, redefining reasonable care to include the ability to question and assess AI systems. Directors need to understand key risks, ask the right questions, and ensure ethical use of AI. Aside, directors should seek expert advice and third-party audits for high-risk AI tools. Consulting digital risk advisors and validating AI systems through independent reviews ensures compliance, transparency, and protects the company from harm.

TAGF – Key Feature 3: AI Transparency and Accountability Mechanisms

These mechanisms ensure that AI operates in a clear, explainable, and auditable manner, allowing directors to make informed decisions and fulfil their legal and ethical duties. A crucial element of AI transparency and accountability is algorithmic explainability. Directors should insist that AI systems provide clear, understandable reasoning behind their outputs or decisions, particularly in sensitive areas such as fraud detection, credit scoring, or personnel evaluation.

To further strengthen accountability, organizations must maintain real-time audit trails and monitoring systems, capturing detailed logs of AI-generated decisions and activities. Such records enable post-incident investigations, regulatory reporting, and the identification of errors or misuse. For example, if a deepfake attack deceives an AI system, audit logs would help trace the breach and inform future prevention. Lastly, human oversight and intervention remain non-negotiable. Directors must guarantee the presence of clear "human-in-the-loop" or "human-on-the-loop" protocols that allow for human review, override, or suspension of AI operations, especially in high-stakes scenarios.

Ultimately, the goal of the TAGF model is to shift from traditional passive oversight, where directors merely respond to issues as they arise, to a model of proactive governance. Through this

approach, directors actively anticipate emerging risks, particularly those related to AI and digital technologies, and take strategic steps to address them before they escalate. Integrating AI-related responsibilities within established legal and ethical governance frameworks enables directors to more effectively foresee, comprehend, and manage potential risks, ensuring they meet both fiduciary and statutory duties in an era shaped by intelligent technologies.

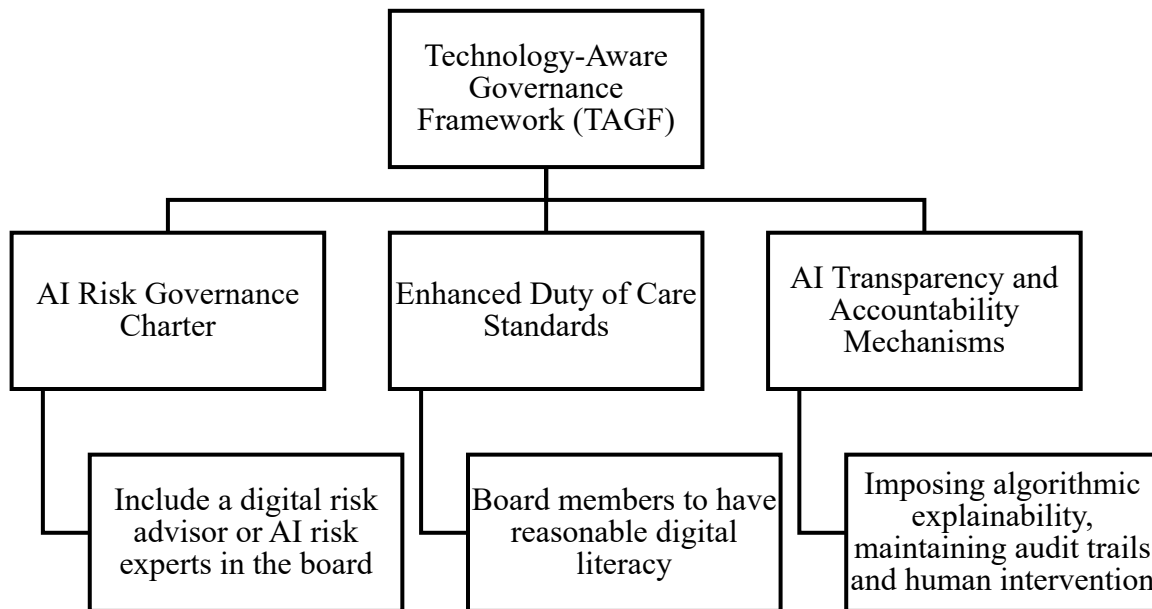


Figure 2.0: Technology-Aware Governance Framework (TAGF)

The goal is to shift from the traditional passive overseeing where directors merely respond to issues as they arise to a model of proactive governance. Through this approach, directors actively anticipate emerging risks, particularly those related to AI and digital technologies, and take strategic steps to address them before they escalate. Integrating AI-related responsibilities within established legal and ethical governance frameworks enables directors to more effectively foresee, comprehend, and manage potential risks, ensuring they meet both fiduciary and statutory duties in an era shaped by intelligent technologies.

6. CONCLUSION

The case studies demonstrate that the traditional standard of care imposed on directors requires reconsideration in order to remain effective amidst the rapid growth of artificial intelligence (AI). As Surden (2019) explains, AI is not an autonomous thinking entity but a human-designed system that functions according to programmed instructions. Within this context, Boards of Directors and executives may utilize AI-powered analytics to enhance risk assessment, monitor compliance, and identify emerging governance issues (Sheorey, 2021). However, recent deepfake incidents involving senior executives at leading financial institutions in Malaysia and a large multinational firm in Singapore reveal a critical governance gap: the lack of explicit regulatory frameworks addressing AI and related technological risks within corporate oversight.

This regulatory shortfall places significant pressure on directors, who must rely on traditional fiduciary duties such as the duty of care and risk management when confronting complex AI-driven threats, despite the absence of clear legal benchmarks. As a result, directors are exposed to heightened uncertainty and potential liability, complicating both their decision-making

processes and their compliance obligations. Deepfake technologies, in particular, present profound challenges to the financial sector, where authenticity and trust form the foundation of institutional stability (Khan, Taqi, & Afzal, 2024).

Figure 1.0, which maps the current framework of directors' duties, underscores the reliance on traditional fiduciary principles that do not explicitly address digital risks. This framework, while foundational, appears increasingly insufficient to guide directors in managing emerging AI-related threats. In contrast, Figure 2.0 presents the proposed Technology-Aware Governance Framework (TAGF), which demonstrates how governance structures can evolve to integrate AI-specific oversight, enhanced duty of care standards, and mechanisms for transparency and accountability.

These developments demand the urgent formulation of comprehensive legal guidelines that explicitly integrate AI-related risks into corporate governance frameworks. By aligning statutory and fiduciary duties with the governance reforms illustrated in Figure 2.0, directors would be better equipped to fulfil their responsibilities effectively while safeguarding corporate integrity in an era of accelerated technological disruption. In doing so, this study contributes to the doctrinal exploration of directors' duties by highlighting how legal responsibilities must evolve to address the unique risks posed by AI in contemporary corporate governance.

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