The Role of Artificial Intelligence Governance in Corporate Board Decision-Making: A South African Perspective on External Influences

Phemelo Patrick Fout[1]

ABSTRACT

Artificial Intelligence (AI) is rapidly transforming corporate governance by providing boards of directors with sophisticated analytical tools capable of enhancing strategic decision-making, risk management, and regulatory compliance. Despite these advantages, AI introduces significant governance challenges relating to accountability, transparency, algorithmic bias, data privacy, and directors' fiduciary obligations. South Africa currently lacks a comprehensive legislative framework regulating AI within corporate governance, compelling directors to rely upon existing principles contained in the Companies Act 71 of 2008, the King V Report on Corporate Governance, the Protection of Personal Information Act 4 of 2013, and constitutional values.

This paper examines the role of AI governance in corporate board decision-making within South Africa and analyses how external influences, including regulatory developments, political dynamics, economic pressures, technological innovation and ethical considerations shape board decisions. The study argues that existing South African corporate governance principles provide an important foundation but are insufficient to regulate AI-driven board decision-making comprehensively. The research proposes the development of a dedicated AI governance frameworks that promote innovation while safeguarding accountability, transparency, fairness, and responsible corporate governance.

KEYWORDS

Artificial Intelligence, Corporate Governance, Board Decision-Making, Directors' Duties, Companies Act 71 of 2008, King V, AI Regulation; South Africa.

[1] Director at Fout Attorneys, Johannesburg.

INTRODUCTION

Artificial intelligence has emerged as one of the most transformative technologies affecting corporate governance in the twenty-first century[2]. Machine learning, predictive analytics, natural language processing, and generative AI increasingly support corporate boards in evaluating financial performance, managing enterprise risks, monitoring compliance, and formulating long-term strategy[3]. AI has therefore become an important governance tool rather than merely an operational technology.

South African companies are progressively integrating AI into governance processes to improve efficiency and competitiveness[4]. Boards now utilise AI-powered systems to analyse vast quantities of financial and non-financial information, detect fraud, and support strategic decision-making. While these technologies enhance board effectiveness, they also generate significant legal and governance concerns[5].

Corporate boards remain legally accountable for decisions irrespective of whether those decisions were informed by AI systems.[6] Directors cannot delegate fiduciary responsibilities to algorithms or automated systems. Consequently, AI raises complex legal questions regarding accountability, transparency, explainability, cybersecurity, discrimination, and ethical governance. External influences further complicate AI governance. Political developments, regulatory reform and technological innovation increasingly shape how South African boards adopt and oversee AI technologies. These influences create new governance responsibilities requiring directors to balance innovation with legal compliance and ethical accountability[7].

---

[2] Stuart Russell & Peter Norvig, Artificial Intelligence: A Modern Approach (4th ed. 2021).
[3] Johannes Schneider et al., Artificial Intelligence Governance for Businesses, 40 Info. Sys. Mgmt. 229, (2023); Org. for Econ. Co-operation & Dev., Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449 (2019).
[4] Friedrich Hamadziripi & Howard Chitimira, The Integration and Reliance on Technology to Enhance the Independence and Accountability of Company Directors in South Africa, 24 Potchefstroom Elec. L.J. 1, [pin] (2021).
[5] Organisation for Economic Co-operation and Development, Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449 (amended May 3, 2024), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449.
[6] Companies Act 71 of 2008 § 76(3) (S. Afr.); Inst. of Dirs. in S. Afr., King V Report on Corporate Governance for South Africa princ. 1 (2025).
[7] OECD, *supra* note 3, World Econ. Forum, (2024).

DEFINING ARTIFICIAL INTELLIGENCE (AI)

There is no universally accepted legal definition of artificial intelligence8. Broadly, AI refers to computer systems capable of performing tasks that traditionally require human intelligence, including reasoning, learning problem solving, language processing and decision making9. Organization for Economic Co-operation and Development (OECD)10 defines AI as a machine-based system that can, for a set of objectives, make predictions, recommendations, or decisions influencing real or virtual environments.

Understanding AI governance

Within corporate governance, AI extends beyond automation, it encompasses technologies that assist boards in identifying strategic opportunities, monitoring regulatory compliance and assessing risk. It functions as a decision-support mechanism rather that an autonomous corporate decision maker11. Ultimately responsibility for governance decision remains vested in directors. AI governance seeks to ensure that AI technologies operate lawfully, protect privacy, and confidential information, comply with corporate governance standards and promote responsible innovation12. It extends beyond technical regulations. It encompasses board oversight, risk management, ethical leadership, and organizational accountability.

THE SOUTH AFRICAN LEGAL AND REGULATORY FRAMEWORK GOVERNING ARTIFICIAL INTELLIGENCE IN CORPORATE BOARD DECISION-MAKING

Corporate governance refers to the system through which organizations are directed and controlled[13]. It regulates relationship between directors, shareholders, creditors and regulators[14]. Unlike jurisdictions such as the European Union which has adopted the Artificial Intelligence Act (AI Act), South Africa has not yet enacted comprehensive legislation specifically regulating AI. Consequently, the governance of AI in South African companies is primarily derived from existing constitutional principles, corporate legislation, data protection laws, common-law fiduciary duties, and voluntary corporate governance codes such as King V

8 Russell & Norvig, *supra* note 2.
9 *Id.*
10 OECD, *supra* note 3.
11 Companies Act 71 of 2008 § 76(3) (S. Afr.).
12 OECD, *supra* note 2, § 1.2; Inst. of Dirs. in S. Afr., *supra* note 6, princ. 10.
13 Bob Tricker, Corporate Governance: Principles, Policies and Practices (5th ed. 2024).
14 Christine A. Mallin, Corporate Governance (7th ed. 2022).

report. These legal instruments collectively establish the framework within which directors must exercise oversight over AI-assisted decision-making.

Constitutional Framework

The Constitution of the Republic of South Africa, 1996 is the supreme law of the Republic and provides the normative foundation for the governance of emerging technologies, including AI. Although the Constitution does not expressly regulate AI, several constitutional rights and values have direct implications for the design, deployment, and oversight of AI systems[15].

Section 1[16] of the Constitution establishes the foundational values of human dignity, equality, the advancement of human rights and freedoms, the rule of law, accountability, responsiveness, and openness. These values should inform the governance of AI within corporate entities, ensuring that technological innovation aligns with constitutional principles and promotes ethical corporate conduct.

Several provisions in the Bill of Rights are particularly relevant to AI governance such as section 9[17] which is equality clause and under this section, AI systems must not perpetuate unlawful discrimination or algorithmic bias. Section 10[18] deals with human dignity, that is the use of AI should respect and protect the dignity of individuals affected by automated decisions. Section 14[19] which is privacy clause, AI systems processing personal information must safeguard individuals' privacy rights. Section 33[20] which deals with Just Administrative Action, automated decision-making affecting administrative functions should remain lawful, reasonable, and procedurally fair. The Constitution therefore provides the normative framework within which AI governance should evolve in South Africa.

The Companies Act 71 of 2008

The Companies Act 71 of 2008 constitutes the principal legislative framework governing corporate governance in South Africa. Although the Act predates widespread AI adoption, several of its provisions are directly applicable to AI-assisted corporate decision-making. Section 76[21] requires directors to act in good faith and for a proper purpose, act in the best

[15] Iain Currie & Johan de Waal, The Bill of Rights Handbook (6th ed. 2013).
[16] S. Afr. Const. 1996, § 1.
[17] *Id*. § 9.
[18] *Id.* § 10.
[19] *Id.* § 14.
[20] *Id.* § 33.
[21] Companies Act 71 of 2008 § 76(3)(a)–(c) (S. Afr.).

interests of the company, exercise the degree of care, skill, and diligence reasonably expected of a director. These statutory duties remain applicable irrespective of whether directors rely upon AI-generated recommendations. AI cannot replace directors' fiduciary responsibilities, nor can directors avoid liability by attributing decisions to algorithmic systems. Directors must therefore critically evaluate AI-generated information before relying upon it in board deliberations.

The Business Judgment Rule

Section 76(4)[22] of act 7 of 2008 codifies the business judgment rule, which protects directors who make informed decisions in good faith, without conflicts of interest, and on a rational basis. The increasing use of AI raises important questions regarding the application of this rule. A director who relies blindly on an AI recommendation without understanding its limitations may fail to satisfy the statutory standard of informed decision-making. Conversely, directors who appropriately evaluate AI outputs alongside professional advice are more likely to benefit from the protection afforded by the business judgment rule. AI should therefore complement and not replace independent human judgment.

King V Report on Corporate Governance

The newly revised King V Report on Corporate Governance (2025) is South Africa's leading corporate governance code. Although it does not specifically regulate AI, its principles are highly relevant to AI governance. Several King V principles have direct application to AI governance. Principle 1[23] which deals with Ethical and Effective Leadership emphasis that boards should ensure that AI systems operate consistently with ethical values, integrity, accountability, fairness, and transparency. Directors should oversee the ethical implications of AI deployment and prevent misuse of algorithmic decision-making. Principle 10[24] and 12[25] are particularly relevant to AI in that boards should oversee information technology in a manner that supports organisational objectives while safeguarding information assets, cybersecurity, privacy, and regulatory compliance.

[22] *Id.* § 76(4).
[23] Inst. of Dirs. in S. Afr., *supra* note 6, princ. 1.
[24] *Id.* princ. 10.
[25] *Id*. princ. 10.

Protection of Personal Information Act 4 of 2013 (POPIA)

AI systems frequently depend upon large datasets, containing personal information. Consequently, the Protection of Personal Information Act (POPIA)[26] is one of the most significant statutes governing AI deployment in South Africa.

POPIA requires that personal information be processed, lawfully, reasonably, transparently, for specific and legitimate purposes, securely, and subject to appropriate safeguards. Boards implementing AI systems must ensure compliance with POPIA throughout the AI lifecycle, including data collection, model training, deployment, monitoring, and retention. Failure to comply may expose companies to regulatory enforcement, civil liability, and reputational harm.[27]AI governance frameworks should incorporate robust data governance policies, privacy impact assessments, and cybersecurity measures to ensure compliance with POPIA.

EXTERNAL INFLUENCES SHAPING ARTIFICIAL INTELLIGENCE GOVERNANCE AND CORPORATE BOARD DECISION-MAKING IN SOUTH AFRICA

Corporate governance does not operate in isolation. Board decision-making is continuously influenced by a range of external factors that shape strategic priorities, regulatory compliance, risk management, and organisational performance[28]. The emergence of artificial intelligence (AI) has intensified the impact of these external influences by requiring directors to navigate an increasingly complex legal, technological, economic, and ethical environment[29].

For South African companies, AI governance is affected not only by domestic legislation and corporate governance principles but also by global technological developments, investor expectations, geopolitical dynamics, sustainability imperatives, and evolving international regulatory standards[30]. Directors are required to anticipate and respond proactively to these external influences while ensuring that AI systems remain aligned with constitutional values and sound corporate governance practices[31].

26 Protection of Personal Information Act 4 of 2013 §§ 4, 8–25 (S. Afr.).
27 Info. Regulator (S. Afr.) (2021).
28 Inst. of Dirs. in S. Afr., *supra* note 5.
29 World Econ. Forum, *supra* note 6.
30 Farouk H.I. Cassim et al., Contemporary Company Law (3rd ed. 2022).
31 OECD, *supra* note 3.

Political Influences

Political stability and government policy play a significant role in shaping the governance environment within which corporations operate. Government priorities regarding digital transformation, industrial development, cybersecurity, and innovation directly affect corporate investment in AI technologies. South Africa's commitment to the Fourth Industrial Revolution (4IR) has encouraged organisations to adopt AI-driven technologies to improve productivity and economic competitiveness[32].

Government initiatives promoting digital innovation have created opportunities for businesses to integrate AI into corporate governance, financial management, and strategic planning. However, political uncertainty, inconsistent regulatory policies, and public sector governance challenges may discourage long-term investment in advanced technologies[33]. Boards must therefore consider the implications of political developments when making decisions regarding AI adoption and digital transformation. Furthermore, increasing government attention to cybersecurity, data sovereignty, and digital infrastructure may result in new legislative obligations affecting corporate AI governance[34].

Economic Influences

Economic conditions significantly influence corporate investment decisions and the adoption of AI technologies. During periods of economic growth, organisations are more likely to invest in digital innovation, automation, and AI-driven governance systems. Conversely, economic downturns may limit investment in technological infrastructure due to financial constraints[35]. South Africa's economy faces persistent challenges, including low economic growth, high unemployment, inflationary pressures, energy insecurity, and infrastructure constraints. These challenges influence corporate boards to seek innovative solutions that improve operational efficiency and reduce costs[36].

[32] Presidential Comm'n on the Fourth Indus. Revolution, Report of the Presidential Commission on the Fourth Industrial Revolution (2020) (S. Afr.).
[33] *Id.*
[34] *Id.*
[35] *Id* at 7.
[36] S. Afr. Reserve Bank, Financial Stability Review (2024).

Technological Influences

Rapid technological innovation represents one of the most significant external drivers of AI governance[37]. Developments in machine learning, generative AI, cloud computing, big data analytics, blockchain technology, robotics, and quantum computing continue to transform corporate governance[38]. These technologies enable boards to analyse complex datasets in real time, identify emerging business risks, improve corporate reporting, strengthen compliance monitoring and enhance enterprise risk management.

Despite these advantages, technological innovation also creates governance challenges. Directors should ensure that AI systems remain accurate, reliable, transparent and subject to appropriate human oversight. Technological change also requires continuous board education. Directors who fail to understand emerging technologies may struggle to discharge their fiduciary responsibilities effectively[39].

RECOMMENDATIONS FOR STRENGTHENING ARTIFICIAL INTELLIGENCE GOVERNANCE IN SOUTH AFRICA

As AI becomes increasingly integrated into corporate governance and strategic board decision-making, there is an urgent need for legal and institutional reforms that promote responsible innovation while protecting constitutional rights and fostering stakeholder confidence[40]. The OECD[41] and the European Union have similarly recognized that effective AI governance requires a combination of legislative regulations, ethical principles, and institutional oversight. This article proposes recommendations aimed at strengthening AI governance in South Africa.

Enact Comprehensive Artificial Intelligence Legislation

The most significant recommendation arising from this study is the enactment of dedicated AI legislation. While existing laws regulate aspects of AI indirectly, South Africa requires a comprehensive legal framework that specifically governs the development, deployment, and oversight of AI systems.

---

37 *Id*.
38 Mark Fenwick et al., Artificial Intelligence and Corporate Governance: Opportunities, Challenges and Implications for Corporate Boards, 20 Eur. Bus. Org. L. Rev. 257 (2019).
39 *Id.*
40 *Id*. at 8.
41 OECD, *supra* note 3; Regulation 2024/1689, of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, 2024 O.J. (L 1689).

Such legislation should define AI and classify AI systems according to risk levels, establish legal obligations for developers, users, and corporate boards, require transparency and explainability for high-risk AI systems, mandate human oversight of AI-assisted corporate decisions, regulate liability for AI-related harm and align with constitutional rights, including equality, dignity, privacy, and access to justice[42].

Integrate AI Governance into the Companies Act 71 of 2008

Rather than replacing the Companies Act, Parliament should amend it to expressly recognize AI governance as part of directors' corporate governance responsibilities. Possible amendments could include imposing express duties on directors to oversee AI governance, requiring boards to assess AI-related risks, clarifying directors' responsibilities when relying on AI-generated recommendations, requiring disclosure of material AI governance practices and strengthening accountability for AI-assisted decision-making[43]. These amendments would provide greater legal certainty while reinforcing directors' fiduciary duties.

Update the King V Report on Corporate Governance

King V report remains one of the world's leading corporate governance codes and it should include AI ethics principles, board responsibilities relating to AI oversight, governance of algorithmic decision-making, AI risk management, AI transparency, cybersecurity governance, responsible innovation and board competency in digital governance. Updating King V report would provide practical governance guidance without requiring extensive legislative reform.

Establish a National Artificial Intelligence Regulatory Authority

Government should consider establishing an independent AI regulatory authority or expanding the mandates of existing regulators, such as the Information Regulator and the Companies and Intellectual Property Commission (CIPC), to oversee AI governance[44]. Such a body could develop AI governance guidelines, monitor compliance, conduct investigations, certify high-risk AI systems, coordinate AI regulation across sectors, advise government on emerging AI risks; and cooperate with international regulators. An independent oversight body would promote consistency and enhance public confidence in AI technologies[45].

[42] Dep't of Commc'ns & Digital Techs., South Africa National Artificial Intelligence Policy Framework (2024) (S. Afr.)
[43] Companies Act 71 of 2008 § 76 (S. Afr.); Hamadziripi & Chitimira, *supra* note 3,
[44] Protection of Personal Information Act 4 of 2013 §§ 39–54 (S. Afr.) (Information Regulator's mandate)
[45] *Id.*

Strengthen Board Competence and Digital Literacy

The effectiveness of AI governance depends significantly on the competence of directors. Boards should ensure that directors possess sufficient knowledge of AI technologies, Cybersecurity, data governance, digital ethics, technology risk management, algorithmic accountability and emerging AI regulation[46].

The recommendations advanced in this article advocate a balanced, principles-based approach that promotes innovation while safeguarding constitutional rights, stakeholder interests, and corporate accountability. By enacting dedicated AI legislation, modernizing the Companies Act and King V, strengthening institutional oversight, and investing in board capacity-building, South Africa can establish a forward-looking AI governance framework that supports sustainable economic development and reinforces confidence in corporate decision-making.

CONCLUSION

Artificial intelligence presents both unprecedented opportunities and significant governance challenges for South African corporations. While existing legal instruments provide a valuable foundation, they are insufficient to address the complexities associated with AI-assisted corporate decision-making. Strengthening AI governance requires coordinated legislative reform, enhanced regulatory oversight, improved board competence, greater transparency, and the integration of ethical principles into corporate governance frameworks. The absence of a comprehensive AI governance framework creates legal uncertainty concerning directors' responsibilities, algorithmic accountability, transparency, liability, and regulatory oversight.

[46] Inst. of Dirs. in S. Afr., *supra* note 5, princ. 10.