

AI IN THE BOARDROOM: LET THE LAW BE IN THE DRIVING SEAT

Joseph Lee; Peter Underwood

Reader in Corporate and Financial Law, University of Manchester;
Lecturer in Law, University of Exeter



Governance Failures

Embedded Systemic Short-termism

The pursuit of short-term gains is at the expense of long-term sustainability. The mixing of insider and outsider rights with no-liability rentier shareholder has become a recipe for short-termism.

This demonstrates a significant level of disengaged shareholders with a diminished democratic voice resulting in a democratic deficiency. The overall result is two principal deficiencies:

- 1) Shareholder's interest is so trivial that many will not exercise their voting rights, and
- 2) exit is preferred over voice

Use of Shareholder Centric Approach

The leading conception of the company is that of the shareholder-centred approach, the corporation exists to serve the shareholders and the company ought to be run in their sole interests. Broader stakeholder considerations will always remain subservient.

The result of the shareholder centred approach is short-termism with investors seeking to gain quick and efficient returns

Law Facilitating AI

There are two principal ways in which company law can facilitate AI and the use of AI to augment the skills of directors' decision making in the boardroom. We submit two proposals.

1. Directors Duties to be amended to allow for the use of AI in discharging their duties.
2. Introduction of a specialist director – 'The Technology director'

In addition, the design and implementation should be regulated. There is a need for the introduction of regulation of the AI systems themselves. This could be in the form of industrial best practice or in the form of a code much like the UK Corporate Governance Code

AI Autonomous Director?

A fundamental reason which prevents an AI being appointed director is the requirements for appointment and the subsequent duties. Challenges also exist over capacity and the juridical nature of autonomous directors.

Non-executive artificial intelligence is equally challenging due to the role of supervision. AI supervision of natural directors is neither feasible nor practical.

Conclusion

Two main problems within corporate governance

- 1) Short-termism
- 2) Shareholder centered approach

AI can be utilized as a tool to address these problems. The AI introduction requires a regulatory framework to allow for adoption, as such the law must be in the driving seat when implementing such change.

Abstract

This paper discusses the introduction of artificial intelligence (AI) to the boardroom and the importance of law and regulation in doing so. We argue that AI should be utilised in the boardroom to address the current shortcomings in the corporate governance – corporate short-termism. AI can assist boards as they consider societal interests as it can process data in a manner and at a speed that is beyond the capability of manual systems. With well-designed algorithmic steps, AI can provide guidance that is independent of subjective judgements biased by shareholder short-termism and board opportunism. Company law should be revised to support AI-assisted corporate development by mitigating the legal risks of boards and by encouraging directors to use AI to achieve the ESG goals of the company.

Research Questions

This paper examines the possibilities and limitations of AI in UK corporate governance by evaluating both currently available AI and the 'AI of the future'.

The questions posed by the paper are therefore:

- 1) What are the problems AI Can remedy
- 2) In what capacity can AI provide this remedy
- 3) How can law facilitate the remedy proposed

Findings

AI allows for more voices to be considered when included into the boardroom decision making process, enhancing the decision-making process, of the collective board. The addition of stakeholder focused ESG can enhance corporate sustainability and reverse the focus of short-term decision making.

AI as a tool can address failings of corporate governance by

- Enhancing governance of shareholder democracy
- Enhancing sustainability and inclusion through ESG

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CONTACT

Joseph Lee
University of Manchester
joseph.lee-2@manchester.ac.uk

Peter Underwood
University of Exeter
P.D.Underwood@exeter.ac.uk